
Memorandum of Agreement between the N.C. Department of Environment and Natural Resources and the Town of Cary Regarding the Use of its (the Town's) Secondary and Cumulative Impact Master Mitigation Plan

This Memorandum of Agreement (MOA) is made and entered into on the date herein below last written by and between the Town of Cary (hereinafter "TOWN") and the NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (hereinafter "DENR"), collectively referred to hereinafter as the "Parties".

WHEREAS, the TOWN may be required under the North Carolina Environmental Policy Act ("NCEPA") to prepare an Environmental Document;

WHEREAS, NCEPA environmental documents regarding infrastructure projects are required to address Secondary and Cumulative Impacts (SCI);

WHEREAS, addressing the SCI of growth and development that may be induced or supported by proposed infrastructure projects is a repetitive, time-consuming and expensive process for the TOWN and DENR, and involves addressing essentially the same potential environmental effects from growth and development and measures for mitigation of such effects for each infrastructure project;

WHEREAS, it is to the mutual benefit of the TOWN and DENR to develop a more effective procedure for addressing the SCI of the growth and development facilitated by the TOWN's infrastructure projects and of the measures implemented or to be implemented by the TOWN to mitigate those impacts that may occur inside and outside of the Town's planning area;

WHEREAS the TOWN and DENR have agreed to use a single comprehensive document to address the SCI of growth and development induced or supported by all planned TOWN infrastructure projects;

WHEREAS, the TOWN and DENR wish to set out in this MOA the procedures to be used and the obligations and responsibilities of the parties in developing a comprehensive document to satisfy SEPA requirements that the secondary and cumulative impacts of a proposed infrastructure project be described and discussed.

THEREFORE, the Parties hereby enter this Memorandum of Agreement.

1. Purpose and Scope of MOA

- 1.1 Purpose -- This MOA defines the duties and responsibilities of the Parties concerning preparation, review and use of a comprehensive document, called an SCI Master Mitigation Plan (PLAN), to satisfy NCEPA requirements to address SCI of growth and development induced or supported by the town's future infrastructure projects.
- 1.2 Scope --The Plan is intended to address SCI, which may occur inside and outside of the TOWN's planning area, of growth and development induced and supported by infrastructure projects and for which DENR is the lead State agency under the NCEPA.

2. Definitions

- 2.1. “Environmental Document” means an environmental assessment, finding of no significant impact, environmental impact statement, or record of decision required to be prepared under North Carolina General Statute § 113A-4(2) and NCAC Title 15A, Subchapter 01C.
- 2.2 “Infrastructure Project” means any utilities, transportation, or other project for the TOWN’s provision of services to its citizens as identified in the PLAN.
- 2.3 “Planning Area” means the area defined in the PLAN.

3. Secondary and Cumulative Impacts Master Mitigation Plan (PLAN)

- 3.1. Scope of PLAN. The PLAN to be developed and approved according to this MOA shall identify the SCI associated with the TOWN’s future growth and development including capital projects that are in various master plans regarding water, sewer and transportation, and identify the mitigation measures in place for these impacts. Documentation of the ordinances implementing the mitigation measures shall be included in the PLAN.
- 3.2 Scope of Secondary and Cumulative Impacts. For the purposes of this MOA and the PLAN, secondary impacts are the reasonably foreseeable impacts of growth and development induced or supported by the proposed infrastructure projects. Secondary impacts may include changes in the pattern of land use, population, density, or growth rate and related effects on air, water, and other natural systems. Cumulative impacts are impacts that result from incremental effects of an activity when added to other past, present and reasonably foreseeable future activities regardless of what entities undertake such actions.
- 3.3 Approved PLAN. The PLAN developed and approved for the purposes of this MOA, and as may be amended according to the procedures set forth in Section 6, shall be attached to this MOA as Attachment 1 upon approval.

4. Procedure for Adopting the PLAN

- 4.1 Draft PLAN –The TOWN shall develop a draft PLAN and submit the document to DENR for review and comment according to the applicable requirements and established procedures for Environmental Documents under North Carolina General Statute § 113A-4 and the NCAC Title 15A, Subchapter 01C, including State Clearinghouse Review and all public meeting, comment and agency review requirements.
- 4.2 Final PLAN – The TOWN shall develop and adopt a final PLAN to incorporate revisions agreed upon by DENR and the TOWN as appropriate to address any comments and recommendations received through the review and comment procedure regarding the draft PLAN.
- 4.3 Coordination of the State Clearinghouse Process – The TOWN shall ensure that all components of the draft and final PLAN and proposed revisions to the PLAN are submitted to the State Clearinghouse and are reviewed and approved in accordance with established procedures for Environmental Impact Statements under the NCEPA.
- 4.4 Copies of the final PLAN – After the State Clearinghouse review and DENR approval of the PLAN, the TOWN will provide twelve (12) copies of the final PLAN and this MOA to the DENR’s Environmental Review Coordinator (ERC) for distribution to appropriate DENR agencies and shall post it on the TOWN’s website.

