Proposed Stormwater Program Modifications to Comply with
the Approved Falls Lake Nutrient Rules

August 10, 2011

Revised: December 9, 2011

Prepared by

Durham County Engineering Department

Stormwater and Erosion Control Division
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Tab 1: Submittal Guidance Form
Falls Lake New Development Stormwater Rule
(Rule Requirements and Implementation Timeline)

UNRBA TAC Meeting - June 22, 2011

Falls Lake Stormwater Management for New Development (15A NCAC 02B . 0277)

This rule requires all local governments in the Falls watershed (six counties and eight municipalities) to implement stormwater programs for new development activities.

Requirements

- Post-construction runoff meet N & P rate targets
  - 2.2 lbs/ac/yr TN .33 lbs/ac/yr TP
  - Local governments implement

- Land disturbance thresholds
  - ½ acre residential
  - 12,000 sq/ft commercial

- Onsite treatment criteria
  - 30% of N&P onsite: <1 acre
  - 50% of N&P onsite: >1 acre
  - 30% of N&P onsite: Downtown Redevelopment

- Annual Reports

Key Implementation Dates

- March 10, 2011
  - EMC approved DWQ model program

- August 10, 2011
  - LG submit local programs to DWQ for approval

- January 12, 2012
  - DWQ Makes recommendations to EMC

- July 12, 2012
  - LGs adopt and implement local program
Local Program Information for EMC Approval

Local programs will need to provide the following minimum information for Commission approval:

- **Proposed adoption timeline and effective date** – Commission approval of the Model Program is proposed for March 10, 2011. Section 1-D of the supplemental program guidance describes the rule timeline requirements for the submittal, review, and adoption and implementation of local programs.

- **Other Stormwater Programs** – The rule requires adherence to certain other state stormwater regulations. The program should identify existing stormwater regulations within the jurisdiction, including water supply watershed, whether designated under Phase II NPDES and status of Phase II implementation.

- **Statement of Riparian Buffer Ordinance Compliance** - One aspect of development application review required by the rule is ensuring protection of riparian buffers, as discussed in Chapter 2-C.3 and state whether, and if so, where they include that process description in their ordinance.

- **State and Federal Entities Implementation** – State whether the program will enforce the requirements of this rule on state and federal entities that do not have a Phase II NPDES stormwater permit. See Chapter 2-A.5. of the companion Guidance.

- **Area of Applicability** – Include description of planning jurisdiction, responsibility for program in ETJ, any inter-jurisdictional agreement, and if applicable, extent of implementation of rule requirements outside Falls Watershed.

- **Minimum Qualifications of Stormwater Administrator** - State the minimum qualifications of the personnel who will be responsible for implementing the program, including stormwater plan review and BMP inspection. The Division prefers these persons to be registered North Carolina professional engineers with stormwater experience. Minimum qualifications are persons performing services only in their area of competence, including professional engineer, registered North Carolina professional surveyor, landscape architect, soil scientist, aquatic biologist, or a person certified by the North Carolina Cooperative Extension Service to approve stormwater management plans or to inspect BMPs.

- **Maintenance/Inspection Program** - Describe your intent regarding a program for ensuring maintenance of BMPs called for in the rule. Your maintenance program description should address the elements discussed in Section 2-D (BMP maintenance) of the companion Guidance, including:
  - Owner inspection and reporting requirements, including qualifications required of BMP inspectors;
  - Local government inspection and oversight program, including frequency of local government inspections;
  - Financial surety for long-term function; and
  - Database of practices installed.
Falls Lake Local Stormwater Program Submittal Requirements
(From pages 5-8 of EMC Approved Falls Model Program)

- **Forms in Administrative Manual** – Provide a listing of forms to be used in the permitting and compliance process (See Appendix Q).
- **Ordinance** – Provide all sections of ordinance that will be necessary to implement the rule. This should include all subject areas covered by the model ordinance (see Appendix L).
- **Nutrient Loading Accounting Tool** – Provide a statement that you will use the Jordan / Falls nutrient load accounting tool provided in Appendix M or describe the method that will be used for accounting for nutrient loading and BMP implementation to meet rule requirements. In the latter case, please provide: documentation on that tool; an electronic version of the tool; a discussion of how it differs from the Jordan / Falls tool; and how it will be at least as protective as the Jordan/Falls tool.

**Equivalent Program Option**

Item (6) of the Falls New Development Rule provides local governments the option of requesting the Division accept the local government’s implementation of another stormwater program or programs as satisfying one or more of the requirements on Items (3) and (4) of the rule. The Division shall provide a determination on the acceptability of any such alternative prior to requesting Commission approval of local programs. Should a local government propose alternative requirements to achieve and maintain the rate targets described in the Rule, it shall include in its program submittal technical information demonstrating the adequacy of those requirements. At a minimum the local government shall submit all of the information described in Sub-Item (6)(a) through (e) of the Rule.

**Appendix of Supporting Information**

Local programs are to include an appendix that contains detailed supporting information that will be updated periodically. Future revisions to this information will not require Commission or Division Director approval. The Program appendix shall include the following information:

- **Program Contacts and Professional Qualifications** – Names and contact information for the Stormwater Administrator and other personnel responsible for reviewing stormwater designs and performing and reviewing inspections.
- **Stormwater Map** – Provide most current map of jurisdictional boundaries. This map should be at a scale or resolution useful for implementation purposes, and be one that you will be prepared to update periodically as needed and report on in annual reports. This map may differ from a map you provided as part of your Falls Existing Development Stage I programs, since those requirements applied only to the area covered by your police powers. This map should include the following:
  - Preferably a zoning map.
  - Identify limits of planning jurisdiction.
  - Include delineation of Falls boundaries.
  - Identify date of map.

We prefer that you make the map available on a website and provide a link to that site. You may also submit the map as a digital file or a printed map.
Falls Lake Local Stormwater Program Submittal Requirements
(From pages 5-8 of EMC Approved Falls Model Program)

- **Forms** – Provide a copy of all forms that you will use to carry out permitting and compliance, which should include the following:
  - Stormwater Permit Application
  - Sample Permit
  - As-Built Submittal Form w/ BMP Certification Statements
  - Operation and Maintenance Agreements for BMPs
  - Example Access Easement
  - Example Conservation Easement

**Supplemental Information**

Local governments are asked to provide the following supplemental information to aid the Division’s review of your programs:

- **Program Approval** – Describe your local approval process and the status of your program’s approval prior to submittal to the Division. Include a description of approval steps following Commission approval leading to implementation.

- **Ordinance Changes** – Provide a listing of ordinance sections created or revised to address the rule’s requirements. If a local government finds a subject covered by the model ordinance unnecessary, provide a statement identifying the model ordinance section(s) and any supporting discussion to support your position.

- **Land use planning** – State whether you have conducted a review of local ordinances to identify potential modifications that would 1) reflect improved growth management practices 2) allow developers adequate flexibility to utilize planning measures to reduce impervious surfaces and 3) reduce untreated nutrient loading rates from developments as discussed in Chapter 2-E - Land Use Planning. If such a review has been conducted, please provide a summary of your findings and any actions taken.

- **Appeals Process** – (optional) Summarize the appeals processes that are described in your ordinance.

- **Exceeding Minimum Requirements** – (optional) Identify significant aspects of your proposed local program that go beyond the minimum requirements established in the rule, potentially including any of the following:
  - New Development Definition
  - Disturbance thresholds
  - Loading rate targets
  - Off-site thresholds
  - If your jurisdiction is partly outside the Falls watershed, whether you propose to apply the rule jurisdiction-wide
  - Redevelopment - require treatment on redevelopment that does not increase built-upon area?

- **Permitting Process** – (optional) Provide an outline and fact sheet describing the steps of the local permitting process for developers and engineers subject to the program requirements.
Falls Lake New Development Stormwater Rule, Durham County Proposed Stormwater Program Modifications (Based on a document distributed by John Huisman, NCDWQ on June 22, 2011)

Proposed Falls Lake New Development Program Adoption Timeline and Effective Date:

August 10, 2011 – Durham County Staff deliver proposed stormwater program modifications to John Huisman, NCDWQ for review and to comply with the Falls Lake New Development Rule.

August 10, 2011 to January 12, 2012 – Staff from DWQ reviews and works with Durham County Staff to finalize proposed stormwater program.

November / December, 2011 – Durham County Staff present close-to-final proposed stormwater program modifications to the Durham Board of County Commissioners for any final input.

January 12, 2012 – DWQ makes a recommendation to EMC for approval of Local Government’s proposed stormwater program modifications.

March to June 12, 2012 – Durham County Staff preset EMC approved proposed stormwater program modifications to the Durham Board of County Commissioners for adoption. Once adopted, the program as modified is implemented.

Other Stormwater Programs:

Durham County also administers and enforces other stormwater programs in all unincorporated areas of the County. Those are:

- Neuse River Basin Nutrient Management Strategy
- Water Supply / Watershed Overlay Districts (Administered and enforced by the City/County Planning Department via the City/County Unified Development Ordinance(UDO))
- Jordan Lake Riparian Buffer Rules
- Approved Jordan Lake Nutrient Management Strategy (once adopted and implemented locally)
Statement of Riparian Buffer Ordinance Compliance:

Durham County has had a long tradition of protecting existing riparian buffers both through Water Supply / Watershed Ordinances (City County UDO) and through the Neuse River Basin Riparian Buffer Rule (Durham County Stormwater Ordinance). The proposed modifications to the Stormwater Ordinances include updated Existing Riparian Buffer Protection in Section 14-153. Specifically, the subsections are: a.6, b.3, c.9. Planning, uses, enforcement of existing riparian buffers mainly is thought the UDO, Section 8 and by the City/County Planning Department.

State and Federal Entities Implementation:

The County does intend to enforce the requirements of the rules on State and Federal owned lands.

Area of Applicability:

Areas of applicability fall into three main departments within Durham County. The City/County Planning Department, the City Public Works/Stormwater Services, and the County Engineering Department/Stormwater Division. The Planning Department is responsible for administering the riparian buffer UDO (with assistance from the City and County Stormwater programs) and the City and County Stormwater programs are responsible for administering nutrient strategy rules though individual stormwater ordinances.

The proposed changes within the Ordinance include splitting the areas of the County into three areas:

- Falls Lake Drainage Area
- Neuse River Basin that is not draining into Falls Lake
- Cape Fear River Basin/ Jordan Lake Drainage Area

The original standards for the Neuse River Basin within the County have remained the same for just the area that does not drain to Falls Lake.

Minimum Qualifications of Stormwater Administrator:

The Stormwater Administrator of the County’s Stormwater program is the Stormwater and Erosion Control Division Manager located within the County’s Engineering Program. The minimum requirements include: a registered NC P.E., two years of stormwater design experience, and Certified NC BMP Inspector and Reviewer.
Maintenance/Inspection Program:

Since its local adoption in 2001, the Durham County Stormwater Ordinance has required County permitted owners of BMPs to agree to a yearly self-inspection program. The maintenance program (as described by Sections 14-155, 14-157, and 14-159).

- Owner inspection, reporting requirements, and BMP inspector qualifications – Section 14-157.b.
- Local Government inspection and oversight program – Section 14-157.f.
- Financial Surety for long term function – Section 14-155.e.
- The County’s Stormwater activities (permits, plan approvals, inspection reports received, etc) are tracked and located on a sophisticated proprietary database for County use only. The system is capable of inquiry results and mapping of permitted BMPs.

Forms in Administrative Manual:

- Application for Permit (FRO)
- Performance Bond
- Cape Fear River Basin Stream Delineation Application

Durham County Stormwater Ordinance Titles by Section:

14-150 – Purposes
14-151 – Definitions (Modified per Falls New Development Rules)
14-152 – Enforcement and administration
14-153 – Design and performance standards (Modified per Falls New Development Rules)
14-154 – Proposed development rules (Modified per Falls New Development Rules)
14-155 – Permit requirements (Modified per Falls New Development Rules)
14-156 – Plan submission procedures
14-157 – Maintenance and obstruction of stormwater collection systems (Modified per Falls New Development Rules)
14-158 – Illegal discharges
14-159 – Inspection and investigations
14-160 – Penalties (Modified per Falls New Development Rules)
14-161 – Appeals
14-162 – Injunctive relief
14-163 – Recordation Requirements

Ordinance Compliance References by Model Ordinance Section Sections (UDO – City/County Unified Development Ordinance, SWO – County Stormwater Ordinance):

SECTION 1: GENERAL PROVISIONS

xx-101 Title
xx-102 Authority – UDO: 1.3
xx-103 Findings – UDO: 2.1.1
xx-104 Purpose – SWO: 14-150, UDO: 1.2
xx-105 Applicability and Jurisdiction
   (A) General - UDO: 1.4
   (B) Exemptions – UDO: 3.3.2
   (C) No Development or Redevelopment Until Compliance and Permit - SWO: 14-154; 14-155
   (D) Map – Included with this submittal and will be on Durham City/County GIS by implementation
xx-106 Interpretation
   (A) Meaning and Intent
   (B) Text Controls in Event of Conflict – UDO: 16.1.H
   (C) Authority for Interpretation – UDO: 2.9.4; 3.22.2
   (D) References to Statutes, Regulations, and Documents – SWO: 14-153
   (E) Computation of Time – UDO: 1.10.3
   (F) Delegation of Authority – UDO: 2.9.3; 2.10.3
   (G) Usage
   (H) Measurement and Computation
xx-107 Design Manual
   (A) Reference to Design Manual – SWO: 14-153
(B) Relationship of Design Manual to Other Laws and Regulations – SWO: 14-153
(C) Changes to Standards and Specifications
(D) [Amendments to Design Manual]

xx-108 Relationship to Other Laws, Regulations and Private Agreements
(A) Conflict of Laws – UDO: 1.7, SWO – 14-152
(B) Private Agreements

xx-109 Severability – UDO: 1.9

xx-110 Effective Date and Transitional Provisions
(A) Effective Date – UDO: 1.8
(B) Final Approvals, Complete Applications
(C) Violations Continue – UDO: 1.10.4

SECTION 2: ADMINISTRATION AND PROCEDURES

xx-201 Review and Decision-Making Entities
(A) Stormwater Administrator – SWO: 14-152

xx-202 Review Procedures
(A) Permit Required; Must Apply for Permit - SWO: 14-154; 14-155
(B) Effect of Permit – SWO 14-155
(C) Authority to File Applications – SWO: 14-155
(D) Establishment of Application Requirements, Schedule, and Fees – UDO: 3.8.3, SWO: 14-155
(E) Submittal of Complete Application – SWO: 14-155
(F) Review – SWO: 14-155

xx-203 Applications for Approval
(A) Concept Plan and Consultation Meeting – SWO: 14-153; 14-154; 14-155
(B) Stormwater Management Permit Application – SWO: 14-155
(C) As-Built Plans and Final Approval – SWO: 14-155
(D) Other Permits

xx-204 Approvals
(A) Effect of Approval – Stormwater Permits expire every ten years. SWO: 14-155; 14-156
(B) Time Limit/Expiration – Stormwater Permits expire every ten years.

xx-205 Appeals
(A) Right of Appeal – UDO: 2.4.4; 3.1.1; 3.8.9; 15.2.1; 15.8.7, SWO: 14-161
(B) [Filing of Appeal and Procedures] – UDO: 15.8, SWO: 14-161

(C) [Review by Superior Court] - UDO: 15.8.7

SECTION 3: STANDARDS
.xx-301 General Standards – SWO: 15-153
.xx-302 Nitrogen and Phosphorus loading – SWO: 15-153
.xx-303 Nitrogen and phosphorus standard is supplemental; TSS removal – SWO: 15-153
.xx-304 Control and Treatment of Runoff Volume – SWO: 15-153
.xx-305 Partial offset of nutrient control requirements – SWO: 15-153
   (A) Evaluation According to Contents of Design Manual
   (B) Determination of Adequacy; Presumptions and Alternatives
.xx-307 Dedication of BMPS, Facilities & Improvements – SWO: 14-153
.xx-308 Variances – UDO: 2.4.4; 8.5.13; 15.1.2, SWO: 14-153

SECTION 4: MAINTENANCE
.xx-401 General Standards for Maintenance – SWO: 14-157
   (A) Function of BMPs As Intended
   (B) Annual Maintenance Inspection and Report
.xx-402 Operation and Maintenance Agreement – UDO: 8.7.2, SWO: 14-157
   (A) In General
   (B) Special Requirement for Homeowners' and Other Associations
.xx-403 Inspection Program – SWO: 14-157
.xx-404 Performance Security for Installation and Maintenance – SWO: 14-155
   (A) May Be Required
   (B) Amount
   (C) Uses of Performance Security
.xx-405 Notice to owners – SWO: 14-163
   (A) Deed Recordation and Indications On Plat
   (B) Signage
.xx-406 Records of Installation and Maintenance Activities – SWO: 14-163
xx-407 Nuisance – UDO: 3.23.2
xx-408 Maintenance Easement

SECTION 5: ENFORCEMENT AND VIOLATIONS
xx-501 General – UDO: 15
  (A) Authority to Enforce – SWO: 14-152
  (B) Violation Unlawful – UDO: 15.1, SWO: 14-159
  (C) Each Day a Separate Offense – UDO: 1.10.1; 1.10.4; SWO: 14-160
  (D) Responsible Persons/Entities – SWO: 14-155
xx-502 Remedies and Penalties
  (A) Remedies – UDO: 3.18.16; 15.1.4; 15.3, SWO: 14-160; 14-162
  (B) Civil Penalties – UDO: 15.5.7, SWO: 14-160
  (C) Criminal Penalties – UDO: 15.5.8, SWO: 14-160
xx-503 Procedures
  (A) Initiation/Complaint – SWO: 14-159
  (B) Inspection – SWO: 14-159
  (C) Notice of Violation and Order to Correct – UDO: 15.8.5, SWO: 14-157
  (D) Extension of Time – UDO: 15.8.5
  (E) Enforcement After Time to Correct – UDO: 15.8.5
  (F) Emergency Enforcement – UDO: 15.8.5

SECTION 6: DEFINITIONS
xx-601 Terms Defined – SWO: 14-151, UDO: 16

Nutrient Loading Accounting Tool:

Per the rules, the proposed modifications to the County’s Stormwater Ordinances include a requirement to utilize a Nutrient Accounting Tool approved by NC DWQ (Jordan / Falls Nutrient Accounting Tool). This is in Section 14-153, subsections a.3 and c.4.
Equivalent Program Option

Durham County will comply with the rules as a traditional stormwater program. No equivalent program is desired.

Appendix of Supporting Information:

- Program Contact:

  Chris Roberts, P.E.

  Stormwater and Erosion Control Division Manager, County Engineering Department

  120 East Parrish Street

  Durham, NC 27701

  Phone: 919-560-0739

  Fax: 919-560-0740

  Email: croberts@durhamcountync.gov

- Zoning Map of the County and Stormwater Map showing the locations of the County Permitted BMPs

Supplemental Information:

- Program Approval – Any modifications to the Durham County Stormwater Ordinance requires Durham Board of County Commissioner approval and adoption. Once adopted, the program is fully implemented and enforced.

- Ordinance Changes – The sections of the Ordinance that are proposed to be changed are as in the above section called “Ordinance”. Several sections of the Ordinance were not changed either due to sufficient enforcement to comply with the rules or no applicability.

- Land Use Planning – The City/County Planning Department has developed a Comprehensive Plan for “Smart Growth”. This plan allows for or limits the locations of development to better the quality of life and protects the environment. The Planning Department also administers the Zoning Ordinance in the form of a Unified Development Ordinance.
• Appeals Process – The appeals process is located in Section 1-161 of the County Stormwater Ordinance. If an appeal to a plan disapproval or civil penalty issued is desired, then it must be requested to the County Engineer in writing within 15 days after notification. Within 21 days after receipt of this appeal, the County Engineer must hold a hearing to allow factual and/or legal evidence to be presented. In the case of civil penalties, the County Board of Commissioners may hold a quasi-judicial hearing to amend the amount of the penalty which can only be appealed by an appropriate division of the general court of justice.

• Exceeding Minimum Requirements – The proposed Durham County Ordinance modifications are intended to meet and comply with the approved Falls Lake Rules.

• Permitting Process – In general, the permitting process in the County is as follows:
  o Re-Zoning process (if necessary) is completed with possible stormwater review
  o Site Plan Approval is completed with stormwater design required.
  o Construction Stormwater Drawing approval is required if a stormwater collection system and/or BMPs are proposed.
  o If a BMP is proposed, then several items are required before issuance of an Operation and Maintenance Stormwater Permit is issued: As-Builts, Proof of Surety, executed Operation and Maintenance Agreement, and initial inspection following final construction by a qualified BMP inspector.
Tab 3: Proposed Ordinance Changes
Proposed Ordinance Changes Legend:

- Changes that are highlighted in **yellow** and italicized are for Falls Lake Rules
- Changes that are highlighted in **blue** are for Jordan Lake Rules
- Changes that are highlighted in **green** are for clarifications
ARTICLE V. STORMWATER MANAGEMENT

Sec. 14-150. Purposes.

(a) To establish and implement a program which will protect and enhance the quality of surface waters by controlling the amount of new and existing stormwater runoff.

(b) To improve the water quality of the surface waters by identifying and eliminating illegal discharges to the basin through stormwater collection systems.

(c) To maintain and protect the riparian areas.

(Ord. of 2-26-01, § 1)

Sec. 14-151. Definitions.

[Unless the context requires otherwise, the following words as used in this article have the indicated meanings:]

**Act** means G.S. ch. 143, pt. 1, art. 21, as they concern stormwater management and the implementing rules for same in the North Carolina Administrative Code.

**Built-Upon Area means that portion of a development that is covered by impervious, or partially impervious, surface cover, including, but not limited to buildings, pavement, gravel areas, recreational facilities, etc., such as roads, parking lots, and paths; and recreation facilities such as tennis courts.** “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material. The project site or area must exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, state or local stormwater regulation.

**Developer** means:

(1) The person who has, or holds himself out as having, financial or operational control over the land-disturbing activity;

(2) The landowner or person in possession or control of the land when he directly or indirectly allowed the land-disturbing activity, has benefitted from it, or has failed to comply with any provision of this article or the act;

(3) The person listed on the stormwater permit as having financial or operational control for a development; and/or

(4) The person owning property containing permitted stormwater control measures.
Development means any human-caused change to improved or unimproved real estate that requires a permit or approval from any agency of the City or County of Durham, including, but not limited to, constructing or changing buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations and storage of equipment or materials.

Discharge means the addition of any man-induced waste effluent, either directly or indirectly, to state surface waters.

Inspect means inspection, observation, monitoring, testing, sampling, surveying, and otherwise measuring compliance with the provisions of this ordinance, the Act, and implementing rules.

Larger common plan of development or sale means any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Neuse River Basin means land which drains to the Neuse River, as determined by the Durham Planning Department and as shown on a map which is maintained by the Durham Planning Department.

One-year 24-hour storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, once a year, and of a duration which will produce the maximum peak runoff flow from the watershed of interest under average antecedent wetness conditions. Acceptable methodologies for computing these flow rates include:

(1) The rational method, which may be used for drainage areas of 200 acres or less;

(2) The peak discharge method as described in the USDA Soil Conservation Service's Technical Release Number 55, which may be used for drainage areas of 2,000 acres or less; and

(3) The Putnam Method, which may be used for drainage areas greater than 2,000 acres.

Redevelopment means any development on previously-developed land. Redevelopment of structures or improvements that (i) existed prior to December 2006 and (ii) would not result in an increase in built-upon area and (iii) provides stormwater...
control at least equal to the previous development is not required to meet the nutrient loading targets of this ordinance.

**Stormwater** means flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

**Stormwater collection system** means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A N.C.A.C. 2H.1003(c)(1).

(Ord. of 2-26-01, § 1)

**Sec. 14-152. Enforcement and administration.**

(a) The stormwater administrator, or his designee, is hereby authorized to enforce and administer the provisions of this article, and associated ordinances of the County of Durham concerning stormwater management unless a contrary intention is expressed in such other ordinances.

(b) The stormwater administrator shall be responsible for complying with the mandates of Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21, as they detail standards for local stormwater programs, including annual reporting requirements.

(c) Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

(d) All fees for permits and plans shall be established by the board of county commissioners.

(Ord. of 2-26-01, § 1)

**Sec. 14-153. Design and performance standards.**

*Durham County has been included in the Falls Lake Nutrient Management Strategy, Neuse River Sensitive Waters Management Strategy, and the Jordan Lake Nutrient Management Strategy. Accordingly, all development and redevelopment to which this ordinance applies shall comply with the standards of this section and of the official North Carolina Division of Water Quality Best Management Practice Manuals. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future*
development and redevelopment maintains the site consistent with the approved project plans:

(a) The following requirements shall apply to developments within the Neuse River Basin and within Falls Lake Drainage Basin (Subject to the Falls Lake Nutrient Strategy):

(1) Developments shall plan for, and implement, stormwater management controls which will limit the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent Best Management Practice Manual approved by the North Carolina Department of Environment and Natural Resources / Division of Water Quality. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event.

(2) Developments shall plan for and implement, stormwater management controls which will limit the unit-area mass nitrogen load of runoff to 2.2 pounds/acre/year and limit the unit-area mass phosphorus load of runoff to 0.33 pounds/acre/year.

(3) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the most recent Nutrient Accounting Tool approved by the North Carolina Department of Environment and Natural Resources / Division of Water Quality.

(4) Notwithstanding 15A NCAC 2B.104(q), redevelopment subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: 40 percent and 77 percent reduction for nitrogen and phosphorus, respectively.

5) Developers who desire to pursue offsite offset reduction measures for developments subject to this ordinance shall attain nitrogen and phosphorus loading rate reductions on-site that meet the following criteria prior to using an offsite offset measure:

i. 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing one half acre but less than one acre.
ii. 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing more than one acre.

iii. 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing 12,000 square feet but less than one acre.

iv. 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing more than one acre.

v. 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for proposed redevelopment activities in a designated downtown area that would replace or expand structures or improvements that existed as of December 2006.

A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may propose other offset measures to Durham County, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0282 and 15A NCAC 02B .0240.

(6) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A N.C.A.C. 2B.0233, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the stormwater administrator’s satisfaction that the North Carolina Department of Environment and Natural Resources / Division of Water Quality has approved the development.

(b) The following requirements shall apply to developments within the Neuse River Basin and outside Falls Lake Drainage Basin (Subject to Neuse River Nutrient Sensitive Waters Management Strategy):
(1) Developments shall plan for and implement stormwater management controls which will limit the nitrogen load of runoff to 3.6 pounds/acre/year. Developers who have obtained an offset by participation in the North Carolina Wetland Restoration Fund established by the North Carolina Department of Environment and Natural Resources, shall plan for and implement management controls which will limit the nitrogen load of runoff from the site to six pounds/acre/year for residential development and ten pounds/acre/year for commercial or industrial development. Nitrogen export calculations shall be made using a formula approved by the stormwater administrator.

(2) Developments shall plan for and implement stormwater management controls which will ensure that there is no net increase in peak flow leaving the site from the predevelopment conditions for the one-year 24-hour storm, of more than ten percent. If the development results in an increase of greater than ten percent, the developer will be responsible for installing measures which will result in no net increase. The same methodology must be used for calculating both the pre- and post-development flow rates.

(3) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A N.C.A.C. 2B.0233, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 1/2-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the stormwater administrator’s satisfaction that the North Carolina Department of Environment and Natural Resources / Division of Water Quality has approved the development.

The following requirements shall apply to developments outside the Neuse River Basin:

(1) Developments shall plan for, and implement, stormwater management controls which shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the most recent Best Management Practice Manual approved by the North Carolina Department of Environment and Natural Resources / Division of Water Quality. To ensure that the integrity
and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, 24-hour storm event.

(2) Developments shall plan for, and implement, stormwater management controls shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).

(3) Developments shall plan for, and implement, stormwater management controls which will limit the unit-area mass nitrogen load of runoff to 2.2 pounds/acre/year and limit the unit-area mass phosphorus load of runoff to 0.82 pounds/acre/year.

(4) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the most recent Nutrient Accounting Tool approved by the North Carolina Department of Environment and Natural Resources / Division of Water Quality.

(5) Notwithstanding 15A NCAC 2B.104(q), redevelopment subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: 35 percent and 5 percent reduction for nitrogen and phosphorus, respectively.

(6) Plans for developments shall protect and maintain existing riparian areas. No developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina.

Notwithstanding the foregoing, developments may be approved within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina provided:

(a) For streams, a stream delineation is performed by a person selected by the county engineer from an approved list, which is to be compiled by the county engineer, to do stream delineations and presented to the county engineer which, to the county engineer's satisfaction, shows that the stream shown on the most recent
version of either the U.S.G.S. 7 1/2-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina does not exist. Any person requesting such a stream delineation to be performed as provided in this subsection shall make application to the county engineer for the stream delineation to be done and shall pay a fee to cover the cost of said delineation in an amount as determined by the board of commissioners.

(b) For ponds and lakes, that the ponds or lakes are manmade and are located outside natural drainage ways.

(Ord. of 2-26-01, § 1; Ord. of 4-12-04, § 1)

(8) Developers who desire to pursue on-site offset reduction measures for developments subject to this ordinance shall attain a maximum nitrogen loading rate on-site of six pounds per acre per year for single-family detached and duplex residential development and ten pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls otherwise imposed by this ordinance. A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may propose other offset measures to Durham County, including providing his or her own on-site offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B 0273(2) through (4) and 15A NCAC 02B 0240.

(9) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A NCAC 2B 0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Unified Development Ordinance. Consistent with the requirements of 15A NCAC 2B 0267/.0268/.0269, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 1/2-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the stormwater administrator's satisfaction that the North Carolina Department of Environment and Natural Resources / Division of Water Quality has approved the development.
Sec. 14-154. Proposed development review.

(a) All proposed developments within the jurisdiction of Durham County shall be subject to this ordinance and shall be reviewed by the stormwater administrator, or his designee, where the development:

(1) For development/redevelopment located within the Falls Lake Drainage Basin for conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21:

(a) Disturbs greater than one-half acre of land in order to establish, expand, or modify a single-family or duplex residential development or a recreational facility;
(b) Disturbs greater than 12,000 square feet of land in order to establish, expand, or modify a multifamily residential development or a commercial, industrial, or institutional facility; or

(2) For development/redevelopment located outside of the Falls Lake Drainage Basin for conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21:

(a) Disturbs greater than one acre of land in order to establish, expand, or modify a single-family or duplex residential development or a recreational facility;
(b) Disturbs greater than one-half acre of land in order to establish, expand, or modify a multifamily residential development or a commercial, industrial, or institutional facility; or

(3) The development/redevelopment is not part of a larger common plan of development or sale; or
(4) Includes a stormwater collection system.

(b) Proposed developments consisting solely of agriculture, mining, or forestry activities shall not be subject to review.

(c) No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development or redevelopment for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(Ord. of 2-26-01, § 1)

Sec. 14-155. Permit requirements.
(a) No person shall undertake any development or redevelopment subject to this article without first obtaining a permit therefor from the stormwater administrator, or their designee. Permits must be maintained for the life of the development and shall be reviewed and renewed every ten years from the date the initial permit was issued.

(b) A stormwater permit may be obtained upon submitting the following:

1. Stormwater Permit Application in the form of a Durham County Stormwater Financially Responsibility/Obligation form.
2. Permit application fee as approved by the Durham County Board of Commissioners.
3. Zoning compliance check off issued by the Durham City-County Planning Department.
4. Approved development/stormwater control plan plans.
5. If the proposed development is affecting riparian buffer areas, as detailed in 15A N.C.A.C. 2B.0233 and 15A N.C.A.C. 2B.0267 shall also be accompanied by proof that it has been approved by the Division of Water Quality of the North Carolina Department of the Environment and Natural Resources.
6. Improvement security.
8. As-built plans and final approval from the stormwater administrator at project construction completion.

(c) The applicant shall submit three copies of the permit application, including the control plan, to the stormwater administrator, or their designee, at least 30 days prior to commencement of the proposed development. The stormwater administrator, or their designee, shall review permit applications for developments and, within 30 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. If the permit application is disapproved the reasons for this action will be stated with particularity in writing.

(d) No permit shall be issued until such time as the stormwater administrator or their designee is assured that the proposed development will be carried out in accordance with this article and the approved stormwater control plan.

(e) Improvement security. The stormwater administrator, or their designee, shall require security to assure performance of the continuing conditions of the permit.
The applicant shall be required to file an improvement security in the form of a performance bond, executed by one or more surety companies legally authorized to do business in the State of North Carolina and approved by the county attorney. The amount shall be deemed sufficient by the stormwater administrator, or their designee, to cover all costs of constructing and maintaining the stormwater control measures required by the permit for conformity with the standards specified in this article. A performance bond(s) shall be maintained by the applicant to provide for continuous improvement security for the life of the development. At the time of renewal of the permit pursuant to subsection 14-155(a), the amount of the performance bond shall be recalculated and revised to reflect any increase in the costs of construction or maintenance and shall be in the amount specified by the stormwater administrator, or their designee. No improvement security shall be required from an applicant which is a federal, state or county governmental entity, or is a school board.

(Ord. of 2-26-01, § 1; Ord. of 2-10-03, § 1; Ord. of 4-10-06, § 1)

Sec. 14-156. Plan submission procedures.

(a) A stormwater measures control plan shall be prepared for all land-disturbing activities subject to this article, as defined in section 14-154.

(b) The stormwater administrator's office will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a stormwater control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan shall specifically state in writing the reasons for disapproval. The stormwater administrator, or their designee, shall approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved.

(c) Plans for which no permit has been issued shall expire one year from the approval date.

(d) One copy of the approved plan shall be kept on file at the job site.

(e) After approving the plan, if the stormwater administrator, or their designee, upon inspection of the job site, determines that the measures will not be effective, the stormwater administrator, or their designee, may require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue only under conditions outlined by the stormwater administrator, or their designee.

(f) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures

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planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the stormwater administrator, or their designee, on request.

(g) Stormwater control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, or registered architect.

(Ord. of 2-26-01, § 1)

Sec. 14-157. Maintenance and obstruction of stormwater collection systems.

(a) During the development of a site, the developer shall install and maintain all temporary and permanent stormwater control measures as required by the approved plan or any provision of this article, the Act or any order adopted pursuant to this article or the Act. After site development, the developer shall install and/or maintain all necessary permanent stormwater control measures specified in the approved plan, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency. Conveyance of the property shall not terminate the original developer's obligations under this article until such time as a replacement permit is approved by the stormwater administrator. The original developer shall include in the deed conveying the property notice of the existence of the stormwater control measures and the purchaser's obligations to maintain and inspect them and to obtain a permit and otherwise comply with the terms of this article.

(b) The developer shall have the stormwater control measures inspected, by a registered professional engineer, a registered land surveyor, or a registered landscape architect, upon completion of their construction, and shall have additional inspections conducted to certify their maintenance and continued function per a schedule established by the stormwater administrator, or their designee, but at least annually. The developer shall transmit to the stormwater administrator a copy of all inspection reports within three working days of their being conducted. The inspection report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each engineered stormwater control;
3. A statement that an inspection was made of all engineered stormwater controls;
4. The date the inspection was made.
(5) A statement that all inspected engineered stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

(6) The signature and seal of the engineer, surveyor, or landscape architect.

(c) Prior to the conveyance or transfer of any lot or building site to be served by a engineered stormwater control pursuant to this ordinance, and prior to issuance of any permit for development requiring a engineered stormwater control pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the engineered stormwater control, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater control. In addition, it shall grant to Durham County a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case shall the right of entry, of itself, confer an obligation on Durham County to assume responsibility for the engineered stormwater control.

(d) It is unlawful for any person to place any obstruction in any stormwater collection system so as to obstruct or impede the free flow of surface water, unless same has been authorized by the stormwater administrator, or their designee.

(e) If the stormwater administrator, or their designee, finds any stormwater collection system constructed, arranged, clogged, or in such disrepair as to impede, obstruct, or hinder the free flow of surface water in a manner which conflicts with acceptable engineering practices, or if a planned and permitted stormwater control measure has not been installed per an approved plan, he shall give written notice to the developer of the property. This notice shall specify the problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

(Ord. of 2-26-01, § 1)

Inspections and inspection programs by Durham County may be conducted or established on any reasonable basis, including but not limited to routine.
inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in Best Management Practices (BMPs); and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

Sec. 14-158. Illegal discharges.

(a) It is unlawful for any person to empty or deposit in any stormwater collection system, directly or indirectly, any substance, liquid or solid, which by reason of its nature:

(1) Is, or may become, a public health hazard endangering human or animal health;

(2) Is a nuisance, including substances which are unsightly or malodorous, or may become so;

(3) Interferes, or may interfere, with the free and rapid flow of surface water;

(4) Is flammable or explosive;

(5) Is toxic to plant or animal life;

(6) Is corrosive, or has properties which may damage or render unsightly the stormwater collection system; or

(7) Affects adversely the State of North Carolina classification of the stream into which the stormwater collection system discharges.

(b) Any developer, or other person, who makes, directly, or indirectly, an illegal discharge into a stormwater collection system shall be subject to both civil and criminal penalties as provided in section 14-160 of this article.

(c) The developer is responsible for taking immediate action to report and remove an illegal discharge occurring on its property, regardless of the source of same. Upon receiving any report of an illegal discharge the stormwater administrator shall issue notice to the developer. This notice shall specify the
problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

(Ord. of 2-26-01, § 1)

Sec. 14-159. Inspections and investigations.

(a) Agents, officials or other qualified persons authorized by the stormwater administrator may periodically inspect public and private property in order to ensure compliance with the Act, this ordinance or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required have been implemented and are effective in achieving the goals of this ordinance.

(b) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting, or attempting to inspect, a development or installed stormwater collection system under this article.

(Ord. of 2-26-01, § 1)

Sec. 14-160. Penalties.

(a) Civil penalties:

(1) Any person who violates any of the provisions of this article, or rules or orders adopted or issued pursuant to this article or who initiates or continues a development for which a stormwater control plan and/or permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or permit shall be subject to a civil penalty. The maximum civil penalty for a violation is $5,000.00 per day.

(2) No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 14-157 of this article. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date the violation was detected. However, no time period for compliance need be given for failure to submit a stormwater control plan for approval, for failure to obtain a stormwater permit, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for an illegal discharge. Each day of continuing violation shall constitute a separate violation.

(3) The county engineer, upon consideration of the recommendation of the stormwater administrator, shall assess the civil penalty authorized by this section. The county engineer shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the following factors shall be considered: the degree and extent of harm caused by the violation,
the cost, if any, of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, promulgated rules and this article. The notice of assessment shall be served by certified mail, return receipt requested, or personal service by the sheriff, county engineer, stormwater administrator, or their designee, and shall direct the violator to either pay the assessment or contest the assessment, within 15 days after receipt of the notice of assessment, by requesting a hearing before the board of county commissioners.

(4) If payment is not received within 30 days after the assessment is due, the matter will be referred to the county attorney's office for initiation of a civil action to recover the amount of the civil penalty. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative review of the assessment.

(b) Criminal penalties. Violation of this article is punishable as a misdemeanor as provided in section 1-6 of this Code, above.

(Ord. of 2-26-01, § 1)

Sec. 14-161. Appeals.

(a) Plan and permit denials. The disapproval or modification of any proposed stormwater control plan or the refusal to issue a stormwater permit by the stormwater administrator, or their designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing before the county engineer if such person submits written demand to the county engineer for a hearing within 15 days after receipt of written notice of disapproval or modifications. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. Such hearing will be held within 21 days after the date of the appeal or request for a hearing, or at such later time as the parties mutually agree.

(b) Civil penalties. Any person so assessed shall have a right of appeal to the board of county commissioners upon serving written notice of appeal on the clerk to the board within 15 days after the assessed person receives notice of the assessment. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. The board of county commissioners shall hold a quasi-judicial hearing and may affirm, increase, reduce or remit the penalty initially assessed by the county engineer. Appeals from the final decision of the board of county commissioners shall be to the appropriate division of the general court of justice.
(Ord. of 2-26-01, § 1)

Sec. 14-162. Injunctive relief.

(a) Whenever there is reasonable cause to believe that any person is violating or threatening to violate this ordinance or any rule or order adopted or issued pursuant to the Act, this ordinance, or any term, condition or provision of an approved stormwater control plan, the county attorney may, either before or after the institution of any other action or proceeding authorized by this article, institute a civil action in the name of the local government for injunctive relief as provided in section 1-6 of this Code, above, to restrain the violation or threatened violation, or to obtain mandatory relief, in superior court.

(b) The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this article, or the Act.

(Ord. of 2-26-01, § 1)

Sec. 14-163. Recordation Requirements.

A deed restriction or restrictive covenants shall be recorded which require compliance with the approved stormwater control plan and stormwater permit, as described in Article V. The deed restriction or restrictive covenants shall provide for enforcement by the County of Durham.

(Ord. of 5-14-07, § 1)
Tab 4: Original Ordinances
Durham County

Stormwater Ordinance

Last Amended: May 14, 2007
ARTICLE V. STORMWATER MANAGEMENT

Sec. 14-150. Purposes.

(a) To establish and implement a program which will protect and enhance the quality of surface waters by controlling the amount of new and existing stormwater runoff.

(b) To improve the water quality of the surface waters by identifying and eliminating illegal discharges to the basin through stormwater collection systems.

(c) To maintain and protect the riparian areas.

(Ord. of 2-26-01, § 1)

Sec. 14-151. Definitions.

[Unless the context requires otherwise, the following words as used in this article have the indicated meanings:]

Act means G.S. ch. 143, pt. 1, art. 21, as they concern stormwater management and the implementing rules for same in the North Carolina Administrative Code.

Built-upon area means that portion of a development that is covered by impervious, or partially impervious, cover, including buildings, pavement, gravel areas, recreational facilities, etc.

Developer means:

(1) The person who has, or holds himself out as having, financial or operational control over the land-disturbing activity;

(2) The landowner or person in possession or control of the land when he directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with any provision of this article or the act;

(3) The person listed on the stormwater permit as having financial or operational control for a development; and/or

(4) The person owning property containing permitted stormwater control measures.

Development means any land disturbing activity which adds to, or changes, the amount of impervious, or partially impervious cover on a land area, or which otherwise decreases the infiltration of precipitation into the soil. This includes, but is not limited to: tree removal, grubbing, stump removal, removal of topsoil, coarse or fine grading, erection of structures and construction of roads.

Discharge means the addition of any man-induced waste effluent, either directly or indirectly, to state surface waters.

Inspect means inspection, observation, monitoring, testing, sampling, surveying, and otherwise measuring compliance with the provisions of this ordinance, the Act, and implementing rules.

