

**Task Force on Land Use and Enjoyment  
Bolin Forest II HOA  
Final Report  
September 10, 2007**

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**The Taskforce will conduct fact finding efforts to identify 1) external factors (such as ordinances, planning documents and statements by agencies such as land management, forest management, related environmental experts); and 2) internal factors (such as BFHOA II Bylaws, Declarations/Covenants, and legally recognized maps) that affect the planning, use and enjoyment of the Common Areas. The Taskforce will give the Board direction on what activities the Association should implement to assure the long term use and enjoyment of the Common Areas within the Properties. The final work product will be a written report to the BFHOA II Board of Directors. The secondary work product will be the compiled resource list used to prepare the final report. Such resources will be made available to all homeowners – present and future.**

As part of the overall charge, the Board requests that the Taskforce address the following issues in its report:

- 1. Obtain a valid map and description of all property lines, easements, greenways, and other conveyances, prepared in a manner that the Board and the Homeowners can clearly view the Association's land assets and any restrictions or reservations on these assets.**

Findings: Copies of the original survey maps were obtained from the engineers contracted to survey the original Bolin Forest subdivision. Enhanced views of selected map areas were enlarged to show certain property lines in greater detail.

- 2. Describe the legally authorized use, if any, of Phase II Common Areas by homeowner/members of BFHOA-Phases I, III, IV.**

Findings: Evidence from the original deeds, records filed with Orange County, correspondence from Carrboro officials and discussions with the survey engineers all agree that homeowner/members of BFHOA-Phase I, III, and IV have legally authorized access to and use of the Common Areas in Phase II. Homeowners should note that the Bolin Forest Subdivision is in simplified legal terms, a single neighborhood with named developmental Phases 1-IV. Therefore the term Common Areas applies to all homeowners within Phases.

**3. Describe the legally authorized use, if any, of Phase II Common Areas by the public (i.e. non-homeowners) as granted by town ordinances, land use agreements established by the Developer or other related documents.**

Findings: There is no legally authorized use of the Phase II Common Areas by the public (i.e. non-homeowners – See #2 above) as found in any ordinance, land use agreement, conditional use permit, deed or other documents known to the Task Force. The Task Force finds that the HOA is responsible for and is not prohibited from controlling access and use of the Common Areas by homeowners and the general public (excludes pedestrian and bicycle easements).

**4. Describe the legally authorized public (i.e. non-homeowner) use of any easements, greenways or other conveyances upon or across the Common Areas belonging to the Association.**

Findings: The public has access rights to use selected pedestrian and bikeway easements as designated on the survey maps. Generally speaking, these public easements parallel Bolin Creek and extend along a narrow path to the end of Bolin Creek Drive, ending at the town property designated as a right-of-way for a future road.

OWASA has designated utility easements within Bolin Forest II and such easements extend over Common Areas and privately-owned land within the subdivision. The easements provide access to utility pipes, OWASA personnel and OWASA equipment to maintain the pipes. Task Force members researched and reviewed the deeds on file with the county and find no legally authorized access by the general public to OWASA easements. Furthermore, in discussions with OWASA personnel we find no policy or precedent that allows the general public access to utility easements that cross private land.

The plans of both private groups (Friends of Bolin Creek) and public groups (Chapel Hill Greenways Commission) to preserve a corridor of land along major stretches of Bolin Creek were reviewed. There are no Bolin Forest Greenway project easements or property within the perimeter of Bolin Forest II property. The HOA should continue to monitor the activity of these groups for future impact on Phase II and participate accordingly in the natural preservation efforts and goals. *Map note: The “Greenway” designated areas on the survey map are NOT the same as Greenway areas referenced in this paragraph.*

**5. What aspects of the town’s land management plan for the Adam’s Tract might have a positive or a negative effect on the Properties in BF?**

Findings: Members identified potentially positive and potentially negative aspects of the Adam’s Tract land management plan on the properties in Phase II. Overall, members do not believe it is possible to predict with certainty any of these possible futures. Oversight and management of the process is the best approach to reducing major surprises and extreme outcomes.

Potential positives

- Increased property value in the adjacency to land managed under a conservation plan
- Limited to no commercial growth and development (e.g. buildings and roads)
- Protections of environmentally sensitive adjacent lands may encourage similar protections of sensitive lands in Phase II
- Increase health promotion activities (e.g. exercise) of homeowners
- Increase sense of community through social activities

### Potential negatives

- Increased vehicle traffic on Bolin Creek Drive
- Increased parking problems (e.g. parking on private lands, traffic congestion at corner near road stub, interference with emergency vehicle access to Common Areas, obstruction of fire-hydrant access at the intersection to Mill Rock Court.
- The final location of the Bolin Creek footbridge can potentially direct more public access across private land and common areas.
- Increased forest fire risk
- Poorly marked public access trails can increase confusion between public and private (i.e. Phase II property)

### **6. What, if anything, should the Board do in response to the town's land management plan for the Adam's Tract?**

Findings: The HOA has limited to no direct control over the town's plans for the Adam's Tract. In collaboration with the town and groups such as the Friends of Bolin Creek, the HOA may achieve the following:

- Educate homeowners about the Adam's Tract management plan
- Resist efforts by the Town to implement actions or staff plans that increase vehicle traffic in Phase II
- Encourage placement of the bridge and associated trails in a location that diverts public traffic flow away from HOA land toward the center of park land.
- Participate in and/or monitor the Greenways Planning Project
- Participate in and/or monitor the Town of Carrboro Adam's Tract plans and decisions.
- Provide input to the Town of Carrboro re: improvement planning activities and schedule (for example, encourage a connector path to Wilson Park to divert traffic from HOA lands.
- Petition the Town of Carrboro to control parking at the end of Bolin Creek Drive and limit parking to no more than 3 spaces on the road stub.
- Petition the Town of Carrboro to erect signage directing parking to Wilson Park and directing the bulk of the Adam's Tract traffic flow to other public access entrances.
- In collaboration with the Town of Carrboro and the EMS system, develop an emergency plan to assure (1) access and care for persons injured in the common areas and public easements along Bolin Creek, (2) access to manage fires or other emergencies (e.g. train care spills/accidents) in the public and common areas.
- The HOA should inform and educate all homeowners of the emergency access plans
- The HOA should assure that signage erected on HOA property conveys a polite message in a positive tone. Signage should be brief and easy to read. Words should be directive and clear, making it easy for the visitor to stay on public property or public easements and helpful in avoiding trespass on the private property of individual homeowners.

The Task Force recognizes that at the present time, visitors entering Phase II from any perimeter access point (e.g. Bolin Creek Drive, Phase III, Adam's Tract, railroad track/creek) will find it confusing if not impossible to know the difference and boundaries between private property, the Common Areas, public property and public easements over HOA property. Likewise, members do not believe that the HOA can make significant changes to traffic flow unless and until the Town completes its bridge and trails project near Bolin Creek Drive. Members felt that currently, the situation might warrant temporary signage at certain key locations to HOA property that politely informs visitors of their responsibilities while on easements that cross HOA property. These include: respecting private land, leashing pets, removing trash/litter, and protecting environmentally sensitive areas along creek banks.

**7. What are the educational and communication activities the Board should initiate to fully inform the homeowner/members of the findings of the Taskforce?**

Findings: The Board should use a variety of educational and communication methods to inform homeowners of the findings in this report and the actions taken by the Board on these findings. These methods should include: website postings of this report and its supporting documents and maps, scheduled live presentations with a Q&A session, email, and meeting minutes. The findings and supporting materials have been assembled into a Resource Manual that should be available for review upon request from the Board. Each homeowner should be given the opportunity to obtain a copy of the large survey map and the Resource Manual (costs to be determined by the Board).

**8. What additional information is needed for the Board to be able to develop a reasonable management plan for the Common Areas?**

Findings: Board should implement a stepwise approach to (1) identify areas,(2) increase awareness to these location, (3) develop area-specific controls on use and access...(a one-size-fits-all control model is not necessary or desirable). Thereafter, post notices in areas deemed to be environmentally sensitive, educate homeowners re: these areas and seek voluntarily imposed controls on use and access in highly sensitive areas. While open to discussion/interpretation, these environmentally sensitive areas are likely limited to the riparian area along Bolin Creek and possibly to the walkway/path behind the houses on Mill Rock court.

The Board should identify environmentally sensitive areas within the HOA properties. A simple 2 or 3 step classification and signage system, similar to those used on golf courses might be useful and effective. The riparian buffer (highly sensitive) should be identified and marked. Erosion prone (sensitive) areas or areas with rare/uncommon/interesting flora should be marked. Finally, the HOA should mark the areas that support pedestrian and bicycle access (normal).

The Board should maintain a formal liaison with the Friends of Bolin Creek and establish an ongoing mechanism to monitor the Greenways and Adams Tract projects. Homeowners should receive regular communications about these developments.

**9. How should the Board evaluate and manage the risk and liability of any privately-initiated or Board approved activities on the Common Areas?**

Findings: The By-laws and Covenants describe the use and access to Common Areas by homeowners in Phases I-IV. The HOA has long maintained an insurance policy that protects the Board of Directors and the HOA for occurrences on HOA property. We believe that this is a standard policy for HOA's that provides reasonable (\$1,000,000 per event) monetary protection. Members believe that the overall risk of any claim against the HOA is low as evidenced by the low annual premium. We could find no exclusions attached to the policy that limited the insurance protections due to the existing playground, our past recreational use of the non-developed common areas and activities by visitors or trespassers.

The Board should develop a general policy on accepted uses of the Common Areas and procedures for requesting Board approval for other activities. The Board should distribute the policy to all homeowners in Phases I-IV. The Board policy should evaluate the acceptability of future risks and benefits on a case-by-case basis. The Boards' decisions and policy should consider the relative risks and relative benefits of planned activities. Homeowners planning to use the Common Areas for privately initiated activities that are beyond the traditional quiet recreation

use of these areas should seek approval from the Board in advance of the activity. Quiet recreational use is generally interpreted to mean, picnicking, hiking, bicycling, “playing” and similar acts. Homeowners planning other privately initiated uses of the Common Areas (e.g. events that attract crowds, events that potentially affect the safety of the participants or other homeowners) should seek Board review and approval, in accordance with Board/HOA policies (to be drafted) on use of the Common Area.