5. Reporting Requirements

- 5.1 Report Required – On a biennial (every two years) basis, the TOWN shall submit a report to DENR's ERC regarding TOWN actions that affect the PLAN. The reports shall be submitted to DENR with the first report due one year from the effective date of this MOA.
- 5.2 Contents of the Biennial Report – The biennial report shall identify any significant changes in actual land use or infrastructure that were not anticipated or described in the PLAN; The report shall also describe any significant or proposed changes to the TOWN's land use and infrastructure plans; sediment and erosion control programs; stormwater programs; ordinances related to buffers and open space requirements; and other major mitigation measures described in the PLAN.
- 5.3 DENR Review – If requested by DENR, the TOWN will meet with agency representatives to discuss the report.

6. PLAN Revisions

- 6.1 The TOWN shall revise the PLAN and submit it to DENR by January 1, 2015 and by January 1 of each tenth year thereafter. The Secretary of DENR or his/her designee may require the PLAN to be updated sooner based upon the findings, conclusions, or contents of the biennial reports and/or the following reasons:
 - A. The TOWN has made changes to its land use plan and/or infrastructure plans that may cause significant changes to the elements of the SCI PLAN.
 - B. DENR provides information and data that demonstrate SCI mitigation presented in the PLAN have not been effective in addressing the SCI identified in the PLAN.
 - C. DENR provides information and data that demonstrate the existence of additional SCI that were not initially identified during the preparation of the PLAN.
 - D. DENR informs the TOWN that a new Federally listed endangered or threatened species has been identified within the TOWN's Planning Area, or a change in characterization or status of a potentially impacted environmental resource has occurred.
 - E. DENR informs the Town of a change in characterization or status of a potentially impacted environmental resource.
 - F. DENR informs the TOWN of DENR program changes that require consideration of SCI impacts that were not initially addressed during the preparation of the Plan.
- 6.2 Approval of PLAN Revisions. Revisions to the PLAN shall be subject to the same review and approval procedures set out in Section 4 of this MOA.

7. Use and Effect of the PLAN

- 7.1 DENR shall use the PLAN in reviewing NCEPA documents prepared by the TOWN for projects that are initiated after DENR views the Plan complete and after the date the MOA is signed by the Secretary of DENR.
- 7.2 The Parties agree that the PLAN shall satisfy the SCI discussion requirements of NCEPA with respect to the environmental impacts of growth and development

associated with projects proposed by the TOWN during the period for which the PLAN is in effect.

- 7.3 The PLAN is not intended to address the direct impacts of proposed infrastructure projects. Direct impacts, including any direct cumulative impacts, and secondary impacts that are not associated with anticipated growth and development will be discussed in the ENVIRONMENTAL DOCUMENT for each individual project.
- 7.4 Participation in the MOA does not limit the ability of the lead agency to determine the type of ENVIRONMENTAL DOCUMENT required for an individual project
- 7.5 Endangered species impacts that occur outside the Town's Planning Area, but within the impact area for a proposed Town infrastructure project will be addressed in the individual Environmental Document for that project.

8. Relationship to Permitting

- 8.1 The Parties agree that participation in this MOA not limit the regulatory authority of any DENR agency or limit the ability of any agency to require additional mitigation for an individual project as a condition of permit issuance.
- 8.2 Participation in this MOA does not imply endorsement by DENR of any aspect of the project that is not subject to the NCEPA.

9. Termination and Dispute Resolution

- 9.1 Termination – This MOA may be terminated by mutual agreement of the signatory parties at any time, or by either signatory party by giving ninety (90) days written notice to the other party. Notwithstanding any termination of this MOA, the terms and conditions of the MOA shall be honored for any infrastructure improvement projects for which a NCEPA document has been submitted to the State Clearinghouse for final review prior to the date of the written notice of termination.
- 9.2 Conflicts and Disputes – If there is an alleged breach of the MOA or other complaint giving rise to a conflict or dispute, the party making the allegation must give written notice to the other party. The parties shall meet to resolve the conflict or dispute. All conflicts and disputes arising from the implementation of this MOA, including possible termination, shall be resolved by the Secretary of DENR or his/her designee.
- 9.3 MOA Administrators – The Environmental Review Coordinator for DENR and the Town Manager or his designee for the TOWN (or successor offices and designees) are designated as the contacts for the purpose of notice, implementation, and administration of the MOA.

10. Effective Dates

The effective date of this MOA is the date of the last signature below, and it shall remain in effect until December 31, 2035 unless terminated sooner as provided herein.

In Testimony Whereof, TOWN and DENR have caused this AGREEMENT to be executed by their respective representatives and attested to by their respective Clerks, on this the _____ day of _____, 2_____.

Town of Cary

**NC Department of Environment and Natural
Resources**

Signature _____

Name (printed) William B. Coleman, Jr.

Title Town Manager

Date _____

Attested
Signature _____

Title Town Clerk

Date _____

Signature _____

Name (printed) William G. Ross, Jr.

Title Secretary

Date _____

Attested Signature _____

Title _____

Date _____