Neuse River Basin means land which drains to the Neuse River, as determined by the Durham Planning Department and as shown on a map which is maintained by the Durham Planning Department.
One-year 24-hour storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, once a year, and of a duration which will produce the maximum peak runoff flow from the watershed of interest under average antecedent wetness conditions. Acceptable methodologies for computing these flow rates include:

1. The rational method, which may be used for drainage areas of 200 acres or less;

2. The peak discharge method as described in the USDA Soil Conservation Service’s Technical Release Number 55, which may be used for drainage areas of 2,000 acres or less; and

3. The Putnam Method, which may be used for drainage areas greater than 2,000 acres.

Stormwater means the flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

Stormwater collection system means any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) runoff. A stormwater collection system does not include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems, or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A N.C.A.C. 2H.1003(c)(1).

(Ord. of 2-26-01, § 1)

Sec. 14-152. Enforcement and administration.

(a) The stormwater administrator, or his designee, is hereby authorized to enforce and administer the provisions of this article, and associated ordinances of the County of Durham concerning stormwater management unless a contrary intention is expressed in such other ordinances.

(b) The stormwater administrator shall be responsible for complying with the mandates of Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21, as they detail standards for local stormwater programs, including annual reporting requirements.

(c) Whenever conflicts exist between federal, state or local laws, ordinances or rules, the more restrictive provision shall apply.

(d) All fees for permits and plans shall be established by the board of county commissioners.

(Ord. of 2-26-01, § 1)


(a) Durham County has been included in the Neuse River Nutrient Sensitive Waters Management Strategy. Accordingly, developments within this article’s jurisdiction are subject to specific requirements established in the act and its implementing rules. The following requirements shall apply to developments within the Neuse River Basin:

1. Developments shall plan for, and implement, stormwater management controls which will limit the nitrogen load of runoff to 3.6 pounds/acre/year.
Developers who have obtained an offset by participation in the North Carolina Wetland Restoration Fund established by the North Carolina Department of Environment and Natural Resources, shall plan for and implement management controls which will limit the nitrogen load of runoff from the site to six pounds/acre/year for residential development and ten pounds/acre/year for commercial or industrial development. Nitrogen export calculations shall be made using a formula approved by the stormwater administrator.

(2) Developments shall plan for and implement stormwater management controls which will ensure that there is no net increase in peak flow leaving the site from the predevelopment conditions for the one-year 24-hour storm, of more than ten percent. If the development results in an increase of greater than ten percent, the developer will be responsible for installing measures which will result in no net increase. The same methodology must be used for calculating both the pre- and post-development flow rates.

(3) Plans for developments shall protect and maintain existing riparian areas in accordance with 15A N.C.A.C. 2B.0233 which is hereby incorporated by reference, as well as the requirements of the Durham City-County Zoning Ordinance. Consistent with the requirements of 15A N.C.A.C. 2B.0233, no developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina, unless the developer can demonstrate to the stormwater administrator’s satisfaction that the state division of water quality has approved the development.

(b) The following requirements shall apply to developments outside the Neuse River Basin:

(1) Developments shall plan for and implement stormwater management controls which will ensure that there is no net increase in peak flow leaving the site from the predevelopment conditions for the one-year 24-hour storm, of more than ten percent. If the development results in an increase of greater than ten percent, the developer will be responsible for installing measures which will result in no net increase. The same methodology must be used for calculating both the pre- and post-development flow rates.

(2) Plans for developments shall protect and maintain existing riparian areas. No developments shall be approved which are proposed within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina.

(3) Notwithstanding the foregoing, developments may be approved within the first 50 feet adjacent to a waterbody that is shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina provided:

(a) For streams, a stream delineation is performed by a person selected by the county engineer from an approved list, which is to be compiled by the county engineer, to do stream delineations and presented to the county engineer which, to the county engineer’s satisfaction, shows that the stream shown on the most recent version of either the U.S.G.S. 7 ½-minute quadrangle topographic map or the U.S.D.A. Soil Survey of Durham County, North Carolina does not exist. Any person requesting
such stream delineation to be performed as provided in this subsection shall make application to the county engineer for the stream delineation to be done and shall pay a fee to cover the cost of said delineation in an amount as determined by the board of commissioners.

(b) For ponds and lakes, that the ponds or lakes are manmade and are located outside natural drainage ways.

(Ord. of 2-26-01, § 1; Ord. o' 4-12-04, § 1)

(4) High Density Developments, defined as those with greater than 24 percent impervious surface, located outside of the Water Supply Watershed Overlays as established in Durham County Unified Development Ordinance Section 4.11.2.A, shall use stormwater management systems that control and treat runoff from the first one (1) inch of rain to remove an eighty-five percent (85%) average annual amount of total suspended solids (TSS).

(Ord. of 5-14-07, § 1)

Sec. 14-154. Proposed development review.

(a) All proposed developments within the jurisdiction of Durham County shall be subject to this ordinance and shall be reviewed by the stormwater administrator, or his designee, for conformance with this article, Subchapter 2B of Title 15A of the North Carolina Administrative Code and G.S. ch. 143, art. 21, where the development:

(1) Disturbs greater than one acre of land in order to establish, expand, or modify a single-family or duplex residential development or a recreational facility;

(2) Disturbs greater than one-half acre of land in order to establish, expand, or modify a multifamily residential development or a commercial, industrial, or institutional facility; or

(3) Includes a stormwater collection system.

(b) Proposed developments consisting solely of agriculture, mining, or forestry activities shall not be subject to review.

(Ord. of 2-26-01, § 1)

Sec. 14-155. Permit requirements.

(a) No person shall undertake any development subject to this article without first obtaining a permit therefore from the stormwater administrator, or their designee. Permits must be maintained for the life of the development and shall be reviewed and renewed every ten years from the date the initial permit was issued.

(b) A stormwater permit may be obtained upon submitting the fee, zoning compliance check off issued by the Durham City-County Planning Department, if required, statement of financial responsibility and ownership, development plan, and the stormwater control plan. A proposed development affecting riparian buffer areas, as detailed in 15A N.C.A.C. 28.0233 shall also be accompanied by proof that it has been approved by the Division of Water Quality of the North Carolina Department of the Environment and Natural Resources.
(c) The applicant shall submit three copies of the permit application, including the control plan, to the stormwater administrator, or their designee, at least 30 days prior to commencement of the proposed development. The stormwater administrator, or their designee, shall review permit applications for developments and, within 30 calendar days of receipt thereof, shall notify the person submitting the application that it has been approved, approved with modifications, or disapproved. If the permit application is disapproved the reasons for this action will be stated with particularity in writing.

(d) No permit shall be issued until such time as the stormwater administrator or their designee is assured that the proposed development will be carried out in accordance with this article and the approved stormwater control plan.

(e) Improvement security. The stormwater administrator, or their designee, shall require security to assure performance of the continuing conditions of the permit. The applicant shall be required to file an improvement security in the form of a performance bond, executed by one or more surety companies legally authorized to do business in the State of North Carolina and approved by the county attorney. The amount shall be deemed sufficient by the stormwater administrator, or their designee, to cover all costs of constructing and maintaining the stormwater control measures required by the permit for conformity with the standards specified in this article. A performance bond(s) shall be maintained by the applicant to provide for continuous improvement security for the life of the development. At the time of renewal of the permit pursuant to subsection 14-155(a), the amount of the performance bond shall be recalculated and revised to reflect any increase in the costs of construction or maintenance and shall be in the amount specified by the stormwater administrator, or their designee. No improvement security shall be required from an applicant which is a federal, state or county governmental entity, or is a school board.

(Ord. of 2-26-01, § 1; Ord. of 2-10-03, § 1; Ord. of 4-10-06, § 1)

Sec. 14-156. Plan submission procedures.

(a) A stormwater measures control plan shall be prepared for all land-disturbing activities subject to this article, as defined in section 14-154.

(b) The stormwater administrator’s office will review each complete plan submitted to it and within 30 days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved. Failure to approve or disapprove a stormwater control plan within 30 days of receipt shall be deemed approval. Disapproval of a plan shall specifically state in writing the reasons for disapproval. The stormwater administrator, or their designee, shall approve, approve with modifications, or disapprove a revised plan within 15 days of receipt, or it is deemed to be approved.

(c) Plans for which no permit has been issued shall expire one year from the approval date.

(d) One copy of the approved plan shall be kept on file at the job site.

(e) After approving the plan, if the stormwater administrator, or their designee, upon inspection of the job site, determines that the measures will not be effective, the stormwater administrator, or their designee, may require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue only under conditions outlined by the stormwater administrator, or their designee.
(f) The plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this article. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for plan preparation may be obtained from the stormwater administrator, or their designee, on request.

(g) Stormwater control plans shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, or registered architect.

(Ord. of 2-26-01, § 1)

Sec. 14-157. Maintenance and obstruction of stormwater collection systems.

(a) During the development of a site, the developer shall install and maintain all temporary and permanent stormwater control measures as required by the approved plan or any provision of this article, the Act or any order adopted pursuant to this article or the Act. After site development, the developer shall install and/or maintain all necessary permanent stormwater control measures specified in the approved plan, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency. Conveyance of the property shall not terminate the original developer's obligations under this article until such time as a replacement permit is approved by the stormwater administrator. The original developer shall include in the deed conveying the property notice of the existence of the stormwater control measures and the purchaser's obligations to maintain and inspect them and to obtain a permit and otherwise comply with the terms of this article.

(b) The developer shall have the stormwater control measures inspected, by a registered professional engineer, a registered land surveyor, or a registered landscape architect, upon completion of their construction, and shall have additional inspections conducted to certify their maintenance and continued function per a schedule established by the stormwater administrator, or their designee, but at least annually. The developer shall transmit to the stormwater administrator a copy of all inspection reports within three working days of their being conducted.

(c) It is unlawful for any person to place any obstruction in any stormwater collection system so as to obstruct or impede the free flow of surface water, unless same has been authorized by the stormwater administrator, or their designee.

(d) If the stormwater administrator, or their designee, finds any stormwater collection system constructed, arranged, clogged, or in such disrepair as to impede, obstruct, or hinder the free flow of surface water in a manner which conflicts with acceptable engineering practices, or if a planned and permitted stormwater control measure has not been installed per an approved plan, he shall give written notice to the developer of the property. This notice shall specify the problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

(Ord. of 2-26-01, § 1)

Sec. 14-158. Illegal discharges.

(a) It is unlawful for any person to empty or deposit in any stormwater collection system, directly or indirectly, any substance, liquid or solid, which by reason of its nature:
(1) Is, or may become, a public health hazard endangering human or animal health;

(2) Is a nuisance, including substances which are unsightly or malodorous, or may become so;

(3) Interferes, or may interfere, with the free and rapid flow of surface water;

(4) Is flammable or explosive;

(5) Is toxic to plant or animal life;

(6) Is corrosive, or has properties which may damage or render unsightly the stormwater collection system; or

(7) Affects adversely the State of North Carolina classification of the stream into which the stormwater collection system discharges.

(b) Any developer, or other person, who makes, directly, or indirectly, an illegal discharge into a stormwater collection system shall be subject to both civil and criminal penalties as provided in section 14-160 of this article.

(c) The developer is responsible for taking immediate action to report and remove an illegal discharge occurring on its property, regardless of the source of same. Upon receiving any report of an illegal discharge the stormwater administrator shall issue notice to the developer. This notice shall specify the problem and action necessary to remedy it, as well as the time frame for taking such corrective action and the potential for additional action under sections 14-160 and 14-162 of this article.

(Ord. of 2-26-01, § 1)

Sec. 14-159. Inspections and investigations.

(a) Agents, officials or other qualified persons authorized by the stormwater administrator may periodically inspect public and private property in order to ensure compliance with the Act, this ordinance or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required have been implemented and are effective in achieving the goals of this ordinance.

(b) No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting, or attempting to inspect, a development or installed stormwater collection system under this article.

(Ord. of 2-26-01, § 1)

Sec. 14-160. Penalties.

(a) Civil penalties.

(1) Any person who violates any of the provisions of this article or rules or orders adopted or issued pursuant to this article or who initiates or continues a development for which a stormwater control plan and/or permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or permit shall be subject to a civil penalty. The maximum civil penalty for a violation is $5,000.00 per day.
(2) No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in section 14-157 of this article. If after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date the violation was detected. However, no time period for compliance need be given for failure to submit a stormwater control plan for approval, for failure to obtain a stormwater permit, for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties, or for an illegal discharge. Each day of continuing violation shall constitute a separate violation.

(3) The County Engineer, upon consideration of the recommendation of the stormwater administrator, shall assess the civil penalty authorized by this section. The county engineer shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty the following factors shall be considered: the degree and extent of harm caused by the violation, the cost, if any, of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, promulgated rules and this article. The notice of assessment shall be served by certified mail, return receipt requested, or personal service by the sheriff, county engineer, stormwater administrator, or their designee, and shall direct the violator to either pay the assessment or contest the assessment, within 15 days after receipt of the notice of assessment, by requesting a hearing before the board of county commissioners.

(4) If payment is not received within 30 days after the assessment is due, the matter will be referred to the county attorney’s office for initiation of a civil action to recover the amount of the civil penalty. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative review of the assessment.

(b) Criminal penalties. Violation of this article is punishable as a misdemeanor as provided in section 1-6 of this Code, above.

(Ord. of 2-26-01, § 1)

Sec. 14-161. Appeals.

(a) Plan and permit denials. The disapproval or modification of any proposed stormwater control plan or the refusal to issue a stormwater permit by the stormwater administrator, or their designee, shall entitle the person submitting the plan, or applying for the permit, to a hearing before the county engineer if such person submits written demand to the county engineer for a hearing within 15 days after receipt of written notice of disapproval or modifications. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. Such hearing will be held within 21 days after the date of the appeal or request for a hearing, or at such later time as the parties mutually agree.

(b) Civil penalties. Any person so assessed shall have a right of appeal to the board of county commissioners upon serving written notice of appeal on the clerk to the board within 15 days after the assessed person receives notice of the assessment. This appeal shall specify the factual and/or legal grounds underlying their demand and only such specified grounds may be argued at the hearing. The board of county commissioners shall hold a quasi-judicial hearing and may affirm, increase, reduce or remit the penalty
initially assessed by the county engineer. Appeals from the final decision of the board of
county commissioners shall be to the appropriate division of the general court of justice.

(Ord. of 2-26-01, § 1)

Sec. 14-162. Injunctive relief.

(a) Whenever there is reasonable cause to believe that any person is violating or
threatening to violate this ordinance or any rule or order adopted or issued pursuant to
the Act, this ordinance, or any term, condition or provision of an approved stormwater
control plan, the county attorney may, either before or after the institution of any other
action or proceeding authorized by this article, institute a civil action in the name of the
local government for injunctive relief as provided in section 1-6 of this Code, above, to
restrain the violation or threatened violation, or to obtain mandatory relief, in superior
court.

(b) The institution of an action for injunctive relief under this section shall not relieve any
party to such proceedings from any civil or criminal penalty prescribed for violations of
this article, or the Act.

(Ord. of 2-26-01, § 1)

Sec. 14-163. Recordation Requirements.

A deed restriction or restrictive covenants shall be recorded which require compliance with the
approved stormwater control plan and stormwater permit, as described in Article V. The deed
restriction or restrictive covenants shall provide for enforcement by the County of Durham.

(Ord. of 5-14-07, § 1)
Durham County
Neuse River Basin Nutrient Sensitive Waters Management Strategy

Stormwater Plan

Last Amended: May 14, 2007
Durham County

Neuse River Basin Nutrient Sensitive
Waters Management Strategy Stormwater Plan
May 14, 2007

The Neuse River Basin Nutrient Sensitive Water Management Strategy adopted in December of 1997 required the County of Durham and 14 other local governments to develop and implement a stormwater management strategy to control nitrogen runoff. The Neuse River Basin includes northern and eastern parts of Durham County. Other jurisdictions subject to the stormwater requirements include the cities of Cary, Durham, Garner, Goldsboro, Havelock, Kinston, New Bern, Raleigh, Smithfield, Wilson and the Counties of Johnston, Orange, Wake and Wayne.

The elements that must be included in the local government stormwater management program are:

1. New Development Review/Approval
2. Illegal Discharge
3. Retrofit Locations
4. Public Education
5. Annual Reporting

Each program element is described in more detail below.

1. New Development Review/Approval

The Neuse River Basin stormwater management requirements for new development consist of nitrogen reduction and peak flow control. New development is defined as any single family or duplex residential development or a recreational facility that disturbs more than one acre of land or any multi-family residential, commercial, industrial, or institutional development that disturbs more than one half acre of land. Land disturbance includes but is not limited to: tree removal, grubbing, stump removal, removal of topsoil, course or fine grading, erection of structures and construction of roads.

Stormwater management requirements for new development limit the nitrogen load to 70% of the 1995 average nitrogen load and maintain the pre-development peak flow rate for the 1-year, 24-hour storm.

The Neuse Stormwater Rules also require local governments to ensure that riparian areas are protected on new development.

- Land Use Planning Provisions

Durham has been on the cutting edge of urban planning for a number of years. Over the last decade the Durham City/County Planning Department has been evaluating a number of measures to facilitate and promote "smart growth" and to improve protection of the environment. Initiatives include development of the Durham 2020 Comprehensive Plan, a Natural Resources Protection Ordinance, and adoption of zoning ordinances and amendments to implement various planning provisions. These are discussed below.

Comprehensive Land Use Plan

The Durham 2020 Comprehensive Plan, adopted by the Board of County Commissioners December 11, 1995, addressed many of the measures listed in the Model Program. Three of the neighborhoods considered in the 2020 Plan are
suburban neighborhoods, urban neighborhoods and compact neighborhoods. One of the land use objectives for suburban neighborhoods in the 2020 Plan is to "...encourage clustered development where possible." For urban neighborhoods the objectives include protecting the integrity of established neighborhoods while encouraging new moderate density, mixed use development, and increasing housing density in existing neighborhoods with sensitive in-fill. The 2020 Plan also defines the Urban Growth Area which details the intended limits on dense development.

The 2020 Plan States:

"Compact Neighborhoods form the heart of the Durham 2020 Comprehensive Plan and will be a new feature on the urban landscape...The primary objective is to create 15 to 20 high and moderate intensity, mixed use neighborhoods, including transit stations, public parks, and plaza, while respecting the integrity of surrounding established neighborhoods...Over the next 25 years, Durham wants to locate up to 20 percent of new housing units and 45 percent of new employment in Compact Neighborhoods...While a central theme of Durham's plan, Compact Neighborhoods constitute a relatively small proportion of the Durham Planning Area, comprising about 5 percent."

As envisioned in the 2020 Plan, Compact Neighborhoods will be located within the Regional Corridors identified on the Community Growth Map and will consist of a core area of 30 to 50 acres centered around a transit station, and a support area of about 450 to 500 acres.

In beginning to implement the 2020 Plan and other planning initiatives, Durham has already reduced minimum road widths, eliminated the requirements for curb-and-gutter in residential subdivisions, made provisions for clustered developments and made provisions for mixed use developments. As Durham moves forward with its smart-growth initiatives it may continue to make adjustments in these areas to further the County's planning goals.

**Reducing road widths**

The standard minimum road width under NCDOT criteria is 18 feet. Durham has reduced minimum design requirements for public and private residential streets. Minimum pavement width now varies between 18, 20 and 22 feet for roads without curb, depending upon the number of residential units served and the traffic loading. Minimum width for alleys is now 15 feet. Durham provides flexibility to developers in allowing cul-de-sac and Tee type turnarounds in residential subdivisions.

**Reducing minimum parking requirements**

The Zoning Ordinance has been revised to reduce parking requirements. The nitrogen loading provisions will act as a disincentive to adding excessive amounts or rarely used parking.

Incentives will be provided under the aegis of the Transportation Demand Management (TDM) standards that were added to the zoning ordinance in January 2000. The TDM standards require shopping centers to provide park and ride areas and that employment centers give preference to car pool spaces and provide for bicycle parking. Other provisions of the TDM standards require large employers in Durham to develop a TDM plan and provide staff support to the TDM programs. Implementation of the TDM standards will reduce the need for excess parking.
**Minimum use of curb and gutter**

Durham has already eliminated requirements for curb and gutter in public and private residential streets except in high traffic volume collector streets.

**Cluster or open-space developments**

Durham has adopted performance standards allowing cluster development generally in zoning ordinance section 8.1.10 **Clustering Standards** and also in the section on watershed overlay zoning districts in section 5.5.10 **Cluster Developments**. Additional steps in this direction include adoption of performance standards allowing so-called zero lot line development in zoning ordinance section 8.1.11 **Zero Lot Line Development**, which allows the side yard requirement to be eliminated on one side of each lot.

**Traditional neighborhood developments**

There are no obstacles to developing traditional neighborhoods in appropriately zoned areas of Durham County.

**Mixed-use developments**

As indicated in the 2020 Plan, mixed-use development is an essential focus for the next 20 years. Durham Zoning Ordinance section 4.B.2 **Mixed Use District (MU)** describes the current available general zoning district for mixed-use developments. The purpose of this zoning district is "to provide innovative opportunities for an integration of diverse but compatible uses into a single development that is unified by distinguishable design features. In addition to a mixture of compatible uses, developments in this district shall provide amenities and walkways to increase pedestrian activity, decrease reliance on individual vehicles, foster transit usage, enhance the attractiveness of Durham City and County, improve the overall quality of life, and provide for the welfare of the citizens."

**Natural Resource Protection Standards**

Nitrogen control from new development will be assisted and promoted by adherence to the Natural Resource Protection Standards, Zoning Ordinance Section 11. The standards:

- Preserve and maintain buffers adjacent to intermittent and perennial streams in an undisturbed, natural state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, and reduce sedimentation and erosion; channel wetlands and vegetated, natural stream buffers are effective at removing excess nitrogen;
- Preserve and maintain buffers adjacent to natural wetlands to conserve and maintain them in an undisturbed, vegetated state; natural wetlands are effective at removing excess nitrogen through de-nitrification;
- Restrict development on steep slopes, which will protect wetlands and water courses below the slope from increased sedimentation; protection of wetlands, riparian areas and natural water courses help to preserve and maintain the effectiveness of these natural features in removing nitrogen;
- Restrict development in floodplains to preserve and maintain the floodplain in an undisturbed, vegetated state in order to maintain flood storage capacity, control stormwater, and improve water quality; this helps to keep development away from major streams so that natural processes can help to remove the nitrogen before it enters streams; it also helps by providing further protection for streams, riparian areas and wetlands.
In December 1999, the Durham City/County Planning Department hosted a conference entitled "Growing Smarter: A Toolbox for Change." The conference focused on Smart Growth tools available now or "in the pipeline" that elected officials, developers, and citizens could use to implement Smart Growth. The conference provided recommendations and action items for future initiatives, including open space acquisition and further development of greenways. See www.ci.durham.nc.us/planning/121199/\text{Index.html}

Nitrogen reduction

The nutrient load contributed by new development activities is held at 3.6 pounds per acre per year. This is equivalent to 70% of the 1995 average non-urban nitrogen load.

There are three approaches that a developer can use alone or in combination to meet the Neuse River Basin nitrogen export limit requirements:

1. Treat the stormwater runoff to reduce nitrogen export to surface waters.
2. Pay a one-time offset fee to fund wetland or riparian restoration through the North Carolina Wetland Restoration Program.
3. Limit imperviousness.

The nitrogen export from each new development must be calculated. This export will be calculated in pounds per acre per year (lbs/ac/yr). There are two different methodologies proposed for calculating nitrogen export from new developments. These are as follows:

Method 1 is intended for residential developments where lots are shown but the actual footprints of buildings are not shown on site plans. This method does not require calculation of the area of building footprints. Rather, the impervious surface resulting from building footprints is estimated based on typical impervious areas associated with a given lot size. This method is shown in Figure 2a.

Method 2 is for residential, commercial and industrial developments when the entire footprint of the roads, parking lots, buildings and any other built-upon area is shown on the site plans. This method is simpler and more accurate since it does not require estimating the impervious surface based on lot size like Method 1 does. Method 2 is shown in Figure 2b.

**Figure 2a: Method 1 for Quantifying TN Export When Building and Driveway Footprints Are Not Shown**

Step 1: Determine area for each type of land use and enter in Column (2).
Step 2: Total the areas for each type of land use and enter at the bottom of Column (2).
Step 3: Determine the TN export coefficient associated with right-of-way using Graph 1.
Step 4: Determine the TN export coefficient associated with lots using Graph 2.
Step 5: Multiply the areas in Column (2) by the TN export coefficients in Column (3) and enter in Column (4).
Step 6: Total the TN exports for each type of land use. Enter at the bottom of Column (4)
Step 7: Determine the export coefficient for site by dividing the total TN export from uses at the bottom of Column (4) by the total area at the bottom of Column (2).
<table>
<thead>
<tr>
<th>(1) Type of Land Cover</th>
<th>(2) Area (acres)</th>
<th>(3) TN export coeff. (lbs/ac/yr)</th>
<th>(4) TN export from use (lbs/yr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanently protected undisturbed open space (forest, unmown meadow)</td>
<td>0.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanently protected managed open space (grass, landscaping, etc.)</td>
<td>1.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right-of-way (read TN export from Graph 1)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lots (read TN export from Graph 2)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Figure 2b:** Method 2 for Quantifying TN Export from Residential / Industrial / Commercial Developments when Footprints of all Impervious Surfaces are Shown

Step 1: Determine area for each type of land use and enter in Column (2).
Step 2: Total the areas for each type of land use and enter at the bottom of Column (2).
Step 3: Multiply the areas in Column (2) by the TN export coefficients in Column (3) and enter in Column (4).
Step 4: Total the TN exports for each type of land use and enter at the bottom of Column (4).
Step 5: Determine the export coefficient for site by dividing the total TN export from uses at the bottom of Column (4) by the total area at the bottom of Column (2).

<table>
<thead>
<tr>
<th>(1) Type of Land Cover</th>
<th>(2) Area (acres)</th>
<th>(3) TN export coeff. (lbs/ac/yr)</th>
<th>(4) TN export from use (lbs/yr)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permanently protected undisturbed open space (forest, unmown meadow)</td>
<td>0.6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Permanently protected managed open space (grass, landscaping, etc.)</td>
<td>1.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Impervious surfaces (roads, parking lots, driveways, roofs, paved storage areas, etc.)</td>
<td>21.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The rule requires that all new developments achieve a nitrogen export of less than or equal to 3.6 pounds per acre per year. If the development contributes greater than 3.6 lbs/ac/yr of nitrogen, then the options shown in Table 2a are available based on whether the development is residential or non-residential.
### Table 2a: Nitrogen Export Reduction Options

<table>
<thead>
<tr>
<th>Residential</th>
<th>Commercial / Industrial</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the computed export is less than 6.0 lbs/ac/yr, then the owner may either:</td>
<td>If the computed export is less than 10.0 Lbs/ac/yr, then the owner may either:</td>
</tr>
<tr>
<td>1. Install BMPs to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr.</td>
<td>1. Install BMPs to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr.</td>
</tr>
<tr>
<td>2. Pay a one-time offset payment of $330/lb to bring the nitrogen down to the 3.6 lbs/ac/yr.</td>
<td>2. Pay a one-time offset payment of $330/lb to bring the nitrogen down to the 3.6 lbs/ac/yr.</td>
</tr>
<tr>
<td>3. Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export.</td>
<td>1. Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export.</td>
</tr>
<tr>
<td>If the computed export is greater than 6.0 lbs/ac/yr, then the owner must use on-site BMPs to bring the development's export down to 6.0 lbs/ac/yr. The owner may use one of the three options above to achieve the reduction between 6.0 and 3.6 lbs/ac/yr.</td>
<td>If the computed export is greater than 10.0 lbs/ac/yr, then the owner must use on-site BMPs to bring the development's export down to 10.0 lbs/ac/yr. The owner may use one of the three options above to achieve the reduction between 10.0 and 3.6 lbs/ac/yr.</td>
</tr>
</tbody>
</table>

### Table 2b: BMP Types, TN Removal Rates and Design Standards

<table>
<thead>
<tr>
<th>BMP Type</th>
<th>TN Removal Rate Based on Current Literature Studies</th>
<th>Appropriate Design Standards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wet Detention Ponds</td>
<td>25%</td>
<td>NC and MD Design Manuals</td>
</tr>
<tr>
<td>Constructed Wetlands</td>
<td>40%</td>
<td>NC and MD Design Manuals</td>
</tr>
<tr>
<td>Open Channel Practices</td>
<td>30%</td>
<td>NC and MD Design Manuals</td>
</tr>
<tr>
<td>Riparian Buffers</td>
<td>30%</td>
<td>Neuse Riparian Buffer Rule (15A NCAC 2B .0233)</td>
</tr>
<tr>
<td>Vegetated Filter Strips With Level Spreader</td>
<td>20%</td>
<td>NC and MD Design Manuals and other literature information</td>
</tr>
<tr>
<td>Bioretention</td>
<td>25%</td>
<td>NC and MD Design Manuals</td>
</tr>
<tr>
<td>Sand Filters</td>
<td>35%</td>
<td>NC and MD Design Manuals</td>
</tr>
<tr>
<td>Proprietary BMPs</td>
<td>Varies</td>
<td>Per manufacturer subject to DWQ approval</td>
</tr>
<tr>
<td>Other BMPs</td>
<td>Varies</td>
<td>Subject to DWQ approval</td>
</tr>
</tbody>
</table>

#### Maintain pre-development peak flow rates

The Neuse Stormwater Rule requires that new development must maintain the pre-development peak runoff rate from the one-year, 24-hour storm. The One-year 24-hour storm means the surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, once a year, and of a duration which will produce the maximum peak runoff flow form the watershed of interest under average antecedent wetness conditions. Acceptable methodologies for computing these flow rates include:
1) The Rational Method, which may be used for drainage areas of 200 acres or less,
2) The Peak Discharge Method as described in the USDA Soil Conservation Service’s Technical Release Number 55, which may be used for drainage areas of 2000 acres or less, and
3) The Putnam Method, which may be used for drainage areas greater than 2000 acres.

The flow control requirement is not required for developments that meet one or all of the following requirements:

When the peak flow rate does not increase by more than 10%, no controls will be required.

New development requirements to protect and maintain existing riparian areas

The Neuse Stormwater Rule requires local governments to insure that riparian areas are protected in accordance with the Riparian Buffer Rule (15A NCAC 2B.0233).

The Neuse Stormwater Rule requires local governments to ensure that 50-foot riparian buffers on both sides of intermittent and perennial streams and around lakes, ponds, and estuaries are maintained and protected from new development. The County may either request delegation from the state and implement all applicable provisions of the buffer rule or disapprove any new development that impacts the buffer unless the applicant can demonstrate that the NC Division of Water Quality has approved the activity.

Local governments seeking delegation must comply with the following requirements:

- Have land-use jurisdiction for the riparian buffer
- Have the necessary administrative organization, staff, legal authority, financial, and other resources to implement and enforce the requirements
- Have necessary ordinances, regulations, and resolutions to establish and maintain the buffer requirements
- Have an enforcement plan to address violation
- Appoint a Riparian Buffer Protection Administrator
- Train staff to understand, implement, and enforce the buffer program
- Review proposed uses within the riparian buffer, issue approvals/denials, and provide for appropriate mitigation provisions
- Conduct onsite determinations if a map is in question
- Review and approve/deny minor variance requests (major variances are approved or denied by the Environmental Management Commission)

Durham County does not propose to request delegation from the State.

Per sections 14-153(a)(3) and 14-155(b) of the proposed ordinance, any new development activity that is proposed to take place within the first 50 feet adjacent to a waterbody that is shown on either the USGS topographic map or the USDA Soil Survey maps will be disapproved unless the owner can show that the activity has been approved by DWQ. DWQ approval may consist of the following:

- An Authorization Certificate that documents that DWQ has approved an allowable use such as a road crossing or utility line. A detailed list of allowable uses is included in the Riparian Buffer Rule.
• An opinion from DWQ that vested rights have been established for the proposed
development activity.
• A letter from DWQ documenting that a variance has been approved for the
proposed development activity.

2. Illegal Discharges

The Neuse Stormwater Rule requires that all local governments establish a program to prevent,
identify, and remove illegal discharges. Illegal discharges are flows in the stormwater collection
systems that are not associated with stormwater runoff or an allowable discharge.

One of the first steps in setting up an illegal discharge program is to establish legal authority.
Staff proposes to accomplish this by amending Chapter 14 of the County Ordinance to add Article
V "Stormwater Management," in particular Section 14-158. This will establish the County’s legal
authority to:

• Control the contribution of pollutants to the stormwater collection system associated
  with industrial activity
• Prohibit illegal discharges to the stormwater collection system
• Prohibit discharge of spills and disposal of materials other than stormwater to the
  stormwater collection system
• Determine compliance and non-compliance
• Require compliance and undertake enforcement measures in case of non-
  compliance

The information that is to be collected for the County includes:

• Sanitary sewer location in areas of major storm sewer systems and locations not
  served by sanitary sewers
• Waters that appear on soil survey maps and USGS quad maps
• Land use categories, including undeveloped, residential, commercial, agricultural,
  industrial, institutional, and publicly owned open space
• Currently operating and known closed municipal landfills and other treatment,
  storage, and disposal facilities
• Major stormwater controls
• Known NPDES permitted discharges to the stormwater collection system

This information is, for the most part, currently available in the GIS system and will be used to
produce the required map(s) at a 200 scale.

Written descriptions for the map components are as follows:

• A summary table of municipal waste facilities that includes the names of the facilities, the
  status (open/closed), the types, and addresses
• A summary table of the NPDES permitted dischargers that include the name of the permit
  holder, the address of the facility and permit number.
• A summary table of the major structural stormwater control structures that shows the type
  of structure, area served, party responsible for maintaining, and age of structure.
• A summary table of publicly owned open space that identifies size, location, and primary
  function of each open area.

The second level of information is more detailed and is needed for screening high priority areas
within the County. The first part of the field screening process for high priority areas is mapping
the stormwater collection system. The second part of the field screening process is conducting a
dry weather inspection of all of the outfalls identified above to detect possible illegal discharges.
The dry weather field screening will use the state's 303(d) list to focus efforts on areas with a high potential for illegal discharges. Additionally, information received from complaints will be used to determine the location of illegal discharges. The field screenings will not occur within 72 hours following rain events of 0.1 inches or greater.

If the field screening shows that an outfall has a dry weather flow, a report will be produced. The information contained in the report includes:

**General Information:**
- Sheet Number
- Outfall ID Number
- Date and Time
- Date, Time and Quantity of Last Rainfall Event

**Field Site Description Location:**
- Type of Outfall
- Dominant Watershed Land Use(s)

**Visual Observations**
- Photograph
- Odor
- Color
- Clarity
- Floatable
- Deposits/Stains
- Vegetation Condition
- Structural Condition
- Biological
- Flow Estimation

After the field screening and sampling are complete, the County is required to identify and remove illegal discharges. Methods of identifying potential illegal discharges may include:

- Site investigation
- Additional chemical analysis
- Flow monitoring
- Dye testing
- Smoke testing
- TV inspection
- Citizen complaints

Once an illegal discharge is found, the County is required to take enforcement action to have the source removed. The legal authority established, Sections 14-158 and 14-162, will be used to accomplish this.

The County is required to contact persons/establishments that are likely sources of illegal discharges and inform them of the requirements of the illegal discharge program. The County will also establish a hotline that will include a recording advising citizens of what to do if they call during non-business hours.

3. **Retrofit Locations**

Another component of the stormwater plan is to identify retrofit locations. Retrofit locations are sites within existing developments that have the potential to reduce nitrogen export with the installation of an appropriate Best Management Practice (BMP).
Local governments are required to establish a program to identify potential retrofit sites. Since these rules were written to protect the Neuse River Basin, the required retrofit sites will have to be located within the Neuse River Basin. Based on the County's 1997 population, Durham County will be required to identify a minimum of three retrofit sites annually. A cooperative effort utilizing the Durham Soil and Water Conservation District and the Durham County Cooperative Extension Service Office is being explored.

In order to be considered an acceptable retrofit site, the following conditions will have to be investigated:

- The retrofit clearly has the potential to reduce nitrogen loading to the receiving water.
- The watershed is clearly contributing nitrogen loading above background levels
- The landowner where the retrofit is being proposed has to be willing to have the retrofit installed on his property
- There is adequate space and access for the retrofit

Once these sites are identified a list of them will be forwarded to the Division of Water Quality via an annual report on October 30th of each year beginning in 2001. The list will include maps detailing:

- The drainage area to the retrofit opportunity site
- Land used within the drainage area
- Location of retrofit opportunity
- Property boundaries in the vicinity of the retrofit opportunity
- Significant hydrology (as depicted on U.S.G.S. topographic maps and USDA-NRCS Soil Survey Maps
- Roads
- Environmentally sensitive areas (steep slopes, wetlands, riparian buffers, endangered/threatened species habitat - where available).
- Publicly owned parks, recreational areas, and other open lands.

DWQ may then notify the following organizations of the opportunities for retrofitting:

- Clean Water Management Trust Fund
- N.C. State University Cooperative Extension Service
- Triangle J Council of Governments
- Environmental Programs at:
  - N.C. State University
  - Duke University
  - University of North Carolina
  - East Carolina University
- N.C. Sea Grant
- USDA - Natural Resources Conservation Service
- Upper Neuse Basin Association
- Lower Neuse Basin Association
- N.C. Wetland Restoration Program

4. Education Program

The Neuse Stormwater Rule requires that the County of Durham develop an environmental education program to address nitrogen-loading issues.
The public education action plan shall consist of activities from each of the two categories listed in the table below. In addition to the activities listed below, the action plan must include two technical workshops, one designed for elected and other public officials and one designed for the development community, including engineers, architects, developers, contractors, surveyors, planners, and realtors, during the first year of the program.

<table>
<thead>
<tr>
<th>Category 1</th>
<th>Category 2</th>
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<tbody>
<tr>
<td>Demonstration sites</td>
<td>Fact Sheets</td>
</tr>
<tr>
<td>&quot;Adopt-A-Program&quot;</td>
<td>Environmental Freebies</td>
</tr>
<tr>
<td>Quarterly Newspaper Articles</td>
<td>Fertilizer Tags</td>
</tr>
<tr>
<td>Storm Drain Marking</td>
<td>Flyers</td>
</tr>
<tr>
<td>Recognition Program</td>
<td>Postmarks</td>
</tr>
<tr>
<td>Web Page</td>
<td>Utility Bill Inserts</td>
</tr>
<tr>
<td>Local Cable TV Program</td>
<td>Close Out Packages</td>
</tr>
<tr>
<td>Toll Free Hotline for Reporting</td>
<td>Speak to Civic Groups Quarterly</td>
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<tr>
<td>Environmental Problems</td>
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<tr>
<td>Environmental Field Day</td>
<td></td>
</tr>
<tr>
<td>Environmental Contest</td>
<td></td>
</tr>
</tbody>
</table>

Based on Durham County’s 1997 population of 37,292, we are required to undertake two Category 1 activities and two Category 2 activities. However, if we choose to use effective major media advertising, either independently or through a cooperative effort, the County would be exempt from the minimum Category one and two requirements.

Currently, Durham County is working with Triangle J Council of Governments (COG) and other affected jurisdictions in a cooperative effort to produce an effective advertising campaign using major media. Durham County is also exploring the resources available to satisfy the public education obligation through its own Public Information Office and the Durham County Cooperative Extension Service Office.

5. **Annual Reporting**

Annual Neuse River Basin Stormwater Program reports will be submitted to the Division of Water Quality by October 30 of each year beginning in 2001. All reports shall contain a summary of activities in each of the four plan elements.
Tab 5: Plan/Permit Forms
COUNTY OF DURHAM
ENGINEERING DEPARTMENT

Date, 2011

Name
Name
Address
Address

Re: Stormwater Collection Systems Plan Approval
   Project Name
   DRB Number #######
   Durham County Stormwater Project #SW-######

Dear Name:

On Date, 2011, we received a stormwater construction drawing package submittal package for the Project
Name at Address, Durham, NC. Enclosed is a copy of the plans and calculation, stamped approved by this
office on Date, 2011.

The approved stormwater collection system consists of:
   1. Installation of a stormwater facility (BMP Type) with a one-year design discharge of no more
      than #.### CFS.
   2. Installation of #.### LF of stormwater RCP pipe and # stormwater structures.

Our office will issue a Stormwater Permit after the following are completed:

1. The stormwater system is constructed and final construction inspected by a registered professional
   engineer, a registered land surveyor, or a registered landscape architect. A signed and sealed copy of
   the inspection report must be submitted to this office.
2. The final As-Built Plans sealed and signed by a registered professional engineer, a registered land
   surveyor, or a registered landscape architect must be submitted.
3. An operation and maintenance plan sealed and signed by a registered professional engineer, a
   registered land surveyor, or a registered landscape architect must be submitted.
4. An improvement security must be provided to our office in accordance with Ordinance Section 14-155.
   Our calculations indicate a performance bond in the amount of $###,###,### (per the attached
   bond calculation form) to be renewed annually for a period of ten (10) years is necessary to ensure
   construction, and continuing operation, maintenance and inspection of the facilities. A performance
   bond form is enclosed. If you believe this bond amount is incorrect please contact me.

Please feel free to contact me if you have any questions pertaining to this approval at (919) 560-0739.

Sincerely,

Chris Robert, PE
Stormwater and Erosion Control Division Manager

cc:
COUNTY OF DURHAM
ENGINEERING DEPARTMENT

Stormwater Operations and Maintenance Agreement

Project Name
Stormwater System Permit #: SW####-##
Date of Issuance: Month ##, 200#, Date of Expiration: Month ##, 201#

THIS AGREEMENT, made and entered into this the ____ day of __________, 20___, by and between Durham County, hereinafter referred to as County, and Owner, hereinafter referred to as the Permittee;

WITNESS

THAT WHEREAS, the Permittee is this day accepting responsibility for the permanent engineered stormwater controls, hereinafter referred to as "the facility", installed on that certain real property known as ______________________, as shown on the plat thereof recorded in the Book of Maps ______, Page_______, Durham County Registry; and

WHEREAS, the County's Stormwater Management Ordinance (Chapter 14, Article V of the County's Code of Ordinances) and the City/County Unified Development Ordinance (UDO) require a permittee to provide for the continued care and maintenance of the facility; and

WHEREAS, the UDO further requires that, before a Certificate of Compliance may be issued for any structure constructed within a property which includes a stormwater facility, the property owner must enter into an Agreement with the County to provide for the operation and maintenance of the facility; and

WHEREAS, the Permittee accepts responsibility for the continued care, maintenance and performance of the facility as prescribed in Stormwater Permit # SW####-## (Stormwater Permit), the approved site-specific operation and maintenance manual and this Agreement; and

WHEREAS, the Permittee grants access to Durham County to inspect the facility; and

WHEREAS, the Permittee understands that this Agreement shall endure to the benefit of any successor(s) in title, whomsoever they may be in the future.