The Board should address and take affirmative action on each prospective activity request or retrospectively after any non-approved homeowner action – based on the perceived risk, potential for harm and potential for nuisance. As needed the Board is already empowered to seek additional risk management advice from professionals such as the agent carrying our insurance policy.

The Boards policies and decisions should be available for homeowner input.

#### **10. How should the Board manage the Common Areas to maintain a sense of community within the Association’s members?**

Findings: The By-laws and Covenants designate homeowners’ rights and access to the Common Areas. After considerable discussion, the members concluded (1) that the HOA (Board) has the responsibility to manage the use of the Common Area primarily for the benefit and enjoyment of the homeowners; (2) the Board’s responsibilities are to the homeowners collectively, without regard to lot location (i.e. input from an individual homeowner is “equal” to input from another individual homeowner in its weight of consideration, regardless of where that homeowner resides in Phase II). In essence, this perspective pushes the responsibility for each homeowner to have a common community “connection” with every other homeowner as it relates to management of the Common Areas. It also implies that a general and positive sense of community will emerge when each homeowner has the responsibility to know and understand the issues that affect the community and its individual members.

The Board can assist in maintaining a positive sense of community by establishing policies and procedures that are transparent to the homeowners, encouraging prospective review and discussion of HOA issues and assuring that all homeowners are aware of their responsibilities as defined in the HOA documents and Board policies.

#### **11. How should the Board manage the Common Areas to maintain a sense of community with our non-Bolin Forest neighbors, including those in directly adjacent communities such as Pacifica?**

Findings: Members acknowledge that the Bolin Forest neighborhood is entirely surrounded by public (e.g. Adam’s Tract) and private properties (e.g. Pacifica) and that the Conditional Use Permit facilitates public access on and across designated easements within Phase II. A basic review of the survey map, showing the many different “types” of properties that converge within small areas of land, easily illustrates our HOA need to expect that visitors pass close to, if not across, non-public land.

Our findings suggest that the HOA (Board) has a responsibility to manage expectations and address homeowner questions. We believe that in general, this can best be served when the Board uses appropriate educational and information methods. Homeowners have their own responsibility to know and to understand the relationship between their private property rights and

the surrounding properties, especially when purchasing a lot that is closer to public access and traffic flow.

Our findings suggest that the HOA (Board) has a responsibility to maintain our natural resources for the use and benefit of homeowners. The larger question of maintaining community with our public and private neighbors is best viewed through the perspective of stewardship – i.e. maintaining our Common Areas in a manner that benefits the larger community. In simple terms, this means accepting some access and use by the larger community (visiting public – but managing that use).

A brief review of NC statutes, laws and guidance documents regarding general liability of wood land property in NC, suggests that the property owners have general duties to protect visitors who stray or trespass onto the property. The duties and liabilities appear markedly different based on the signage that is erected by the owner. For example, in one guidance document, visitors and trespassers have no special protections or cause for claim if incurred on wooded land that is maintained in compliance with general standards. In contrast, if the owner “invites” the public onto private land for certain specific purposes (See NC General Statutes Chapter 38A Landowner Liability), there are additional duties for public safety and additional liabilities. The Board should carefully review its policy on the use of Common Areas, its signage policy and signage language, and seek outside expert input, as needed.

## **12. How should the Board manage the Common Areas to protect environmentally sensitive land while preserving the use of the land for the enjoyment of the Homeowners/members?**

Findings: The HOA should take actions that improve the value of the land, increase its enjoyment by homeowners and increase awareness of the need to care for the land by all persons. This can be accomplished by community projects (e.g. building bird houses); appropriate signage and a budget that helps maintain the property in a safe manner (e.g. trash removal).

The HOA should defer further “drastic” actions that attempt to direct public access until after the Adam’s Tract bridge and trail is constructed (work is underway at the present time). Members worked under a series of assumptions that, simply put, looks at decisions and actions that are realistic in the current “pre-Adam’s Tract bridge” period vs. those decisions and actions that can be effected in the “post-Adam’s Tract bridge” period.

Members strongly suggest the HOA sponsor an ice-cream social to be held in conjunction with the opening of the Adam’s Tract bridge (perhaps, a “bridge warming”). Adjoining neighborhoods would be invited to join in the event. The social event would be an opportune time to distribute information about the private properties in Phase II and share information about public trails and respect for sensitive land areas.

## **13. The Taskforce will also identify and assess what is currently happening in similar associations regarding land use and enjoyment of their respective Common Areas**

Findings: Information considered in the above report. Members had considered inviting Dave Otto from the Friends of Bolin Creek, to present information on land use issues in other neighborhoods, but ultimately deferred that decision to the Board. To the best of our knowledge, OWASA is not engaged in any special arrangements with other HOA’s in the management of their Common Areas.