

Interlocal Agreement Regarding the Chatham-Cary Joint Land Use Plan

This Interlocal Agreement Regarding the Chatham-Cary Joint Land Use Plan (‘Agreement’) made and entered into this the 1st day of July, 2012, by and between **Chatham County**, a political subdivision of the State of North Carolina established and operating pursuant to the laws of the State of North Carolina, (‘**COUNTY**’) and the **Town of Cary**, a municipal corporation organized and existing under the laws of the State of North Carolina, (‘**TOWN**’)

WITNESSETH:

WHEREAS, the COUNTY and TOWN have identified the protection of the B. Everett Jordan Lake to be of primary interests to both parties as a source of drinking water, a recreational amenity, wildlife habitat and an area of special environmental concern; and

WHEREAS, in December, 2005 TOWN and COUNTY adopted a resolution calling for joint planning of an area of common interest described as east of Jordan Lake, north of White Oak Creek, west of the Chatham County line with Wake County and south of the Durham County Line (‘Joint Planning Area’); and

WHEREAS, after thorough, careful and diligent study and review, and with extensive public input, the parties have jointly prepared the “Chatham County-Town of Cary Joint Land Use Plan” (‘PLAN’) which consists of a written PLAN Document and PLAN Map, and each find PLAN be an agreeable policy document designed to guide future land use and other planning decisions of both COUNTY and TOWN; and

WHEREAS, the parties desire to provide additional guidance on how PLAN is to be administered, implemented, and from time to time, amended, so that it continues to be a useful and viable document for both the COUNTY and TOWN for land use and other planning decisions within the Joint Planning Area.

NOW THEREFORE, in consideration of the premises, and under the authority granted by North Carolina law, including N.C.G.S. §160A-461, *Interlocal Cooperation Authorized*, the parties agree as follows:

1. Purpose. The purpose of this Agreement is for each party to declare (i) its support for PLAN and the value it brings to decisions on proposed zoning and subdivisions and the location, nature and content of other development projects, including the orderly planning for and location of major thoroughfares, parks, utilities and other facilities; and (ii) its commitment to implementation and use of PLAN consistent with and as contemplated by the laws of the State of North Carolina. PLAN is designed to serve as a statement of goals, recommendations and policies guiding the development of the Joint Planning Area. This Agreement is also designed to provide mechanisms for the two parties to coordinate PLAN implementation and use.

2. Plan Adoption. Each party shall adopt PLAN as a land use plan for the Joint Planning Area within their respective jurisdiction. For the TOWN that means PLAN will be considered an official amendment to the TOWN Comprehensive Plan. For COUNTY, that means adoption as an official policy document for COUNTY zoning, subdivision, and land use and development. The PLAN will be used by TOWN and COUNTY as their official basic policy guide when considering rezonings, development proposals including site and subdivision plans, and when conducting planning efforts for geographic areas within the Joint Planning Area, such as long-range planning for services, infrastructure, and facilities within all or portions of the Joint Planning Area.

3. Rural Buffer/Urban Services Boundary. Among other designations, PLAN contains a “Rural Buffer Boundary” line. The location of the Rural Buffer Boundary is depicted on the PLAN Map. Public wastewater utility service will not be provided to, or allowed to serve, any property west of the Rural Buffer Boundary, whether by TOWN, COUNTY, or other provider, except as otherwise authorized by special policies contained within PLAN. For the purposes of this Agreement “public wastewater utility service” means any wastewater service or system, regardless of ownership, except an individual on-site septic system approved by COUNTY or the State of North Carolina. Public water utility service may be provided to properties west of the Rural Buffer Boundary. TOWN and COUNTY also agree to observe and be guided by the other policy provisions given in the PLAN Document with respect to the Rural Buffer Boundary and

water and wastewater utilities. West of the Rural Buffer Boundary, COUNTY shall work to limit wastewater treatment systems for new development to individual on-site septic systems approved by the Chatham County Environmental Health Department or other on-site septic systems approved by the North Carolina Department of Environment and Natural Resources.

4. Plan Interpretation. Should either party question the meaning or interpretation of any aspect of the PLAN, the planning director, or equivalent position, of that party shall contact the planning director of the other and the two planning directors will jointly agree on and provide a joint interpretation. The planning directors will forward the joint interpretation to their respective governing boards as informational items. If agreement cannot be reached, then either one or both directors may, if necessary, prepare a PLAN amendment for consideration by both TOWN and COUNTY to clarify the issue in question.