NOW, THEREFORE, it is understood and agreed by and between the parties:

1. The continued care and maintenance of the facility shall be the sole responsibility of the Permittee.
2. The responsibility for the maintenance of the facility shall pass in the chain of title to the Permittee's successor in interest.

3. Access is granted to Durham County to inspect the facility.

4. The Permittee shall submit an inspection report annually as required in Condition IV.A. of the Stormwater Permit assessing the condition and operation of the facility. The inspection report shall be signed and sealed by a registered professional engineer, a registered land surveyor, or a registered landscape architect. The inspection report must be submitted in accordance with the schedule established in the Stormwater Permit. The report shall be mailed to:

Durham County Stormwater Administrator
Durham County Engineering Dept.
120 E. Parrish Street, 1st Floor
Durham, NC  27707

Owner (Center)

By: ____________________________
   (Signature)

______________________________
   (Print or Type Name)

______________________________
   (Print or Type Title)

NORTH CAROLINA
______________ COUNTY

I, ____________________________, THE UNDERSIGNED Notary Public of the County and State aforesaid, certify that ____________________________ personally appeared before me this day and acknowledged the due execution of the foregoing Agreement.

WITNESS my hand and notarial seal, this the _____ day of ___________, 20______.

______________________________
   Notary Public

My Commission Expires: ____________________________________
Month ##, 200#

Owner Name
Owner Company
Owner Address
Owner Address

Re: Issuance of Stormwater System Permit # SW#####-##

Dear Ms. Tiffance,

Please find attached to this letter the final Stormwater System Permit # SW#####-## for the Stormwater Facility located at and serving the Project Name. Location.

If you have any questions pertaining to this letter or the final permit, please feel free to contact me at (919) 560-0739.

Sincerely yours,

Name, P.E.
Stormwater and Erosion Control Division Manager

Enclosure: Stormwater System Permit # SW#####-##
          Stormwater Operations and Maintenance Agreement

***/***
In accordance with the provisions of Chapter 14, Article V of Durham County's Code of Ordinances (Stormwater Management Ordinance) as amended, and other applicable Laws, Rules, and Regulations, the above named Permitee is hereby authorized to construct and operate a Stormwater Treatment Facility (Facility) consisting of a stormwater collection system and wet detention basin.

The Facility will serve Project Name (Location, Durham) and will be constructed in accordance with the stormwater control plan, project plans, specifications, and other supporting data filed with and approved by the Durham County Division of Stormwater and Erosion Control and considered a part of this permit.

This permit shall be effective from Month ##, 200# until Month ##, 201# and shall be subject to the following specified conditions and limitations:

I. **Post-Construction Submission Requirements**

   A. The Permitee shall, upon completing construction of the Facility, submit to the Durham County Stormwater Administrator, at the address listed below in Condition V.A.2., the following:

      1. Three (3) copies of sealed as-built plans showing specific elevations, materials and construction details.

      2. A final inspection report signed by a registered professional engineer, a registered land surveyor, or a registered landscape architect that certifies the Facility is functioning properly and that all components are in good working condition – including vegetation and safety features.

      3. A signed and executed Stormwater Operation and Maintenance Agreement.

   B. The Permitee shall submit a revised Stormwater Impact Analysis (SIA) if the final construction of the Facility alters any assumptions made for the approved SIA.
II. **Performance Standards**

A. The Permittee shall not allow any person to empty or deposit in the stormwater collection and treatment system, directly or indirectly, any substance, liquid, or solid, which by reason of its nature:

1. Is or may become, a public health hazard endangering human or animal health;
2. Is a nuisance, including substances which are unsightly or malodorous, or may become so;
3. Interferes, or may interfere, with the free and rapid flow of surface water;
4. Is flammable or explosive;
5. Is toxic to plant or animal life;
6. Is corrosive, or have properties which may damage or render unsightly the stormwater collection system; or
7. Affects adversely the State of North Carolina classification of the stream into which the stormwater collection system discharges.

B. The issuance of this permit shall not relieve the Permittee of the responsibility for damages to surface waters resulting from the operation of this Facility.

C. Diversion or bypassing of the stormwater from the Facility is prohibited.

D. The Permittee shall take immediate action to remove an illegal discharge and remedy any damage caused by same.

III. **Operation and Maintenance Requirements**

A. The Permittee shall operate and maintain the Facility in accordance with the Stormwater Operations and Maintenance Agreement required in Condition I.A.3., incorporated into the permit upon execution of the Agreement.

B. The Permittee shall implement the approved operation and maintenance plan (Plan) and ensure the performance of the Facility. The Permittee shall maintain the Plan at the facility (or at a location accessible to those responsible for plan implementation) and shall make the Plan available to Stormwater Administrator upon request.

C. The Permittee shall keep and maintain the Facility, both surface and underground, free from obstructions, trash, and debris.

D. The Permittee shall maintain suitable year round vegetative cover and slope protection.

E. The Permittee shall maintain appropriate wetland conditions for the intended littoral plant species growth.

F. No traffic or equipment shall be allowed on or about the Facility while normal maintenance is being performed.

G. Public access to the Facility shall be controlled at all times. Such controls may include the posting of signs showing the activities being conducted at the Facility.
IV. Inspection, Reporting and Recordkeeping Requirements

A. Annual Inspection Report

1. The Permittee shall submit an inspection report assessing the condition and operation of the facility once per year. The inspection report shall be signed and sealed by a registered professional engineer, a registered land surveyor, or a registered landscape architect. If the inspection report does not certify that the stormwater Facility is functioning properly and that all components are in good working condition, including vegetation and safety features, the inspection report must include

   a) A description of the deficiency and its cause;

   b) The steps taken and/or planned to reduce, eliminate, and prevent the reported deficiencies.

2. The annual inspection report must be submitted by October 1 of each year beginning October 1, 2009. The report shall be mailed to:

   Durham County Stormwater Administrator
   Durham County Engineering Department
   120 E. Parrish St., 1st Floor
   Durham, NC 27701

B. Noncompliance Notification

The Permittee shall report by telephone to the Stormwater Administrator, telephone number (919) 560-0735, as soon as possible, but in no case more than 24 hours from the time the Permittee becomes aware of the occurrence of any of the following:

1. Discharge of prohibited materials (Condition II.A.) into the Stormwater Facility, or

2. Damage to or malfunction of the Facility.

The Permittee shall also submit a written report to the address above within five (5) days following first knowledge of the occurrence. The written submission shall contain: a description of the noncompliance and its cause; the period of noncompliance including exact dates and time, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

C. Any duly authorized officer, employee, or representative of the Department may, upon presentation of credentials, enter and inspect any property, premises or place on or related to the Stormwater Facility at any reasonable time for the purpose of determining compliance with this permit; may inspect or copy any records that must be maintained under the terms and conditions of this permit, and may obtain samples of storm and surface water.

D. Recordkeeping

1. A set of approved plans and specifications, including approved as-built plans, for the subject project and Stormwater Facility must be retained by the Permittee for the life of the project.
2. Documentation of inspections performed in accordance with the approved operation and maintenance plan and the annual inspection reports and must be maintained by the Permittee for a period of ten (10) years from the date of inspection, and shall be made available upon request to the County or other permitting authority.

V. **General Conditions**

A. This permit is effective only with respect to the nature and volume of stormwater described in the approved plans and specifications.

B. The Permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Stormwater Management Ordinance is grounds for possible enforcement action.

C. Nothing in this permit shall be construed to relieve the Permittee from civil or criminal penalties for noncompliance.

D. The Stormwater Management Ordinance provides that any person who violates a permit condition is subject to a civil penalty not to exceed $5000.00 per day of such violation.

E. This permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

F. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

G. This permit may be modified, revoked and reissued, or terminated with cause in accordance with the requirements of the Stormwater Management Ordinance and North Carolina General Statutes or implementing regulations.

H. The Permittee shall give notice to Durham County of any planned significant changes to the Permittee’s operations or system which might alter the nature, quality, or volume of its stormwater at least 180 days before the change.

I. This permit is not transferable. In the event there is a desire for the permitted Facility to change ownership, or there is a name change of the Permittee, a formal permit transfer request must be submitted to the Stormwater Administrator at the address above accompanied by an application fee, documentation from the parties involved, and other supporting materials as may be appropriate. The approval of this request will be considered on its merits and may or may not be approved.

If the Permittee transfers, or permits the transfer of, an interest without complying with this Condition, that failure to comply shall not invalidate the transfer, but Transferee shall remain obligated under this permit and the associated Stormwater Operations and Maintenance Agreement.

J. Failure to abide by the conditions and limitations contained in this permit may subject the Permittee to an enforcement action by the Department in accordance with Section 14-160 of the Stormwater Management Ordinance.
K. The issuance of this permit does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances which may be imposed by other government agencies (local, state, and federal) which have jurisdiction.

L. The Permittee, at least forty-five (45) days prior to the expiration date of this permit, shall request its renewal. The Permittee shall submit with the request an inspection report (prepared in accordance with Condition V.A.) and the appropriate permit renewal fee. The Department will review the performance, operation and condition of the Facility described herein, and if warranted, will renew the permit for such period of time and under such conditions and limitations as it may deem appropriate.

Permit issued this the #th day of Month, 200#.

DURHAM COUNTY ENGINEERING DEPARTMENT

Name, PE
Stormwater and Erosion Control Division Manager
Durham County
Stormwater Permit Application
FINANCIAL RESPONSIBILITY/OWNERSHIP FORM
WITH LANDOWNER CONSENT FORM

No person may initiate any development covered by the Durham County Stormwater Ordinance before a Stormwater Permit is issued by the Durham County Engineering Department. Issuance of a Stormwater Permit does not relieve the permittee of the obligation to obtain any other licenses, permits and approvals as may be required by Federal, State, County or Municipal governments. This office must be notified in writing of any change to the information on this form.

PLEASE TYPE OR PRINT

1. Project name: ____________________________________________

2. Road location of development: ____________________________________________

   Tax Map - Block - Parcel: ___________________________ PIN: ___________________________

3. Square footage of land to be disturbed: ____________________________________________

4. List below the landowner of record. Each landowner must complete Item 8.
   (If there are multiple owners, please list on a separate page):

   Name

   Address

   City          State          Zip

   Telephone    Fax    Email

5. List the person or entity financially responsible for this development: The financially responsible party shall be (1) the developer or other person who has or holds themselves as having financial or operational control over the development and/or (2) the land owner or person in possession or control of the land when they have directly or indirectly allowed the development or have benefited from it and (3) the named party on the Stormwater Permit.

   Name

   Street Address

   City          State          Zip

   Telephone    Fax    Email

The Stormwater Management Ordinance (Ordinance) includes, but is not limited to, the following legal obligations of the financially responsible party:

- Install and maintain all stormwater control measures.
- Inspection and reporting by a registered professional engineer, registered land surveyor, or registered landscape architect, upon completion of their construction, and annually thereafter.
- Maintain a set of approved stormwater control plans.
- Maintain a performance bond for the life of the project.
- Maintain a valid stormwater permit.

120 E. Parrish Street, Law Bldg., 1st Floor, Durham, N.C. 27701 • (919) 560-0735 • Fax (919) 560-0740
www.co.durham.nc.us/ceng
Provide a Notarized Item 8 for each landowner listed in Item 4.

8. Land Owner Consent. As a landowner, I provide my consent for development activities to occur on the property listed in Item 2 by the person or entity listed in Item 5.

<table>
<thead>
<tr>
<th>Date</th>
<th>Type or Print Name</th>
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<tr>
<th>Telephone</th>
<th>Fax</th>
<th>Title or Authority</th>
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<th>Email</th>
<th>Signature</th>
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**Business Landowner (Provide corporate resolution on signatory authority)**

I, ________________________________________, a Notary Public of the County of ____________________________

State of ____________________________, hereby certify that ____________________________

personally came before me this day and acknowledged that he is ____________________________

of ____________________________, and acknowledged, on behalf of ____________________________, the due execution of the foregoing instrument.

Witness my hand and official seal, this _________________ day of ____________________________, 20________

_________________________________________________________
Notary Public

My commission expires ____________________________, 20______.

**********************************************************************************************************************************************

**Individual Landowner**

I, ________________________________________, a Notary Public of the County of ____________________________

State of ____________________________, hereby certify that ____________________________

personally appeared before me this date and under oath acknowledged that the above form was executed by them.

Witness my hand and official seal, this _________________ day of ____________________________, 20________

_________________________________________________________
Notary Public

My commission expires ____________________________, 20______

SE-03
Cape Fear Stream Delineation Application

Project Name: ____________________________________________________________

Previous Project Name, if applicable: ______________________________________

Site Acreage: __________________ Fee Submitted: $__________________________
PIN: _________________________________________________________________
PIN: _________________________________________________________________
PIN: _________________________________________________________________

Owner/Applicant: __________________________________ Phone Number: _______
Owner Address: _______________________________________________________

Project Contact Person: ___________________________ Phone No. _____________
Company Name/Address: ___________________________ Fax No. ______________

Developer Name ____________________________
Address _________________________________

Engineer Name ____________________________
Address _________________________________

Architect Name ____________________________
Address _________________________________

Stream Consultant Name________________________
Address _________________________________

*Note: Please include with this application copies of the USGS 7 ½ minute quadrangle topographic map and the USDA Soil Survey with the project boundary clearly marked.
STATE OF NORTH CAROLINA  
COUNTY OF DURHAM  

PERFORMANCE BOND  
STORMWATER MANAGEMENT

DATE OF EXECUTION: _____________________________________________________________________

NAME OF PRINCIPAL: ___________________________________________________________________
(FINANCIALLY RESPONSIBLE PARTY)

NAME OF SURETY: _____________________________________________________________________

NAME AND ADDRESS OF OBLIGEE: COUNTY OF DURHAM 
Durham County Engineering Department 
c/o Stormwater Administrator 
120 East Parrish St., 1st Floor 
Durham, NC 27701

AMOUNT OF BOND: ___________________________________________________________________

PROJECT NAME: _____________________________________________________________________

DURHAM COUNTY JOB CONTROL NUMBER: _____________________________________________

KNOW ALL MEN BY THESE PRESENTS, THAT WE, the PRINCIPAL and SURETY above-named, are held and firmly bound unto the above-named OBLIGEE, in the penal sum of the amount stated above to cover all costs of construction and maintaining the stormwater control measures required by the Durham County Stormwater Management Ordinance ("Ordinance") the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, if the PRINCIPAL shall well and truly perform and do all of the things agreed by him/it to be done and perform according to the terms and conditions and requirements of the Durham County Stormwater Management Ordinance ("Ordinance"), and any Permit ("Permit") issued thereunder; and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Permit or Ordinance that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation shall be null and void; otherwise to remain in full force and virtue.

Whenever the Principal shall be, and is declared by County to be, in default under the Permit or Ordinance, the Surety shall promptly remedy the default or shall promptly:

1. Comply with the Permit and Ordinance in accordance with its terms and conditions; or

2. Obtain a bid or bids for complying with the Permit and Ordinance in accordance with its terms and conditions, and upon determination of Surety of the lowest responsible bidder, arrange for a contract between such bidder and Surety, and make available as work progresses sufficient funds to pay the cost of completion and/or operation and maintenance of the subject Stormwater control measures; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth above.

TERM/RENEWAL. The term of this Performance Bond shall begin on the Date of Execution first written above, for a one year period annually renewable at the sole option of Surety. At the time of renewal of the permit pursuant to section 14-155(a), the amount of the Performance Bond shall be recalculated and revised to reflect any increase in the costs of construction or maintenance and shall be in the amount specified by Obligee. Failure of Surety to renew the Bond at the expiration of any term shall not be considered a default hereunder; however, failure of the Principal to obtain alternative security for ongoing construction or operations of the Stormwater measures within thirty (30) days prior to the expiration of this bond, including any renewals, shall be deemed a default by the Principal.
IN WITNESS WHEREOF, the above-bound parties have executed this instrument under their several seals on the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

**PRINCIPAL:**

**NAME:**  __________________________(SEAL)

**ADDRESS:**


**TELEPHONE:**


**BY:**  __________________________

(Authorized Signature of Individual or Officer)

**ATTEST:**  __________________________

Name and Title

**SURETY:**

**NAME:**  __________________________(SEAL)

**ADDRESS:**


**TELEPHONE:**


**BY:**  __________________________

(Authorized Signature of Individual or Officer)

______________________________

Name and Title

**ATTEST:**  __________________________

______________________________

Name and Title
County of Durham  
Engineering Department  
Stormwater and Erosion Control Division  
120 E. Parrish Street, Law Bldg., 1st Floor  
Durham, North Carolina 27701  
(919)560-0735 Fax: (919)560-0740

Stormwater and Erosion Control Division Site Plan and Preliminary Plat Submittal Checklist

For each review submittal the entire study must be submitted. This includes re-submittals. Partial study packages will not be reviewed. Incomplete Stormwater Site Plan Submittals will be returned with NO REVIEW PERFORMED. Contact Stormwater and Erosion Control Division concerning redevelopment, expansion or projects which result in a decrease in impervious area for modified submittal requirements. This submittal checklist is to be submitted with each plan submittal.

I. PROJECT INFORMATION

Project Name: ___________________________ Phase: ___________________________

Previous Project Name, if applicable: ___________________________

PIN: ____________ Tax Map Number ____________ Planning Case Number: ____________

Owner ___________________________________ Phone Number _________________________

Owner Address ________________________________

Project Comment Contact Person: ___________________ Phone number (___) _________

Fax number: (___) _________ Company Name: ___________________

II. REQUIRED ITEMS CHECKLIST

The following checklist outlines submittal requirements. Initial in the space provided to indicate the following submittal requirements have been met and supporting documentation is attached.

A. General Requirements

Applicant’s initials

_______ a. Stormwater Impact Analysis (SIA) including narrative report and drainage calculations sealed and signed by North Carolina Professional Engineer.

_______ b. Cape Fear / Neuse Basin (circle one).

(If Neuse Basin circled completion of Section D, below is required)

_______ c. INSIDE / OUTSIDE (circle one) Water Supply Watershed.

(If INSIDE Water Supply Watershed completion of Section E, below is required)

_______ d. Show ALL Riparian Stream Buffers on the plan. Diffuse flow into stream buffers is required.(Complete Section C where required)

_______ e. Floodplain located on site: Yes / No (circle one). A copy of floodplain map with site boundary shown is required and the 100-year floodplain with base flood elevations (if applicable) must be shown on the site plan.

Page 1 of 3  
Revised as of 1/27/06
B. 10% Stormwater Rule Requirements

a. Durham County Soils map with site boundary shown.

b. USGS 7.5 Minute Quadrangle with site boundary shown.

c. Introduction narrative describing the site conditions in pre- and post-development conditions including a description of site improvement changes.

d. Drainage area map including:
   ___ Site area delineated, scale and north arrow.
   ___ Sub-basins delineated for pre- and post-development conditions
      with area in acres indicated.
   ___ Analysis points clearly identified and labeled.
   ___ Segmented TR-55 time of concentration flow paths showing each
      segment.

e. Methodologies and procedures described.

f. Site plan or grading plan identifying pre- and post-development drainage patterns.

g. Pre- and post-development times of concentration calculated using the TR-55
   segmented approach.

h. Calculations for the pre- and post-development discharges for the 1-, 2- and 10-year 24-
   hour storm using TR-55, TR-20, HEC-HMS, HEC-1 or Rational Method. The discharge
   point for these calculations is the property boundary.

i. Summary of Results provided in the following format (see Example below).

<table>
<thead>
<tr>
<th>BASIN NAME</th>
<th>Pre-Developed 1-year discharge</th>
<th>Post-Developed 1-year discharge</th>
<th>% Increase</th>
<th>Pre-Developed 2-year discharge</th>
<th>Post-Developed 2-year discharge</th>
<th>% Increase</th>
<th>Pre-Developed 10-year discharge</th>
<th>Post-Developed 10-year discharge</th>
<th>% Increase</th>
<th>Detention Required (Yes/No)</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

j. Conclusion providing detailed findings.

k. BMP provided (indicate quantity):  __ Wet Pond  __ Sand Filter  __ Bioretention
   ___ Dry Detention  ___ Other
   ___ Not required

l. BMP benefits:  ___ control 1-, 2- and 10-year discharge
   ___ Other
   ___ Not required

Page 2 of 3
Revised as of 1/27/06
C. Riparian Stream Buffers

a. A copy of the Durham County Soils map and the USGS 7.5 Minute Quadrangle with the site indicated has been provided. Diffuse flow into buffers is required.
b. All Durham County stream buffers are shown on the plan for intermittent and perennial streams shown on the Durham County Soils map or the USGS 7.5 Minute Quad. Diffuse flow into buffers is required
c. NCDENR documentation for approval of buffer impacts provided.
d. Stream delineations (Cape Fear / Neuse Basin). If in Neuse Basin, provide NCDENR Division of Water Quality documentation. If in Cape Fear Basin, provide report as required by Section 14-153(b)(3) (i) of the County Stormwater Ordinance.

D. Neuse Basin Requirements

Note: If a single family, duplex, or recreational development disturbs ≤ 1 acre or a multi-family, office, institutional, commercial or industrial development disturbs ≤ 0.5 acres then all items below are N/A.

a. Pre- and post-development nitrogen calculations using Durham County Nitrogen Calculation Tables.
b. Nitrogen buy-down calculations (if necessary). Site plan will not be approved until WRF payment is verified.

E. Water Supply Watershed Requirements

a. Indicate the water supply watershed overlay district(s) the project is located. (Circle all that apply) (F/J-A, F/J-B, E-A, E-B, M/LR-A, M/LR-B)
b. Provided BMP for 85% TSS removal or narrative explaining why it is not provided

c. BMP provided: ___ Wet Pond ___ Sand Filter ___ Bioretention ___ Dry Detention ___ Other ________________________________
  ___ Not required
d. BMP benefits: ___ 85% TSS Removal ___ Other ________________________________
  ___ Not required

Note: Executed Stormwater Facility Operation and Maintenance Permit Agreement, payment of permit fee and payment of surety are required prior to construction drawing approval.
Tab 6: Other Misc Forms
Wet Detention Pond Design Summary

Stormwater Management Construction Plan Review:
A complete stormwater management construction plan submittal includes a design summary for each stormwater BMP, design calculations, plans and specifications showing BMP, inlet and outlet structure details.

I. PROJECT INFORMATION
Project Name: ____________________________ Phase ____________________________
PIN: ____________________________ Case #: ____________________________
Design Contact Person: ____________________________ Phone #: (___) ___-_______
Legal Name of Owner: ____________________________
Owner Contact: ____________________________ Phone #: (___) ___-_______
Owner Address: ____________________________
Deed Book _____ Page # _____ or Plat Book _____ Page # _____ for BMP Property
For projects with multiple basins, specify which pond this worksheet applies to: ____________________________
Does the proposed pond also incorporate stormwater detention? Yes ___ No ___
Detention provided for: _______ 1-year ___ 2-year ___ 10-year ___ other _______
Dam Height: _______ (feet) Dam Classification: _______

Elevations
Pond bottom elevation ____________________________ ft. (floor of the pond)
Permanent pool elevation ____________________________ ft. (invert elevation of the orifice)
Temporary pool elevation ____________________________ ft. (elevation of the structure overflow)
1-year storm orifice/weir elevation ____________________________ ft. (invert elevation)
1-year storm water surface elevation ____________________________ ft.
2-year storm orifice/weir elevation ____________________________ ft. (invert elevation)
2-year storm water surface elevation ____________________________ ft.
10-year storm orifice/weir elevation ____________________________ ft. (invert elevation)
10-year storm water surface elev. ____________________________ ft.
Emergency spillway elevation ____________________________ ft. (invert of emergency spillway)
Top of embankment/dam ____________________________ ft. (elevation)
Maximum water surface elevation ____________________________ ft. (max. storm pond can safely pass)

Areas
Permanent pool area provided ____________________________ ft² (water surface area at orifice invert elevation)
Minimum required permanent pool area ____________________________ ft² (calculated surface area required)
Design storm surface area ____________________________ ft² (Specify frequency event: _____ year)
Drainage area (10-acres min) ____________________________ ac. (total drainage to the pond)
Discharges (Specify only applicable frequency events)

At BMP

<table>
<thead>
<tr>
<th>Inflow</th>
<th>1-year cfs</th>
<th>2-year cfs</th>
<th>10-year cfs</th>
<th>____-year cfs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routed outflow</td>
<td>_____ cfs</td>
<td>_____ cfs</td>
<td>_____ cfs</td>
<td>_____ cfs</td>
</tr>
</tbody>
</table>

At Analysis Point(s) that BMP Contributes to

| Pre-development | 1-year cfs | 2-year cfs | 10-year cfs | ____-year cfs |
| Post-development w/o detention | _____ cfs | _____ cfs | _____ cfs | _____ cfs |
| With detention | _____ cfs | _____ cfs | _____ cfs | _____ cfs |

Volumes

- Permanent pool volume: _____ ft³ (volume of main pond and forebay)
- Water quality pool storage volume: _____ ft³ (volume above permanent pool)
- Design storm storage volume: _____ ft³ (volume above permanent pool)
- Total Storage volume provided at design storm: _____ ft³
- Total Storage volume provided at top of dam: _____ ft³
- Forebay volume: _____ ft³ (~ 20% of permanent pool volume)

Hydraulic Depths

Volume of normal pool divided by surface area of normal pool: _____ ft.
Volumes at temporary pool plus normal pool divided by surface area of temporary pool: _____ ft.

Other Parameters

<table>
<thead>
<tr>
<th>SA/DA1</th>
<th>Diameter of orifice (from DWQ table)</th>
<th>Draw-down time (must provide draw down over 2 to 5 day period)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Diameter _____ in.</td>
<td>Draw-down time _____ hrs</td>
</tr>
</tbody>
</table>

1 When using the SA/DA tables from the Stormwater Best Management Practices Manual, linear interpolation may be used for values between table entries.

Riser/Principal and Emergency Spillway Information

| 1-year storm orifice/weir | diameter _____ in. | length _____ ft. |
| 2-year storm orifice/weir | diameter _____ in. | length _____ ft. |
| 10-year storm orifice/weir | diameter _____ in. | length _____ ft. |
| ____- year storm orifice/weir | diameter _____ in. | length _____ ft. |
| Principal spillway | diameter _____ in. |
| Emergency spillway | width _____ ft. | side slopes __:1 | slope _____% |
II. REQUIRED ITEMS CHECKLIST

The following checklist outlines design requirements. Initial in the space provided to indicate the following design requirements have been met and supporting documentation is attached.

Applicant's initials

a. The permanent pool depth is between 3- and 6-feet (required minimum hydraulic depth of 3-feet).

b. The forebay volume is approximately equal to 20% of the pond volume.

c. The temporary pool controls runoff for water quality design storm.

d. The temporary pool draws down in 2- to 5-days.

e. The drainage area to the facility is at least 10-acres.

f. Riprap outlet protection, if provided, reduces flow to non-erosive velocities (provide calculations).

g. The pond length to width ratio is greater than or equal to 3:1.

h. The pond side slopes above the permanent pool area are no steeper than 3:1.

i. A submerged and vegetated shelf with a slope no greater than 6:1 is provided around the perimeter of the pond (show on plan and profile and provide a vegetation plan).

j. Vegetative cover above the permanent pool elevation is specified. No woody vegetation is permitted on the embankment.

k. A surface baffle, trash rack or similar device is provided for both the overflow and orifice. Flat top trash racks are not acceptable. Access hatch has been provided.

l. A recorded drainage easement is provided for each pond including access to the nearest right-of-way and is graded per Section 8.3, Stormwater Control Facilities (BMPs).

m. If the basin is used for sediment and erosion control during construction, a note requiring clean out and vegetative cover being established prior to use as a wet detention basin shall be provided on the construction plan.

n. A mechanism is specified which will drain the pond for maintenance and emergencies. Valves used shall be plug valves.

o. Anti-floatation calculations are provided for riser structure.

p. A plan view of the pond with grading shown is provided.

q. A profile through the forebay, main pond and spillway is provided. Water surface elevations are shown on the profile.

r. Riser structure details are provided.

s. Dam designed to account for a 5.00% settlement factor.

t. Compaction specifications for the embankment are shown on the plan.

u. The minimum top of dam width has been provided for the pond embankment top width per Section 8.3, Stormwater Control Facilities (BMPs).

Note: Executed Stormwater Facility Operation and Maintenance Permit Agreement and payment of surety are required prior to Stormwater Permit issuance.
Dry Detention Basin Design Summary

Stormwater Management Construction Plan Review:
A complete stormwater management construction plan submittal includes a design summary for each stormwater BMP, design calculations, plans and specifications showing BMP, inlet and outlet structure details.

I. PROJECT INFORMATION

Project Name: ____________________________ Phase ____________________
PIN: ____________________________ Case #: ____________________
Design Contact Person: ____________________________ Phone #: (___) ___-_______
Legal Name of Owner: ____________________________ Phone #: (___) ___-_______
Owner Contact: ____________________________ Phone #: (___) ___-_______
Owner Address: ____________________________

Deed Book __________ Page # ______ or Plat Book __________ Page # ______ for BMP Property

For projects with multiple basins, specify which pond this worksheet applies to: __________

Detention provided for: ___ 1-year ___ 2-year ___ 10-year ___ other ______
Dam Height: _____ (feet) Dam Classification: ______

Elevations

Basin bottom elevation
1-year storm orifice/weir elevation
1-year storm water surface elevation
2-year storm orifice/weir elevation
2-year storm water surface elevation
10-year storm orifice/weir elevation
10-year storm water surface elevation
Emergency spillway elevation
Top of embankment/dam
Maximum water surface elevation

Areas

Design storm surface area
Drainage area

Volumes

Total storage volume provided at design storm
Total storage volume provided at top of dam

Hydraulic Depth (volume of design storm divided by surface area of design storm)
Hydraulic Depth
Discharges (Specify only applicable frequency events)

At BMP

<table>
<thead>
<tr>
<th>Inflow</th>
<th>1-year</th>
<th>2-year</th>
<th>10-year</th>
<th>_____-year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routed outflow</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
</tr>
</tbody>
</table>

At Analysis Point(s) that BMP Contributes to

<table>
<thead>
<tr>
<th>Pre-development</th>
<th>1-year</th>
<th>2-year</th>
<th>10-year</th>
<th>_____-year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post-development w/o detention</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
</tr>
<tr>
<td>With detention</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
<td>______cfs</td>
</tr>
</tbody>
</table>

Riser/Principal and Emergency Spillway Information

1-year storm orifice/weir  diameter ______ in.  length ______ ft.
2-year storm orifice/weir  diameter ______ in.  length ______ ft.
10-year storm orifice/weir  diameter ______ in.  length ______ ft.
___ - year storm orifice/weir  diameter ______ in.  length ______ ft.
Principal spillway  diameter ______ in.
Emergency spillway width ______ ft.  side slopes __:1  slope ______% 

II. REQUIRED ITEMS CHECKLIST

The following checklist outlines design requirements. In the space provided to indicate the following design requirements have been met and supporting documentation is attached.

Applicant's initials

a. Riprap outlet protection, if provided, reduces flow to non-erosive velocities (provide calculations).

b. The basin side slopes are no steeper than 3:1.

c. Vegetative cover for the basin is specified. No woody vegetation is permitted on the embankment.

d. A trash rack or similar device is provided for both the overflow and orifice. Flat top trash racks are not acceptable. Access hatch has been provided.

e. A recorded drainage easement is provided for each basin including access to the nearest right-of-way and is graded per Section 8.3, Stormwater Control Facilities (BMPs).

f. If the basin is used for sediment and erosion control during construction, a note requiring clean out and vegetative cover being established prior to use as a dry detention basin shall be provided on the construction plan.

g. Anti-floatation calculations are provided for riser structure.

h. A plan view of the pond with grading shown is provided.

i. A profile through the forebay, main pond and spillway is provided. Water surface elevations are shown on the profile.

j. Riser structure details are provided.

k. Compaction specifications for the embankment are provided on the plan.

l. Dam designed to account for a 5.00% settlement factor.
m. The minimum top of dam width has been provided for the pond embankment top width per Section 8.3, Stormwater Control Facilities (BMPs).

Note: Executed Stormwater Facility Operation and Maintenance Permit Agreement and payment of surety are required prior to issuance of Stormwater Permit.
Bio-Retention Area Design Summary

Stormwater Management Construction Plan Review:
A complete stormwater management construction plan submittal includes a design summary for each stormwater BMP, design calculations, plans and specifications showing BMP, inlet and outlet structure details.

I. PROJECT INFORMATION
Project Name: ____________________________ Phase __________
PIN: ____________________________ Case #: __________
Design Contact Person: ____________________________ Phone #: (____) ______-_______
Legal name of Owner: ____________________________
Owner Contact: ____________________________ Phone #: (____) ______-_______
Owner Address: ____________________________
Deed Book ______ Page # ______ or Plat Book ______ Page # ______ for BMP Property
For projects with multiple basins, specify which pond this worksheet applies to: ____________________________

Drainage area ________ ac (on-site drainage to the area, 1-acre max$^1$)
Impervious area ________ ac (on-site impervious area draining to facility)
Design runoff ________ cfs
Design treatment volume ________ ft$^3$

$^1$ Assumes 100% impervious, larger areas may be considered if maximum sheet flow velocity is not exceeded

Bioretention Design
Grass buffer strip width ________ ft (Max slope of 4:1 and minimum width of 10 feet or a forebay)
Size of cell area ________ ft$^2$ (Min 5% of drainage area with sand bed, 7% without bed)
Depth of ponding area ________ ft (6-inches max)
Width of cell ________ ft (Minimum width of 25-feet$^2$)
Length of cell ________ ft (Minimum length of 2 times the width)
Inflow sheet flow velocity ________ ft/s (Maximum of 1-foot/second)
Mulch layer elevation ________ ft (Elevation of top of layer)
Planting soil top elevation ________ ft (Elevation of top of soil)
Depth of planting soil ________ ft (Minimum depth of 4-feet$^3$)
Top of sand if applicable ________ ft (Elevation of top of sand)
Bottom elevation ________ ft (Elevation of bottom of cell)
Perforated pipe length ________ ft (Length of perforated pipe provided under cell layers)
Space between pipe runs ________ ft (Spacing between perforated pipe runs, max of 10-feet)

$^2$ Smaller widths may be accepted in urbanized areas or in retrofit situations. These designs will be evaluated on a case-by-case basis.
$^3$ Smaller depths may be accepted in urbanized areas or in retrofit situations. These designs will be evaluated on a case-by-case basis.
Longitudinal slope __________ ft  (1% minimum longitudinal slope)
Diameter of pipe __________ in  (Pipe diameter of perforated pipe, min of 6-inches)

**Emergency Spillway Information**

Emergency outlet elev. __________ ft  (invert of emergency overflow weir)
Emergency spillway width ___ ft.  side slopes ___:1  slope ___%

**II. REQUIRED ITEMS CHECKLIST**

The following checklist outlines design requirements. Initial in the space provided to indicate the following design requirements have been met and supporting documentation is attached.

**Applicant's initials**

__________  a. Runoff from landscaped areas and other non-impervious areas has been directed away from the bioretention area to the maximum extent practical.

__________  b. Drainage area for bioretention area is less than 1-acre.

__________  c. Plan specifies how all slopes draining to the bioretention area will be stabilized, note that the slopes must be stabilized before installation of the under drain system.

__________  d. Construction sequencing shall be considered and a note added to the plan that states: “All sediment and erosion control practices shall be in place and the slopes draining to the bioretention area shall be stabilized before construction of the bioretention area begins.”

__________  e. No side slopes draining to bioretention area greater than 3:1, promote sheet flow through the grass filter strip.

__________  f. Riprap outlet protection, if provided, reduces flow to non-erosive velocities (provide calculations).

__________  g. A recorded drainage easement is provided for each cell including access to the nearest right-of-way and is graded per Section 8.3, Stormwater Control Facilities (BMPs).

__________  h. A plan view of the bioretention area with grading shown is provided.

__________  i. A profile through the bioretention area and emergency spillway is provided.

__________  j. Geotextile fabric is placed at the bottom of the excavated cell to prevent soil from getting into the underdrain system.

__________  k. The underdrain system is wrapped in a gravel jacket and a geotextile fabric is placed between the bottom of the sand bed or planting soil and the top of the gravel jacket.

__________  l. The pipe for the underdrain system shall be perforated Schedule 40 PVC.

__________  m. The underdrain system shall connect to the outflow system at a point at least 1 foot inside the bioretention cell wall.

__________  n. A non-perforated piping system is connected to the underdrain piping and extends to the surface of the planting soil for cleanouts.

__________  o. Cleanouts are to be provided at the beginning of each pipe run and at all intersections.

__________  p. A planting soil mixture specification and a soil characteristics table are provided. Maximum clay content in the soil mixture is 8.00%.

__________  q. The hydraulic conductivity for the planting mixture is to be 1-inch to 2-inches per hour.

__________  r. Mulch layer specification is provided; mulch is to be a 4-inch layer of coarse hardwood mulch with re-application rate specified.

__________  s. Soil with a P index of less than or equal to 25 specified on plan.

__________  t. A bioretention area landscape plan is provided including the transport of plant material, preparation of the planting pit, fertilization, installation of the plant material, type and number of plantings (note that there shall be a minimum of three species of trees and three species of
shrubs selected to insure diversity, their planting locations, post-installation inspection and maintenance guidelines.

Note: Executed Stormwater Facility Operation and Maintenance Permit Agreement and payment of surety are required prior to Stormwater Permit issuance.
Underground Detention Design Summary

Stormwater Management Construction Plan Review:
A complete stormwater management construction plan submittal includes a design summary for each stormwater BMP, design calculations, plans and specifications showing BMP, inlet and outlet structure details.

1. PROJECT INFORMATION

Project Name: ____________________________ Phase __________________
PIN: ________________________________ Case #: __________________
Design Contact Person: __________________________ Phone #: (____) ____-_____
Legal Name of Owner: ________________________________
Owner Contact: ____________________________ Phone #: (____) ____-_____
Owner Address: ________________________________
Deed Book _____ Page #____ or Plat Book ______ Page# _______ for BMP Property
For projects with multiple basins, specify which pond this worksheet applies to: ____________________________
Detention provided for: ___ 1-year ___ 2-year ___ 10-year ___ other ________

Elevations
Bottom elevation __________________ ft. (invert out elevation of system)
1-year storm orifice/weir elevation __________________ ft. (invert elevation)
1-year storm water surface elevation __________________ ft. (elevation at the outlet of system)
2-year storm orifice/weir elevation __________________ ft. (invert elevation)
2-year storm water surface elevation __________________ ft. (elevation at the outlet of system)
10-year storm orifice/weir elevation __________________ ft. (invert elevation)
10-year storm water surface elevation __________________ ft. (elevation at the outlet of system)
Emergency spillway elevation __________________ ft. (invert of emergency spillway)
Ground Surface Elevation __________________ ft. (elevation of ground above outlet)
Maximum Water Surface Elevation (____-year storm) ____________ ft. (elevation at the outlet of system)

Areas
Drainage area __________________ ac. (total drainage to the facility)

Volumes
Total Storage Volume Provided __________________ ft³ (volume detained at design storm)
Discharges (Specify only applicable frequency events)

At BMP

<table>
<thead>
<tr>
<th>Inflow</th>
<th>1-year</th>
<th>2-year</th>
<th>10-year</th>
<th>____-year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Routed outflow</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
</tr>
</tbody>
</table>

At Analysis Point(s) that BMP Contributes to

<table>
<thead>
<tr>
<th>Pre-development</th>
<th>1-year</th>
<th>2-year</th>
<th>10-year</th>
<th>____-year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Post-development w/o detention</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
</tr>
<tr>
<td>With detention</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
<td>_______ cfs</td>
</tr>
</tbody>
</table>

System Information

1-year storm orifice/weir diameter _______ in. length _______ ft.
2-year storm orifice/weir diameter _______ in. length _______ ft.
10-year storm orifice/weir diameter _______ in. length _______ ft.
___-year storm orifice/weir diameter _______ in. length _______ ft.
Principal spillway diameter _______ in.
Emergency spillway width _______ ft. side slopes ___:1 slope _____%

II. REQUIRED ITEMS CHECKLIST

The following checklist outlines design requirements. In the space provided to indicate the following design requirements have been met and supporting documentation is attached.

Applicant’s initials

_______ a. Riprap outlet protection, if provided, reduces flow to non-erosive velocities (provide calculations).

_______ b. The system consists of two 60-inch minimum header pipes and two 60-inch minimum perimeter pipes. 36-inch interior pipes for additional storage are provided if needed.

_______ c. Manhole access has been provided at the 4 corners of the system.

_______ d. Traffic bearing cleanouts have been provided every 100-feet with a minimum of two per pipe run. Manholes may be counted as cleanouts.

_______ e. A traffic bearing door (bilco type or approved equal) has been placed at the inlet and outlet of the system.

_______ f. Spacing of pipe runs are per the manufacturer’s specification.

_______ g. The backfill material has been certified by a Geotechnical Engineer.

_______ h. The system is water tight for the 10-year hydrostatic pressure calculated at the inlet to the system.

_______ i. A surface or sub-surface bypass has been sized to safely convey the maximum required design storm.

_______ j. An operation and maintenance plan for the system has been provided.

_______ k. A recorded drainage easement is provided for each basin including access to the nearest right-of-way and is graded per Section 8.3, Stormwater Control Facilities (BMPs).

_______ l. A plan view of the system with grading shown is provided
m. A profile through the system and emergency bypass is provided. Water surface elevations are shown on the profile.

n. Outlet structure details are provided.

o. Compaction specifications for the installation of the system are provided on the plan.

**Note:** Executed Stormwater Facility Operation and Maintenance Permit Agreement and payment of surety are required prior to Stormwater Permit issuance.
Constructed Wetland and Pocket Wetland Design Summary

Stormwater Management Construction Plan Review:
A complete stormwater management construction plan submittal includes a design summary for each stormwater BMP, design calculations, plans and specifications showing BMP, inlet and outlet structure details.

I. PROJECT INFORMATION
Project Name: ___________________________ Phase ____________________
PIN: ___________ Case #: ___________
Design Contact Person: ____________________ Phone #: (____) ___-_________
Legal Name of Owner: ____________________ Phone #: (____) ___-_________
Owner Contact: __________________________ Phone #: (____) ___-_________
Owner Address: __________________________
Deed Book Page # or Plat Book Page# for BMP Property
For projects with multiple basins, specify which pond this worksheet applies to: ____________________
Does the proposed pond also incorporate stormwater detention? Yes No
Detention provided for: _____ 1-year _____ 2-year _____ 10-year _____ other ________
Dam Height: _____ (feet) Dam Classification: ________

Elevations
Wetland bottom elevation _________ ft. (floor of the wetland)
Permanent pool elevation _________ ft. (invert elevation of the orifice)
Temporary pool elevation _________ ft. (elevation of the structure overflow)
1-year storm orifice/weir elevation _________ ft. (invert elevation)
1-year storm water surface elevation _________ ft. (invert elevation)
2-year storm orifice/weir elevation _________ ft. (invert elevation)
2-year storm water surface elevation _________ ft. (invert elevation)
10-year storm orifice/weir elevation _________ ft. (invert elevation)
10-year storm water surface elevation _________ ft. (invert elevation)
Emergency spillway elevation _________ ft. (invert of emergency spillway)
Top of embankment/dam _________ ft. (elevation)
Maximum water surface elevation _________ ft. (max. storm pond can safely pass)
Depth from design storm to Lowest orifice elevation _________ ft.

Areas
Permanent pool area provided _________ ft² (water surface area at orifice invert elevation)
Minimum required perm. pool area _________ ft² (calculated surface area required)
Design storm surface area _________ ft² (Specify frequency event: _____ year)
Drainage area (10-acres min to Constructed Wetland) _________ ac. (total drainage to the wetland)
Discharges (Specify only applicable frequency events)

At BMP

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<tr>
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<td>With detention</td>
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</tr>
</tbody>
</table>

Volumes

- Permanent pool volume  \( \text{ft}^3 \) (volume of main pond and forebay)
- Water quality pool storage volume  \( \text{ft}^3 \) (volume above permanent pool)
- Design storm storage volume  \( \text{ft}^3 \) (volume above permanent pool)
- Total Storage volume provided at design storm  \( \text{ft}^3 \)
- Total Storage volume provided at top of dam  \( \text{ft}^3 \)
- Forebay volume (Constructed Wetlands only)  \( \text{ft}^3 \)

Environmental Zones

<table>
<thead>
<tr>
<th>Zone</th>
<th>Water Depth at Normal Pool(^1)</th>
<th>Water Depth at Temporary Pool (Max Depth of 12-inches above Normal Pool)(^1)</th>
<th>Portion of Temporary Pool Surface Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deep Pool</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Low Marsh</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>High Marsh</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Woody Upland</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^1\) Depths are to be calculated using the hydraulic depth calculation for each zone. Hydraulic Depth is the volume of water at an elevation divided by the water surface area at the same elevation.

Other Parameters

- SA/DA\(^2\)  (from DWQ table)
- Diameter of orifice  \( \text{in.} \) (must provide draw down over 2 to 5 day period)
- Draw-down time  \( \text{hrs} \)
- Design TSS removal  \( \% \) (minimum 85% removal required)

\(^2\) When using the SA/DA tables from the NC DENR BMP Manual, linear interpolation may be used for values between table entries.)
Riser/Principal and Emergency Spillway Information

1-year storm orifice/weir  diameter _____ in.  length _____ ft.
2-year storm orifice/weir  diameter _____ in.  length _____ ft.
10-year storm orifice/weir diameter _____ in.  length _____ ft.
_____ - year storm orifice/weir  diameter _____ in.  length _____ ft.
Principal spillway  diameter _____ in.
Emergency spillway  width _____ ft.  side slopes __:1  slope _____%

II. REQUIRED ITEMS CHECKLIST

The following checklist outlines design requirements. Initial in the space provided to indicate the following design requirements have been met and supporting documentation is attached.

Applicant’s initials

a. The forebay volume is approximately equal to 20% of the pond volume.
b. The temporary pool controls runoff for water quality design storm.
c. The temporary pool draws down in 2- to 5-days.
d. The drainage area to a Constructed Wetland is at least 10-acres. Smaller drainage areas to Pocket Wetlands will be reviewed on a case-by-case basis.
e. Riprap outlet protection, if provided, reduces flow to non-erosive velocities (provide calculations).
f. The wetland length to width ratio is greater than or equal to 3:1.
g. The wetland side slopes above the permanent pool area are no steeper than 3:1.
h. A submerged and vegetated shelf with a slope no greater than 6:1 is provided around the perimeter of the pond (show on plan and profile and provide a vegetation plan).
i. Vegetative cover above the permanent pool elevation is specified. No woody vegetation is permitted on the embankment.
j. A surface baffle, trash rack or similar device is provided for both the overflow and orifice. Flat top trash racks are not acceptable. Access hatch has been provided.
k. A recorded drainage easement is provided for each pond including access to the nearest right-of-way and is graded per Section 8.3, Stormwater Control Facilities (BMPs).
l. If the basin is used for sediment and erosion control during construction, a note requiring clean out and vegetative cover being established prior to use as a wet detention basin shall be provided on the construction plan.
m. A mechanism is specified which will drain the pond for maintenance and emergencies. Valves used shall be plug valves.
n. Anti-floatation calculations are provided for riser structure.
o. A plan view of the wetland with grading shown is provided.
p. A profile through the forebay, wetland and spillway is provided. Water surface elevations are shown on the profile.
q. Riser structure details are provided.
r. Dam designed to account for a 5.00% settlement factor.
s. Compaction specifications for the embankment are shown on the plan.
t. The minimum top of dam width has been provided for the wetland embankment top width per Section 8.3, Stormwater Control Facilities (BMPs)

Note: Executed Stormwater Facility Operation and Maintenance Permit Agreement and payment of surety are required prior Stormwater Permit issuance.
Tab 7: County Zoning / Permits Maps
Major basin boundaries for the Proposed Stormwater Performance Standards for Development will be incorporated into the City's online mapping service prior to June 2012.

Please contact Sandra Wilbur (919-560-4326/Sandra.Wilbur@durhamnc.gov) for further information.

City of Durham
Major Watersheds and Basins

December 6, 2011
Durham County
8/1/11 M.T.S.

- Falls Lake Drainage Area (Within Neuse River Basin)
- Jordan Lake Drainage Area (Within Cape Fear River Basin)
- Neuse River Basin outside of Falls Lake Drainage Area
Tab 8: UDO Sections
Article 1 General

Sec. 1.1 Short Title

This ordinance shall be known as the "Durham City-County Unified Development Ordinance," and may be referred to as "this UDO" or "this Ordinance."

Sec. 1.2 Purpose and Intent

1.2.1 It is the purpose of this Ordinance to promote the health, safety and general welfare of the residents of Durham City and County.

1.2.2 In support of these purposes, this Ordinance contains regulations designed to:

A. Protect existing neighborhoods, preventing their decline and promoting their livability;
B. Address future needs, growth, and change in the jurisdiction;
C. Conserve land and water resources;
D. Preserve groundwater quality and supply;
E. Recognize geologic features, soil and topography;
F. Improve air quality;
G. Minimize congestion in the streets and reduce reliance on automobiles by providing options for walking, bicycling, and transit use;
H. Secure safety from fire and other dangers;
I. Provide adequate light and air;
J. Prevent overcrowding of land and undue concentrations of population;
K. Provide adequate transportation, water supplies, sewer service, schools, parks, open space, and public facilities;
L. Conserve the value of buildings;
M. Examine the most appropriate use of the land;
N. Regulate the location of business and industry;
O. Regulate the height and bulk of buildings;
P. Protect the capacity of floodways and non-encroachment areas in order to prevent loss or damage to homes or property;
Q. Regulate the area of yards and open spaces for buildings;
R. Provide for the needs of agriculture;
S. Protect historic sites and areas;
T. Encourage an aesthetically attractive community; and
U. Prevent secondary effects from land uses that could negatively impact nearby land uses, consistent with prior ordinances restricting such uses and evidence supporting such restrictions.

1.2.3 It is also the purpose of this Ordinance to provide for the orderly, efficient and economic development of the City and County by providing for:

A. The coordination of streets, highways and other public facilities within proposed subdivisions with existing or planned streets and highways or other public facilities;

B. The dedication or reservation of rights-of-way, easements or sites for streets, utilities, open space, recreation areas, and other public facilities;

C. The protection of historic resources and the natural environment; and

D. The distribution of population and traffic which shall avoid congestion and overcrowding and which shall create conditions essential to public health, safety and the general welfare.

Sec. 1.3 Authority

The authority to adopt and enforce this Ordinance is granted by the Charter of the City of Durham, by Chapter §160A, Article 19 of the North Carolina General Statutes as to the City of Durham, and by Chapter §153A, Article 18 of the North Carolina General Statutes as to the County of Durham, and any other applicable general or special statutes of the State of North Carolina including Chapter 4 of Title 15A of the North Carolina Administrative Code.

Sec. 1.4 Jurisdiction

The provisions of this Ordinance shall apply to all properties within the jurisdiction of the County or the City and shall govern development and use of the land. No building shall be erected or structurally altered nor shall any land development activity take place, unless it conforms to the provisions of this Ordinance. Uses of property shall be limited by the provisions of this Ordinance.

Sec. 1.5 Relationship to Adopted Plans

The Comprehensive Plan adopted by the governing bodies indicates desired development at various levels of intensity. This Ordinance is intended to implement the Comprehensive Plan, therefore the Plan should be used as a guide for the application of this Ordinance to land within the areas covered, as well as for the provision of public services.

Sec. 1.6 Minimum Requirements

The provisions of this Ordinance are intended to be minimum requirements. Where the provisions of this Ordinance impose greater restrictions than other ordinances, the provisions of this Ordinance shall prevail. Where the provisions of another ordinance impose greater restrictions, the other ordinance shall prevail.

Sec. 1.7 Conflict

These regulations are not intended to repeal, abrogate, annul or in any way impair or interfere with existing provisions of other public laws, ordinances, or regulations, except as specified in Sec. 1.8, Effective Date. Where these regulations conflict with other provisions of public law and regulations, the more stringent requirements shall apply.

Sec. 1.8 Effective Date
1.8.1 This Ordinance is effective within each jurisdiction as of January 1, 2006. All ordinances in
conflict are hereby repealed to the extent of their inconsistency. The ordinances repealed are the
following:

A. Durham City Code Chapter 24, Zoning;
B. Durham City Code, Chapter 19, Subdivisions;
C. Durham County Code of Ordinances Appendix A, Durham City-County Zoning Ordinance;
D. Durham County Code of Ordinances Appendix B, City-County Subdivision Ordinance;
E. All other ordinances or parts of ordinances which are in conflict with this Ordinance including,
but not limited to, Sections 4-2, 4-3, 4-6, 4-7, 4-8, 5-5, 5-7, 5-8,12-6, and 23-82 of the Durham City
Code, and sections 14-51 through 14-71 (the Sedimentation and Erosion Control Ordinance) of the
Durham County Code are repealed to the extent necessary to give this Ordinance full force and
effect.

1.8.2 Notwithstanding the above, the provisions of Sec. 1.10, Transitional Provisions, shall govern the
completion of approved permits, development plans, plats and other approvals specified therein,
or completed applications for the same. Vested rights shall be determined in accordance with
Sec. 3.21, Statutory Vested Rights Determination.

Sec. 1.9 Severability
Should any section or provision of this Ordinance be declared invalid, the remaining sections or
provisions shall remain valid.

Sec. 1.10 Transitional Provisions

1.10.1 Violations continue.
Any violation of previous zoning, subdivision, sedimentation and erosion control or flood hazard
ordinances will continue to be a violation under this Ordinance and be subject to penalties and
enforcement under this Ordinance unless the use, development, or activity complies, in its entirety,
with the provisions of this Ordinance.

1.10.2 Prior Nonconformities and Grandfathered Uses
Any use, plan, building, or lot that was nonconforming or grandfathered under prior ordinances shall
be considered a nonconformity under this Ordinance except as may be otherwise provided under
Article 14, Nonconformities. The provisions of Article 14, Nonconformities, shall be applicable to all
nonconformities. Uses, plans, buildings, or lots that were previously nonconforming or grandfathered
that become conforming because of adoption of this Ordinance shall no longer be considered
nonconformities provided that all applicable provisions of this Ordinance are complied with.

1.10.3 Effect of this Ordinance on Approved Plans and on Completed Applications

A. Approved Site Plans, Plats, and Permits and Completed Applications
   1. Completion of development under an approved site plan, preliminary plat, final plat,
      major or minor special use permit, or building permit (if none of the preceding approvals
      are required) shall be governed by the ordinance under which the approval was granted.
   2. An application for a site plan, preliminary plat, final plat, major or minor special use
      permit, building permit (if none of the preceding approvals are required), or development
plan associated with a zoning map change that was administratively determined to be substantially complete as of December 31, 2005, shall be governed by the ordinance in effect at the time of submission if it complied with such ordinance at that time. The expiration and continuing validity of any such site plan, plat, or permit shall be governed by the previous ordinance. The continuing validity of any such development plan shall be governed by Sec. 1.10.3A.3 below and Sec. 3.5.12, Deviations from Approved Development Plans.

3. For property with a development plan approved under an ordinance in effect prior to adoption of this Ordinance, an application for a site plan, preliminary plat, final plat, major or minor special use permit, or building permit (if none of the preceding approvals are required) that is substantially complete as of December 31, 2006 or within two years of the date of development plan approval, whichever is later, shall conform to the approved development plan except that it shall comply with the provisions of this Ordinance adopted for environmental purposes, including but not limited to Article 8, Environmental Protection, Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control, and to all other applicable laws or ordinances adopted for environmental purposes.

B. **Timely Submission of Information**

Applicants who have substantially complete applications as provided above shall comply with all requests for further information and submit all necessary revisions of submitted plans in a timely manner. A delay of more than 90 days in submission of information or revisions requested shall constitute effective withdrawal of the application, with loss of all fees paid. Any new application shall then conform with the provisions of this Ordinance.

### 1.10.4 Violations in Progress

The prosecution of violations which occurred under previous ordinances shall continue until resolved.

### 1.10.5 Zoning District Name Changes

A. The zoning district names in effect prior to the effective date of this Ordinance are hereby converted, as shown on the following table.

<table>
<thead>
<tr>
<th><strong>PREVIOUS DISTRICT</strong></th>
<th><strong>NEW DISTRICT</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential Districts</td>
<td></td>
</tr>
<tr>
<td>RD</td>
<td>Rural District</td>
</tr>
<tr>
<td>R-20</td>
<td>Residential 20,</td>
</tr>
</tbody>
</table>
R-15, R-10 | Residential 15, 10,  |
R-8 | Residential 8 |
| RM-8, RM-12, RM-16 | Residential Multifamily 8, 12, 16 |
| R-5 | Residential 5 |
R-3 | Residential 3 |
| RM-16, RM-20 | Residential Multifamily 16, 20 in the Urban Tier |
| ITOD-CN | Interim TOD Compact |
RM-CN 40 | Neighborhood Residential Multifamily |
RM-CN 60 | Neighborhood Residential Multifamily |
RM-CN 80 | Neighborhood Residential Multifamily |
| Nonresidential Districts |                  |
| -- | --NEW-- | CI | Commercial Infill |

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**Latest Revision** June 27, 2011

**Unified Development Ordinance**
Projects originally developed as R-20 Cluster Developments prior to 1994 that were converted to R-15 projects under the 1994 zoning ordinance shall be designated as RS-20 developments with the adoption of this Ordinance.

C. All parcels zoned with development plans, both developed and undeveloped, shall continue to carry the (D) designation. Deviations from such development plans shall be governed by the provisions of Sec. 3.5.12, Deviations from Approved Site Plans.
Article 2 Review Authority

Sec. 2.1 Governing Bodies

2.1.1 Defined

The governing bodies identified in the text of this Ordinance as having authority to enforce certain provisions of Ordinance are:

A. Durham County Board of Commissioners
   The Durham County Board of Commissioners (hereinafter referred to as the Board of Commissioners) for property located within Durham County but located outside of any City limits.

B. Durham City Council
   The Durham City Council for property located within the City limits of the City of Durham.

2.1.2 Powers and Duties

The governing bodies shall be responsible for final action regarding the following:

A. Amendments to the adopted Comprehensive Plan;
B. Amendments to the text of this Ordinance;
C. Applications for zoning map changes;
D. Applications for major site plans;
E. Applications for historic district/landmark designation;
F. Applications for major special use permits and TIA special use permits; and
G. Vested rights determinations that require a public hearing pursuant to Sec. 3.2.1, Statutory Vested Rights Determination.

Sec. 2.2 Joint City-County Planning Committee (JCCPC)

2.2.1 Establishment

The Joint City-County Planning Committee (JCCPC) is established in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.2 Membership

Members of the JCCPC shall be appointed in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.2.3 Powers and Duties

A. The power and duties of the JCCPC shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.
B. The JCCPC shall also be responsible for review and recommendation regarding amendments to the text of.
Review Authority

Ordinance that affect both the City and County jurisdictions.

C. The JCCPC shall be responsible for review of the Administrative Guidelines established by the Planning Director governing neighborhood meetings pursuant to Sec. 3.2.3, Neighborhood Meeting; the guidelines for establishing Neighborhood Protection Overlays pursuant to Sec. 4.6.2, Establishment of Overlay; and the Durham Design Manual established pursuant to Sec. 6.12.3B.3, Design Manual.

Sec. 2.3 Planning Commission

2.3.1 Establishment

The Durham Planning Commission was created by the Board of Commissioners and the City Council on July 1, 1988 in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.2 Membership, Terms and Compensation

Planning Commission numbers, composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning.

2.3.3 Officers, Meetings, Quorum

Planning Commission officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning and consistent with State statutes.

2.3.4 Rules of Procedure

The Planning Commission shall adopt rules of procedure for the conduct of its business, consistent with state law and this Ordinance.

2.3.5 Powers and Duties

The Planning Commission shall have the following powers and duties.

A. Review Authority

1. The Planning Commission shall be responsible for reviewing and making recommendations (which shall be construed as meeting the certification required by NCGS §153A) regarding the following:
   a. Adoption of or amendments to the Comprehensive Plan and related plans;
   b. Amendments to the text of this Ordinance;
   c. Applications for zoning map change;
   d. Applications for historic district/landmark designation;
   e. Adoption of or amendment to redevelopment plans as set forth in NCGS §160A-513; and
   f. The Planning Department Annual Work Plan.

2. All decisions and recommendations of the Planning Commission shall require an affirmative vote. Tie votes shall be considered decisions or recommendations for denial.

3. The Planning Commission shall perform related duties as directed by the governing bodies.

4. The Planning Commission may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by the Interlocal Cooperation Agreement on City-County Planning.

B. Annual Report

The Planning Commission shall prepare an annual report and submit it to the Board of Commissioners at
the City Council. The annual report shall include a comprehensive review of the Planning Commission’s activities, problems, and actions of the Planning Commission and any budget requests or other recommendations.

**Sec. 2.4 Board of Adjustment (BOA)**

### 2.4.1 Establishment

The Board of Adjustment is established in accordance with the Interlocal Cooperation Agreement on City-County Planning and NCGS §160A-388, NCGS §153A-345, and in accordance with special legislation adopted for the City and County regarding the Board of Adjustment.

### 2.4.2 Membership, Terms and Compensation

The Board of Adjustment shall consist of seven members and three alternates. Its composition, terms, vacancies, removals, and compensation shall be in accordance with the Interlocal Agreement on City-County Planning.

### 2.4.3 Officers, Meetings, Quorum

Board of Adjustment officers, meetings, quorum, and rules of procedure shall be in accordance with the Interlocal Cooperation Agreement on City-County Planning, and the following:

A. **Meetings**

   Meetings shall be held at such times and places as the Board of Adjustment shall determine. All meetings be open to the public and shall conform to the North Carolina Open Meetings Law, Chapter 143, Article 3: the North Carolina General Statutes.

B. **Minutes**

   The Board of Adjustment shall keep minutes of the meetings which record the vote of each member and abstentions from voting.

C. **Quorum**

   The presence of five Board of Adjustment members shall be necessary for a quorum. A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.

D. **Computation of Membership**

   Membership of the Board of Adjustment, for purposes of determining application of the 3/5ths voting requirement for decisions, as allowed by special legislation, shall be considered to be seven members as long as the combined members and alternates who have been appointed by the governing bodies equals at least seven. In the event that unfilled regular and alternate seats on the Board and/or conflicts of interest cause the number of potentially available members for a hearing to fall below seven, the membership shall be considered to be the number of filled positions less the number of members who have a conflict of interest.

E. **Rules of Procedure**

   The Board of Adjustment shall adopt rules of procedure for the conduct of its business, consistent with State law, special legislation, the City/County Interlocal Agreement and this Ordinance.

### 2.4.4 Powers and Duties

The Board of Adjustment shall have the following powers and duties.

A. **Authority**

   1. The Board of Adjustment shall be responsible for final action regarding the following:

      a. Applications for variances; and
b. Applications for minor special use permits.

c. Appeals of decisions made by administrative officials interpreting the provisions of this Ordinance.

2. The Board of Adjustment shall perform related duties as directed by the governing bodies.

B. **Annual Report**

The Board of Adjustment shall prepare an annual report and submit it to the Board of Commissioners and City Council. The annual report shall include a comprehensive review of the activities, problems, and acts of the Board of Adjustment and any budget requests or other recommendations.

### 2.4.5 Decisions

A. An affirmative vote of 3/5ths of the members of the Board of Adjustment shall be required to grant a special use permit or variance, or to overturn an administrative decision. Board members disqualified from voting and vacant positions shall not be calculated in the requisite 3/5ths majority. Voting requirements for written decisions, where required, and for other actions shall be as specified in the *Board’s Rules of Procedure*.

B. Every decision of the Board of Adjustment shall be subject to review by a court of competent jurisdiction in the nature of a petition for a writ of certiorari. Any petition for review by the court shall be filed with the court within 30 days after the decision of the Board of Adjustment is filed in the office of the clerk of the Board of Adjustment, or after a written copy is delivered to the appealing party who has made a request for such decision in compliance with paragraph C. below, whichever is later.

C. Any party desiring a copy of the decision of the Board of Adjustment shall file a written request with the Planning Department at the time of the hearing. Such decisions shall be delivered by personal service or registered mail or certified mail, return receipt requested.

D. Written decisions shall be considered filed with the clerk of the Board of Adjustment on the date that the final necessary signature on such decision is obtained and the decision is ready for distribution.

### Sec. 2.5 Historic Preservation Commission (HPC)

#### 2.5.1 Establishment

The Durham Historic Preservation Commission (HPC) is established in accordance with NCGS §160A-400.7. The HPC is designated as the historic preservation advisory and quasi-judicial body for the County and City, and shall have the powers and duties described in this section.

#### 2.5.2 Membership, Terms and Compensation

A. **Numbers**

The HPC shall consist of nine members. All County appointees shall be residents of Durham County and City appointees shall be residents of the City.

B. **Composition**

1. A majority of the members of the HPC shall have demonstrated special interest, experience or education in history or architecture.

2. The HPC shall always include at least one of each of the following five designations:
   a. Registered architect;
   b. Registered landscape architect;
   c. Social or cultural historian;
d. Representative of a lending institution or an attorney; and
e. Real estate agent, developer or builder.

3. The five designated members shall be appointed as follows:
   a. The Board of Commissioners shall appoint a landscape architect, a social or cultural historian and a representative of a lending institution or an attorney; and
   b. The City Council shall appoint an architect and a real estate agent, builder, or developer.

4. The HPC shall also include four at-large members, as follows:
   a. Two of the at-large members shall be appointed by the Board of Commissioners; and
   b. Two of the at-large members shall be appointed by the City Council, one of whom shall be selected by the Mayor.

5. In making appointments to the HPC, the Board of Commissioners and the City Council shall:
   a. Give special preference to current members, to provide continuity in historic preservation planning;
   b. Make a reasonable effort to balance representation between urban and rural interests among geographic areas; and
   c. Consider the recommendations for appointments from the JCCPC; however, neither elected body is bound to follow any recommendations for appointment which that Committee may make.

6. All members of the HPC shall have equal rights regardless of whether the matters at issue are located inside or outside of the Durham City limits.

C. Terms
   1. The regular term of office for HPC members shall be three years.
   2. A member may be reappointed for a second term. After two consecutive terms, a member shall be ineligible for reappointment until one calendar year has elapsed from the date of termination of her second term.
   3. A term shall continue until a successor is appointed by the appropriate governing body.

D. Vacancies
   Vacancies occurring for reasons other than the expiration of terms shall be filled by the appointing authority for the period of the unexpired term.

E. Compensation of Members
   The members of the HPC may be compensated for their services in such amounts as from time to time shall be determined by the governing bodies.

2.5.3 Organization, Meetings, Quorum

A. Officers
   The HPC shall elect its own officers. The HPC officers shall consist of a Chairperson and Vice Chairperson. HPC may establish committees and subcommittees at its discretion.

B. Meetings
   The HPC shall establish a regular meeting time and shall meet at least monthly, unless the Chairperson, the Planning Director, or designee, jointly determine that there is no business requiring that a meeting take place, in which case meetings may be cancelled. All meetings shall be open to the public and shall conform
the North Carolina Open Meetings Law, Chapter 143, Article 33C of the North Carolina General Statutes.

C. **Minutes**
The HPC shall keep permanent minutes of its meetings. The minutes shall include the attendance of its members and its resolutions, findings, recommendations and other actions.

D. **Quorum**
The presence of five HPC members shall be necessary for a quorum, except in cases involving demolition by neglect, in which case six members shall be necessary for a quorum. A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.

E. **Rules of Procedures**
The HPC shall adopt rules of procedure for the conduct of its business.

### 2.5.4 Powers and Duties

The HPC is authorized and empowered to undertake such actions reasonably necessary to discharge and conduct its duties and responsibilities.

A. **General Authority**
The HPC shall act to promote, enhance and preserve the character and heritage of the Durham community. The HPC has the following general authority:

1. To undertake inventories in Durham County of properties of historical, architectural or archaeological significance.
2. To sponsor or conduct educational programs regarding Historic Districts or Historic Landmarks.
3. To give advice to property owners concerning the treatment of the historical and visual character of his or her property located within any Historic District or designated as an Historic Landmark, such as color schemes, gardens and landscape features, and minor decorative elements.
4. To cooperate with the State, Federal and local governments in historic preservation matters.
5. To enter, solely in the performance of its official duties and only at reasonable times and only with consent of the property owner, upon private land for the examination or survey of the property. However, no member, employee or agent of the HPC may enter any private building or structure without the express consent of the occupants or owner.
6. Recommend to the Board of Commissioners and/or the City Council the following:
   a. Areas to be designated by ordinance as Historic Districts;
   b. The designation of any Historic District be revoked or removed;
   c. Buildings, structures, sites, areas or objects within their relative areas of zoning jurisdiction be designated by ordinance as Historic Landmarks;
   d. The designation of any building, structure, site, area, or object as an Historic Landmark be removed;
   e. Other means of preservation and intervention at such times as vital historic resources appear to the view of the HPC, to be threatened by neglect, use, demolition, or alteration; and
   f. Changes to the City-County Interlocal Agreement which establishes the HPC, or any other related County and City ordinances, and to propose new ordinances relating to Historic Districts, Historic Landmarks or the total program for the development and preservation of historic resources of Durham and its environs.
B. **Demolition by Neglect**
   For purposes of Sec. 3.19, the Historic Preservation Commission is designated a Planning Agency under GS 160A-361 and GS 153A-345 authorized to operate as a Board of Adjustment (BOA) and make quasi-judicial decisions under GS 160A-388(a) and GS 153A-321 for the administrative determinations described herein.

C. **Review Authority**
   The HPC shall be responsible for reviewing and making recommendations regarding applications for historic/landmark designations.

D. **Final Authority**
   The HPC shall be responsible for final action regarding applications for certificates of appropriateness.

E. **Annual Report**
   The HPC shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the HPC’s activities, problems, and actions of the HPC and any budget requests or other recommendations.

2.5.5 **Decisions**

A. An affirmative vote of a majority of members present and voting shall be required for all actions except as noted below.

B. The voting requirements applicable to the Board of Adjustment in Sec. 2.4.5, Board of Adjustment Decisions, shall be used for HPC decisions when the HPC is functioning as a Board of Adjustment under Sec. 3.19, Demolition by Neglect (City Only).

**Sec. 2.6 Development Review Board (DRB)**

2.6.1 **Establishment**

The Development Review Board is the technical planning agency for the City of Durham and Durham County and responsible for site plan and subdivision review in accordance with the provisions of this Ordinance.

2.6.2 **Designation**

A representative of a department or agency eligible to vote on all items shall serve as chair of the Development Review Board and shall be responsible for all final decisions of the Board.

2.6.3 **Membership, Organization and Meetings**

A. **Composition**
   The Development Review Board shall be comprised of the following members from the Agencies and Departments, as appropriate:

   1. **Eligible to vote on matters under City and/or County Jurisdiction**
      a. A representative of the Durham Planning Commission;
      b. A representative of the Durham Open Space and Trails Commission;
      c. A representative of the Durham Bicycle and Pedestrian Advisory Committee;
      d. A representative of the City/County Planning Department;
      e. A representative of the City/County Inspections Department;
      f. A representative of the City Engineering Division;
      g. A representative of the City Transportation Division;
h. A representative of the County Sedimentation and Erosion Control Division;

i. A representative from the North Carolina Department of Transportation, who may vote on items affecting State roads; and

j. A representative from the Design District Review Team (DDRT), who may vote only on items within the scope of DDRT review authority under paragraph 2.7.3A, Review Authority.

2. **Eligible to vote only on matters under City Jurisdiction**
   A representative of the City Stormwater Division.

3. **Eligible to vote only on matters under County Jurisdiction**
   A representative of the County Stormwater Division.

**B. Quorum**
A quorum is necessary to take official action. A roll call vote shall be taken upon the request of any member.

1. The presence of six eligible representatives shall be necessary for a quorum regarding matters under either jurisdiction.

**C. Meetings**
Meetings shall be held at least twice monthly and more frequently if felt necessary by the Development Review Board.

**D. Rules of Procedures**
The Development Review Board shall adopt rules of procedure for the conduct of its business.

### 2.6.4 Powers and Duties

The Development Review Board shall have the following powers and duties.

**A. Authority**

1. The Development Review Board, through its chair, shall be responsible for reviewing and making recommendations regarding major site plans and development plans functioning as site plans or preliminary plats under Sec. 3.5.6.D.10, Development Plan as Site Plan/Preliminary Plat.

2. The Development Review Board, through its chair, shall be responsible for final action regarding the following:
   a. Applications for minor site plan review; and
   b. Applications for subdivision review.

3. The Development Review Board shall perform duties as directed by the governing bodies.

**B. Annual Report**
The Development Review Board shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the activities, problems, actions of the Development Review Board and any budget requests or other recommendations.

### 2.6.5 Decisions

An affirmative vote of a majority of the eligible members of the Development Review Board present and voting shall be required for all actions.

**Sec. 2.7 Design District Review Team (DDRT)**
2.7.1 Establishment

The Design District Review Team assists in protecting the local architectural heritage and preserving the considerable economic investments that have occurred over the years. The DDRT process seeks to encourage renovation and new development in a manner that will promote visual harmony, historical integrity and creative design solutions.

2.7.2 Membership, Organization and Meetings

A. Composition

   The DDRT shall be comprised of the following members:
   1. A representative from the General Services Department;
   2. A representative from the Public Works Department;
   3. Two representatives from the Planning Department with expertise in urban design, historic preservation, or design review;
   4. A representative from the Office of Economic and Workforce Development;
   5. Two citizen appointees, one being appointed by the City Council and the other being appointed by Board of Commissioners preferably with expertise in a design field such as architecture, landscape architecture, or urban design;
   6. A representative from the Durham City County Appearance Commission; and
   7. In submittals where street trees within the right-of-way are proposed, an additional member designated by the Public Works Director with expertise in urban forestry.

B. Terms

   Citizen members shall be appointed by the City Council or Board of Commissioners as appropriate, for staggered two-year terms, and may serve a maximum of three consecutive terms.

C. Meetings

   Meetings shall be held on an as-needed basis.

D. Rules of Procedures

   The DDRT shall adopt rules of procedure.

2.7.3 Powers and Duties

The DDRT shall have the following powers and duties:

A. Review Authority

   1. The DDRT shall be responsible for reviewing and making recommendations regarding proposals for plan review approval in the DD District, the Transitional Use Area of the UC District, any Overlay established pursuant to Sec. 4.6, Neighborhood Protection Overlay, and in any other design district assure compliance with all applicable design guidelines.
   2. The DDRT shall be responsible for reviewing and making recommendations on proposed variation common signage plans in the Compact Neighborhood Tier and the MU District.
   3. The DDRT shall be responsible for reviewing and making recommendations to the Public Works Director or designee on proposed variations to the Downtown Streetscapes.
   4. As necessary, the DDRT shall periodically review and make recommendations regarding any necessary changes to the Design Manual.
B. **Annual Report**

The DDRT shall prepare an annual report and submit it to the Board of Commissioners and the City Council. The annual report shall include a comprehensive review of the activities, problems, and actions of the DDRT and any budget requests or other recommendations.

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### 2.7.4 Decisions

An affirmative vote of a majority of the eligible members of the DDRT present and voting shall be required for all actions.

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### Sec. 2.8 Other Advisory Bodies

A variety of other commenting or advisory bodies approved by a governing body may participate in development review under this Ordinance, including, but not limited to:

- A. The Durham Open Space and Trails Commission;
- B. The Durham Environmental Affairs Board;
- C. The Durham City/County Appearance Commission; and
- D. The Durham Bicycle and Pedestrian Advisory Commission.

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### Sec. 2.9 Durham City-County Planning Department

#### 2.9.1 Establishment

The Durham City-County Planning Department is established in accordance with NCGS §153A-321 and NCGS §160A-361, and serves as the planning agency and the community development agency for the City of Durham and Durham County. The Department administers this Ordinance for the City and County.

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#### 2.9.2 Planning Director

The Planning Director is designated as head of the Durham City-County Planning Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

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#### 2.9.3 Delegation of Authority

The Planning Director may designate any staff member to represent the Director in any function assigned by this Unified Development Ordinance. The Director shall remain responsible for any final action.

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#### 2.9.4 Powers and Duties

The Planning Director or designee shall have the following powers and duties.

- A. The Planning Director or designee is designated to perform the following duties:
  1. Make studies of the area within the planning jurisdiction and surrounding areas;
  2. Determine objectives to be sought in the development of the study area;
  3. Prepare plans for achieving these objectives;
  4. Develop and recommend policies, ordinances, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner;
  5. Advise the governing bodies concerning means for carrying out plans or amending plans;
  6. Accept, receive and disburse funds, grants, and services made available by the Federal government the State government used in the furtherance of departmental functions;
7. Administer zoning and subdivision regulations and other related land use controls;
8. Exercise any functions in the administration and enforcement of various means for carrying out plans that the governing bodies may direct;
9. Develop, approve, and implement design guidelines;
10. Develop, approve, and implement administrative procedures and guidelines to execute the provisions of this Ordinance; and
11. Perform any other related duties that the governing body may direct.

B. The Planning Director or designee shall be responsible for reviewing and making recommendations regarding the following:
   1. Applications for sign permits;
   2. Applications for temporary use permits;
   3. Applications for site plan review;
   4. Applications for subdivision review;
   5. Applications for certificates of appropriateness;
   6. Applications for major and minor special use permits;
   7. Amendments to adopted land use plans;
   8. Amendments to the text of this Ordinance;
   9. Applications for zoning map change;
   10. Applications for historic district/landmark designation; and
   11. Vested rights determinations requiring a public hearing pursuant to Sec. 3.21, Statutory Vested Rights Determination.

C. The Planning Director or designee shall be responsible for final action regarding the following:
   1. Interpretation of this Ordinance;
   2. Administrative adjustments to the specified development standards of this Ordinance;
   3. Applications for simplified site plans;
   4. Applications for common signage plans;
   5. Applications for home occupation permits;
   6. Administrative certificates of appropriateness;
   7. Demolition by Neglect;
   8. Applications for limited agriculture permits; and

Sec. 2.10 Durham City-County Inspections Department

2.10.1 Establishment

The City-County Inspections Department is authorized by the North Carolina General Statutes to enforce certain
State statutes, State regulations, such as the North Carolina State Building Code and local ordinances, including, not limited to, ordinances related to zoning and development.

**2.10.2 Inspections Director**

The Inspections Director is designated as the head of the City-County Inspections Department and shall be responsible for administering the provisions of this Ordinance as set forth in this section.

**2.10.3 Delegation of Authority**

The Inspections Director may designate any staff member to represent the Director in any function assigned by the Unified Development Ordinance. The Director shall remain responsible for any final action.

**2.10.4 Power and Duties**

With regard to this Ordinance, the Inspections Director, or designee, shall enforce provisions of this Ordinance pertaining to new construction and the issuance of building permits and Certificates of Compliance. And shall be responsible for final action regarding:

A. Interpretations of matters related to the North Carolina Building Code;
B. Interpretations of matters related to Sec. 8.4, Floodplain and Flood Damage Protection Standards.
C. Applications for sign permits; and
D. Applications for temporary use permits.

**Sec. 2.11 Other Departments**

Other departments may be empowered by the governing bodies to develop, maintain and implement technical standards, specifications, and guidelines.

**Sec. 2.12 Summary of Review Authority**

The following table summarizes review authority under this Unified Development Ordinance.

<table>
<thead>
<tr>
<th>Application or Permit</th>
<th>Sedimentation and Erosion Control Officer</th>
<th>Inspections Director</th>
<th>Planning Director</th>
<th>Development Review Board</th>
<th>Historic Preservation Commission</th>
<th>Board of Adjustment</th>
<th>Planning Commission</th>
<th>Governing Body</th>
<th>Section</th>
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<tbody>
<tr>
<td>Erosion Control Plan</td>
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<td>Floodplain Development Permit</td>
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<td>Sign Permit</td>
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<td>Temporary Use Permit</td>
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<tr>
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<tbody>
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<td>Floodplain Development Permit</td>
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<td>Sign Permit</td>
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<td>Temporary Use Permit</td>
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<tr>
<td>Interpretation of the Ordinance</td>
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<tr>
<td>Administrative Adjustment</td>
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<tr>
<td>Common Signage Plan</td>
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<tr>
<td>Home Occupation Permit</td>
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<tr>
<td>Administrative Certificate of Appropriateness</td>
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<tr>
<td>Demolition by Neglect (City Only)</td>
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<td>Limited Agriculture Permit (City Only)</td>
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<td>Architectural Review</td>
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### Development Review Board Action

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<thead>
<tr>
<th>Site Plan Review</th>
<th>R</th>
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<th>D</th>
<th>Sec 3.7</th>
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<td>D</td>
<td>Sec 3.6</td>
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### Historic Preservation Commission Action

<table>
<thead>
<tr>
<th>Certificate of Appropriateness</th>
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<th>Sec 3.1</th>
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### Board of Adjustment Action

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<tr>
<th>Variance</th>
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<tr>
<td>Appeal of Administrative Decision</td>
<td>(D)</td>
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<tr>
<td>Minor Special Use Permit</td>
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### Governing Body Action

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<th>(R)</th>
<th>(D)</th>
<th>Sec 3.4</th>
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<tr>
<td>Text Amendment</td>
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<td>(R)</td>
<td>(D)</td>
<td>Sec 3.2</td>
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<tr>
<td>Zoning Map Change</td>
<td>R</td>
<td>(R)</td>
<td>(D)</td>
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</tr>
<tr>
<td>Historic District/Landmark Designation</td>
<td>R</td>
<td>(R)</td>
<td>(R)</td>
<td>Sec 3.1</td>
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### Review Authority

<table>
<thead>
<tr>
<th>Permit Type</th>
<th>Review or Recommendation</th>
<th>Decision</th>
<th>Appeal</th>
<th>Public Hearing Required</th>
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<td>Major Special Use Permit</td>
<td>R</td>
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<tr>
<td>Vested Rights Determination</td>
<td>R</td>
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</tbody>
</table>

- **R** = Review or Recommendation
- **D** = Decision
- **A** = Appeal
- **{ }** = Public Hearing Required

*Except as noted in the relevant Ordinance Section*

**Latest Revision** June 27, 2011
Article 3 Applications and Permits

Sec. 3.1 Interpretation of this Ordinance

3.1.1 Applicability

A. When uncertainty exists, the director of the appropriate department, or designee, as identified below, shall be authorized to make all interpretations concerning the provisions of this Ordinance. In making these interpretations all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any powers granted under State statutes; and
4. Require application of the more stringent provisions wherever the provisions of this ordinance appear to impose conflicting provisions that cannot otherwise be reconciled.

B. Sections Excepted

The Planning Director shall not make interpretations of the following sections:

1. Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, and Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, the County Engineer, or designee, shall be authorized to make all interpretations concerning the provisions of these sections.
2. Sec. 8.4, Floodplain and Flood Damage Protection Standards, the Inspections Director, acting as the Floodplain Administrator, or designee, in consultation with the Planning Director, shall be authorized to make all interpretations related to this section.
3. Sec. 12.3.1, Street Layout, the Public Works Director or designee, shall be authorized to make all interpretations concerning the provisions of this section.
4. Sec. 12.8, Stormwater Management, the Public Works Director or County Engineer or designees, as appropriate, shall be authorized to make all interpretations concerning the provisions of this section.
5. All interpretations of matters relating to the North Carolina Building Code shall be made by the Inspections Director or designee.

C. Other Sections

The Planning Director may defer interpretations of additional sections of this Ordinance to appropriate City and/or County officials.

3.1.2 Application Requirements

A request for interpretation shall be submitted in writing.
3.1.3 Action by Planning Director

A. The Planning Director shall:
   1. Review and evaluate the request in light of the text of this UDO, the Official Zoning Map, the Comprehensive Plan and any other relevant information;
   2. Consult with the Inspections Director or designee and coordinate with other staff, including the City or County Attorney, as necessary; and
   3. Render an opinion.

B. The interpretation shall be provided to the applicant in writing.

3.1.4 Official Record

The Planning Director or designee shall maintain an official record of all interpretations. The record of interpretations shall be available for public inspection during normal business hours.

3.1.5 Appeal

Final action on an official interpretation of this Ordinance by the Planning Director or designee may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.2 Common Review Procedures

3.2.1 Applicability

The review procedures described below apply to the types of applications listed below, as may be limited by the individual subsections that follow.