5. Plan Amendments.

- a. **Types of Amendments.** TOWN and COUNTY agree that there is a distinction between “minor” and “major” PLAN amendments. Minor amendments to the PLAN Map include nonsubstantive changes such as changes in map layout, formatting, or thematic coloring, as well as slight shifts in the boundary between two land use categories to take into account topography or similar factors, or to set the boundaries between map categories more precisely based on better field mapping of geographic features. Minor amendments to the PLAN Document include changes or adjustments to document layout or presentation that do not affect substantive content or recommendations, corrections to grammar and spelling, or clarifications to confusing text. Major PLAN amendments are more significant and substantive changes to the PLAN Map, and any changes to the substantive content of the PLAN Document.
- b. **Process for Minor Amendments.** A minor amendment may be proposed by either TOWN or COUNTY. Approval of a minor amendment requires the consent of the planning directors of both TOWN and COUNTY. If consent and agreement is not reached, the requesting party may follow the procedures for a major amendment, as given below. The planning directors shall forward agreed-upon minor amendments to their respective governing boards as informational items. Once a minor amendment is

approved by consent of the planning directors, the PLAN shall be modified to reflect the amendment and date of such amendment.

- c. **Process for Major Amendments.** Either party may propose or initiate a major amendment. Each party shall follow their respective established procedures for submission and review of a land use plan amendment, consistent with their procedures for making other amendments to their Comprehensive Plans, except that the initiating party shall also file an application for a Comprehensive Plan amendment with the other party. The COUNTY shall first consider the proposed amendment and either approve or deny the amendment. The COUNTY Planning Director will inform the TOWN Planning Director of the COUNTY decision. While the Major Amendment is being considered by the COUNTY, the TOWN may simultaneously review the application and hold public hearings, but final action on the amendment will not be considered by the TOWN until the COUNTY has first taken action and the TOWN has been notified of the action. Upon notification of the action of the COUNTY, the TOWN will take final action on the major amendment. Approval of a major amendment requires the approval of the governing boards of both parties. If the governing board of either party denies the request for a major amendment, the proposed amendment may not be considered as an amendment to the PLAN. The COUNTY should take final action on a major amendment request within ninety (90) days of the date of original application date of the amendment request. If approved by the COUNTY, the TOWN should take final action on the amendment within ninety (90) days of notification of COUNTY action. If either party fails to act within their respective time periods, the failure to act shall be considered as approval of the amendment by that party; provided, however, that notwithstanding a party's failure to act, no amendment to the PLAN that is inconsistent with a party's existing Comprehensive Plan or other official plan or policy for land use development (collectively "Comprehensive Plan") shall be considered an amendment to such party's Comprehensive Plan until that party has affirmatively adopted the amendment as a part of its Comprehensive Plan.
- d. **Process for Citizen-Initiated Major Amendments.** Citizens may initiate a major amendment to the PLAN by submitting a completed application to both COUNTY and TOWN, following the respective established procedures for submission, review, and

adoption of a land use plan amendment of COUNTY and TOWN, including any applicable fees. Citizen-initiated major amendments shall follow the procedure outlined in subsection (c) above.

6. Zoning/Rezoning. Within the geographic boundaries of the Joint Planning Area, the following shall apply:

- a. **Jurisdiction.** Each party shall each retain exclusive authority for actions on zoning/rezoning requests for property that is, at the time of the approval, within their respective planning and regulation of development jurisdiction. Applications for rezonings shall be provided to COUNTY by TOWN and to TOWN by COUNTY for information and comment purposes.
- b. **Initial Determination of Conformance with PLAN.** Zoning/rezoning applications or proposals, when received or initiated by either TOWN or COUNTY staff, shall be classified by staff according to the extent to which the application conforms or fails to conform to the PLAN. For each application, the Planning Department of the party receiving or initiating the application will classify the application in accordance with the guidance provided in sections 6(c) and 6(d) below, as “conforming” or “non-conforming”. This initial conformance classification is not binding on either the planning and zoning board or governing board that will ultimately hear the case and make their own findings as to PLAN conformance.
- c. **Conforming.** A zoning/rezoning application should be classified as Conforming by the receiving or initiating party if the type of land use requested is specifically described and recommended in the PLAN; if the density or intensity of the use requested is equal to or less intense than that described in the PLAN; and if the boundaries of the land uses in the application are fully consistent with the corresponding boundaries shown on the PLAN map. An application may also be classified as Conforming after consultation of the Planning Directors as described below if the type of land use requested is not specifically described and recommended in the PLAN but, on balance, the type of use seems reasonable in light of all PLAN provisions; if the density or intensity of the proposed use is no more than 10% greater than that which is described in the PLAN; or if the boundaries of the proposed land uses are not fully consistent with the corresponding boundaries shown on the PLAN map, but are within 100 feet of the map boundaries. In

this second category of applications, the Planning Director of the initiating party should consult with the Planning Director of the other party for a Plan Interpretation as provided in Section 4 above to determine whether the application is conforming.