A. Comprehensive Plan Amendment
B. Zoning Map Change
C. Subdivision, including Conservation Subdivision
D. Site Plan
E. Special Use Permit
F. Sign Permit
G. Temporary Use Permit
H. Home Occupation Permit
I. Administrative Adjustment
J. Variance
K. Appeal of Administrative Decision
L. Historic District/Landmark Designation
M. Certificate of Appropriateness
N. UDO Text Amendment
O. Statutory Vested Rights Determination
P. Floodplain Development Permit
Q. Limited Agriculture Permit (City Only)

R. Architectural Review

### 3.2.2 Pre-Application Conference

A. Before submitting an application for development approval, it is recommended that each applicant schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards and regulations required for development approval in accordance with this Ordinance.

B. A pre-application conference with the Planning Director or designee shall be required for the following development reviews:
   1. Comprehensive Plan amendment;
   2. Minor or major special use permits;
   3. Zoning map change; and

C. A mandatory pre-application conference with the Public Works Director, or designee shall be required for the following development reviews:
   1. Traffic impact analysis; and
   2. Traffic impact analysis major special use permit.

### 3.2.3 Neighborhood Meeting

A. All applicants shall hold a neighborhood meeting prior to submitting an application, but after a pre-application conference, for the following development reviews:
   1. Comprehensive Plan amendment;
   2. Zoning map changes that require a TIA pursuant to Sec. 3.3, Traffic Impact Analysis;
   3. Conservation subdivision; and
   4. Other applications as may be specified elsewhere in this Ordinance.

B. The purpose of the neighborhood meeting shall be to inform the neighborhood of the nature of the proposed land use and development features, explain the site plan if any, and solicit comments. This requirement shall not mean that all association members, owners or tenants are required to attend such a meeting.

C. The applicant shall provide notice by mail at least ten days prior to the date of the neighborhood meeting to each owner of record of any land within 600 feet of the property for which the development approvals are sought and to neighborhood associations located within 1,000 feet of the site which have registered with the Planning Department to receive notice. The notice shall include at a minimum the following:
   1. The applicant's name and telephone number;
   2. The street address of the site with an identification map;
   3. A clear explanation of what the applicant is proposing; and
   4. The date, time and location of the meeting.

D. The Planning Director or designee may develop administrative regulations setting forth guidelines...
pertaining to any additional requirements for the conduct of the meeting. Such guidelines shall be subject to review by the Joint City/County Planning Committee.

3.2.4 Application Requirements

The following requirements shall apply to all applications for development approval identified in Sec. 3.2.1, Applicability.

A. **Forms**

Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the appropriate department. All forms shall include, at a minimum, the following information:

1. Contact information for the individual or firm submitting the application.
2. Contact information for the individual or firm on whose behalf the application is being submitted.
3. Identification of the property affected by the application, such as a legal description, address, or PIN as may be appropriate.
4. Any other information required by the director of the appropriate department, or designee, or the provisions of this Ordinance.

B. **Fees**

1. All applications and associated fees shall be filed with the appropriate department.
2. Filing fees shall be established from time to time to defray the actual cost of processing the application.
3. An applicant who has paid the appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application prior to its distribution for review shall be entitled to a refund of the total amount paid, less ten percent for administrative costs, upon written request to the appropriate department. Once review has begun, no refund shall be available, except that unused notice surcharges shall be refunded less ten percent for administrative purposes. No refund of technology surcharges shall be provided.

C. **Applications Sufficient for Processing**

1. Applications shall contain all required information as described on forms available from each department involved in the review process, unless modified by the department, in writing, pursuant to 2, below. Incomplete applications may be reviewed in extraordinary circumstance.
2. The presumption shall be that all of the information required in the application forms is necessary to satisfy the requirements of this section. However, it shall be recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The applicant may rely on the recommendations of the appropriate department as to whether more or less information should be submitted.
3. Once the application has been determined sufficient for processing, copies of the application shall be referred by the appropriate department to the appropriate reviewing entities.
4. The director of the appropriate department, or designee, may require an applicant to present evidence of authority to submit the application.
5. An application shall be considered to have been accepted for review only after it has been determined to be complete as provided above, not upon submission to the appropriate...
department.

D. **Application Deadline**
   Applications sufficient for processing shall be submitted to the director of the appropriate department or designee in accordance with the established schedule. Schedules indicating submittal dates shall be developed each year and made available to the public.

E. **Staff Consultation after Application Submitted**
   1. Upon receipt of an application sufficient for processing, the director of the appropriate department, or designee, shall review the application and confer with the applicant to ensure an understanding of the applicable requirements of this Ordinance; that the applicant has submitted all of the information they intend to submit; and that the application represents precisely and completely what the applicant proposes to do.
   
   2. Once the applicant indicates that the application is as complete as the applicant intends to make it, the application shall be placed before the appropriate approving authority in accordance with standard procedures. However, if the director of the appropriate department, or designee, believes the application is incomplete, a recommendation to deny the application on that basis shall be provided to the appropriate approving authority.

F. **Related Applications**
   1. Necessarily related applications for development approvals may be filed and reviewed simultaneously, at the option of the applicant. Any application that also requires a variance or use permit shall not be eligible for final approval until the variance or use permit has been granted.
   
   2. Related applications submitted simultaneously are subject to approval of all other related applications; denial or disapproval of any concurrently submitted application shall stop consideration of any related applications until the denied or disapproved application is resolved.

### 3.2.5 Notice and Public Hearings

A. **Summary of Notice Required**
   Notice shall be required for applications for development approval as shown in the table below.

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Published</th>
<th>Mailed</th>
<th>Posted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive Plan Amendment</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Zoning Map Change</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Site Plan</td>
<td></td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Minor Special Use Permit</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Major Special Use Permit (including TIA special use permit)</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Variance</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Appeal of Administrative Decision</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Historic District Designation</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Historic Landmark Designation</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Certificate of Appropriateness - Minor</td>
<td></td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Certificate of Appropriateness - Major</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>UDO Text Amendment</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Vested Rights Determination</td>
<td>✓</td>
<td>✓</td>
<td></td>
</tr>
<tr>
<td>Rectification of Plans</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
B. Public Notice Requirements

1. Published Notice

An advertisement shall be placed by the Planning Department in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

2. Mailed Notice

a. The director of the appropriate department,, or designee, shall notify by first class mail all property owners, as indicated by County tax listings of property ownership, within the applicable notification distance from the property under consideration as specified in the table below:

<table>
<thead>
<tr>
<th>Procedure</th>
<th>Notification Distance (ft)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comprehensive Plan Amendment</td>
<td>1,000</td>
</tr>
<tr>
<td>Zoning Map Change</td>
<td>600</td>
</tr>
<tr>
<td>Initial Zoning</td>
<td>100</td>
</tr>
<tr>
<td>Site Plans</td>
<td>600</td>
</tr>
<tr>
<td>Board of Adjustment Hearings</td>
<td>300</td>
</tr>
<tr>
<td>Major Special Use Permit</td>
<td>600</td>
</tr>
<tr>
<td>Historic District Designation</td>
<td>600 and all adjacent properties</td>
</tr>
<tr>
<td>Historic Landmark Designation and Certificate of Appropriateness</td>
<td>All adjacent properties²</td>
</tr>
<tr>
<td>Vested Rights Determination</td>
<td>Subject property and all adjacent properties²</td>
</tr>
</tbody>
</table>

¹Mailed notice shall be required whenever an applicant for a site plan is seeking approval of any of the modifications to standards specified in Sec. 3.7.1B.3, Major Site Plans that are granted at the discretion of a governing body.

²adjacent properties shall include properties directly across the street from the subject property (where applicable)

b. For amendments to the Comprehensive Plan, Zoning Map Changes, Site Plans that require notice pursuant to Sec. 3.2.5A, Summary of Notice Required, and Major Special Use Permits, mailed notice shall also be provided to any organization or individual located within 1,000 feet of the site under consideration which is registered to receive notice pursuant to Sec. 3.2.5D, Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.

c. For UDO Text Amendments, notice shall be provided to any organization or individual which is registered to receive such notice pursuant to Sec 3.2.5D, Registration to Receive Notice. Notice shall be provided to each organization or individual in the manner specified in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.

d. The notice shall be mailed at least 14 but not more than 25 days prior the date of the public hearing.

e. Mailed notice under this section shall not be required if a zoning map change directly
affects more than 500 properties owned by a total of at least 500 different property owners, and the Planning Director or designee elects to use the following expanded published notice requirements:

1. An advertisement of not less than 1/2-page may be placed in a local newspaper of general circulation once a week for two successive calendar weeks, the first notice being published not less than ten days nor more than 25 days before the date fixed for the public hearing.

2. In addition to the published notice, the Planning Director or designee shall post one or more signs on or immediately adjacent to the subject area reasonably calculated to give public notice of the proposed change in accordance with paragraph 4.c., Posted Notice, below rather than the notice required pursuant to subsection 3, Posted Notice (Sign), below.

3. Mailed notice shall be provided by first class mail to property owners who reside outside of the newspaper’s circulation area.

3. **Posted Notice (Sign)**
   A sign noticing the public hearing shall be prominently posted by the director of the appropriate department, or designee, not less than 14 days prior to the public hearing at which the application shall be reviewed. The sign shall be posted on the property or at a point visible from the nearest public street. In the case of multiple parcels, sufficient signs shall be posted to provide reasonable notice to interested persons.

4. **Content of Notice**
   For all applications for development approval except UDO text amendments, the notices listed above shall contain the following specific information.

   a. **Published or Mailed Notice**
      A published or mailed notice shall provide at least the following:
      
      1. Parcel Identification Number;
      2. The address of the subject property (if available);
      3. The general location of the land that is the subject of the application, which may include, a location map;
      4. A description of the action requested;
      5. Where a zoning map change or a Comprehensive Plan amendment is proposed, the current and proposed districts;
      6. The time, date and location of the public hearing;
      7. A phone number to contact the Planning Director or designee;
      8. A statement that interested parties may appear at the public hearing; and
      9. A statement that substantial changes to the proposed action may be made following the public hearing.

   b. **Published Notice for UDO Text Amendments**
      A published notice shall include the following specific information:
      
      1. A summary description of the proposed change;
      2. The time, date and location of the public hearing;
3. A phone number to contact the Planning Director or designee;
4. A statement that interested parties may appear at the public hearing; and
5. A statement that substantial changes to the proposed action may be made following the public hearing.

c. **Posted Notice**
   Required posted notices shall indicate the following:
   1. A case number;
   2. Type of action; and
   3. A phone number to contact the Planning Director, or designee.

C. **Minor Defects in Notice**
   Minor defects in notice shall not impair the notice or invalidate proceedings pursuant to the notice if a bona fide attempt has been made to comply with applicable notice requirements.

D. **Registration to Receive Notice**
   Upon adoption of this amended section, and every two years thereafter, any organization or individual may pay an established fee, if applicable, and register with the Planning Director to receive notice of all applications for development approval requiring mailed notice and other notice required under this Ordinance. To be eligible for registration, the applicant must provide the information required by the Planning Director, including manner of notice, whether first class mail, electronic mail, or other manner offered by the Planning Director. Notice will be provided in the manner specified in the registration information. Each organization or individual is responsible for providing updated information to the Planning Director as necessary, and must re-register and pay the established fee, if applicable, every two years in order to continue receiving notice.

E. **Required Hearing**

   1. A legislative public hearing or a quasi-judicial hearing shall be required for development review as shown in the table below.

<table>
<thead>
<tr>
<th>Applications for Approval</th>
<th>Board of Adjustment</th>
<th>Planning Commission</th>
<th>Governing Body</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transportation Special Use Permit</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Comprehensive Plan Adoption/Amendment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Zoning Map Change</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Minor Special Use Permit</td>
<td>✓</td>
<td></td>
<td>✓ 1</td>
</tr>
<tr>
<td>Major Special Use Permit</td>
<td></td>
<td></td>
<td>✓ 1</td>
</tr>
<tr>
<td>Variance</td>
<td>✓</td>
<td></td>
<td>✓ 1</td>
</tr>
<tr>
<td>Appeal of Administrative Decision</td>
<td>✓</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Historic District Designation</td>
<td>✓</td>
<td></td>
<td>✓ 2</td>
</tr>
<tr>
<td>Historic Landmark Designation</td>
<td></td>
<td></td>
<td>✓ 2</td>
</tr>
<tr>
<td>UDO Text Amendment</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vested Rights Determination</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   1 Requires a quasi-judicial hearing

   2 HPC shall also hold a public hearing

2. The day of the public hearing shall be considered the day the hearing is originally advertised for,
unless a deferral is granted by the Governing Body upon a request that follows the procedures set forth in this Ordinance regarding timely submission of requests for deferrals.

### 3.2.6 Notice of Decision

Within seven days after a decision is made, a copy of the decision shall be provided to the applicant and filed in the appropriate department, where it shall be available for public inspection during regular office hours.

### Sec. 3.3 Traffic Impact Analysis (TIA)

#### 3.3.1 Applicability

Unless exempted below, a traffic impact analysis (TIA) shall be required for zoning map changes utilizing a development plan, site plans, and preliminary plats that can be anticipated to generate at least 150 vehicle trips at the peak hour (as determined by Institute of Transportation Engineers Standards). Trips generated by separate developments meeting the criteria of Sec. 3.3.3, TIA Submission for Projects with Cumulative Impacts, shall be considered cumulatively.

#### 3.3.2 Exemptions

The following projects shall not be required to submit a TIA:

A. Projects located within the Downtown Tier.

B. Developments that submitted a TIA in conjunction with a zoning map change or previously approved site plan, special use permit, or other plan, where the TIA remains valid, consistent with the provisions of Sec. 3.3.6, Period of Validity.

C. Redevelopment of any site on which the increase in traffic at peak hour represents an increase of less than 150 trips from the previous development, if the redevelopment is initiated within 12 months of the cessation of use of the previous development so long as no access road that leads directly to the site is operating at a level of service worse than the jurisdiction's adopted level of service.

#### 3.3.3 TIA Submission for Projects with Cumulative Impacts

A. **Unified, Phased, or Otherwise Aggregated Developments**

   An applicant shall be required to submit a TIA, or obtain a major special use permit as hereafter provided, for a development plan, site plan, preliminary plat, special use permit, or other similar plan that does not otherwise meet the thresholds for submission of a TIA or for obtaining a major special use permit if the development approval is for a project that:

   1. Shares features such as site access or other roadways, design elements, or other infrastructure with nearby unbuilt, but reasonably foreseeable developments; and,

   2. When complete, will function in conjunction with such nearby developments as a single project, the impact on the infrastructure of which would exceed the thresholds for preparation of a TIA.

B. **Determination**

   The Public Works Director, or designee shall determine whether a development application meets the criteria in A, above, and shall determine whether one TIA shall be required for all of the aggregated development, or whether multiple TIAs may be employed for separate phases of the development.

#### 3.3.4 Pre-Application Conference

The applicant shall schedule a pre-application meeting with the Public Works Director or designee to discuss procedures, standards, and regulations required for TIA submittal and approval.
3.3.5 Requirements

A. Content
The Public Works Director or designee shall set forth specific guidelines for preparation of TIAs. A TIA shall, at a minimum, provide the following information:

1. An estimate of the traffic generated as a result of the proposed development;
2. An analysis of the existing street system serving the proposed development; and
3. An assessment of the improvements needed to the existing street system in order to support the traffic anticipated to be generated by the proposed development.

B. Preparer
A TIA shall be prepared by a registered professional engineer with experience in traffic engineering.

C. Sources of Data
Estimates of vehicle trips shall be calculated based on trip generation rates from the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers, unless an alternative source of information is approved by the Public Works Director or the NCDOT.

3.3.6 Period of Validity
A TIA shall be valid for a specific site for no more than eight years, so long as no significant modifications to the development proposed for the site that substantially increase the traffic impact are made. A TIA submitted in connection with a project that is accessed by a road that is operating at a level of service lower than the jurisdiction's adopted level of service shall be valid for no more than five years, however.

3.3.7 Coordination with Zoning Map Changes, Site Plans, and Preliminary Plats
Transportation mitigation measures may be required to address issues raised by a TIA, or as part of the approval of a TIA Major Special Use Permit. Such measures may include, but not be limited to, onsite and offsite improvements related to reduction of traffic impact on the surrounding road system, bicycle facilities, pedestrian movement, and the environment. These measures shall be conditions of development approval. Deletion or modification of these conditions shall require the same approval process that was required for the original project, unless the approved mitigation measure is deemed to conflict with NCDOT or Public Works requirements, in which case they may be deleted or modified by the Development Review Board.

3.3.8 Transportation Special Use Permit (TSUP)

A. Requirements
A Transportation Special Use Permit shall be required for site plans and preliminary plats that are expected to generate:

1. 600 or more vehicle trips at peak hour; or
2. 300 or more vehicle trips at peak hour, if any road serving the project is operating at a level of service lower than the jurisdiction's adopted level of service.

B. Exemptions
The following projects shall be exempt from the requirement for a TSUP, even if they meet or exceed the thresholds specified above.

1. Projects utilizing either the UC or SRP zoning district.
2. Projects located within the Downtown Tier.
3. Projects which have submitted a TIA in connection with a zoning map change, and which are developing consistent with the approved development plan, if the TIA is valid pursuant to Sec. 3.3.6, Period of Validity, above.

C. Process
Projects requiring a TSUP shall be processed in accordance with the provisions of Sec. 3.9, Special Use Permit.

D. Criteria for Approval
In order to approve a TSUP; the governing body shall make the following findings:

1. The traffic generated by the development and associated improvements to the street system will not have a significant adverse impact on the surrounding area. Significant adverse impact shall include:
   a. Substantial increases in traffic on local residential streets such that the majority of the traffic is not associated with the residential properties which front on the street; or
   b. The need to widen local residential streets which would detract significantly from the character or basic function of the nearby streets.

2. Adequate provisions have been made for safe and efficient vehicular circulation, parking and loading, and pedestrian access.

3. The traffic generated by the proposed development and any proposed improvements to the street system will not have a significant adverse impact on the environment. Significant adverse impacts shall include but not be limited to undue concentration of air pollutants, or excessive noise or vibrations.

4. The traffic generated by the development can be accommodated by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed as part of the development application. Proposed mitigation measures shall become conditions of the special use permit. The adopted level of service for the adjacent roadways may be considered in making this determination but shall not be the sole factor considered by the governing body.

Sec. 3.4 Comprehensive Plan Adoption/Amendment
3.4.1 Applicability

A. The governing bodies shall consider adoption of or amendments to the Comprehensive Plan, as may be required from time to time.

B. The governing bodies shall also consider adoption of or amendments to the Comprehensive Plan when zoning map change proposals are in significant conflict with the Plan, as determined by the Planning Director or designee.

C. Adoption of or amendments to the Comprehensive Plan shall only apply to the jurisdiction in which the subject property is located unless the property is the subject of an annexation petition; or through the rectification process established in Sec. 3.4.10, Rectification of County and City Plans.

3.4.2 Coordination with Applications for Zoning Map Change

When required to ensure consistency between the Comprehensive Plan and proposed zoning map changes, an application for a plan amendment shall be submitted concurrently with a zoning map change application. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting; however, decisions shall be rendered with separate motions.

3.4.3 Pre-Application Conference

All applicants applying for a plan amendment shall schedule a pre-application conference with the Planning Director or designee in accordance with Sec. 3.2.2, Neighborhood Meeting.

3.4.4 Neighborhood Meeting

All applicants applying for a plan amendment shall hold a neighborhood meeting in accordance with Sec. 3.2.3, Neighborhood Meeting.

3.4.5 Application Requirements

An application for a plan amendment shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.4.6 Action by the Planning Commission

A. Before making any recommendation on a plan amendment, the Planning Commission shall consider any recommendations from the Planning Director or designee, and shall conduct a public hearing.

B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.

C. It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the Comprehensive Plan should be changed.

D. Following the public hearing, the Planning Commission shall make a recommendation on the application to the governing body.

E. The Planning Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing on the amendment.
3.4.7 Criteria for Planning Commission Recommendations

The recommendations of the Planning Commission to the governing body shall show that the Planning Commission has studied and considered the proposed change in relation to the following, where applicable:

A. Whether the proposed change would be consistent with the intent, goals, objectives, policies, guiding principles and programs of any adopted plans;

B. Whether the proposed change would be compatible with the existing land use pattern and designated future land uses;

C. Whether the proposed change would create substantial adverse impacts in the adjacent area or the City or County in general; and

D. Whether the subject parcel is of adequate shape and size to accommodate the proposed change.

3.4.8 Modification of Tier Boundary

Where a zoning map change involves modification of the Tiers established in the Comprehensive Plan, the following criteria shall be considered.

1. The site is contiguous to the proposed Tier;

2. The site is not in the drainage basin for Lake Michie or Little River or in the one-mile critical area around Jordan or Falls Reservoirs;

3. The extension does not violate any agreements with neighboring jurisdictions; and

4. If the proposal is to expand the Suburban Tier, extending utilities to serve the site is determined to be technically feasible by the Public Works Director or designee and will not result inordinate cost to the City.

3.4.9 Action by the Governing Body

A. Before taking action on a plan amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, and shall conduct a public hearing.

B. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice of Public Meetings.

C. It is expected that the applicant or a representative of the applicant will appear at the meetings to explain why the land use plan should be changed.

D. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission for additional consideration.

E. An approval shall be by written resolution. The approval may be contingent upon conditions specified by the governing body. The effective date may be immediate or may be a date otherwise specified in the approval.

3.4.10 Rectification of County and City Plans

Annually, the Planning staff will conduct a public hearing before each governing body for the purpose of addressing and possibly rectifying any differences between the adopted plans of the City and County. There shall be public notification of the hearing in accordance with Sec. 3.2.5B.1, Published Notice, and public participation shall be allowed.

Sec. 3.5 Zoning Map Change
3.5.1 Description

A. **Purpose**
The purpose of a zoning map change is to amend the zoning district boundaries of the Official Zoning Map.

B. **Initiation**
A zoning map change may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.

C. **Development Plan**
A development plan provides additional information with a zoning map change petition. The purposes of the development plan are set forth in Sec. 3.5.6, Development Plan. The development plan establishes the level of development that will be allowed on the property. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed or required under this Ordinance. Deviation may require a zoning map change, as established in Sec. 3.5.12, Deviation from Approved Development Plans. Unless a development plan also functions as a site plan, it is not a site specific development plan. The right to develop pursuant to a development plan, whether provided under this Ordinance or any previous ordinance, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Ordinance, or where a vested right is established pursuant to Sec. 3.21, Statutory vested Rights Determination.

D. **Mandatory Development Plans**
The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in the PDR, CC, MU, and IL districts and in the RS-M district if the applicant proposes to develop a building greater than 35 feet in height or proposes a density greater than eight units per acre. A development plan shall be required for additions to the UC District after the initial zoning map change establishing the District on each campus. Development plans may also be required as otherwise set forth in this Ordinance. The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition.

E. **Traffic Impact Analysis**
A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Sec. 3.3, Traffic Impact Analysis.

3.5.2 Pre-Application Conference

All applicants petitioning for a zoning map change shall schedule a pre-application conference with the Planning Director or designee in accordance with Sec. 3.2.2.

3.5.3 Neighborhood Meeting
An applicant petitioning for a zoning map change shall hold a neighborhood meeting as set forth in Sec. 3.2.3, Neighborhood Meeting.

### 3.5.4 Coordination with the Comprehensive Plan

A. All petitions for zoning map change shall be consistent with the Comprehensive Plan. A petition for zoning map change shall not be approved by the governing body when there is a significant conflict with the Comprehensive Plan, as determined by the Planning Director or designee (see Sec. 3.4, Comprehensive Plan Amendment).

B. When required, an application for a plan amendment shall be submitted concurrently with an application for zoning map change. The public hearings on both the plan amendment and zoning map change may be heard at the same meeting. The decisions, however, shall be rendered with separate motions.

### 3.5.5 Application Requirements

A. An application for zoning map change shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

B. Zoning map changes should correspond with the boundary lines of existing platted lots or tracts. If the boundaries of a zoning map change request stop short of an exterior property line, that portion of the property outside the proposed zoning map change boundary shall be capable of being subdivided and developed in accordance with the existing zoning and other requirements of this Ordinance.

C. All zoning requirements shall be met within the boundaries of the area being proposed for change, unless the area being changed is utilizing a development plan and is an addition to an existing area zoned with a development plan. If all of the requirements cannot be met on the site being changed, the zoning map change shall be expanded to include necessary property being used to meet zoning requirements. Projects utilizing a development plan may be expanded without meeting this criteria if, considering the original development plan area, the requirement can be met without violating any committed elements. Projects utilizing this provision shall provide graphics and/or a chart demonstrating how the requirements are met.

D. If the boundaries of a zoning map change request in process are modified so as to 1) remove property from the request, and 2) have the effect of separating other adjoining properties from the boundaries of the modified request, that change shall be considered a substantial change from the original request and shall result in the modified request being considered a new zoning map change request and requiring resubmittal with a new application and applicable fees.

### 3.5.6 Development Plan

A. **Purpose**

A development plan is intended to identify commitments that are equal or greater than Ordinance requirements, including but not limited to:

1. Intensity/density of the proposed development;
2. Sensitive areas and related protection;
3. Any limitations on number, type, or range of uses;
4. Dedications or reservations;
5. Design elements if required or otherwise provided; and
6. Development phasing if required or otherwise provided.
B. **Designation/Effect**
When a proposed zoning map change includes a development plan, the letter "D" shall follow the proposed zoning district designation. If approved, the letter "D" shall remain as a part of the zoning designation of the property. The elements submitted as part of the development plan, called "commitments," are binding and establish the level of development permitted on the property absent further zoning action except as otherwise allowed or required under this ordinance. "Commitments" may also be identified as "committed elements" throughout this ordinance.

C. **Authority of the Planning Director**
The Planning Director is authorized to:

1. Delegate authority under this section to a designee;
2. Determine whether modification of an unapproved development plan or deviation from an approved development plan is significant/substantial or minor, or more or less stringent, if not specified in this section;
3. Interpret commitments;
4. Determine whether a conflict exists between commitments. Any conflict between commitments, including design commitments, shall be resolved in favor of the most stringent;
5. Determine whether an element is a commitment if it is not specified as such in this section; and
6. Determine whether additional staff review time is necessary following addition of commitments at hearings through proffers or illustrative graphic depictions. Such determination may require consultation with other departments.

D. **Requirements**
A development plan shall comply with all applicable laws and guidelines. Requirements under this section shall consist of the following, which may be supplemented by guidelines of the Planning Department.

1. A development plan shall be signed and sealed by a Professional Engineer, Registered Architect, or Registered Landscape Architect. All graphic depictions shall be accurately scaled, and separate or additional sheets may be required by the Planning Department.
2. A development plan shall include a signed request from each property owner that the development plan be approved. A request from an owner’s representative is unacceptable unless a document establishing legal authority to act as representative is included.
3. **Existing Information**
   A development plan shall include an existing conditions survey that depicts conditions at the time of plan submittal and is signed and sealed by a licensed Professional Land Surveyor, Engineer, or Landscape Architect. A separate existing conditions sheet may also be included. Such document(s) shall provide at least the following information:
   
   a. All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, and north arrow;
   b. Acreage of the entire site, approximate acreage of the area within each zoning district or overlay on the site, and approximate acreage of area within floodway, floodway fringe, non-encroachment area, or non-encroachment area fringe on the site;
   c. Existing zoning districts and overlays on the site and all adjoining properties, including properties separated by easements or rights-of-way;
d. The owners of all adjoining properties, including properties separated by easements or rights-of-way;

e. Existing manmade and natural conditions on the site, and within 100 feet of the site on adjoining properties, including properties separated by easements or rights-of-way. Those conditions shall include but are not limited to: amount and locations of impervious surface; topography including steep slopes; Special Flood Hazard Areas and Future Conditions Flood Hazard Areas; streams; wetlands; water bodies; forested areas; and sites identified by the Durham County Inventory of Important Natural Areas, Plants, and Wildlife (Inventory); historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in the Durham Architectural and Historic Inventory; sites identified in the Durham Archeological Inventory and other identified archeological sites, including cemeteries and burial grounds; and

f. Existing and proposed utility and access easements and rights-of-way on the site and within 100 feet of the site; and

g. Adopted plans, including transportation plans, that apply to the site.

4. Minimum Commitments

A development plan shall depict the following proposed elements, as applicable, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.

a. Zoning districts and overlays on the site;

b. Intensity/density for each zoning district or overlay (square feet if non-residential, units if residential);

c. For non-residential or multi-family development, building and parking element;

d. Project boundary buffers, including any located off-site, depicted by border lines and indicating minimum committed width. Illustrative representations of vegetation shall not be used. A buffer reduction may only be requested if the minimum committed width that reflects the possible reduction is depicted. Any such width shall be labeled “width if reduced”;

e. General location of each stream crossing;

f. General location of access points and connections to existing roads;

g. Dedications or reservations made for consistency with adopted plans, including transportation plans, or as otherwise required by this Ordinance or other law;

h. Railroad corridors as required under Sec. 12.6, Railroad Corridors;

i. Maximum impervious area for the site and for each separately zoned portion of the site, indicated numerically within the overall site depiction and each portion;

j. Areas committed for preservation, included but not limited to steep slopes, stream buffers, wetland buffers, Inventory sites, historic sites or structures currently designated in, or eligible for, the National Register of Historic Places, sites identified in the Durham Architectural and Historic Inventory, and sites identified in the Durham County Archeological Inventory and other identified archeological sites, including cemeteries and burial grounds;
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k. Tree preservation areas, tree replacement areas, and a generalized or specimen tree survey as required under Sec. 8.3.3, Tree Survey;

l. For a manufactured home park or subdivision in a Planned Development Residential (PDR) district, the information required under Sec. 6.11.3, Planned Development Residential (PDR);

m. For all development in a PDR district, the information required under Sec. 6.11.3, Planned Development Residential (PDR);

n. For all development in a Commercial Center (CC) district, the information required under Sec. 6.11.5, Commercial Center (CC);

o. For all development in an Industrial Park (IP) district, the information required under Sec. 6.11.6, Industrial Park (IP); and

p. For all development in a Mixed Use (MU) district, the information required under Sec. 6.11.7, Mixed Use (MU).

5. Additional Commitments - Graphic
A development plan may depict additional proposed elements, including but not limited to the following, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.

a. Limitations on number, type, or range of uses, if not required under Sec. 3.5.6 D.4, Minimum Commitments;

b. General location of on- or off-site road improvements or pedestrian and bicycle systems;

c. General location and area of open space, recreation areas, trails and greenways, tree preservation areas, or buffers other than project boundary or stream buffers;

d. Buffer width or opacity that exceeds ordinance requirements;

e. Landscaping features such as berms or vegetation types;

f. Building specifications such as number, location, maximum floor area, or maximum height;

g. General location and types of stormwater facilities and mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements;

h. Areas where mass grading will not occur; and

i. Building or site design elements not subject to review by the Design District Review Team.

6. Additional Commitments - Text
A development plan may include additional proposed elements as text in side notes, provided they cannot legibly be included within, or do not reference, the graphic depiction. Such elements shall become commitments and shall be labeled "Text Commitments." Examples include description of off-site transportation infrastructure improvements, technical specifications that exceed ordinance requirements, description of elements not identified graphically, and additional description of elements identified graphically. Such elements shall not repeat ordinance requirements or contradict or diminish graphic elements.

7. SIA and TIA Requirements
A development plan shall include a Stormwater Impact Analysis and a Traffic Impact Analysis, if required, with measures required to address any identified deficiencies. Such measures shall be in
The development plan for a project containing nonresidential or multi-family structures not located in the UC District or Downtown Tier shall include design elements indicating how the project will relate to its environment (both built and natural). Such elements may be in graphic or text form as appropriate and shall become commitments. They shall be labeled "Design Commitments" and shall include, at a minimum:

a. A description of the general architectural styles proposed for use in the buildings. This description shall include information on rooflines, building materials, and any distinctive architectural features; and

b. A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments

9. Phasing Plans

a. A phasing plan may be provided with any development plan, but shall be required in the following instances:

   1. Projects utilizing the Mixed Use District. The phasing plan shall ensure that residential and non-residential components are constructed to satisfy the intent and requirements of this district; and

   2. Development within the Suburban Transit Areas. The phasing plan shall ensure the existence of adequate available infrastructure for each phase and minimum required densities in a transit-supportive form at buildout.

b. The phasing plan shall be in graphic or table form as appropriate and included in the development plan. It shall identify the sequence and timing of the development phases and include utility improvements, land use categories, and areas in square feet or acres. Phasing plan elements shall become commitments.

E. Illustrative Graphic Depictions

Graphic depictions other than those listed above shall not be shown at, submitted at, or otherwise used in connection with any public hearing on a zoning map change with development plan unless they depict only the area within the scope of the development plan and are development plan commitments in their entirety. Such graphic depictions shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.

F. Development Plan as Site Plan/Preliminary Plat

1. At the request of the applicant, a development plan may also serve as a site plan or preliminary plat. Such plan shall comply with both development plan and site plan or preliminary plat requirements, as applicable, and shall undergo one review process. Such plan shall be deemed approved as both development plan and site plan or preliminary plat, as applicable, following development plan approval by the governing body. Fees shall be adjusted by the Planning Department in such cases.

2. Where a development plan also serves as a site plan or preliminary plat, any associated special use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.

G. Modifications Before Approval
1. Modifications to a development plan that are proffered at a hearing before the Planning Commission or governing body shall become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent. Proffers that prove to be illegal or less stringent than existing commitments shall be referred back to the Planning Commission or governing body for an additional hearing.

2. Minor modifications may be made to a development plan after the Planning Commission recommendation and before the governing body hearing. Such modifications become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.

3. Significant modifications that are made to a development plan after the Planning Commission recommendation and before the governing body hearing shall be referred back to the Planning Commission for an additional hearing as required under Sec. 3.5.9B, Changed Application.

### 3.5.7 Deferral and Withdrawal of an Application for Zoning Map Change

#### A. Deferral Requests Approved by the Planning Director

1. Deferrals shall be granted by the Planning Director, or designee, under the following criteria:
   
   a. The applicant or an opponent may each seek not more than one deferral for each zoning map change requested. No more than two deferrals (one each from the applicant and an opponent) shall be allowed per proposed zoning map change;
   
   b. Each deferral request shall be for a maximum of one month. Any deferral request shall be made in writing, citing reasons for requesting the deferral; and
   
   c. If the request for deferral is received by the Planning Director or designee and the reasons for the request are made in writing at least ten days, prior to the first Planning Commission or governing body meeting where the item would otherwise be considered.

2. Any other deferrals which do not meet the above criteria shall be treated as a continuance.

3. If notification of the hearing has already been sent by the time deferral is requested each request shall be accompanied by two sets of mailing labels imprinted with the names and addresses of all previously notified property owners and a fee equivalent to the postage required to re-notify the property owners.

4. The above procedures are not applicable to proposed zoning map changes that have been designated as "expedited" by a governing body.

#### B. Withdrawal Request by Applicant

1. The applicant petitioning for a zoning map change may withdraw the application provided that a written request stating the reason for the withdrawal is received by the Planning Director, or designee, at least ten days prior to the public hearing.

2. The request shall be accompanied by mailing labels imprinted with the names and addresses of the previously notified property owners and a fee sufficient to cover the postage for renотification of surrounding property owners if the withdrawal occurs after the Planning Commission hearing.

3. The applicant petitioning for a zoning map change with a development plan may withdraw the application at any time prior to the opening of the public hearing before the governing body by withdrawing consent to the development plan being imposed on the applicant’s property.
4. The governing body may vote to allow the applicant to withdraw an application for a zoning map change at any time.

C. **Administrative Withdrawal**

The Planning Director or designee may withdraw applications due to the failure of the applicant to submit required information within 90 days of a request for such information.

D. **Resubmittal of Withdrawn Applications**

Except in the case of an application where the applicant withdrew consent to a development plan, no application that was previously withdrawn may be resubmitted until at least 6 months have elapsed since the date of withdrawal. In the case of applications withdrawn as a result of the withdrawal of consent to a development plan after publication of a notice of a public hearing, no new application may be resubmitted until at least 12 months have elapsed since the date of withdrawal. The Planning Director or designee may waive this waiting period if the application has been substantially modified or if there has been a significant change in facts or circumstances since the application was withdrawn.

### 3.5.8 Action by the Planning Director

A. The Planning Director or designee shall prepare a staff report that reviews the zoning map change request in light of any applicable plans and the general requirements of this Ordinance. The staff report shall consider the entire range of permitted uses in the requested classification regardless of any representations made that the use will be limited, unless a development plan is submitted that restricts the permitted range of uses to specific uses. The staff report shall include an evaluation of the consistency of the requested classification with adopted plans and the impact of the requested classification on public infrastructure, as well as any specific requirements of the requested classification.

B. The Planning Director or designee shall forward completed zoning map change requests and any related materials to the Planning Commission for a hearing and recommendation at the first regularly scheduled meeting following completion of the technical reviews by staff.

C. The Planning Director or designee shall forward completed zoning map change requests and any related materials, including the Planning Commission recommendation, to the governing body for a public hearing and decision prior to the first regularly scheduled meeting after the Planning Commission hearing.

### 3.5.9 Action by the Planning Commission

A. **General Procedures**

1. Before making any recommendation on a petition for zoning map change, the Planning Commission shall consider any recommendations from the Planning Director and shall conduct a public hearing where interested parties may be heard.

2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.

3. Except in the case of expedited hearings pursuant to Sec. 3.5.9C, Expedited Hearings, the Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing. The time period for a recommendation may be altered, as in the case of significant modifications, in which case three additional consecutive regular cycles shall be granted before the case shall go to the governing body.

4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.
5. A zoning map change proposed as a County case shall not require rehearing by the Planning Commission if the property subject to the proposed change is annexed into the City before the Board of Commissioners has acted on the case and the annexation is within 12 months of the original Planning Commission recommendation on the zoning map change, unless the applicant has made a significant modification to the application.

B. **Changed Application**
   If the applicant makes a significant modification to an application for a zoning map change after the Commission has made its recommendation, the Planning Director shall refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the governing body within 90 days of the public hearing on the modified application. If a recommendation is not made within this time frame, the governing body may hear the application without a recommendation from the Planning Commission.

C. **Expedited Hearing**
   1. If the governing body has set an expedited hearing concerning a request, in accordance with Sec. 3.5.11B, Expedited Hearing, a public hearing before the Planning Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
   2. The Commission shall make a recommendation at this hearing based on the Review Criteria in Sec. 3.5.10, Written Recommendation, Review Criteria, below. The Planning Commission shall not continue a request for which an expedited hearing has been set, nor shall any deferrals be granted for such a request.

### 3.5.10 Written Recommendation, Review Criteria

The Planning Commission shall provide a written recommendation regarding whether each proposed map change is consistent with the comprehensive plan and other applicable adopted plans. The recommendation shall be based on the reasons articulated by Commission members voting in the majority, and the recommendation shall be developed as determined in the Commission's Rules of Procedure. In addition to plan consistency, Commissioners may also consider other matters deemed appropriate by the Commission, which may include but are not limited to:

A. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood;

B. Suitability of the subject property for uses permitted by the current versus the proposed district;

C. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the City and County; and

D. The availability of adequate school, road, parks, wastewater treatment, water supply and stormwater drainage facilities for the proposed use.

### 3.5.11 Action by the Governing Body

A. **General Procedures**
   1. Before taking action on a zoning map change request, the governing body shall consider any recommendations of the Planning Commission, Planning Director or designee, and of staff agencies, and shall conduct a public hearing where interested parties may be heard.
   2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.
3. Continuances may be granted before action on the request.

4. Following the public hearing, the governing body may approve the request, deny the request, or send the request back to the Planning Commission for additional consideration.

5. In adopting or rejecting a zoning map change, the governing body shall adopt a statement describing whether its action is consistent with the Comprehensive Plan, and why the action is reasonable and in the public interest. The governing body may adopt the statement furnished by staff or agencies, including but not limited to the Planning Director or the Planning Commission, or it may formulate its own statement.

6. The map change request approved by the governing body may include changes from the request presented. Changes to a development plan may be made upon the proffer by the applicant of such changes.

7. Approval of a petition gives the applicant the ability to proceed with any additional required approvals.

B. **Expedited Hearing**

1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective zoning map change.

2. The governing body may consider a written request from a potential applicant, or from staff, requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.

3. An expedited hearing shall not be granted when a Comprehensive Plan amendment is required, or when a Traffic Impact Analysis is required.

4. In order to grant the request, the governing body shall find that at least one of the criteria below have been met:
   
   a. Deadlines set by the local, State or Federal government for receipt of applications for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
   
   b. The prospective zoning map change request results from an emergency beyond the control of the applicant, such as response to a disaster;
   
   c. The prospective zoning map change request addresses an urgent matter of public health or safety; or
   
   d. There are special circumstances that will have a substantial negative impact on the development which could not have reasonably been anticipated and which make expedited consideration necessary.

5. In no event may the governing body hearing occur less than 30 days after the item was granted expedited status.

**3.5.12 Deviations from Approved Development Plans**

A. **Significant Deviations**

The deviations from an approved development plan listed below are deemed significant and shall require that the entire plan be resubmitted for a zoning map change in accordance with the application requirements of this section, except as specified in paragraphs B, C, and D below. Deviations not listed below do not require a zoning map change unless they are otherwise deemed significant or substantial.
1. Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus;

2. Decrease by more than 20% in total density in residential projects, except in the Downtown Tier or Compact Neighborhood Tier, unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus;

3. Decrease by more than 5% in total density in residential projects located in residential projects, except within the Downtown Tier or Compact Neighborhood Tier unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus, or from the application of UDO requirements relating to size or design;

4. In a nonresidential or mixed-use development, a cumulative expansion adjacent to a residential district or use that exceeds 5% of total building floor area or 4,000 square feet, whichever is greater, or a cumulative decrease that exceeds 20% of total building floor area if creating or maintaining intensity was important to the zoning map determination;

5. With regard to development plans that were approved before commitments, or committed elements, were required to be identified on development plans, any change to a development plan depiction that exceeds current Ordinance requirements for setbacks, open space, buffer width or planting, recreation areas, tree protection areas, landscaped areas, or limitations on height, unless such depiction is clearly identified as "conceptual" or "illustrative";

6. Elimination or reduction of a dedication of right-of-way, greenway, or other public component;

7. A change in the proposed phasing of the project where phasing plans are required or are commitments;

8. A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Article 5, Use Regulations), if limitations on the number, range, or types of uses were proposed with the development plan and the governing body limited its consideration of uses to those uses;

9. A significant change in number, location or configuration of access points to the development, or a significant change to previously shown public road improvements;

10. A significant change in the location, square footage, or size of a building adjacent to a residential district or use;

11. A significant change in the architectural design;

12. If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by 3% or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;

13. An increase of more than 3% in impervious area; and

14. Any change that is otherwise prohibited under this Ordinance.

B. Changes to Portions of Development Plans

Where a deviation is proposed from a portion of a development plan, for example from one phase or zoning district, the Planning Director may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or only a portion of the development plan.
C. **Changes Following Transfers to Residential Owners**
   Where a deviation is proposed from a development plan and a portion of the development has been transferred to a residential owner, the Planning Director may exclude such residential portion from a significance assessment if it meets all minimum ordinance requirements. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or part of the development plan.

D. **Changes Required by Ordinance or Other Law**
   Notwithstanding the other requirements of this section and except as stated below, a site plan or preliminary plat shall deviate from an approved development plan to conform to the requirements of a new ordinance or other law adopted after development plan approval, and a zoning map change shall not be required. Exceptions are: 1) where the development plan is vested by the appropriate governing body pursuant to the statutory vested rights procedure; and 2) as authorized under Sec. 1.10.3A, Approved Site Plans, Plats, and Permits and Completed Applications. Under such exceptions, the site plan or preliminary plat may conform to the approved development plan.

### 3.5.13 Protest Petition Sufficiency and Procedures

A. **Protest Petition Defined**
   A petition in opposition to a zoning map change shall be considered a "valid protest petition" if the petition meets the requirements of applicable state or local law.

B. **Standards**
   1. The petition must meet the substantive requirements of GS 160A-385(2) or Session Law 2010-80, as appropriate, and in particular must be signed by the owners of either:
      a. 20% or more of the area included in the proposed change or
      b. 5% of the area of a 100-foot wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. In evaluating the sufficiency of a protest under this provision:
         1. A discrete or separate area shall be calculated for any noncontiguous part of an area proposed for zoning map change that is physically separated from other areas proposed for change by property (not including right of way) that is not part of the requested zoning map change;
         2. A street right of way shall not be considered in computing the 100 foot buffer area as long as the street right of way is 100 feet wide or less.
         3. When less than an entire parcel of land is being rezoned, the 100 foot buffer shall be measured from the property line of the entire parcel.
2. **Property Ownership**
   Property ownership shall be determined based on available recorded property records. In the event of records that are incomplete or in conflict, County tax listings may be used to determine ownership.

3. **Other Required Information**
   The petition shall contain all information required on the form supplied by the Planning Director or designee or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.

C. **Procedure**
   1. A form for a protest petition shall be available from the Planning Director, or designee, or the City Clerk or the Clerk to the Board of Commissioners, as appropriate.

   2. Completed petitions shall be submitted to the appropriate Clerk's office (City Clerk or Clerk to the Board of Commissioners) at least four working days prior to the day of the public hearing.

   3. The Planning Director, or designee, in consultation with the Attorney for the jurisdiction shall determine if the petition meets the criteria for classification of "valid protest petition". The Clerk shall inform the governing body that a petition has been filed and indicate the determination by the Planning Director, or designee, whether the petition is valid or invalid. The Planning Director, or designee, shall notify the petitioner as to the validity of the protest petition.

   4. Where a substantial modification to a zoning map change application that requires resubmission to the Planning Commission has been submitted, the Planning Director, or designee, shall notify the petitioner, in writing, that a new protest petition is required.

   5. Petitions for zoning map change for which a protest petition has been determined to be valid shall require a 3/4 vote of the governing body for approval rather than a simple majority. Vacant positions and members who have been excused from voting because of a conflict of interest shall not be considered in computing governing body membership.

D. **Withdrawal**
   Persons or entities who have signed protest petitions may withdraw their signatures at any time prior to the vote on the proposed map change. Any withdrawal must meet standards established for such withdrawals by the Planning Department. Withdrawals submitted less than two working days prior to the public hearing may result in a continuance of the hearing if the effect of the withdrawal on the validity of the protest cannot be determined prior to the public hearing.
E. **Exemption**

The foregoing provisions concerning protest petitions shall not be applicable to any zoning map change that establishes the City’s zoning designation on property that has been added to the City’s jurisdiction as a result of annexation, except as provided by general or local law.

### 3.5.14 Coordination with Site Plans

Approval of zoning map change with a development plan shall enable the owner or an authorized agent of the owner to prepare a site plan in conformance with the zoning map change and development plan for the property. The site plan may be prepared for the entire property or phases of the development project in accordance with Sec. 3.7, Site Plan Review.

### 3.5.15 Subsequent Applications

When the governing body has taken action on a zoning map change, no new application may be filed for a similar zoning map change until at least 12 months have elapsed since the date of the previous action. The Planning Director or designee may waive this requirement if the application has been significantly modified or there has been a significant change in the facts or circumstances since the previous request.

### 3.5.16 Development Agreements

Development agreements authorized under NCGS 160A-400.20 et seq. and NCGS 153A-379.1 et seq. are not authorized by this Ordinance.

### Sec. 3.6 Subdivision Review

#### 3.6.1 Applicability

A. Subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street right-of-way or a change in existing street right-of-way. Subdivision approval shall be required before the division of land (for any purpose) into two or more parcels, except as specified in Sec. 3.6.2, Actions Exempt from Subdivision Requirements.

B. All requirements imposed through a plat shall run with the land and shall apply against any owner, subsequent owner, or occupant.

#### 3.6.2 Actions Exempt from Subdivision Requirements

A. The following shall not be considered "subdivision" and are exempt from the provisions of this section:

1. The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;

2. The division of land into parcels greater than ten acres if no street right-of-way dedication is involved;

3. The acquisition of strips of land for public easements, including the widening or opening of streets or the location of utility right-of-way; and

4. The division of a tract in single ownership of which the entire area is no greater than two acres.
into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of this Ordinance.

B. No review or approval is required for exempt subdivisions; however, Planning Director or designee certification of exempt status is required. Exempt subdivision plats shall be stamped by the Planning Director or designee, noting their exemption, and signed so that they can be recorded by the Office of the Register of Deeds.

### 3.6.3 No Subdivision without Plat Approval

A. No subdivision of land within the jurisdiction of either the City or County may be filed or recorded with the Office of the Register of Deeds until it has been submitted to and approved by the Development Review Board, Planning Director, or Director's designee as specified herein and until the approval is entered on the face of the plat.

B. Any person who, being the owner or the agent of the owner of any land located within the jurisdiction of this Ordinance, subdivides land in violation of this Ordinance, or transfers, or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this Ordinance, and recorded in the Office of the Register of Deeds, shall be guilty of a misdemeanor and shall be punishable, accordingly, by fine or imprisonment.

C. The description by metes and bounds in the instrument of transfer, or other document used in the process of selling or transferring land, does not exempt the transaction from penalties. The City or County, as appropriate, may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order for compliance.

### 3.6.4 Pre-Application Conference

All applicants considering petitioning for a preliminary plat shall schedule a pre-application conference with the Planning Director, or designee to discuss the procedures, standards, and regulations required for subdivision approval in accordance with the provisions of this Ordinance.

### 3.6.5 Sketch/Concept Plans

It is recommended, but not required, that the applicant applying for subdivision approval submit a sketch/concept plan for review by the Planning Director or designee. This plan should, in simple sketch form, show the proposed layout of streets, lots and other features in relation to existing conditions.

### 3.6.6 Preliminary Plat Requirements

An application for preliminary plat review shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Preliminary plat documents showing the proposed subdivision of the land into lots shall contain, as a minimum, the information listed below unless the Planning Director, or designee, makes the determination that less detailed information is required for adequate review. No processing or review of a preliminary plat will proceed without the required information. Detailed standards and specifications for design and construction are available from City, County and State agencies, as applicable.

**A. General Requirements**

1. **Title Block** - Name of project, labeled: Preliminary Plat; submittal and revision dates; sheet size (36” x 48” maximum) with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 200 feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts.
and any overlay zones.

2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.

3. In addition, State or Federal regulations may require that additional information be supplied to the Planning Department as a part of a submittal.

B. Existing Conditions

1. Boundary of the property, using metes and bounds with angle of departure of adjacent properties; site size and amount to be developed; lot lines; building footprints and square footage; improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.; any septic tanks, drain fields and wells; culverts and other subsurface features; all utility easements, above and below ground, including information on type, size, and elevation; railroads; cemeteries; setback requirements; zoning of the site and adjacent zoning, including any overlay zones; land use of the site and adjacent land uses including major improvements within 50 feet of the subject property; adjacent property owners; adjacent streets, including name and right of way width. Existing features shall be clearly distinguishable from proposed development.

2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.

3. A list of any conditions applied to the property as part of any previous approvals.

C. Proposed Conditions

1. Street Improvements (Public and Private): location of improvements or widenings, names, widths of rights of way and pavement, design criteria including sight triangles and a typical cross section; Traffic Impact Analysis, if required.

2. Pedestrian Circulation: location of sidewalks and other pedestrian ways including dimensions and surfacing, along streets and other locations; provision of crosswalks.

3. Landscaping: location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey; and the location and a description of all proposed and required tree protection measures.

4. Grading: location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two foot intervals, supplemented with spot elevations when necessary, including location, description, and size of any retaining walls; dimensions of stream buffers.

5. Utilities: location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.

6. Storm Drainage: location and description of temporary and permanent storm drainage pipes and
swales; amount of impervious surface; provisions for erosion and sedimentation controls, including retention and detention facilities; mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements; as well as professionally sealed engineering calculations used in the design.

7. *Water and Sewer:* location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.

8. *Property Dedications/Reservations:* location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

9. Specific performance standards as required by other Articles of the UDO.

10. *Within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas:* demonstration that the subdivision will minimize flood damage through the location and construction of all public utilities and facilities, including water and sewer systems; adequate drainage in accordance with adopted standards to reduce exposure to flood hazards.

D. **Traffic Impact Analysis**

A traffic impact analysis (TIA) pursuant to Sec. 3.3, Traffic Impact Analysis (TIA), may be required.

### 3.6.7 Preliminary Plat Approval

**A. Applicability**

1. A preliminary plat shall be required for all subdivision of land within the jurisdiction of this Ordinance for developments of more than six lots. A preliminary plat is optional for development of six lots or less with no public dedication of land, no streets, no utility extensions, no required diffuse flow mechanisms, and no required stormwater management facilities.

2. Subdivision approval requires the submission of both preliminary and final plats and full interagency review for conformity with the requirements of this Ordinance and other development-related ordinances.

3. Where site plans, as required by this Ordinance, serve as preliminary plats for subdivisions, they shall satisfy these submission requirements in addition to those required for zoning compliance.

**B. Public Notice**

As applicable, notification of preliminary plat review shall be sent to groups including, but not limited to, the following:

1. Durham Public Schools;

2. Durham Area Transportation Authority;

3. Historic Preservation Commission (if applicable);

4. Durham Open Space and Trails Commission;

5. Durham Bicycle and Pedestrian Advisory Commission; and

6. If the applicant for the preliminary plat is seeking approval of any of the modifications to standards specified in Sec. 3.7.1B.3, Major Site Plans, that are granted at the discretion of a governing body, any organization or individual that is registered to receive notice pursuant to Sec. 3.2.5D, Registration to Receive Notice, and is located within 1,000 feet of the site under consideration. Notice shall be provided to each organization or individual in the manner specified.
in its registration information, which may be first class mail, electronic mail, or other manner offered by the Planning Director.

C. **Action by the Planning Director**

Staff review agencies shall complete review and transmit comments back to the Planning Director or designee. If required corrections are minor, as determined by the Planning Director or designee, the Planning Director or designee shall schedule the subdivision for review at the next Development Review Board meeting; if required corrections are extensive, the applicant shall correct the plat before it is scheduled for Development Review Board review. If the applicant fails to submit revised plats in response to the comments of the staff review agencies within 90 days of receiving such comments from the Planning Director, or designee, the Planning Director may consider the application to have been withdrawn by the applicant.

D. **Action by the Development Review Board**

1. The preliminary plat documents, along with the review comments, will then be considered by the Development Review Board at a public meeting at which a representative of the subdivider or any other interested person may attend.

2. After hearing a recommendation from the Planning Director or designee, the Development Review Board shall approve the plat as is, approve it subject to additional corrections, defer action for additional information and corrections, or disapprove it. Approved or corrected preliminary plats shall be stamped and signed denoting approval. If the preliminary plat is disapproved or deferred, the Development Review Board shall notify the applicant of the reasons for such disapproval or deferral.

3. The preliminary plat shall be approved by the Development Review Board if it meets the following criteria:
   a. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector plans, and bicycle plans;
   b. Conforms with all the provisions and requirements of this Ordinance; and
   c. Conforms with all the provisions and requirements of other applicable ordinances not included in this ordinance.

E. **Reservation of Public Facility Sites and Lands**

   **Commentary:** This section does not apply to the reservation of lands for public streets and roads

1. The review of preliminary plats may be delayed by no more than 45 calendar days if the proposed subdivision contains sites which appear in an adopted plan or policy documents as a future site for a public school or other public facility, recreation area, park, greenway or other open space. During preliminary plat review, the appropriate entity responsible for future site acquisition shall be given 45 calendar days from date of plat submission to decide if it wishes to reserve the site.

2. If the site is not to be reserved, the subdivision shall be processed in the normal fashion. If the agency wishes to reserve the site and specifies such intent in writing to the Planning Director or designee, the subdivision shall not be approved without the reservation.

3. Public school authorities shall have 18 months from the date of preliminary plat approval to
acquire the site by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 18-month period, none of the above actions has occurred, the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for its use.

**Commentary:** See NC General Statutes 153A-331 and 160A-172.

4. Public agencies other than schools shall have 120 calendar days from the date of preliminary plat approval to arrange for site acquisition for public facilities by option to purchase, by purchase, by receipt of dedication, or by initiating condemnation proceedings. If, at the end of the 120-day period, none of the above actions has occurred the subdivider may consider the land free from reservation and apply for revised preliminary plat approval for private use of the property.

F. **Issuance of Required Permits**
   
   Upon preliminary plat approval, the applicant may apply for the required permits to begin site work and the installation of improvements. All site work shall be performed in compliance with the requirements of this section and other applicable regulations of the city, county, and state. No required permit may be issued until the required preliminary plat is approved.

G. **Preliminary Plat Revisions**

1. Minor revisions to approved preliminary plats, which reflect the same basic street and lot configuration as used for the original approval, may be approved by the Planning Director or designee.

2. Significant changes to an approved preliminary plat, as determined by the Planning Director or designee, shall be resubmitted for review and approval as if it is a new application.

H. **Continuing Validity of Preliminary Plat**

1. An approved preliminary plat shall retain its validity for four years, if:
   
   a. A permit to begin development pursuant to the plat, such as a land disturbance permit, a building permit, or an improvement permit has been issued and has remained continuously valid thereafter; and,

   b. Building or land disturbing activity has begun on the property.

2. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the preliminary plat for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

### 3.6.8 Final Plat Approval

A. **Applicability**

   A final plat shall be required for all subdivision of land within the jurisdiction of this Ordinance except as allowed under North Carolina General Statute.

B. **Conformity with Preliminary Plat**

   The final plat shall conform to the approved preliminary plat, if any, and may constitute only that portion of the preliminary plat which is proposed for recordation.

C. **Application Requirements**

   1. When the installation of required site improvements is nearing completion, the subdivider shall submit a final plat for review and approval.
2. An application for final plat approval shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3. The final plat shall be drawn in accordance with North Carolina General Statute 47-30, Plats and Subdivisions-Mapping Requirements; standard land surveying and mapping practices; and city/county engineering standards.

D. **Endorsements on Final Plats**

The following certificates shall be placed upon all final plats:

1. Certificate of accuracy and mapping signed by a registered surveyor;

2. Certificate of ownership and dedication signed and notarized, including all individuals, partnerships, and corporations, and lenders with financial security interests;

3. Attorney’s certification of ownership for any final plat involving a right-of-way dedication signed and notarized; and

4. Review officer’s certification.

E. **Action by the Planning Director**

Staff review agencies shall complete review and transmit comments back to the Planning Director, or designee. The Planning Director or designee shall approve the plat as is, defer action for additional information and corrections, or disapprove it. If the final plat is disapproved or deferred, the Planning Director or designee shall notify the applicant of the reasons for such disapproval or deferral. The final plat shall be approved by the Planning Director or designee if it meets the following criteria:

1. Conforms with all the provisions and requirements of applicable adopted plans, including but not limited to the Comprehensive Plan, historic preservation plans, open space plans, greenways plans, transportation plans, gateway plans, corridor plans, collector plans, and bicycle plans;

2. Conforms with all the provisions and requirements of this Ordinance;

3. Conforms with all the provisions and requirements of other applicable ordinances not included in this ordinance;

4. Conforms with the preliminary plat, if any;

5. Conforms with completed and approved construction drawings for public infrastructure, where such construction drawings are required by this Ordinance or other applicable ordinance; and

6. Is accompanied by a bond or other performance guarantee deemed adequate in amount and form by the requesting department, if required infrastructure, including but not limited to stormwater, street, or water and sewer improvements, has not been completed in accordance with approved construction drawings, and if the department responsible for such infrastructure has consented to final plat approval pending its completion.

F. **Issuance of Certificate of Compliance**

1. **Necessary Infrastructure**

   a. If a final plat for a project has been approved prior to completion of stormwater facilities, water and sewer utilities, streets, sidewalks, and recreation facilities, certificates of compliance shall not be issued and permanent water or sewer service shall not be provided for buildings within the platted area until completion of required improvements except as further provided in paragraph b. below.

   b. If the director or designee of the department responsible for acceptance or regulation of the
required infrastructure determines in his/her reasonable discretion that delay will improve the quality of the infrastructure or will conserve resources, he/she may allow certificates of compliance to be issued. In such case, the responsible director or designee may require supplementation of the performance guarantee(s) that was provided prior to final plat approval, and shall, in addition, set a date by which the necessary infrastructure shall be completed. Examples of improvement for which delays may be granted include completing stormwater facilities after they are no longer needed as sedimentation basins; delaying final asphalt application on road surfaces for a period of time to detect problems; delaying construction of turn lanes until traffic thresholds are reached; delaying sidewalk segments as individual houses are built; and delaying construction of infrastructure that requires coordination with other planned infrastructure.

2. **Other Improvements**

For other required improvements, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the responsible department director or designee shall determine the time period within which the improvement must be completed.

G. **Expiration of Approval**

The subdivider shall have 180 days after approval to file and record the final plat with the Office of the Register of Deeds before the approval becomes void.

3.6.9 **Waivers**

For purposes of financing or refinancing development, it is sometimes necessary to subdivide a previously approved development complex (including but not limited to a shopping center, an office or industrial park, or a housing complex) originally located on a single parcel into two or more lots. The Development Review Board may by affirmative majority vote, vary or modify the requirements of this Ordinance and the dimensional, parking, landscaping, and buffering provisions of this Ordinance to permit such subdivision to occur subject to making the following findings:

1. A valid, approved site plan exists for the overall complex;
2. The complex, in its entirety, satisfies all Ordinance requirements; and
3. Each final plat created contains a note stating that the owners acknowledge that the individual parcel is a part of the named development complex, and that deeds of easement, restrictive covenants, and/or other legal documents necessary for the perpetual functioning of the development complex shall be executed and recorded with the final plat.

**Sec. 3.7 Site Plan Review**
3.7.1 Applicability

A. The site plan review process assures any future development will occur in a planned and orderly manner. All proposed development, except for single-family and two-family development on single lots (which may be approved through the issuance of building permits), shall be subject to the site plan review process so long as changes that are not interior to an existing building are proposed, unless a change in the category of use (from overnight accommodations to retail sales, for example) that may result in alternative standards for parking, landscaping, or buffers is proposed.

B. Types of Site Plans

There shall be three types of site plans with differing levels of approval required for each. The criteria for establishing which type of site plan and the corresponding level of approval for each are indicated below:

1. Simplified Site Plans

   a. Criteria

      Projects shall be considered simplified site plans if:

      1. They do not involve the development of more than 25 residential units or 25,000 square feet of non-residential space;
      2. They do not require a TIA pursuant to Sec. 3.3, Traffic Impact Analysis (TIA);
      3. They request no modifications of any of the standards established in this Ordinance other than those which the Planning Director or designee may make administratively; and
      4. They do not involve the development of any use that requires the issuance of a special use permit.

   b. Approving Authority

      The Planning Director or designee shall be the approving authority for simplified site plans.

2. Minor Site Plans

   a. Criteria

      Projects that do not meet the criteria for simplified site plans shall be considered minor site plans if:

      1. They request no modifications of any of the standards established in this Ordinance other than those which the Development Review Board or Planning Director or
designee may make administratively; and

2. They do not involve the development of any use that requires the issuance of a major special use permit.

b. Approving Authority

The Development Review Board shall be the approving authority for minor site plans.

3. Major Site Plans

a. Criteria

Projects shall be considered major site plans if:

1. They request modifications of a standard established in this Ordinance that requires governing body approval;

2. They involve the development of any project that requires the issuance of a major special use permit; or

3. They are located in a Watershed Protection Overlay Critical Area (A), as defined in Sec. 4.11, Watershed Protection Overlay, with impervious surface that exceeds the maximum permitted by the Low Density Option under Sec. 8.7, Watershed Protection Overlay Standards.

b. Process

Following review of the proposed development by all reviewing agencies, the Development Review Board shall make a final review of the request and make a recommendation to the approving authority on the project.

c. Approving Authority

The appropriate governing body shall be the approving authority for major site plans.

C. All requirements imposed through a site plan shall run with the land and shall apply against any owner, subsequent owner, or occupant.

D. Delineation of the proposed limits of disturbance shall be required.

3.7.2 Conformance to an Approved Development Plan

A site plan shall conform to an approved development plan except as required under Sec. 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under Sec. 3.5.12, Deviations from Approved Development Plans, and Sec. 3.5.6C, Authority of the Planning Director.

3.7.3 Pre-Application Conference

All applicants petitioning for a site plan may schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations required for site plan approval in accordance to the provisions of this Ordinance.

3.7.4 Site Plan Requirements

An application for site plan review shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Site Plan documents shall contain, as a minimum, the information listed below unless expressly exempted by another provision of this Ordinance or the Planning Director, or the Director's designee makes the determination that less detailed information is required for adequate review. No processing or review of a site plan will proceed without the required information. Detailed standards and specifications for design and construction are available from City, County and State agencies, as applicable.
A. General Requirements

1. Title Block - Name of project, labeled: Site Plan; submittal and revision dates; sheet size (36” x 48” maximum) with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 200 feet on a standard engineering scale); north point; property identification number; vicinity map clearly establishing the location of the proposed project, with readily recognizable landmarks, stream buffers, flood plain boundaries, property zoning districts and any overlay zones.

2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of surveyor, engineer, landscape architect, or other designer, with seal.

3. In addition, State or Federal regulations may require that additional information be supplied to the Planning Department as a part of a submittal.

B. Existing Conditions

1. Boundary of the property, using metes and bounds with angle of departure of adjacent properties; site size and amount to be developed; lot lines; building foot prints and square footage; improvements, such as loading areas, parking areas, driveways, alleys, streets, sidewalks, etc.; any septic tanks, drain fields and wells; culverts and other subsurface features; all utility easements, above and below ground, including information on type, size, and elevation; railroads; cemeteries; setback requirements; zoning of the site and adjacent zoning, including any overlay zones; land use of the site and adjacent land uses including major improvements within 50 feet of the subject property; adjacent property owners; adjacent streets, including name and right of way width. Existing features shall be clearly distinguishable from proposed development.

2. Topographic contours at two foot intervals for all property within 100 feet of a proposed development area and topographic contours at five foot contour intervals for the remainder of the property including a source reference; locations and names of water features including shorelines, water bodies, intermittent and perennial streams; a specimen tree survey; locations of drainage ways, stream buffers, floodways, floodway fringes, wetlands and wetland buffers; locations of vegetation, rock outcrops, steep slope areas, Durham Natural Inventory sites and Durham Historic Inventory Sites.

3. A list of any conditions applied to the property as part of any previous approvals.

C. Proposed Conditions

1. Buildings: location, footprint, entrances, area by floor (square feet), height, finished floor elevation, setback requirements defining building envelope. When building descriptions have been included in a zoning approval, the site plan shall include building elevations or renderings as well as any other information needed to support the requirements of the zoning map change approval.

2. Site Service Areas and Facilities: location of loading, trash/recycling handling and other facilities including height, footprint and screening.

3. Internal Vehicular Circulation and Parking: location of drives and driveways [with radii] aisles, and parking spaces, including number of spaces required, and number provided, a justification for the number of spaces exceeding the minimum requirement, the number of handicapped spaces required and number provided, the location and number of spaces devoted to carpools if required, the number of spaces devoted to bicycle parking, the type(s) of bicycle racks provided, a description of the pavement structure, a lighting plan if lighting is proposed.

4. Street Improvements (Public and Private): location of improvements or widenings, names, widths of
rights of way and pavement, design criteria including sight triangles and a typical cross section;
Traffic Impact Analysis: if required.

5. *Pedestrian Circulation:* location of sidewalks and other pedestrian ways including dimensions and surfacing, along streets and other locations; provision of crosswalks.

6. *Landscaping:* location of all plant materials and other landscaping features, including calculations of amount required and the amount provided; the number, size, and description of plant materials, fences, walls and berms; provisions for screening specialized features, such as storage areas; calculations of the amount of tree coverage required and the amount and percentage of tree coverage provided by tree preservation and tree replacement; calculation of the amount of street trees and the amount provided by tree preservation and tree installation; a land disturbance tree survey; and the location and a description of all proposed and required tree protection measures.

7. *Grading:* location of vegetation to be retained including approximate sizes and protection measures to be used; a depiction of contours at two foot intervals, supplemented with spot elevations when necessary, including location, description, and size of any retaining walls; dimensions of stream buffers.

8. *Utilities:* location and width of all easements and rights of way for water, sewer, storm sewers, gas, electric, communication facilities, or any other utility facility.

9. *Storm Drainage:* location and description of temporary and permanent storm drainage pipes and swales; amount of impervious surface; mechanisms for complying with paragraph 8.5.5, Diffuse Flow Requirements; as well as professionally sealed engineering calculations used in the design.

10. *Water and Sewer:* location and description of public and private water and sanitary sewer improvements including connections to existing facilities and maintenance provisions.

11. *Property Dedication/Reservations:* location and description of dedicated or reserved properties under public or private ownership including the boundaries, size, purpose, future ownership and maintenance provisions for the property. This category includes but is not limited to thoroughfares, rail corridors, greenways, recreation facilities, open space and common areas.

12. Specific performance standards as required by other Articles of the UDO.

D. **Traffic Impact Analysis**

A traffic impact analysis (TIA) pursuant to Sec. 3.3, Traffic Impact Analysis (TIA), may be required.

**3.7.5 Action by the Planning Director**

A. The Planning Director or designee shall compile all staff comments on the site plan in light of any applicable requirements of this Ordinance. A copy shall be provided to the applicant.

B. The Planning Director or designee shall be responsible for approving all simplified site plans.

C. The Planning Director or designee shall provide a copy of all staff comments on minor and major site plans to the Development Review Board.

**3.7.6 Action by the Development Review Board**

A. The Development Review Board shall approve, approve with modifications, deny, or continue the minor site plan, including the Traffic Impact Analysis where applicable.

B. The Development Review Board shall recommend approval, approval with modifications, denial, or may continue the major site plan, including the Traffic Impact Analysis where applicable.
3.7.7 Action by the Governing Body

The governing body shall approve, approve with modifications, deny, or continue the major site plan.

3.7.8 Site Plan Review Criteria

The following evaluations shall be made during the site plan review process. Site plans that meet the following criteria shall be approved by the approving authority:

A. Compliance with all applicable Ordinance requirements;
B. Compliance with all previously approved applicable plans, including open space and trails plans;
C. The site plan displays a site design and development intensity appropriate for and tailored to the unique natural characteristics of the site, considering factors such as the location of significant wooded areas, specimen trees, wetlands, steep slopes, Durham Natural Inventory sites, and floodplains and, if the project is not subject to the provisions of Sec. 6.8, Infill Development in Residential Districts, the orientation of proposed buildings in order to maximize solar exposure;
D. For nonresidential and multifamily project, the site plan displays the location of trash handling, recycling, grease bins, and other waste related facilities employed in the normal operation of the use;
E. Adequacy and location of parking areas and pedestrian and vehicular access points;
F. Adequacy of design of traffic patterns, traffic control measures and street pavement areas, with provisions for maintaining traffic flows and reducing unfavorable effects of traffic on nearby properties;
G. Compliance with site construction specifications;
H. Adequacy of stormwater facilities, water supply, sanitary sewer service, fire protection, street signs, and street lighting as evidenced by conformance with department standards, specifications and guidelines;
I. Compliance with requirements for easements or dedications; and
J. Where a TIA has been submitted, accommodation of the traffic generated by the development by the existing or funded transportation system, or adequate traffic mitigation measures have been proposed within the development project.

3.7.9 Modifications Required for Approval

Site plans requiring modifications shall be returned to the Planning Director or designee within 90 days or the site plan application shall be considered withdrawn. An extension period may be granted by the Planning Director, or designee.

3.7.10 Corrected Site Plans

Before final approval, the applicant shall submit the corrected site plan to the Planning Director or designee, which addresses any comments made as part of the approval process.

3.7.11 Issuance of Building Permits

After the final approval, the approved plans shall be stamped and dated by the Planning Director, or designee, and supplied to appropriate departments. After an approved copy is received by the Inspections Director, or designee, building permits may be issued for the project. No building permit may be issued until the required site plan is approved.

3.7.12 Inspections of Required Improvements

Inspections during the installation of site improvements shall be made by the entity responsible for such
improvements as required to certify compliance with approved site plans. No improvements shall be accepted for maintenance by the governing jurisdiction unless and until the requirements regarding public improvements have been met.

3.7.13 Issuance of Certificate of Compliance

Improvements specified in the approved plan shall be made prior to issuance of a certificate of compliance unless an extension of compliance has been prepared and approved in conformance with the requirements of this Ordinance.

3.7.14 Site Plan Amendments

A. Minor changes to the approved site plan, such as those resulting from field conditions or which result in an equivalent or better performance may be approved by the Planning Director or designee in conjunction with the Inspections Director or designee.

B. Significant changes to the approved site plan, as determined by the Planning Director or designee shall be resubmitted for approval. Site Plans resubmitted for approval are processed as if they were a new application.

C. A site plan amendment request shall clearly identify the elements for which approval is sought in both text and graphic form. Only those elements so identified shall be reviewed and considered for approval. If any element of an approved plan is changed but not identified, the amendment request shall be denied in its entirety or, if already approved, the amendment shall be deemed null and void in its entirety.

3.7.15 Coordination with Major Special Use Permits

Applications for major special use permits may be submitted concurrently with a site plan. However, decisions shall be rendered with a separate motion.

3.7.16 Continuing Validity of Site Plans

A. An approved site plan shall retain its validity for four years, if:

1. A permit to begin development pursuant to the site plan, such as a land disturbance permit, a building permit, or an improvement permit, has been issued and has remained continuously valid thereafter; and,

2. Building or land disturbing activity has begun on the property.

B. The issuance of a building permit or a certificate of compliance within a phase of a project shall not extend the validity of the site plan for the unbuilt portions of that phase or any future phases of the project for which building permits have not been issued.

Sec. 3.8 Sedimentation and Erosion Control
3.8.1 Applicability

A. If required under Sec. 12.10, Sedimentation and Erosion Control, an approved sedimentation and erosion control plan and/or a land-disturbing permit shall be obtained before commencing land-disturbing activity.

B. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, land-disturbing activity that requires a sedimentation and erosion control plan under Sec. 12.10, Sedimentation and Erosion Control, shall not commence until at least 30 days after a sedimentation and erosion control plan is filed with the County Sedimentation and Erosion Control Office, regardless of when the plan is approved.

3.8.2 Application Requirements

A. Erosion and Sedimentation Control Plan

1. Three copies of a sedimentation and erosion control plan shall be filed with the County Sedimentation and Erosion Control Office.

2. A sedimentation and erosion control plan shall contain site drawings, vicinity maps, assumptions, calculations, narrative statements, and a construction sequence as needed to adequately describe the proposed development and the measures proposed to comply with the requirements of this Article.

3. A sedimentation and erosion control plan shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional sediment and erosion control specialist. The County Sedimentation and Erosion Control Officer or designee may, however, deem such a seal and signature not necessary due to site simplicity (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the sedimentation and erosion control measures required.

4. The approval of a sedimentation and erosion control plan is conditioned on the applicant’s compliance with federal, state and local water quality laws, regulations, and rules.

5. An approved sedimentation and erosion control plan shall be kept on file at the job site.

B. Land Disturbing Permit

1. A land-disturbing permit may be obtained by submitting the following:
   a. Applicable fee;
   b. Zoning compliance checkoff issued by the Durham City-County Planning Department;
   c. Completed Durham County Financial Responsibility Ownership Form With Landowner Consent Form (FRO);
   d. Approved sedimentation and erosion control plan, if required;
   e. Improvement security, if required;
   f. Certification that tree protection fencing has been installed, if required; and
   g. Approval of the proposed project by the City or County as applicable.

2. No permit shall be issued until such time as the Sedimentation and Erosion Control Officer or designee is assured that the proposed land-disturbing activity will be carried out in accordance
with this section and Sec. 12.10, Sedimentation and Erosion Control, and the approved sedimentation and erosion control plan, if required. A land-disturbing permit application may be disapproved for the same reasons that a sedimentation and erosion control plan may be disapproved, as set forth in Sec. 3.8.7, Disapproval of Plan, of this Ordinance.

3. The Sedimentation and Erosion Control Officer or designee shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Officer or designee determines that the activity may result in significant off-site damage. The applicant shall file with the Officer or designee an improvement security in the form of a performance or cash bond or letter of credit. The amount shall be that which the Officer or designee deems sufficient to cover all costs of protection or other improvements required for conformity with standards specified in this section and Sec. 12.10, Sedimentation and Erosion Control. The security may be adjusted or released as the amount of disturbed area changes. The security shall be released when the Officer or designee has certified that all of the requirements of such sections have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this section or Sec. 12.10, Sedimentation and Erosion Control, or any rule or order promulgated in furtherance thereof.

4. Prior to initiating land-disturbing activity, the permittee shall notify the Sedimentation and Erosion Control Office of the date that such activity will begin.

5. A land-disturbing permit issued shall be prominently displayed at the job site until all construction is completed, all permanent sedimentation and erosion control measures are removed, and the site has been stabilized as required.

3.8.3 Fees

The fees charged for the administration and enforcement of this Article shall be as prescribed by the Board of Commissioners.

3.8.4 Action by Sedimentation and Erosion Control Office

A. The County Sedimentation and Erosion Control Office shall forward a copy of each complete sedimentation and erosion control plan to the Durham Soil and Water Conservation District for review and comment.

B. The County Sedimentation and Erosion Control Officer or designee shall review each complete sedimentation and erosion control plan submitted and within 30 days of receipt shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval.

C. If, following commencement of a land-disturbing activity pursuant to an approved sedimentation and erosion control plan, the County Sedimentation and Erosion Control Officer or designee determines that the plan is inadequate to meet the requirements of this section or Sec. 12.10, Sedimentation and Erosion Control, the Officer or designee may require such revisions as it deems necessary to comply with such sections. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Pending approval of a revised plan, work shall cease or shall continue only as authorized by the Officer or designee.
D. The County Sedimentation and Erosion Control Officer or designee shall review each permit application that does not require an approved sedimentation and erosion control plan and within 14 calendar days of receipt shall notify the person submitting the application that it has been issued or denied.

3.8.5 Action by Durham Soil and Water Conservation District

The Durham Soil and Water Conservation District shall review a sedimentation and erosion control plan and submit any comments and recommendations to the County Sedimentation and Erosion Control Office within 20 days of receipt, or within any shorter period of time as may be agreed upon by the District and Office. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the plan.

3.8.6 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer or designee, a preconstruction conference may be required.

3.8.7 Disapproval of Plan

A. An erosion control plan may be disapproved upon a finding that an applicant, or a parent, subsidiary or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the North Carolina Sedimentation Control Commission or a local government pursuant to the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act) or local ordinance adopted pursuant to the Act, and has not complied with the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act or a local ordinance adopted pursuant to the Act by the time the payment is due;

3. Has been convicted of a misdemeanor pursuant to NCGS § 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or

4. Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the Act.

B. For purposes of this subsection, an applicant's record may be considered for only the two years prior to the application date.

C. Any person engaged in land-disturbing activity who fails to file a plan in accordance with this Article, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan, shall be deemed in violation of this Article.

3.8.8 Amendment of Plan

Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as described in this section for a new application. Until such time as such amendment is approved by the Sedimentation and Erosion Control Officer or designee, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

3.8.9 Appeals

A. Except as provided in paragraph B. of this subsection, the appeal of a disapproval or approval with
modifications of a plan shall be governed by the following provisions:

1. The disapproval or modification of any proposed erosion control plan or the refusal to issue a land-disturbing permit by the Sedimentation and Erosion Control Officer or designee shall entitle the person submitting the plan, or applying for the permit, to a hearing if such person submits written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of written notice of disapproval or modifications. The written demand must specify, with particularity, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued;

2. Hearings held pursuant to this section shall be conducted by the Board of Commissioners within 15 days after the date of the appeal or request for a hearing, or at the next regularly scheduled meeting, whichever is later; and

3. If the Board of Commissioners upholds the disapproval or modification of a proposed erosion control plan or refusal to issue a permit following the public hearing, the person submitting the plan or permit application shall then be entitled to appeal the Board of Commissioners’ decision to the State Sedimentation Control Commission as provided in NCGS § 113A-61(c) and Title 15 NCAC 4B.0018(d).

B. In the event that an erosion control plan is disapproved pursuant to Sec. 3.8.7, Disapproval of Plan, the County Sedimentation and Erosion Control Office shall notify the Director of the Division of Land Resources (within the North Carolina Department of Environment and Natural Resources [DENR]) of such disapproval within ten days. The Office shall advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Office’s disapproval of the plan pursuant to Sec. 3.8.7, Disapproval of Plan, directly to the State Sedimentation Control Commission.

3.8.10 Expiration

A. A land-disturbing permit shall expire at the end of:

1. One year from the date of issuance if no land-disturbing activity has been undertaken in that period. No land-disturbing activity may take place following expiration until the person responsible has applied for, and received, a new land-disturbing permit. The fee for the new permit shall be 100% of the current applicable fee; or

2. A two-year period, unless it is extended by the Sedimentation and Erosion Control Officer or designee upon written request of the permit holder. The request for extension shall include reasons for incompletion of the work. After review of the original plan and an on-site inspection of the completed work, the permit may be extended effective for a period not to exceed six months from the date of expiration of the original permit. The fee for the extended permit shall be 25% of the current applicable fee. If work cannot be completed and the site permanently stabilized prior to expiration of the permit extension, then a new land-disturbing permit must be applied for and obtained as described in this section.

B. An approved sedimentation and erosion control plan for which no permit has been issued shall expire one year from the approval date. If a plan has been disapproved, a revised plan must be submitted within one year from the disapproval date or the file will be closed.

Sec. 3.9 Special Use Permit
3.9.1 Applicability

A. Special uses within the zoning districts are considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses may require individual review.

B. A minor special use permit shall be required for all minor special uses as set forth in the use table in Sec. 5.1, Use Table, and as may be specified elsewhere in this Ordinance. Minor special use permits require approval by the Board of Adjustment.

C. A major special use permit shall be required for all major special uses as set forth in the use in Sec. 5.1, Use Table, for fill or development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas pursuant to Sec. 8.4.4D, Development Requiring Governing Body Approval, and for spray irrigation in a conservation subdivision pursuant to Sec. 6.2.4, Conservation Subdivision, and as may be specified elsewhere in this Ordinance. Major special use permits require approval by the appropriate governing body.

D. Projects within the Downtown Tier that require both minor and major special use permits may have the use permits consolidated into a single hearing for a major special use permit before the appropriate governing body so long as all required findings for both the minor and major special use permits are made.

3.9.2 Pre-Application Conference

All applicants applying for a special use permit shall schedule a pre-application conference in accordance with Sec. 3.2.2, Pre-Application Conference.

3.9.3 Application Requirements

All applications for special use permits shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.9.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as set forth in Sec. 3.2.5, Notice and Public Hearings.

3.9.5 Action by the Planning Director

The Planning Director or designee shall prepare a report that reviews the special use permit in light of any requirements of this Ordinance. A copy shall be provided to the Board of Adjustment or the governing body, as appropriate, and the applicant.

3.9.6 Approval of a Minor Special Use Permit

A. Prior to scheduling the public hearing on the minor special use permit, the corresponding site plan shall be ready for action by the approving authority.

B. After conducting the public hearing, and hearing the recommendations of the Planning Director or designee, the Board of Adjustment shall:
   1. Approve the request;
   2. Approve the request with conditions.
3. Deny the request; or
4. Continue the hearing.

C. The Board of Adjustment may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the minor special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

### 3.9.7 Approval of a Major Special Use Permit

A. Prior to scheduling the public hearing on the major special use permit, the corresponding site plan shall be ready for action by the approving authority.

B. After conducting the public hearing, and hearing the recommendations of the Planning Director, Transportation Manager, or their designee as appropriate, the governing body shall:
   1. Approve the request;
   2. Approve the request with conditions.
   3. Deny the request; or
   4. Continue the hearing.

C. The governing body may place conditions on the use as part of the approval to assure that adequate mitigation measures are associated with the use. The conditions shall become a part of the major special use permit approval. Violations of any of the conditions shall be treated in the same manner as other violations of this Ordinance.

### 3.9.8 Criteria for Approval of Major and Minor Special Use Permits

#### A. General Findings

Applications for major or minor special use permits shall be approved only if the approving authority finds that the use as proposed, or the use as proposed with conditions, is:

1. In harmony with the area and not substantially injurious to the value of properties in the general vicinity;
2. In conformance with all special requirements applicable to the use;
3. Will not adversely affect the health or safety of the public; and
4. Will adequately address the review factors identified below.

#### B. Review Factors

The applicant shall demonstrate that the review factors listed below have been adequately addressed. If an application is denied, the approving authority shall specify which of these review factors, if any, were not adequately addressed.

1. **Circulation**
   Number and location of access points to the property and the proposed structures and uses, with particular reference to automotive, bicycle, mass transit and pedestrian safety and convenience, traffic flow and control, and access in case of fire or catastrophe.

2. **Parking and Loading**
   Location of off-street parking and loading areas.

3. **Service Entrances and Areas**
Locations of refuse and service areas with particular reference to ingress and egress of service vehicles.

4. **Lighting**
   Locations of exterior lighting with reference to glare, traffic safety, economic effect and compatibility with other property in the area.