- d. **Not Conforming.** An application should be classified as Not Conforming if the PLAN clearly does not intend or support the type of land use requested in the application; or if the density or intensity of the proposed use is more than 10% greater than that described in the PLAN; or if the boundaries of the proposed land uses exceed the corresponding boundaries shown on the PLAN Map by more than 100 feet. If the application is classified as Not Conforming, that determination is final.
- e. **Processing Zoning/Rezoning Applications Classified as Conforming.** Once an application has been classified as Conforming, the application may be released for processing, review and action following the established procedures of the party from whom approval is sought (“Approval Party”). The Approval Party will provide the other party with a copy of the application and notification of the public hearing dates for the case. The other party may submit written or verbal comments at those public hearings, or to the Approval Party directly, for consideration as part of the public review process.
- f. **Processing Zoning/Rezoning Applications Classified as Not Conforming.** If an application has been classified as Not Conforming, and the applicant desires to pursue the zoning/rezoning process, then a Major Plan Amendment should be prepared and submitted as described in Section 5(c) above that will, if adopted, render the application Fully Conforming. Processing of the zoning/rezoning case will be held until final action has been taken on the Major Plan Amendment.

7. Annexations. Requests for voluntary, owner-initiated annexation of property into TOWN by property owners shall be exclusively administered by TOWN in keeping with existing State and local laws, ordinances, procedures, and policies. Copies of applications for owner-initiated annexations received by TOWN for property within the geographic limits of the Joint Planning Area shall be provided by TOWN to COUNTY for information purposes. TOWN will provide COUNTY with written notice of the public hearing date for the case. COUNTY may provide TOWN with comments and input on such annexation cases, to be considered by the Cary Town Council in evaluating the annexation request. Proposals for TOWN-initiated annexation, if any,

will follow procedures established by state law, TOWN policy and ordinance, and the Tri-Party Agreement dated May 2, 2011 between the TOWN, the Town of Apex and COUNTY.

8. Site or Subdivision Plans. Site or subdivision development plans for property within TOWN's corporate limits at the time of approval will be exclusively administered by TOWN in keeping with State and local laws, ordinances, procedures, and policies as amended and may exist from time to time. Site or subdivision development plans for property located outside the TOWN's corporate limits at the time of approval will be exclusively administered by COUNTY in keeping with State and local laws, ordinances, procedures, and policies as amended and may exist from time to time. Upon receipt or initiation of a site or subdivision plan for its review and approval, notification shall be provided to COUNTY by TOWN or to TOWN by COUNTY for information and comment purposes. Upon final approval of a site or subdivision plan, notification shall be provided to COUNTY by TOWN or to TOWN by COUNTY for information purposes. Copies of such development plans shall be furnished upon request of either party.

9. Implementation Steps. COUNTY and TOWN agree that work on recommendations in PLAN for future implementation actions, as spelled out in Chapter 6 of PLAN, shall commence in a reasonable time period in accordance with the schedule in PLAN and shall involve coordinated efforts, as appropriate, for each implementation step which requires joint participation.

10. Overall Plan Update. For as long as this Agreement is in effect, TOWN and COUNTY will participate in a Joint Assessment of the PLAN every five (5) years. As part of the Joint Assessment, both parties will evaluate the performance and utility of the PLAN over the preceding five years, and each party will use the assessment to determine whether a joint update is needed. Such an update would occur in a fashion similar to the original development of PLAN, as determined by both governing boards at the respective times.

11. Term and Renewal of Agreement. This Agreement shall exist and continue for ten years from July 1, 2012 ('Effective Date'). This Agreement will then automatically renew for two consecutive five (5) year periods.

12. Termination of Agreement. Either party who does not wish the agreement to automatically renew under Section 11 above, may terminate the agreement by providing written

notice to the other at least 2 (two) months prior to the termination date. In all other instances, this Agreement may be terminated by either party upon six (6) months written notice to the other party, or at any time upon mutual agreement of the parties.

13. Modifications of Agreement. This Agreement may be amended at any time by the parties. All amendments shall be in writing and executed by both parties following the same formalities as followed for this Agreement.

14. Notice. Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed given when delivered to Clerk of the TOWN or COUNTY, with copies to the Planning Directors at the address specified below or three days after, when mailed, certified mail, return receipt requested, to the Clerk at such address.

COUNTY: Clerk, Chatham County Board of Commissioners
P.O. Box 1809
Pittsboro, NC 27312

TOWN: Town Clerk
P.O. Box 8005
Cary, NC 27512

15. Consistent with Law. This Agreement is made subject to and shall be interpreted in a manner consistent with the laws of the United States and the State of North Carolina including local laws adopted by the NC General Assembly.

16. No Third Party Beneficiary. This Agreement is made for the purpose stated in paragraph 1. There are no third party beneficiaries to this Agreement.

IN WITNESS WHEREOF, the Town of Cary has caused this Agreement to be signed in its name by its Mayor, attested by its Clerk, and its Official Seal to be hereunto affixed, and Chatham County has caused this agreement to be signed in its name by the Chair of the Board of Commissioners and attested by the Clerk of its Board and its Official Seal to be hereunto affixed, the day and year first above written.

TOWN OF CARY

CHATHAM COUNTY

By *David Newlin Jr*
Mayor

By *B. J. Beck*
Chair, Board of Commissioners

ATTEST *Sue Rowland*
Town Clerk

ATTEST *Sandra B. Sublett*
Clerk to the Board