5. **Signs**
   Appropriateness of signs considering location, color, height, size, and design within the context of other property in the area.

6. **Utilities**
   Location and availability of utilities.

7. **Open Spaces**
   Location of required yards and other open spaces and preservation of existing trees and other natural features.

8. **Environmental Protection**
   Preservation of tree cover, Durham Inventory Sites, floodplain, stream buffers, wetlands, steep slopes, open space and other natural features, and protection of water quality.

9. **Screening, Buffering and Landscaping**
   Installation of screening, buffering, fencing and landscaping where necessary to protect adjacent property.

10. **Effects on Nearby Properties**
    Effects of the proposed use on nearby property, including, but not limited to, the effects of noise, odor, lighting, and traffic.

11. **Compatibility**
    The level of general compatibility with nearby properties and impacted neighborhoods, including but not limited to the appropriateness of the scale, design, and use in relationship to other properties.

12. **Consistency with Policy**
    Consistency with the Comprehensive Plan and applicable development tier guidelines, overlay purposes, and zoning district intent statements in Article 4, Zoning Districts.

13. **Other Factors**
    Any other review factors which the approving authority considers to be appropriate to the property in question.

**C. Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas (Floodway Fringe, Non-Encroachment Area Fringe, and Areas of Shallow Flooding [Zone AO] Only)**

1. **Additional Review Factors**
   The applicant for a major special use permit under this section shall demonstrate that the additional review factors listed below have been adequately addressed. If the application is denied, the governing body shall specify which of these review factors, if any, were not adequately addressed.

   a. Susceptibility of the proposed facility, structure, or other development and its contents to flood damage and the effect of such damage on the individual property owner and others as a result of flood damage;

   b. Importance of the services provided by the proposed facility, structure, or other
development to the community;
c. Necessity to the facility, structure, or other development of a waterfront location, where applicable;
d. Compatibility of the proposed use with existing and anticipated development;
e. Safety of access to the property in times of flood for ordinary and emergency vehicles;
f. Expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site;
g. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges;
h. Relationship of the proposed use to the comprehensive plan and floodplain management program for that area; and
i. Any other relevant factors, technical evaluations, or standards specified in other sections of this ordinance.

3.9.9 Coordination with Variances

Applications for variances may be submitted concurrently with requests for major and minor special use permits. However, decisions shall be rendered separately for any variance and the special use permit.

3.9.10 Coordination with Zoning Map Change Applications

An application for a major or minor special use permit may be reviewed concurrently with a zoning map change application. However, decisions shall be rendered with separate motions.

3.9.11 Resubmittals

An application for a major or minor special use permit which has been denied may be resubmitted if there has been a change in circumstances, as determined by the Planning Director or the Director’s designee.

3.9.12 Amendments

Alterations or revisions to approved major or minor special uses may be approved by the Planning Director or designee if the major or minor special use still meets the intent of the standards established with the original approval. Significant modifications to approved major or minor special uses, as determined by the Planning Director or designee, shall require submittal of a new application.

3.9.13 Expiration

A major or minor special use permit shall become null and void in any of the following cases:

A. If a site plan is not approved within 12 months of the date of permit approval.
B. If an approved site plan or building permit expires.
C. If a building permit is not issued within two years of the date of approval, in cases where a site plan is not required.
D. If a substantial violation of the conditions of the permit, as determined by the Planning Director or designee occurs. The addition of language to the special use permit regarding such voiding shall not be required.
Applications and Permits

Sec. 3.10 Sign Permit

3.10.1 Applicability

A. Certain signs shall be allowed without sign permits (as set forth in Article 11, Signs). Signs requiring permits shall be allowed in accordance with the following procedures.

Commentary: A common signage plan may be required before a sign permit can be issued (see Sec. 3.11).

B. Internally oriented signs not legible from the public right-of-way shall not require a sign permit; however, electrical or other permits may be required. Internally oriented signs not visible from the public right-of-way may be subject to all applicable requirements of Article 11, Signs.

3.10.2 Application Requirements

A. Except as provided in Article 11, Signs, no sign may be erected, moved, enlarged, or altered except in accordance with this Ordinance and pursuant to the issuance of a sign permit.

B. A sign permit application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.10.3 Action by the Inspections Director

Upon review of the application, the Inspections Director or designee shall approve the sign permit provided the sign meets all requirements of this Ordinance, and all other applicable electrical and North Carolina Building Code requirements.

3.10.4 Inspection of Permanent Signs

A. The applicant shall request an inspection by the appropriate inspector after installation of the signs.

B. If the signs are found to be in compliance, the applicant shall receive a permanent seal which identifies the sign. The applicant shall attach the identification in a conspicuous location which is accessible to the Inspections Director or designee. It is recommended that businesses place the permit in a lower corner of the front door of the business in those cases where the seal is not affixed to the sign.

C. The sign permit shall be null and void if sign installation is not completed within six months or the signs are not in conformance with the approved application.

D. Valid sign permits may be assigned to a successor as holder of a business license for the same premises.

3.10.5 Temporary Sign Permits

A temporary sign permit shall be issued in accordance with Article 11, Signs. A common signage plan pursuant to Sec. 3.11, Common Signage Plan, shall not be required for applications for temporary sign permits.

3.10.6 Revocation of a Sign Permit

The sign permit shall be revoked if a sign is found to be in violation of the requirements of this Ordinance, or other applicable electrical and North Carolina State Building Code requirements.

3.10.7 Appeal

Final action on a sign permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.
Sec. 3.11 Common Signage Plan

3.11.1 Applicability

Prior to the issuance of a sign permit for one or more buildings or businesses in the same project, a common signage plan shall be required, except as follows:

A. Internally-oriented signs not visible from the public right-of-way shall not be required to submit an approved common signage plan; and

B. Applications for temporary sign permits shall not be required to submit an approved common signage plan.

3.11.2 Application Requirements

A. The elements of a common signage plan shall be in accordance with Sec. 11.8, Elements of a Common Signage Plan.

B. A common signage plan application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

C. Additional signage requirements are listed in Sec. 11.7, Landmark Signs.

3.11.3 Action by the Planning Director

A. Upon hearing a recommendation from the Inspections Director, or designee, and the DDRT for signs within the Downtown and Compact Neighborhood Tiers or in the MU District, the Planning Director, or designee, shall approve the common signage plan provided the plan meets all the requirements of this section.

B. The Planning Director, or designee, may allow modifications to the lettering style to accommodate state and federally registered trademarks (logos) if the Planning Director, or designee, feels that the intent of the common signage plan requirements shall be maintained. In allowing the modifications, the Planning Director, or designee, may limit the logo size. The requirements of a common signage plan shall apply to all businesses within a related project, even if the properties have been subdivided.

C. Minor alterations in sign locations resulting from unexpected conditions on the site may be approved by the Planning Director, or designee.

3.11.4 Revisions and Amendments

Revisions or amendments to the common signage plan shall require documentation from all tenants on the property prior to approval. Signs erected after September 1, 1989 and subsequently made nonconforming because of an amendment to a common signage plan shall be brought into compliance with the amended plan within six months of approval of the amended plan.

3.11.5 Appeal

Final action on a common signage plan may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.12 Temporary Use Permit
3.12.1 Applicability

A. Temporary uses occurring on property outside of the public right-of-way shall be allowed upon the issuance of a temporary use permit, except as set forth in, Sec. 5.5, Temporary Uses.

**Commentary:** Standards for specific uses are included in Sec. 5.5, Temporary Uses.

B. The provisions of this section shall not apply to temporary uses occurring within the public right-of-way.

**Commentary:** For further details on temporary uses occurring within the public right-of-way see the applicable City or County Code.

3.12.2 Application Requirements

A temporary use permit application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.12.3 Action by the Inspections Director

A. After receiving the application, the Inspections Director or designee shall have up to 30 days to review the application.

B. Upon hearing recommendations from all appropriate departments, the Inspections Director or designee shall approve the issuance of a temporary use permit subject to the following:
   1. No lighting or electrical service shall be provided without an electrical permit;
   2. No temporary use structure shall be erected without a building permit;
   3. No temporary use structure shall block fire lanes or pedestrian or vehicular access;
   4. The site of the temporary use shall be cleared of all debris at the end of the temporary use. All temporary structures shall be cleared from the site within five days after the use is terminated;
   5. Written permission of the property owner for the temporary use shall be provided;
   6. Adequate parking shall be provided, considering both the required parking for other uses and the parking for the proposed temporary use;
   7. Adequate traffic control measures shall be provided;
   8. Adequate provisions for trash disposal and sanitary facilities shall be provided; and
   9. When appropriate, adequate provisions for crowd control shall be provided.

C. Temporary use permits may be renewed one time by the Inspections Director or designee, unless other renewal standards are specified in Sec. 5.5, Temporary Uses, or in other provisions of this section.
3.12.4 Revocation of a Temporary Use Permit

A temporary use permit shall be revoked if the Inspections Director or designee finds that the terms of the permit have been violated or that there is a hazard to the public health, safety and welfare.

3.12.5 Appeal

Final action on a temporary use permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.13 Home Occupation Permit

3.13.1 Applicability

A home occupation (see Sec. 5.4.4) shall require a permit, as set forth below.

3.13.2 Application Requirements

A home occupation application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.13.3 Action by the Planning Director

Upon review of the application, the Planning Director, or designee, shall approve the home occupation permit, provided the home occupation meets all requirements of this Ordinance.

3.13.4 Revocation

The home occupation permit shall be revoked if the home occupation is found to be in violation of the requirements of this Ordinance.

3.13.5 Appeal

Final action on a home occupation permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.14 Administrative Adjustment
3.14.1 Applicability

The Planning Director or designee shall be authorized to approve minor specified deviations as specified in Sec. 3.14.3, Action by the Planning Director, where, owing to special conditions, strict enforcement of the provisions of this Ordinance would be physically impractical.

3.14.2 Application Requirements

An application for an administrative adjustment shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.14.3 Action by the Planning Director

A. The Planning Director shall have the authority to authorize the following administrative adjustments:

1. A reduction of up to 10% of the required front, side or rear yard setback for any encroachments into required setback as of the effective date of these regulations;

2. Minor adjustments to site plans consistent with the requirements of Sec. 3.7.14, Site Plan Amendments.

3. Minor deviations from development plans consistent with the requirements of Sec. 3.5.12, Deviations from Approved Development Plans and Sec. 3.5.6C, Authority of Planning Director.

B. Any request for deviation from the provisions of this Ordinance not listed above shall be reviewed by the Board of Adjustment as provided in Sec. 3.15, Variances.

3.14.4 Administrative Adjustment Criteria

To approve an administrative adjustment, the Planning Director or designee shall make an affirmative finding that all of the following criteria are met:

A. That granting the administrative adjustment will not have an adverse impact on land use compatibility;

B. That granting the administrative adjustment will not materially and adversely affect adjacent land uses and the physical character of uses in the immediate vicinity of the proposed development because of inadequate buffering, screening, setbacks and other land use considerations; and

C. That granting the administrative adjustment shall be consistent with the purposes and intent of this Ordinance.

3.14.5 Appeals

Final action on an administrative adjustment by the Planning Director or designee may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.15 Variance
3.15.1 Applicability

A. The Board of Adjustment may vary certain requirements of this Ordinance, in harmony with the general purpose of these regulations, where special conditions applicable to the property in question would make the strict enforcement of the regulations impractical or result in a hardship in making reasonable use of the property. Despite the above and pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0267, a variance from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, including where incorporated by reference, shall be granted only by the North Carolina Environmental Management Commission or the City or County as appropriate pursuant to paragraph 8.5.13, Variances.

B. The Board of Adjustment may grant variances in the following special circumstances, as indicated elsewhere in this Ordinance:

1. Reconstruction, rehabilitation, or restoration of structures that are individually listed or are contributing structures within an historic district (see Sec. 4.10, Historic Districts and Landmarks Overlay).

2. Construction, reconstruction, or repair of structures which are nonconformities that meet the requirements for Article 14, Nonconformities.

C. The Board of Adjustment may waive certain requirements when authorized to do so by provisions adopted as a part of this Ordinance.

D. No variance shall be granted that would have the effect of allowing a use not permitted in the use table in Sec. 5.1, Use Table, or by Sec. 8.4, Floodplain and Flood Damage Protection Standards.

Commentary: Variances may be granted for, among other things, height, structure size, lot dimensions, and setbacks.

3.15.2 Pre-Application Conference

All applicants seeking a variance shall schedule a pre-application conference with the Planning Director or designee to discuss the procedures, standards, and regulations required for variance approval in accordance to the provisions of this Ordinance.

3.15.3 Application Requirements

An application for a variance shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

3.15.4 Notice and Public Hearings

Once the application has been determined complete, the Planning Director or designee shall schedule a public hearing and give public notice as forth in Sec. 3.2.5, Notice and Public Hearings.

3.15.5 Burden of Proof

The applicant seeking the variance shall have the burden of presenting evidence sufficient to allow the Board of Adjustment to reach the conclusions set forth below, as well as the burden of persuasion on those issues.

3.15.6 Action by the Planning Director

The Planning Director, or designee, shall provide the Board of Adjustment with a copy of the application and all
relevant materials pertaining to the request prior to the public hearing.

3.15.7 Action by the Board of Adjustment

A. Each decision shall be accompanied by a finding of fact by the Board of Adjustment which specifies the reasons for the decision.

B. A decision of the Board of Adjustment to approve a variance or reverse an interpretation requires an affirmative vote by 3/5ths of the members of the Board, consistent with Sec. 2.4.5, Decisions.

C. The Board of Adjustment may approve the request, deny the request, or continue the request. In approving the variance, the Board of Adjustment may prescribe reasonable and appropriate conditions which will ensure that the use will be compatible with adjacent properties and will not alter the character of the neighborhood.

3.15.8 Findings

A. In granting any variance, the Board of Adjustment shall make the following findings:

1. That special or unique circumstances or conditions or practical difficulties exist which apply to the land, buildings or uses involved which are not generally applicable to other land, buildings, structures, or uses in the same zoning districts;

2. That the special conditions or circumstances or practical difficulties do not result from the actions of the property owner or applicant, their agent, employee, or contractor. Errors made by such persons in the development, construction, siting or marketing process shall not be grounds for a variance except in cases where a foundation survey submitted to the Inspections Director, or designee, before a contractor proceeds beyond the foundation stage has not revealed an error which is discovered later;

3. That the strict enforcement of this Ordinance would deprive the owner or applicant of reasonable use of the property that is substantially consistent with the intent of this Ordinance;

4. That the granting of a variance will not result in advantages or special privileges to the applicant or property owner that this Ordinance denies to other land, structures, or uses in the same district, and it is the minimum variance necessary to provide relief;

5. That the variance shall not be materially detrimental to the health, safety or welfare of persons residing or working in the neighborhood. Consideration of the effects of the variance shall include but not be limited to, increases in activity, noise, or traffic resulting from any expansion of uses allowed by the variance;

6. That the proposed use and the appearance of any proposed addition or alteration will be compatible with, and not negatively impact, nearby properties; and

7. That the variance will not result in the expansion of a nonconforming use.

B. In making the findings above, the Board of Adjustment may give special weight to the number and percentage of nearby properties that share characteristics for which the variance is requested by the applicant. The Board of Adjustment may grant a variance to expand an existing structure, including the expansion of a nonconforming feature that would otherwise be disallowed under Article 14, Nonconformities, without making findings A.1 and A.4 above if the remaining findings can be made.

3.15.9 Watershed Protection

A. A request for a variance from any requirement of Sec. 8.7, Watershed Protection Overlay Standards, that violates any provision in Title 15 NCAC 2B, Sections .0100, .0200, and .0300, as amended, shall be first
heard by the Board of Adjustment in accordance with this section and after notification of the appropriate governing body, except that a request for a variance from the requirements of Sec. 8.5, Riparian Buffer Protection Standards, as referenced by paragraph 8.7.2E, Riparian Buffers, shall proceed under paragraph 8.5.13, Variances. A recommendation from the Board of Adjustment for a variance shall constitute a request by the local government for a variance from the North Carolina Environmental Management Commission. Such variances shall be considered “major variances” in accordance with Title 15A NCAC .0104(r).

B. For all variance requests from Sec. 8.7, Watershed Protection Overlay Standards, except those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced therein, the local government with jurisdiction shall notify and allow reasonable comment period for all local governments having jurisdiction within the watershed area of the water supply source and the entity using the water supply for consumption.

C. The Planning Director, or designee, shall keep a record of variances to Sec. 8.7, Watershed Protection Overlay Standards. This record of variances, not including those from Sec. 8.5, Riparian Buffer Protection Standards, as referenced in Sec. 8.7, shall be submitted to the Division of Water Quality, North Carolina Department of Environment and Natural Resources by January 1st of each year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance. The record of variances from Sec. 8.5 shall be included in the annual report to the North Carolina Division of Water Quality summarizing activities implementing the requirements of that section.

3.15.10 Environmental Protection

A. At the request of a property owner, and except as otherwise specified in this ordinance, the Board of Adjustment may vary the requirements of Article 8, Environmental Protection Standards, in accordance with the procedures of this section. The Board of Adjustment shall not vary the requirements of Sec. 8.4, Floodplain and Flood Damage Protection Standards or the requirements of Sec. 8.5, Riparian Buffer Protection Standards. In addition to the findings required in Sec. 3.15.8, Findings, the Board of Adjustment in granting any variance shall make the following additional findings.

1. That failure to grant the variance would result in exceptional hardship to the property owner;

2. That the applicant has presented proof that alternatives to the variance have been thoroughly examined and are not practicable;

3. That the variance represents the minimum amount necessary to provide relief from the hardship in making reasonable use of the property; and

4. That the variance would not result in significant degradation of water quality, loss of significant wetlands, increase in sedimentation and erosion, increase in stormwater runoff, loss of significant plant and wildlife habitat, increase in flood heights, threats to public safety, extraordinary public expense or cause fraud on or victimization of the public.

B. Reasonable conditions may be attached to any variation from the requirements of Article 8, Environmental Protection Standards in order to accomplish the purposes and objectives of the Article.

3.15.11 Appeal

Appeal from final action by the Board of Adjustment on a variance may be taken by filing a petition for certiorari with the Durham County Superior Court.

Sec. 3.16 Appeal of Administrative Decision
3.16.1 Applicability

An appeal by any person aggrieved by a final order, interpretation or decision of any administrative official authorized to make decisions in regard to the provisions of this Ordinance may be taken to the Board of Adjustment, except as otherwise provided in this Ordinance.

3.16.2 Application Requirements

A. An appeal of an administrative decision shall be taken by filing a written notice of appeal specifying the grounds for the appeal with the Planning Director or designee and the Board of Adjustment.

B. An application for an appeal of an administrative decision shall be filed in accordance with Sec. 3.2.4, Application Requirements.

C. A notice of appeal of an administrative decision shall be considered filed when a complete application is delivered to the Planning Director, or designee. The date and time of filing shall be entered on the notice.

3.16.3 Deadline for Submission of Application

An appeal of an administrative decision shall be filed with the Board of Adjustment within 30 days of receipt of the decision.

3.16.4 Notice and Public Hearings

Once the application has been submitted, the Planning Director or designee shall schedule a public hearing at the first available BOA meeting and give public notice as forth in Sec. 3.2.5, Notice and Public Hearings.

3.16.5 Action by the Planning Director

The Planning Director or designee shall transmit to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

3.16.6 Action by Board of Adjustment

A. The Board of Adjustment may reverse or affirm (wholly or partly) or may modify the order, requirement, decision, or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the Board of Adjustment shall have all the powers of the official from whom the appeal is taken.

B. If a motion to reverse or modify is not made, or fails to receive the affirmative vote of $\frac{3}{5}$ of the members necessary for adoption, then appeal shall be denied.

C. Any motion to overturn or modify a decision shall state the specific reasons or findings of fact that support the motion.

3.16.7 Effect of Appeal

A. An appeal shall stay all proceedings in furtherance of the action appealed, unless the administrative official from whom the appeal is taken certifies to the Board of Adjustment that, because of facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property or that because the violation is transitory in nature a stay would seriously interfere with the effective enforcement of this Ordinance. In that case, proceedings shall not be stayed except by order of the Board of Adjustment or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the
administrative official.

B. An appeal shall not stop action lawfully approved (including construction activities authorized by a building permit); only actions presumed in violation of this Ordinance are stayed.

3.16.8 Appeal

Appeal of the Board of Adjustment action under this subsection may be taken by filing a petition for certiorari with the Durham County Superior Court.

Sec. 3.17 Historic District or Landmark Designation

3.17.1 Applicability

A. The City Council and the Board of Commissioners may designate, in their respective jurisdictions, an area as an historic district or a property as an historic landmark.

B. An area may be considered for designation as an historic district only after the HPC deems and finds that an area is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.

C. A property owner or owners may request that a property be designated as an historic landmark.

3.17.2 Initiation of Request

A. Requests for designating an historic district may be made in any one of the following methods:

1. By petition to the appropriate governing body of more than 25% of the property owners in the proposed historic district. (Petition shall be filed with the Planning Director or designee).

2. By initiative of the governing body for proposed historic districts in the governing body’s zoning jurisdiction.

B. An application for an historic landmark designation shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed.

3.17.3 Designation of an Historic District

A. Initiation of an Historic District Preservation Plan

1. Upon the filing of a petition from a property owner or owners or upon the initiative of the City or County, the Planning Director, or designee, shall give notice in accordance with Sec. 3.2.5, Notice and Public Hearings, that a request has been filed and shall be considered by the HPC at a specified date and time.

2. The HPC shall conduct a preliminary consideration of the request and, at this time, may make the findings indicated in Sec. 3.17.1B above. The HPC shall report its findings to the Planning Director, or designee. If
the decision of the HPC is negative, the Planning Director, or designee, shall report the negative recommendation to the governing body, as an informational item.

3. If the HPC finds that the proposed historic district meets the requirements of Sec. 3.17.1B above, then the Planning Director, or designee, shall prepare a Historic District Preservation Plan, in accordance with Sec. 3.17.3B below.

4. Upon the completion of the Historic District Preservation Plan, the Planning Director, or designee, shall give notice in accordance with Sec. 3.2.5, Notice and Public Hearings, that the designation of an historic district and the adoption of a Historic District Preservation Plan shall be considered by the HPC at a specified date and time.

B. **Historic District Preservation Plan**

1. An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS §160A-400.4(1); principles and design review criteria (guidelines) for certificates of appropriateness as required in NCGS §160A-400.9(c); and a preservation strategy tailored to the individual needs of the specific area.

2. The preservation strategy shall include, but not be limited to, the following elements:
   a. The need for the historic district in that area, including the specific reasons why the regulatory provisions of this section should be applied in order to effectively accomplish the preservation of that area;
   b. The means by which existence of the historic district shall be publicized to historic district property owners and to the general public;
   c. The principles, design guidelines and criteria to be followed in the historic district for exterior activities involving new construction, alteration, restoration, or rehabilitation and which shall be the basis for the HPC’s review and action upon an application for a certificate of appropriateness;
   d. The means by which technical assistance shall be offered to property owners of the historic district by the HPC, City and County staff, or other groups;
   e. A description of the various financial incentives that are proposed for use in promoting preservation activities within the historic district, how those incentives would be utilized and how property owners shall be made aware of them; and
   f. A description of what, if any, measures the HPC, the City or County staff, or other groups will take to encourage economic activity and development which will be conducive to preservation activities within the historic district.

C. **Action by the NC Department of Cultural Resources**

In accordance with NCGS §160A-400.4(2), the NC Department of Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan. Failure of the NC Department of Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the governing body of any responsibility for awaiting such analysis, and the governing body may at any time thereafter take action on the proposed historic
Applications and Permits

D. **Action by the Historic Preservation Commission**

1. The HPC shall conduct a public hearing and give notice in accordance with Sec. 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan.

2. The HPC shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend to the appropriate governing body denial of the request or designation of the area.

3. The HPC shall forward its recommendation on historic district designation to the Planning Commission and to the governing body with a recommended Historic District Preservation Plan. Consideration of the Historic District Preservation Plan shall be part of the consideration of the historic district designation.

E. **Action by the Planning Commission**

1. The Planning Commission shall conduct a public hearing and give notice in accordance with Sec. 3.2.5, Notice and Public Hearings, on the proposed historic district designation and the Historic District Preservation Plan.

2. The Planning Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend denial or designation of the area.

F. **Action by the Governing Body**

1. The governing body shall set a public hearing and shall notify property owners within the proposed historic district of the public hearing in accordance with the public hearing and notification provisions of Sec. 3.2.5, Notice and Public Hearings.

2. The governing body, shall hold a public hearing to consider the request to designate the historic district and the adoption of the Historic District Preservation Plan. The protest petition procedures as established for a petition for zoning map change in Sec. 3.5.13, Valid Protest Petition, shall apply to the designation or amendment of an historic district.

3. If the governing body, shall deny a request for designating an historic district, property owners may not initiate a new request to designate an historic district for the same area until at least one year after the governing body's action to deny the request.

4. When the governing body, designates an area as an historic district, the Historic District Preservation Plan for the particular historic district shall become City or County policy and all appropriate public bodies or administrative officials cited as having implementation responsibilities shall be directed to use their best efforts to ensure the effective implementation of the Plan as it is written.

### 3.17.4 Designation of an Historic Landmark

A. **Criteria for Designation**

1. A building, structure, site, area or object may be considered for designation as an historic landmark only if all of the following three criteria are met:

   a. The property must not currently be undergoing renovation unless it has been approved for state or federal tax credits in accordance with the Secretary of Interior Standards;

   b. The HPC must deem and find that the building, structure, site, area, or object meets at least

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one of the three following criteria:

1. Individual listing on the National Register of Historic Places or on the Study List;
2. Statewide Significance status granted by the State Historic Preservation Office;
3. Integrity of location, design, setting, materials, and workmanship, feeling and association on the whole, and:
   a. Is associated with events that have made a significant contribution to the broad patterns of local, regional, or national history; or
   b. Is associated with the lives of persons significant in local, regional, national history; or
   c. Embodies the distinctive characteristics of a type, period, or method of construction; represents the work of a master; possesses high artistic values (i.e., the architecture alone is significant in its own right); or
   d. Has yielded, or may be likely to yield, information important to Durham’s history or prehistory.

   c. The governing body must deem and find that the property possesses distinction within the context or period of significance.

2. A property shall be designated as a historic landmark only with the consent of the property owner or owners.

Commentary: A building, structure, site, area or object whose components lack individual distinction may still be considered a landmark if the whole is significant.

B. Action by the Historic Preservation Commission

1. In accordance with NCGS §160A-400.6(2), the HPC shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.

2. The HPC shall hold a public hearing and give notice in accordance to Sec. 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation. It shall recommend to the governing body, denial of designation or approval of designation of the proposed historic landmark.

C. Action by the NC Department of Cultural Resources

In accordance with NCGS §160A-400.6(3), the NC Department of Cultural Resources shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the NC Department of Cultural Resources does not submit its comments within 30 days following receipt by the Department of the investigation and report, the HPC and the governing body are relieved of any responsibility to consider such comments.

D. Action by the Governing Body

1. The governing body, after ensuring that the other governing body has been notified, shall hold a public hearing and give notice in accordance Sec. 3.2.5, Notice and Public Hearings, on the proposed ordinance of designation.

2. Following the public hearing, the governing body may adopt the ordinance of designation as
proposed, adopt the ordinance of designation with any amendments it deems necessary, or reject
the proposal.

E. Adoption of an Ordinance of Designation
Upon compliance with the required procedures of this section, the governing body may, for its
respective jurisdiction, adopt and from time to time amend or repeal an ordinance designating one or
more historic landmarks. The ordinance shall include the following information:

1. A description of each property designated by the ordinance, including the tax map reference
number for the property. The ordinance shall clearly indicate what elements of the property are
designated as an historic landmark. Examples of those elements are a building’s interior, its
exterior, any specific or all outbuildings, other site elements or the entire site;

2. The name or names of the owner or owners of the property;

3. A description of those elements of the landmark that are integral to its educational, cultural,
historical, architectural or prehistorical value;

4. The land area of the property;

5. A note that, for each building, structure, site, area or object, the waiting period set forth in Sec.
3.18.3, Certificates of Appropriateness for Demolition, Destruction and Relocation, of this
Ordinance shall be observed prior to its demolition; and 6. Any other information the HPC deems
necessary.

F. Historic Markers
The ordinance designating the landmark may also provide for suitable markers on the property noting
that the landmark has been so designated, including but not limited to signs, plaques or other
appropriate indicators. If the owner consents, the sign shall be placed upon the property. If the owner
objects, the sign shall be placed on a nearby public right-of-way.

G. Action Following Designation
Upon adoption of the ordinance of designation, the following provisions shall apply:

1. The owners and occupants of each designated historic landmark shall be given written
notification of such designation by the Planning Director, or designee, insofar as reasonable
diligence permits.

2. One copy of the ordinance and each amendment thereto shall be filed by Planning Director, or
designee, in the Office of the Register of Deeds of Durham County. Each historic landmark
designated in the ordinance shall be indexed according to the name of the owner of the property
in the grantee and grantor indexes in the Office of the Register of Deeds.

3. One copy of the ordinance and each amendment thereto shall be given to the Inspections Director,
or designee.

4. For historic landmarks, one copy of the ordinance and each amendment thereto shall be kept on
file in the Office of the City or County Clerk, as appropriate, and made available for public
inspection at any reasonable time.

5. The fact that a building, structure, site, area or object has been designated as an historic landmark
shall be clearly indicated on all maps maintained by Durham County for tax purposes for such
period as the designation remains in effect.

6. The Planning Director, or designee, shall give notice of the adoption of an ordinance of designation
and any amendment thereof to the Durham County Tax Supervisor. The designation and any
recorded restriction upon the property limiting its use for preservation purposes shall be considered by the Tax Supervisor in appraising it for tax purposes.

3.17.5 Designation of a Landmark Sign

A. Procedure
   The following procedure shall be used to designate signs as Landmark Signs. No sign shall be considered a Landmark Sign unless it has received that designation through this process.

   1. An application for a landmark sign designation shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

   2. The Planning Director, or designee, shall forward the application and all supporting material to the Historic Preservation Commission.

   3. The applications shall be considered by the Historic Preservation Commission. The Commission shall review the application and may designate the sign as a Landmark Sign, deny the designation, or request additional information in order to make a decision. A sign which is denied a designation shall be considered a nonconforming sign which shall be removed.

   4. If the sign is designated as a Landmark Sign, a copy of the application shall be submitted to the Inspections Department. After designation, the applicant shall have 60 days to bring any signs that pose a hazard into a structurally safe condition. Failure to assure that the signs are safe and do not pose a hazard shall result in loss of the Landmark Sign designation. The Inspections Department shall issue a sign permit for the sign if the sign is found to be structurally safe. Landmark Signs shall conform to all other provisions of this section not in conflict with the privileges of the landmark designation.

   5. Landmark signs shall be subject to the privileges and regulations of Sec. 11.7, Landmark Signs, but Article 11, Sign Standards, shall otherwise not apply.

B. Approval Criteria
   The Historic Preservation Commission may establish a schedule to review applications for Landmark Sign designations. To qualify as a Landmark Sign, the sign shall meet all of the following criteria:

   1. Be recognized as important to the culture or history of the jurisdiction, or possess unique characteristics, or incorporate materials or craftsmanship not commonly found in newer signs.

   2. Bear a close resemblance to its appearance when it was installed.

3.17.6 Repeal of Historic District or Historic Landmark Designation

A. The governing body may repeal an ordinance designating an historic district or an historic landmark. The repeal process shall be in accordance with NCGS §160A-400.6. The governing body’s action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office.

B. When such repeal occurs, the Planning Director, or designee, shall notify the HPC and the property owner or owners. When such repeal occurs of an historic landmark designation, the Planning Director, or designee, shall also notify the Register of Deeds for Durham County and the Durham County Tax Supervisor.

Sec. 3.18 Certificate of Appropriateness
3.18.1 Applicability

A. From and after the designation of an historic district or historic landmark, no exterior feature or designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within or on such historic district or historic landmark until after an application for a certificate of appropriateness as to the exterior feature or designated portion has been submitted to and approved by the Historic Preservation Commission (HPC).

B. The City or the County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within or on an historic district or historic landmark for which a certificate of appropriateness has not been approved. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this section shall be invalid. A certificate of appropriateness may be issued by the HPC subject to reasonable conditions necessary to carry out the purposes of this Ordinance.

C. For the purposes of this section, the term "exterior feature" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. These "exterior features" may include historic signs and significant landscape, archaeological and natural features of the area.

D. For the purposes of this section, the term "designated portion" shall mean any portion of an historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements and landscaping.

3.18.2 Circumstances Not Requiring Certificates of Appropriateness

A. Nothing in this Ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district or on an historic landmark which does not involve a substantial change in the design, material, or outer appearance thereof, provided that any required building permit is obtained. Examples of this work shall include, but not be limited to, the following:

1. Caulking or reglazing windows;
2. Minor repairs to windows, doors, siding, gutters, etc;
3. Replacement of existing mechanical equipment;
4. Repairing or repaving of flat concrete work in side and rear yards;
5. Repairing or repaving of existing street yard paving, concrete work and walkways, if the material the same or similar in appearance is used;
6. Roofing work, if no change in appearance occurs;
7. Foundation work, if no change in appearance occurs; or
8. Chimney work, if no change in appearance occurs.

B. Nor shall this Ordinance be construed to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is determined to be a threat to the public safety. The Inspections Director, or designee, shall certify in writing to the HPC that such action is required for the public safety because of an unsafe or dangerous condition.

C. Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.

D. No certificate of appropriateness shall be required for interior changes. However, this does not excuse the property owner from obtaining required building permits for interior work.

3.18.3 Certificates of Appropriateness for Demolition, Destruction and Relocation

A. An application for a certificate of appropriateness authorizing the demolition, destruction or relocation of a structure in a designated historic district or of a designated historic landmark shall not be denied. However, the effective date of such a certificate of appropriateness may be delayed for a period of up to 365 days from the date of approval. This maximum period of delay shall be reduced by the HPC when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such structure or landmark by virtue of the delay. During such period, the HPC may negotiate with the owner and with any other parties in an effort to find a means of preserving the structure or landmark.

B. If the HPC finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal.

C. An application for demolition, destruction and relocation of a building, site or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the HPC finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such structure or landmark by virtue of the denial.

3.18.4 Master Certificates of Appropriateness

A. Work done by the City and County and by public utility companies within any historic district shall be subject to the provisions of this section. However, rather than obtaining individual certificates of appropriateness for each proposed project in an historic district, the City and County and public utility companies may instead obtain a master certificate of appropriateness from the HPC.

B. The provisions of this section that apply to certificates of appropriateness shall also apply to master certificates of appropriateness. No master certificate of appropriateness shall be valid for a period greater than one year from the date of issuance.

C. In addition to acquiring a master certificate of appropriateness, the City and County and any public utility companies shall notify the City Manager or County Manager, as appropriate, prior to performing any work within any historic district. In emergency situations, as determined by the Inspections Director, or designee, notification by the next work day is acceptable. Such work shall be done in accordance with the principles and design criteria adopted for the historic district as part of the Historic District Preservation Plan. The City Manager or County Manager, as appropriate, may inspect all work done pursuant to a master certificate of appropriateness.
3.18.5 Administrative Certificate of Appropriateness

A. With the concurrence of the chair of the HPC, the Planning Director, or designee, may approve or amend certificates of appropriateness for the following activities, or may refer them to the HPC for a decision:
   1. Activities expressly authorized by the HPC;
   2. Minor design changes to projects for which a certificate of appropriateness has been issued by the HPC;
   3. Increasing the expiration date of a certificate of appropriateness for an additional period not to exceed six months; or
   4. Anything not specifically covered by this section that the Planning Director, or designee, determines is not so significant as to impair or affect historic, architectural, or aesthetic character.

B. A public hearing or public notice shall not be required unless the application is referred to the HPC for a major or minor certificate of appropriateness.

3.18.6 Application Requirements

A. An application for a certificate of appropriateness shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

B. An applicant may file with the application any additional relevant information bearing on the application.

3.18.7 Notification of Affected Property Owners

Prior to the issuance or denial of a certificate of appropriateness, the Planning Director, or designee, shall take such action as may be reasonable to inform the owner of any property likely to be materially affected by the application.

3.18.8 Notification of the Commission

The Planning Director, or designee, shall notify the members of the HPC at least seven calendar days before its regularly scheduled meeting of any pending applications for certificates of appropriateness.

3.18.9 Action by the Historic Preservation Commission

A. The HPC shall hold a public hearing for a major certificate of appropriateness. A public hearing shall not be required for a minor certificate of appropriateness. Public notice of applications for major and minor certificates of appropriateness shall be provided pursuant to Sec. 3.2.5, Notice and Public Hearings.

B. As part of its review procedure, the HPC may view the premises and seek the advice of the North Carolina Department of Cultural Resources or other expert advice as it may deem necessary under the circumstances.

C. The HPC shall approve, approve with modifications or conditions, or disapprove an application for a certificate of appropriateness or master certificate of appropriateness.

D. Prior to final action on an application for a certificate of appropriateness in an historic district, the HPC, using the principles and design review criteria adopted pursuant to Sec. 3.17.3B, Requirements for Historic District Preservation Plan, shall make findings of fact indicating the extent to which the application is or is not consistent with the historic character and qualities of the historic district.

E. Prior to final action on an application for a certificate of appropriateness for an historic landmark, the HPC, using the principles and design review criteria adopted pursuant to Sec. 3.17, Historic District or...
Landmark Designation, shall make findings of fact indicating the extent to which the application is or is not consistent with the principles and design review criteria.

F. The HPC may not deny a certificate of appropriateness for demolition except as specified in Sec. 3.18.3, Certificate of Appropriateness for Demolition, Destruction and Relocation.

**3.18.10 Approval Criteria for Historic Districts**

A. For historic districts, the intent of these regulations is to ensure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other building or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or to prohibit the demolition or removal of such buildings or to impose architectural styles from particular historic periods. In considering new construction, the HPC shall encourage contemporary design which is harmonious with the character of the historic district.

B. In granting a certificate of appropriateness, the HPC shall take into account, in accordance with the principles and design review criteria of the Historic Preservation Plan adopted for the historic district:

1. The historic or architectural significance of the structure under consideration in relation to the historic value of the district;
2. The exterior form and appearance of any proposed additions or modifications to that structure; and
3. The effect of such additions or modifications upon other structures in the vicinity.

**3.18.11 Approval Criteria for Historic Landmarks**

A. In granting a certificate of appropriateness, the HPC shall take into account in accordance with the principles and design review criteria adopted for historic landmarks:

1. The historic or architectural significance of the structure, site or setting under consideration; and
2. The exterior form and appearance of any proposed additions or modifications to the structure, site or setting.

B. The intent of these regulations is to ensure, insofar as possible, that changes to buildings or structures designated as historic landmarks shall be in harmony with the historic character that was cited as the reasons for designation.

**3.18.12 Deferral of Application**

A. An applicant for a certificate of appropriateness may request that the HPC’s consideration of the application be deferred to a specific date.

B. Upon such request, the Planning Director, or designee, shall have the authority to grant the deferral.

C. A request for deferral shall be made in writing to the Planning Director, or designee, at least ten days prior to the scheduled consideration of the application and shall indicate the date to which the deferral is requested and the reasons for the deferral. Only one deferral shall be permitted for each application.

**3.18.13 Time Limits**

Final action shall be taken upon any application for a certificate of appropriateness within 180 days after the complete application is submitted to the Planning Director or designee. Such 180-day time period shall include any continuance or deferred consideration by the HPC or deferral granted as requested by the applicant under Sec. 3.18.12, Deferral of Application. If final action is not taken within such 180-day time period, the application shall be deemed approved. A certificate of appropriateness shall expire if a building permit or other
development permit has not been obtained within one year after the effective date of the certificate of appropriateness and remains continuously valid or if work not requiring a permit has not been initiated.

### 3.18.14 Submission of New Application

If the HPC denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration, moving or demolition, or if conditions related to the historic district or historic landmark or surrounding uses have changed substantially.

### 3.18.15 Local and State Coordination

The HPC shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of Cultural Resources if such a process is desired by the applicant for the purpose of securing both a certificate of appropriateness and a Federal historic preservation tax credit.

### 3.18.16 Specific Enforcement

A. Compliance with the terms of a certificate of appropriateness shall be enforced by the Inspections Director, or designee. Construction or other work which fails to comply with a certificate of appropriateness shall be a violation of this Ordinance. The discontinuance of work for a period of six months shall be considered a failure to comply with a certificate of appropriateness.

B. Nothing contained in this section shall prohibit, impair or limit in any way the power of the City or County to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures or outdoor signs in the historic district in violation of the provisions of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

### 3.18.17 Appeal

Final action on a certificate of appropriateness by the HPC may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

### Sec. 3.19 Demolition by Neglect (City Only)

#### 3.19.1 Applicability

Owners of certain historic properties are required to maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

A. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It shall be a violation of this Ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this Ordinance. Conditions of neglect include the following:

1. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.

2. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
3. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
4. Deterioration or crumbling of exterior plasters or mortars.
5. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
6. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
7. Rotting, holes, and other forms of decay.
8. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
9. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
10. Deterioration of fences, gates, and accessory structures.
11. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
12. Deterioration that contributes to a hazardous or unsafe condition.

3.19.2 Process and Administration

A. Director Investigation and Determination

1. Initiation by Petition
   The initial determination that there is a condition of neglect shall be made by the Planning Director, or designee, after an investigation that is initiated by a petition from any person who is familiar with the subject property, which may include but not be limited to a City employee.

2. Notice of Investigation
   On receipt of a petition, the Director, or designee, shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Director, or designee, and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.

3. Responsibilities of Director
   The Planning Director or designee shall:
   a. Investigate the allegation that a condition of neglect exists;
   b. Hold one or more meetings at a time to be set by the Director, or designee, in which the owner, other persons who have received notice, or other interested persons may give information;
   c. Issue a written determination, supported by findings of fact, regarding the allegation within 45 days of the owner’s receipt of notice;
   d. Include within the determination a time period for correcting the condition of neglect, if a
condition of neglect has been found;

e. Retain all information presented by the owner or other persons;

f. Deliver the written determination through any of the means for delivery of notice, as described above;

g. Designate the written determination as a final administrative determination with the right of appeal to the HPC; and

h. Include information regarding rights to a de novo hearing before the HPC.

B. **Suspension of Process**

The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Director, or designee. If the condition is not corrected within that time period, the process shall continue where it was suspended.

C. **Appeal of Director’s Determination**

If the property owner disagrees with the Director’s determination, the owner may appeal and may request a de novo hearing before the HPC. The request shall be delivered to the Planning Department, in writing, within 30 days of receipt of the Director’s determination. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director’s determination shall be considered an administrative determination, which has been appealed to the HPC, as the designated Planning Agency under GS 160A-388 or 153A-321 and all procedures applicable to the Board of Adjustment in GS 160A-388 and GS 153A-345 shall apply to such hearings. The HPC’s determination to overturn the administrative determination shall be passed by the standards established in Sec. 2.4.5. The HPC’s written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested. Appeal to the Courts may be had by certiorari as is provided for an appeal of a Board of Adjustment decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

D. **Safeguards from Undue Economic Hardship**

1. **Right of Claim of Economic Hardship**

   The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible.

2. **Issuance of Stay for Economic Hardship**

   In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Director’s order shall be stayed until after the HPC’s determination regarding the claim.

3. **Process**

   If a claim of undue economic hardship is made, the Director or his designee shall receive all information from the property owners that the HPC is entitled to receive pursuant to this Ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, certified mail, return receipt requested, with notice of the owner’s rights to appeal to the HPC within 30 days of receipt. If the owner disagrees with the recommendation and plan the owner may request a hearing before the HPC. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a BOA hearing and the...
decision shall be in writing, supported by findings and conclusions. The Director's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any HPC decision altering such recommendation or plan shall require a four-fifths majority, or seven votes to pass, consistent with the requirements of Sec. 2.4.5, Decisions.

4. **Evidence Regarding Undue Economic Hardship**

When a claim of undue economic hardship is made owing to the effects of this Article, the owner and/or parties in interest shall, where reasonably possible, provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Director, or designee, or HPC or evidence the owner considers relevant.

   a. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.

   b. Financial resources of the owner and/or parties in interest.

   c. Cost of repairs.

   d. Assessed value of the land and improvements.

   e. Real estate taxes for the previous two years.

   f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.

   g. Annual debt service, if any, for previous two years.

   h. Any listing of the property for sale or rent, price asked, and offers received, if any.

   i. Annual gross income, if any, from the property for the previous two years.

   j. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.

   k. Annual cash flow, if any, for the previous two years.

5. **Plan to Relieve Economic Hardship**

A recommended plan to relieve the economic hardship may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the City, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this Article sufficient to mitigate the undue economic hardship. The Director, or designee, shall issue an order regarding the time period during which the property should be repaired, taking into account the provisions of the recommended plan.

E. **Other City Powers; City’s Election of Remedies**

Nothing contained within this Article shall diminish the City’s power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City Code apply, the City may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The City may also suspend the procedures of this section at any time if an action has been initiated under other
applicable law.

F. **Penalties and Remedies**

Enforcement of this Article may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

1. **Equitable Remedy**
   The City may apply for any appropriate equitable remedy to enforce the provisions of this Article.

2. **Order of Abatement**
   The City may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Article. Whenever the party is cited for contempt by the court and the City has executed the order of abatement, the City shall have a lien on the property for the cost of executing the order of abatement.

3. **Civil Penalty**
   Civil penalties may be assessed for failure to comply with a final administrative determination or an un-appealed HPC decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the City-County Planning Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director, or designee, or the HPC no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Adjustment, the Board shall not rehear any issue that was heard by the HPC or could have been so heard had an appeal to the HPC been made. Rather, the Board of Adjustment shall limit the scope of its review to whether there has been compliance with the Director’s determination or the HPC’s determination, as applicable.

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**Sec. 3.20 Text Amendment**
**3.20.1 Applicability**

A. The governing bodies shall consider amendments to the text of this Ordinance, as may be required from time to time.

B. Amendments to the text of this Ordinance shall be made in accordance with the provisions of this section.

C. A request to amend the text of this Ordinance may be initiated by the governing body, the Board of Adjustment, the Planning Commission, the City Manager, the County Manager, the Planning Director, or designee, or a citizen.

**3.20.2 Action by the Planning Director**

A. The Planning Director, or designee, shall be responsible for review and recommendation regarding amendments to the text of this Ordinance that affect only City or County jurisdictions.

B. When a text amendment is initiated, the Planning Director, or designee, shall draft an appropriate ordinance and present that ordinance to the Planning Commission so that a public hearing may be set.

C. The Planning Director, or designee, shall prepare a staff report that reviews the proposed text amendment request in light of any applicable plans and the general requirements of this Ordinance.

**3.20.3 JCCPC Review**

The JCCPC shall be responsible for review and direction regarding amendments to the text of this Ordinance that affect both the City and County jurisdictions prior to review by the Planning Commission. This responsibility does not create a legal obligation for review of text amendments. Among other instances, review may not occur in the event that the City and County Managers, after consultation with the chair and vice-chair of the JCCPC, determine that delay is not in the public interest.

**3.20.4 Action by the Planning Commission**

A. **General Procedures**

1. Before making any recommendation on a text amendment, the Planning Commission shall consider any recommendations from the Planning Director, or designee, and shall conduct a public hearing where interested parties may be heard.

2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.

3. The Commission shall make its recommendation within 90 days of its initial public hearing unless the text amendment is granted expedited status.

4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.

B. **Changed Application**

If the applicant makes significant changes to the application for a text amendment after the Commission has made its recommendation, the Planning Director, or designee, may refer the modified request back to
the Commission for an additional public hearing.

C. Expedited Hearing
   1. If the governing body has set an expedited hearing concerning a request, in accordance with Sec. 3.20.5B, Expedited Hearing, a public hearing before the Commission shall be held at the first available hearing date or prior to the hearing before the governing body.
   2. The Commission shall make a recommendation based on the approval criteria in Sec. 3.5.10, Review Criteria, as appropriate.
   3. The Planning Commission may not continue, nor may a deferral be granted for, a request that is subject to an expedited public hearing.

3.20.5 Action by Governing Body

A. General Procedures
   1. Before taking action on a text amendment, the governing body shall consider the recommendations of the Planning Commission and Planning Director, or designee, and shall conduct a public hearing.
   2. Except for an emergency moratorium or a short term moratorium of 60 or fewer days (which shall comply with the provisions of Sec. 3.20.6, Development Moratoria), notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.
   3. Following the public hearing, the governing body may approve the amendment, deny the amendment, or send the amendment back to the Planning Commission or a committee of the governing body for additional consideration.
   4. Text amendments, if approved, shall only have applicability within the jurisdiction of the governing body that approved the change.

B. Expedited Hearing
   1. The governing body, in situations in which it determines certain standards have been met, may expedite the hearing process on a proposed or prospective amendment.
   2. The governing body may consider a written request requesting an expedited hearing process. The request shall identify and support the reasons for such expedited consideration.
   3. In order to grant the request, the governing body shall find that at least one of the criteria below has been met:
      a. Deadlines set by the local, State or Federal government for receipt of application for needed funding, designation or other regulations concerning the property make expedited consideration necessary;
      b. The prospective text amendment results from an emergency beyond the control of the applicant, such as response to a disaster;
      c. The prospective text amendment addresses an urgent matter of public health or safety; or
      d. The prospective text amendment addresses issues raised in threatened, actual, or potential litigation against the jurisdiction that made expedited consideration necessary.
   4. A hearing before the governing body may occur upon the receipt of a Planning Commission recommendation, or the expiration of a 30-day period, whichever comes earlier.
3.20.6 Development Moratoria

A. Statutory Procedures
   Development moratoria, if necessary, shall be considered and processed in accordance with the special notice provisions, particular findings, and other requirements of NCGS 160A-381(e) and NCGS 153A-340(h).

B. Resolution
   A public hearing to impose either a moratorium of 60 or fewer days (hereafter a "short-term moratorium") or a lengthier moratorium of 61 days to a year may be initiated by a governing body for that body’s jurisdiction upon passage of a resolution, including appropriate supportive findings, that calls for a public hearing. Passage of such a resolution shall be considered a "call for public hearing" under the above-cited statutes and shall allow the jurisdiction to stop acceptance, review, and approval of applications for development approvals described in the above-cited statutes or such other similar development approvals created under this Ordinance or other development ordinances.

C. Notice and Hearing
   If the call is for a short-term moratorium, Planning Commission review shall not be required, and one published notice not less than 7 days prior to the hearing shall be given, as allowed under the above-cited statutes, in lieu of other notices required by statute or this Ordinance. If the call is for a lengthier moratorium, the procedure followed shall be as set forth in the provisions for expedited hearings for text amendments above. The need for a moratorium shall be considered "an urgent matter of public health or safety" as required for approval of an expedited hearing. Emergency moratoria shall not require compliance with any procedures set forth in this Ordinance, other than an unadvertised public hearing, and an ordinance making the findings required below.

D. Duration
   The duration of any moratorium shall be reasonable in light of the specific conditions that warrant imposition of the moratorium and may not exceed the period of time necessary to correct, modify, or resolve such conditions. Any ordinance establishing a lengthier moratorium shall include a provision that allows for termination of the moratorium by resolution of the governing body prior to the express expiration date if the conditions requiring the moratorium have been adequately addressed so that the moratorium is no longer necessary.

E. Ordinance Findings
   An ordinance establishing a moratorium shall contain all the required findings set forth in NCGS 160A-381(e) and NCGS 153A-340(h), including but not limited to the conditions that necessitate the moratorium, alternatives, development approvals subject to the moratorium, termination date, and reasonableness of the moratorium period.

F. Extensions
   A moratorium may only be extended upon compliance with NCGS 160A-381(e) and NCGS 153A-340(h) and the existence of new facts and conditions warranting an extension.

G. Emergency Moratorium
   In the event that there is an imminent and substantial threat to public health or safety, an ordinance imposing an emergency moratorium may be considered by a governing body without prior resolution or public notice of the hearing on such moratorium.

Sec. 3.21 Statutory Vested Rights Determination
3.21.1 Applicability

A. This section establishes a procedure for obtaining a statutory vested right in conformance with NCGS §153A-344.1 and NCGS §160A-385.1.

B. New or amended zoning regulations shall not apply to a property with an established vested right until the vested right expires or is terminated.

C. A vested right may be established upon approval of a "site specific development plan." In order to qualify as a "site specific development plan," a plan shall meet the requirements for site plan review in accordance with Sec. 3.7, Site Plan Review, and shall receive governing body approval in accordance with the procedures of this section.

3.21.2 Application Requirements

A. An application for vested rights determination shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

B. Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to Sec. 3.2.4, Application Requirements:
   1. Information on the proposed uses of the property that the applicant wishes to vest;
   2. The length of time for which vesting is requested;
   3. A listing of those provisions of this Ordinance from which vesting is requested.

C. Landowners seeking zoning vested rights on plats, special use permit applications, or other plans that would not normally receive site plan approval, may apply for vested rights protection through submittal of an application which contains the identical information, fee, and plans required for a complete site plan application and an additional fee for a vested rights public hearing.

3.21.3 Action by the Planning Director

Once the application has been determined complete, the Planning Director, or designee, shall schedule a public hearing, give public notice as set forth in Sec. 3.2.5, Notice and Public Hearings, and forward a copy of the application with all related materials to the appropriate governing body.

3.21.4 Action by the Governing Body

A. The governing body may hold the vested rights public hearing at the same time that the site plan is considered for approval.

B. Approval by the governing body shall confer upon the owner of the property a zoning "vested right" as defined in NCGS §160A-385.1 and NCGS §153A-344.1, effective on the date of approval. The governing body may condition the approval upon terms and conditions reasonably necessary to protect the public health, safety, and welfare.

3.21.5 Effect of Zoning Vested Rights

A. Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
B. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or with this Ordinance.

C. The establishment of a zoning vested right shall not preclude the application of new laws or regulations as is allowed under NCGS §160A-385.1. In addition, it shall not preclude overlay zoning that imposes additional requirements, but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the City or County. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this section.

D. A zoning vested right is not a personal right, but shall be attached to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

3.21.6 Duration

A. A zoning right that has been vested as provided in this section shall remain vested for the period specified by the governing body, which shall be a minimum of two years but no more than five years from the date of the vested rights determination. The expiration and validity of site plans and plats issued pursuant to the vested rights determination that extend beyond the vesting period shall be governed by the provisions of this ordinance. Substantial amendments and modifications to an approved site specific development plan shall not be accorded "vested rights" unless such changes are processed as a new "site specific development plan." Each approved site specific development plan shall contain the following notation: "Approval of this plan establishes a zoning vested right under NCGS §160A-385.1 or NCGS §153A-344.1. Unless terminated at an earlier date, the zoning vested rights shall be valid until (Insert date)."

B. A building permit shall not expire or be revoked because of the passage of time while a zoning vested right under this section is outstanding.

C. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to portions of the development that do not have approved and continuously valid site plans and preliminary plats, or buildings and uses for which no valid building permit applications have been filed.

3.21.7 Termination

A zoning vested right as provided in this section shall terminate when any one of the following circumstances apply:

A. At the end of the applicable vesting period;

B. With the written consent of the affected landowner;

C. Upon findings by the governing body by ordinance and after public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;

D. Upon payment of compensation to the affected owner for all costs, expenses, and other losses incurred by the landowner together with interest;

E. Upon findings by the governing body by ordinance and after public hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material
misrepresentations which made a difference in the approval by the governing body of the site specific development plan; or

F. Upon the enactment of a State or Federal law or regulation or local ordinances enacted in compliance with such laws or regulations that preclude development as contemplated in the site specific development plan.

3.21.8 Annexation

A. Property that is annexed shall retain any vested rights throughout the original vesting period subject to the limitations of paragraph B below.

B. A property owner petitioning for annexation shall submit a signed statement declaring any existing vested right with respect to the properties subject to annexation, if the owner wishes to maintain the vested right. The failure to sign such a statement shall terminate any such vested right.

3.21.9 Limitations

Nothing in this section shall be deemed to create any vested rights other than those established under NCGS §160A-385.1 or NCGS §153A-344.1. In the event that either NCGS §160A-385.1 or NCGS §153A-344.1 is repealed, the provisions of this section are no longer effective to the jurisdiction involved.

Sec. 3.22 Floodplain Development Permit

3.22.1 Applicability

A floodplain development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

3.22.2 Floodplain Administrator

A. Designation

The Inspections Director, or designee, shall serve as the Floodplain Administrator. For this purpose, the Inspections Director, or designee, shall receive training and certification from the Association of Floodplain Managers.

B. Duties and Responsibilities

Duties of the Floodplain Administrator shall include, but not be limited to:

1. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied;

2. Advise permittees that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit;

3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
5. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of 8.4.3E, Floodway and Non-Encroachment Areas, are met;

6. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with the certification requirements in Sec. 3.22, Floodplain Development Permit;

7. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with the certification requirements in Sec. 3.22, Floodplain Development Permit;

8. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with the certification requirements in Sec. 3.22, Floodplain Development Permit;

9. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the certification requirements in Sec. 3.22, Floodplain Development Permit and Sec. 8.4.3, Standards;

10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article;

11. When Base Flood Elevation (BFE) data has not been provided in accordance with Sec. 8.4.2, Applicability, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Sec. 8.4.3.C, Floodplains without Base Flood Elevations, in order to administer the provisions of this ordinance;

12. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Sec. 8.4.2, Applicability, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance;

13. When the lowest ground elevation of a parcel or structure located within Zone AE is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file;

14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection;

15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator, or designee, has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;

16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator
may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;

17. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked;

18. Make periodic inspections throughout all Special Flood Hazard Areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action;

19. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under Sec. 8.4.2, Applicability, including any revisions thereto including Letters of Map Change, issued by the State and/or FEMA. Notify State and FEMA of mapping needs; and

20. Follow through with corrective procedures of Sec. 15.7; Floodplain and Flood Damage Protection Enforcement and Penalties.

21. Maintain records of all floodplain development permits, actions by the Development Review Board, and major special use permits approving fill or development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas and report on them to the Federal Emergency Management Agency upon request.

### 3.22.3 Base Flood Elevations

**A. Basis for Determination in Mapped Areas**

Base flood elevations shall be based upon the Flood Insurance Rate studies described in Sec. 8.4.2, Applicability, when such studies define a base flood elevation.

**B. Development, including the construction of structures that only require building permits and land disturbing activity within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, as identified by the Federal Emergency Management Agency in the most current Flood Insurance Rate Studies, which are hereby adopted by reference and declared to be a part of this section, shall be prohibited unless carried out pursuant to the general standards in Sec. 8.4.3, Standards, or expressly authorized pursuant to Sec. 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.**

**C. When Base Flood has not been Determined**

1. When base flood elevations have not been determined, the Inspections Director, or designee, acting as the Floodplain Administrator, may require FEMA accepted hydrologic and hydraulic engineering studies, or may obtain, review, and reasonably utilize any base flood elevation data and floodway or non-encroachment area data available from a Federal, State, or other source in determining the appropriate base flood elevation.
2. On small streams where no base flood data has been provided, no encroachments, including fill, new construction, substantial improvements or new development, shall be permitted within the setbacks established in Sec. 8.5, Riparian Buffer Protection Standards, or Sec. 8.7, Watershed Protection Overlay Standards, or 20 feet each side from top of bank, or five times the width of the stream, whichever is greatest.

**3.22.4 Application Requirements**

A. Application for a floodplain development permit shall be made to the Floodplain Administrator, or designee, prior to any development activities proposed to be located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items/information shall be required as part of the application for a floodplain development permit:

1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
   
   a. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
   
   b. the boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Areas as delineated on the FIRM or other flood map as determined in Sec. 8.4.2, Applicability, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Areas;
   
   c. flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Sec. 8.4.2, Applicability;
   
   d. the boundary of the floodway(s) or non-encroachment area(s) as determined in Sec. 8.4.2, Applicability;
   
   e. the Base Flood Elevation (BFE) or future conditions flood elevation where provided as set forth in Sec. 8.4.2, Applicability; Sec. 3.24.1.B (11 & 12), Duties and Responsibilities; or Sec. 8.4.3, Standards;
   
   f. the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and
   
   g. preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

2. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:

   a. elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
   
   b. elevation in relation to mean sea level to which any non-residential structure in Zone AE or Zone X (Future) will be flood-proofed; and
   
   c. elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

3. If floodproofing, a floodproofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in Sec. 8.4.3, Standards.
4. A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
   a. Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers); and
   b. Should solid foundation perimeter walls be used in Zones AE and Zone X (Future), details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Sec. 8.4.3, Standards.

5. Usage details of any enclosed space below the regulatory flood protection elevation;

6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

7. Copy of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.);

8. If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure the recreational vehicle and temporary structure requirements of Sec. 8.4.3, Standards are met; and

9. If a watercourse is proposed to be altered and/or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

**3.22.5 Floodplain Development Permit Data Requirements**

The following information shall be provided at a minimum on the floodplain development permit to ensure compliance with this code:

A. A description of the development to be permitted under the floodplain development permit issuance;

B. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Sec. 8.4.2, Applicability;

C. The regulatory flood protection elevation required for the reference level and all attendant utilities;

D. The regulatory flood protection elevation required for the protection of all public utilities;

E. All certification submittal requirements with timelines;

F. State that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable;

G. The flood openings requirements, if in Zone AE or Zone X (Future).

**3.22.6 Certification Requirements**

A. An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, or floodproofed elevation, whichever is applicable in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said
certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder’s risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make said corrections required shall be cause to issue a stop-work order for the project.

B. A Final As-Built Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

C. If a manufactured home is placed within an Zone AE or Zone X (Future) and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Sec. 8.4.3, Standards.

D. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

E. Certification Exemptions. The following structures, if located within Zone AE or Zone X (Future), are exempt from the elevation/floodproofing certification requirements specified in items 1 and 2 above:

   1. Recreational Vehicles meeting requirements of recreational vehicles in Sec. 8.4.3, Standards;
   2. Temporary Structures meeting the temporary structure requirements of Sec. 8.4.3, Standards; and

F. Accessory Structures less than 150 square feet meeting accessory structure requirements of Sec. 8.4.3, Standards.

Sec. 3.23 Limited Agriculture Permit (City Only)

3.23.1 Applicability

Designated limited agriculture (see Sec. 5.4.12, Limited Agriculture) shall require a permit, as set forth below.

3.23.2 Application Requirements

A limited agriculture permit application shall be submitted in accordance with Sec. 3.2.4, Application Requirements.

A. The application shall be signed by the owner of the subject property, and such signature shall be notarized.

B. The applicant shall provide notice of the permit application to, and seek consent from, each owner of
Applications and Permits

adjacent property using a notice and consent form provided by the Planning Director or designee. A completed form shall be sent by certified mail to each owner, and a copy of such form shall be sent by first class mail to the resident of the property, if different. A copy of the relevant sections of this Ordinance shall be sent with each form or copy.

C. Failure of any adjacent property owner to respond within 30 days of the mailing date shall be deemed consent by such property owner.

D. The applicant shall submit a copy of each mailed notice and consent form with proof of mailing along with any returned forms to the Planning Director or designee 30 days or later from the last mailing date, or may submit them earlier if all forms sent have been returned.

E. If any property owner denies consent, the Planning Director or designee shall conduct an informal administrative review with the applicant and non-consenting property owner to determine whether issuance of a permit would likely result in an ordinance violation or otherwise create a nuisance or detriment to public health or safety or cause significant hardship or injury due to site conditions or personal considerations. The Planning Director or designee shall notify the applicant and non-consenting property owner(s) of the date, time, and location of the review by First Class Mail, mailed at least two weeks in advance, and request that each attend, submit a written statement, or appear by telephone. Failure of any non-consenting property owner to attend, submit a written statement, or appear by telephone shall be deemed a change to consent by such property owner. Following the administrative review, the Planning Director or designee shall set forth in writing the determination and shall furnish a copy thereof to any person requesting the same. The permit shall be denied if the Planning Director or designee determines that issuance would likely cause a result identified above.

3.23.3 Action by the Planning Director

Upon review of the application and subject to the requirements of Sec. 3.23.2, Application Requirements, the Planning Director or designee shall approve the limited agriculture permit provided the limited agriculture meets all requirements of this Ordinance, except that misrepresentation including forgery by an applicant shall result in permit denial.

3.23.4 Revocation

The limited agriculture permit shall be revoked if the limited agriculture is found to be in violation of the requirements of this Ordinance, and as otherwise stated in Sec. 5.4.12, Limited Agriculture.

3.23.5 Appeal

Final action on a limited agriculture permit may be appealed in accordance with Sec. 3.16, Appeal of Administrative Decision.

Sec. 3.24 Architectural Review

3.24.1 Applicability

The review procedures described below apply to changes to building elevations where compliance with architectural standards is required, but no site plan approval or certificate of appropriateness is otherwise required. The requirements of paragraph 3.24.2B below also apply where architectural drawings are required for site plan approval.

3.24.2 Application Requirements
A. An architectural review application shall be submitted in accordance with Sec. 3.2.4, Application Requirements. Architectural review application documents shall contain, at a minimum, the information listed below unless expressly exempted by another provision of this Ordinance or if the Planning Director or designee makes the determination that less detailed information is required for adequate review. No processing or review of an architectural review application will proceed without the required information.

B. General Requirements

1. Title Block - Name of project, type of review labeled: Architectural Review; submittal and revision dates; sheet size 36” x 48” maximum with index map and match lines if multiple sheets are required; graphic scale (not smaller than one inch to 32 feet on a standard architectural scale); property identification number.

2. Name, address and telephone number of owner, applicant and agent; name, address and telephone number of architect or other designer.

3. Elevations of all building facades, to scale, and labeled with materials, colors, finished floor elevations, glazing calculations, and other details as necessary to demonstrate compliance with applicable standards.

3.24.3 Action by the Planning Director

Upon review of the application and subject to the requirements of Sec. 3.24.2, Application Requirements, the Planning Director or designee shall approve the architectural review application provided the design meets all applicable requirements of this Ordinance. An architectural review approval shall expire after four years unless a building permit or other development permit has been issued and remains continuously valid or if work not requiring a permit has been initiated, except that an architectural review application that proposes amending an approved site plan shall be considered a site plan amendment under Sec. 3.7.14, Site Plan Amendments, and its approval shall expire at the same time as the approved site plan as amended.
Article 8 Environmental Protection

Sec. 8.1 Purpose

Durham County is endowed with an abundance of natural resources, including land, forests, streams and rivers, lakes, wildlife and natural beauty. Inappropriate development threatens the quality of the natural resources that make it a special place to live and work. Durham’s governing bodies recognize that establishing standards for the protection of Durham County’s natural resources represents prudent stewardship of the land and good business. The multiple purposes of natural resource protection standards are:

A. To preserve and enhance the quality of the water in rivers, streams, ponds and lakes that flow into and out of Durham County;
B. To minimize future flooding problems by restricting development in flood prone areas;
C. To preserve the water carrying capacity of watercourses and the natural water storage capacity of the floodplain;
D. To protect land and watercourses from pollutants, sedimentation and erosion;
E. To retain open spaces in order to protect their environmentally-sensitive character;
F. To protect and conserve significant natural resources from degradation due to inappropriate development. Such natural resources include Inventory Sites, wildlife and plant life habitats, wetland areas and riparian areas;
G. To minimize the impact of development by controlling the location, intensity, pattern and design of development and construction activities;
H. To enhance the aesthetic appearance of Durham as a means of improving quality of life and attracting new businesses and residents;
I. To improve air quality by reducing the heat island effect by reducing pollution and fossil fuel used for transportation by encouraging walking, bicycling and transit; and
J. To protect environmentally sensitive lands while recognizing the legitimate expectations of property owners and Durham’s economic development goals.

Sec. 8.2 Exemptions from Environmental Protection Standards

8.2.1 Water Supply Reservoirs

Public water supply reservoirs and associated facilities shall be exempt from the requirements of this Article unless explicitly acknowledged within any section.

Sec. 8.3 Tree Protection and Tree Coverage

8.3.1 Tree Coverage Standards

A. Purpose
   The primary purpose of the tree coverage standards is the preservation and maintenance of undisturbed
cover and the provision of replacement tree cover on development sites in the Urban and Suburban Tiers. Tree coverage serves to reduce glare, noise, air pollution, and soil erosion; to moderate temperatures; to reduce stormwater runoff; to preserve remnants of Durham’s native ecology; to provide habitat for native plants and wildlife; to provide a healthy living environment; and to make Durham County a more attractive place to live.

B. **Applicability**

1. Tree coverage standards shall only be applied in the Urban and Suburban Tiers.

2. Developments in the RR and RS-20 Districts, and developments of less than four acres in size in the Urban Tier, shall be exempt from tree coverage requirements provided enforceable assurances are provided that no mass grading as defined in Sec. 16.3, Defined Terms, or clear-cutting as defined in paragraph 8.3.4, Clear-Cutting, will be utilized during the development process.

3. No tree coverage is required in non-residential districts in the Urban Tier.

4. Additions to existing residential structures, excluding multiplexes and apartments, are exempt from tree coverage requirements.

C. **Tree Coverage**

1. New development shall include tree coverage areas on a portion of the development tract.

2. Additions to development existing as of the effective date of this Ordinance shall provide tree coverage as a percentage of the area proposed for disturbance.

3. **Locations**

   a. Tree coverage areas in new subdivisions shall be located in common open space or buffers required by other provisions of this Ordinance, except that new subdivisions without the buffers that make payment in lieu of required open space under Section 7.2.2, Required Open Space, may locate tree coverage areas on private lots or as otherwise specified as below.

   b. Any forested land in the floodway, non-encroachment area, floodway fringe, non-encroachment area fringe, or Area of Shallow Flooding (Zone AO) (unless proposed to be filled or developed in accordance with Sec. 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas), preserved wetlands and wetland buffers, steep slope areas, stream buffers, Durham Natural Inventory Sites, Major Transportation Corridor (MTC) buffers, and any portion of the tract left undisturbed in order to create required perimeter buffers that satisfies the minimum size requirements established in Sec. 8.3.1D, Preserved Tree Coverage, Sec. 8.3.1E, Replacement Tree Coverage, below may be used as tree cover.

4. Tree coverage standards may be met either by preserving existing trees on the site, by planting replacement trees, or a combination of both.

   a. **Suburban Tier**

      The percentage of a tract which shall have tree coverage is as indicated in the table below. The total tree coverage area shown reflects the addition of replacement tree coverage area to the preserved tree coverage area shown.

<table>
<thead>
<tr>
<th>Residential Development</th>
<th>Preserved Tree Coverage Area (%)</th>
<th>Total Tree Coverage Area Required (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
b. **Urban Tier**

Developments in residential districts in the Urban Tier shall provide a minimum 3% tree coverage.

5. For the purposes of calculating tree coverage requirements, the water surface area of ponds, lakes and other water bodies (excluding stormwater control structures) shall be excluded from the total land area of the development tract.

6. Tree preservation and tree replacement areas shall be shown on all preliminary plats, final plats, site plans and development plans in order to clearly assign tree replacement responsibility to future owners. Tree preservation and tree replacement areas on any individual lot shall be clearly shown all plot plans for the lot.

7. Property owners shall be responsible for protecting and preserving tree preservation and tree replacement areas during and after the development process in accordance with standard horticultural practice and Sec. 8.3.2, Protection of Existing Vegetation.

D. **Preserved Tree Coverage**

Areas proposed as tree preservation shall meet the following requirements to satisfy the tree coverage standards in paragraph 8.3.1, Tree Coverage and Protection Standards:

1. The provisions of Sec. 8.3.2, Protection of Existing Vegetation, shall be fulfilled.

2. Tree preservation areas shall be located in the areas listed in Sec. 8.3.1, Tree Coverage Standards, above. Additional tree preservation areas may be located outside of these areas, in which case they shall be located in order to preserve specimen trees and to preserve clusters of trees that add to the aesthetic quality of the development as viewed from the public right-of-way.

3. **Clusters of Trees**

   a. The tree coverage area for a cluster of trees shall be determined by the exterior boundary of total root protection zones for all of the trees in the cluster.

   b. For parcels greater than one acre, no tree preservation area for a cluster of trees may be counted toward meeting the tree coverage standard unless it includes a minimum of 1,000 square feet such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension less than 13 feet. The area protected must include the entire root protection zone of the tree cluster, and adequate tree protection measures, as defined in paragraph 8.3.2, Protection of

<table>
<thead>
<tr>
<th>Preserved Tree Coverage Area (%)</th>
<th>Total Tree Coverage Area Required (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>10</td>
<td>10</td>
</tr>
<tr>
<td>At least 8 but less than 10</td>
<td>13</td>
</tr>
<tr>
<td>At least 6 but less than 8</td>
<td>14</td>
</tr>
<tr>
<td>Less than 6</td>
<td>15</td>
</tr>
</tbody>
</table>
Existing Vegetation, must be taken during the construction and grading of the project.

c. For parcels one acre or less, no single tree preservation area for a cluster of trees may be counted toward meeting the tree coverage standard unless it includes a minimum of 500 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension less than 13 feet.

d. At least 60% of the tree coverage included within any tree preservation area shall be composed of trees with at least a one inch dbh as determined through use of landscape sampling pursuant to paragraph 9.3.3, Sampling.

e. At least 75% of the root protection zone for a cluster of trees shall be located on the subject site for it to be considered a protected cluster.

4. Individual Trees

a. The tree coverage area for an individual tree shall be determined by the tree's root protection zone.

b. At least 75% of the root protection zone for an individual tree shall be located on the subject site in order for that tree to count as preserved.

c. An individual tree may be counted toward tree coverage credit provided that its diameter is eight inches dbh or greater.

5. Construction in Preserved Tree Coverage Areas

a. Preserved tree coverage areas shall not be used for active recreational purposes, except for the following:

   1. Unpaved walking paths and foot trails constructed with minimal disturbance of tree roots and existing vegetation. No tree eight inches dbh or greater shall be removed for construction of the trail.

   2. Paved trails that are public trails and are shown on the most recent version of the Durham Trails and Greenways Plan. No tree eight inches dbh or greater shall be removed for the construction of the trail without approval from the Planning Director or designee. In no case shall the clearing of the trail corridor exceed 16 feet in width.

   3. Amenity areas containing such items as picnic tables and benches provided that such areas are unpaved and no larger than 200 square feet or 10% of the tree coverage area whichever is smaller. No tree eight inches dbh or greater shall be removed for the construction of an amenity area.

b. All buildings, utilities, and stormwater facilities shall be set back at least 10 feet from the edge of any preserved tree coverage area. No easements, except conservation, greenway, and landscape easements, shall be included within a tree coverage area.

E. Replacement Tree Coverage

Areas proposed as tree replacement shall meet the following requirements to satisfy the standards found in paragraph 8.3.1C, Tree Coverage:

1. For parcels greater than one acre, no tree replacement area may be counted toward meeting the tree coverage standard unless it includes a minimum of 1,000 square feet (or such smaller area as required by paragraph 8.3.1C.4 above) and has no individual dimension of less than 25 feet.

2. For parcels one acre or less, no tree replacement area may be counted toward meeting the tree coverage standard unless it includes a minimum of 500 square feet (or such smaller area as required by
3. When replacement trees are provided in order to satisfy the requirements of paragraph 8.3.1C, Tree Coverage, coverage credit shall be accrued in accordance with the following table with credit calculated based on the required planting area for the proposed trees up to a maximum credit for a single tree of 275 square feet.

<table>
<thead>
<tr>
<th>Hardwood Caliper (inches)</th>
<th>Non-Hardwood Height (feet)</th>
<th>Credit (square feet)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
<td>18 or over</td>
<td>275</td>
</tr>
<tr>
<td>3-1/2</td>
<td>16 to 18</td>
<td>250</td>
</tr>
<tr>
<td>3</td>
<td>14 to 16</td>
<td>225</td>
</tr>
<tr>
<td>2-1/2</td>
<td>12 to 14</td>
<td>200</td>
</tr>
<tr>
<td>2</td>
<td>10 to 12</td>
<td>175</td>
</tr>
<tr>
<td>1-1/2</td>
<td>8 to 10</td>
<td>150</td>
</tr>
<tr>
<td>1</td>
<td>7 to 8</td>
<td>100</td>
</tr>
<tr>
<td>0.75</td>
<td>5 to 7</td>
<td>75</td>
</tr>
<tr>
<td>Less than 0.75</td>
<td>Less than 5</td>
<td>No credit</td>
</tr>
</tbody>
</table>

**EXAMPLE:** 10 trees at 2-1/2-inch caliper requires 2,000 square feet of planting area, and provides 2,000 square feet of replacement tree credits.

4. At least 50% of replacement trees shall be one inch caliper or greater.

5. A minimum of 50% of replacement trees shall be large, maturing, hardwood species native to Durham County. The remainder of the replacement trees shall be a mix of canopy and understory hardwood and non-hardwood species native to Durham County, as long as no more than 50% of this remainder are pines. Replacement trees shall be provided as a mix of species, in accordance with the standard in paragraph 9.2.3B.5, Mixing of Tree Species.

6. At least 75% of the replacement trees planted to augment preserved tree coverage clusters pursuant to paragraph 8.3.1C.f shall be native understory hardwoods of one inch caliper or greater.

7. Where evidence can be provided that a portion of a development tract has been in continuous agricultural use since January 1, 1980, the tree coverage standard indicated in paragraph 8.3.1C, Tree Coverage, may be reduced by the proportion of the entire development tract that is in such agricultural use, up to 33%. Such portion of the tract shall not be required to remain in agricultural upon approval of a site plan by the approving authority. Tree coverage requirement reductions under this paragraph shall not apply to nonresidential development.

**EXAMPLE:** A 100 acre site in the Suburban Tier is to be developed as single-family housing. Twenty percent of the site is currently in agricultural use. Therefore, instead of the 20% tree coverage requirement, the overall site is only required to provide 16% tree coverage.

8. Areas designated as replacement tree coverage shall be subject to the use limitations imposed on preserved tree coverage in paragraph 8.3.1D.5, Construction in Preserved Tree Coverage Areas, except that stormwater control measures designed as bioretention facilities shall be allowed.
9. Replacement trees shall be planted before any Certificate of Compliance is issued, unless the planting has been deferred to an appropriate season in accordance with the requirements of paragraph 9.11 Extensions for All Other Development.

### 8.3.2 Protection of Existing Vegetation

Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the following protection standards.

A. Protection measures to be used during grading and construction, including details of the tree protection fence(s) and its location(s), shall be shown on the site, landscape, grading, utility, demolition, and erosion control plans.

B. Root protection zones shall be established around all trees to be preserved. The root protection zone shall either be a six-foot radius around the tree or a one foot radius for every inch of tree dbh, whichever is greater.

C. A tree protection fence constructed of a material resistant to degradation by sun, wind, and moisture for the duration of the construction, shall be installed at the same time as the erosion control measures, and shall remain in place until all construction is complete. Such fencing shall be mounted on metal posts placed no further than ten feet apart. Silt fencing shall not serve as tree protection fencing except in unusual circumstances, such as when topography limits the area available for installation of both tree protection fencing and erosion control measures.

D. At the start of grading involving the lowering of the existing grade around a tree or stripping of topsoil, a clean, sharp, vertical cut shall be made at the edge of the tree save area at the same time as other erosion control measures are installed. Tree protection fencing shall be installed on the side of this cut farthest away from the tree trunk. This procedure shall be incorporated as a note on the grading and erosion control plans.

E. No storage of materials, dumping of waste materials, fill, or parking of equipment shall be allowed within the root protection zone, and no trespassing shall be allowed within the boundary of the root protection zone and shall be so noted on the grading and erosion control plans and posted at each end of the tree protection fence with perimeter signs spaced a maximum of 100 feet on center thereafter. Each sign shall read "no trespassing/tree protection area" and "prohibido entrar/zona protectora para los arboles".

### 8.3.3 Tree Survey

A. **Purpose**

The primary purpose of the tree survey requirements is to provide better information about the presence and location of significant trees on sites proposed for development. This information is needed before plans for development are so far advanced that it is unreasonable and impractical to modify the plans to protect the trees identified on the tree survey. Knowing the location and size of specimen trees helps the staff and governing body evaluate possible modifications to the proposed plans to preserve significant trees and improve the appearance of proposed development.

B. **General Tree Survey**

For a development plan showing building envelopes rather than building footprints, a generalized survey describing existing forest stands, indicating the range of species and approximate size of trees on the tract shall be provided.

C. **Land Disturbance Tree Survey**

1. A land disturbance tree survey shall be required for any area for which the limits of disturbance are within 30 feet of a preserved tree coverage area, floodplain, steep slope area, stream buffer, required landscape buffer, Inventory Site, wetland, or conservation area.
2. The land disturbance tree survey shall show the specific location, species, size and root protection zone of any tree(s) eight inches dbh or greater that is within 30 feet of any area proposed for disturbance and meets the qualifications in the above paragraph.

3. The land disturbance tree survey shall be shown on all site, grading, and erosion control plans, as well as preliminary plats.

### 8.3.4 Clear-Cutting

**A. Standard**

Properties shall not be clear-cut during the conduct of forestry activities. To maintain the visual character of the site from adjoining properties and right-of-way, a vegetated perimeter buffer shall be maintained where tree harvesting for forestry occurs. A 32-foot wide buffer of naturally existing vegetation shall be maintained along all boundaries of the property being forested that adjoin other properties. Along public rights-of-way a 50-foot buffer of naturally existing vegetation shall be maintained, exclusive of areas required for access to the site.

**B. Penalties**

1. **City**

   Site plans proposing development of properties on which all or substantially all of the trees protected in a 32-foot buffer required under this section, a 50-foot buffer required under this section, or both, removed shall be denied for a period of three years from the date of removal or five years from the date of removal if removal is a willful violation of this section.

2. **County**

   Site plans proposing development of properties on which all or substantially all of the trees protected in a 32-foot buffer required under this section, a 50-foot buffer required under this section, or both, removed shall be denied for a period of three years from the date of removal.

### 8.3.5 Specimen Trees

**A.** A specimen tree shall be defined as any evergreen canopy tree eighteen (18) inches dbh or greater, any deciduous canopy tree twelve (12) inches dbh or greater and any understory tree (deciduous or evergreen eight (8) inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or listed as Prohibited for Any Use in the Landscape Guidelines for Durham, North Carolina.

**B.** Specimen trees, as defined above, that are saved and protected under the requirements of paragraph 8.3.2 shall be granted tree coverage credit at one and one-half times the size of the root protection zone. Specimen trees that are located in the floodway, non-encroachment area, floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) (unless proposed to be filled or developed in accordance with paragraph 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas), preserved wetlands and wetland buffers, steep slope areas, riparian buffers, Major Transportation Corridor (MTC) buffers, and Durham Natural Inventory Sites are not eligible for additional credit as described above.

**C.** In order to receive additional credit for specimen trees as described above, a specimen tree survey shall be required showing specific location, species, size, and root protection zone of all specimen trees to be saved. This survey shall be included on all site, landscape, grading, utility, demolition, and erosion control plans.

### Sec. 8.4 Floodplain and Flood Damage Protection Standards

#### 8.4.1 Purpose

The primary purpose of the floodplain and flood damage protection standards is to preserve and maintain the natural floodplain in an undisturbed vegetated state in order to maintain flood storage capacity, control...
stormwater, improve water quality and conserve plant and wildlife habitat. Additionally, these standards serv
promote public health, safety, and general welfare and to minimize public and private losses due to flood condit
within flood prone areas.

In addition, this section serves to facilitate implementation of the Federal Flood Insurance Program and to minin
the possibility that new construction will sustain damage from flooding by:

A. Restricting or prohibiting uses that are dangerous to health, safety and property due to water or erosion
hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against f
damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which
involved in the accommodation of floodwaters;

D. Controlling filling, grading, dredging, or other development that may increase erosion or flood damage;

E. Preventing or regulating the construction of flood barriers that unnaturally divert flood waters or that m
increase flood hazards to other lands;

F. Minimizing damage to public facilities and utilities such as water and gas mains, electric, telephone and
sewer lines, and streets and bridges located in areas of special flood hazard; and

G. Ensuring that property owners and potential property owners are notified that property is a Special Flo
Hazard Area or Future Conditions Flood Hazard Area.

Commentary: Losses in flood prone areas are the result of the cumulative effects of
obstructions, removal of vegetative cover, and construction practices that cause an
increase in flood heights and velocities. Increased flood heights and velocities create a
greater threat to land uses and structures that are inadequately elevated, floodproofed,
or are otherwise unprotected from flood damage. Occupancy in flood prone areas by
uses vulnerable to floods or other hazards can result in loss of life, property, health and
safety hazards, disruption of commerce and governmental services, extraordinary
public expenditures of flood protection and relief, and impairment of the tax base, all of
which adversely affect the public health, safety, and general welfare.

The degree of flood protection required by this ordinance is considered reasonable for
regulatory purposes and is based on scientific and engineering consideration. Larger
floods can and will occur. Actual flood heights may be increased by man-made or
natural causes. This ordinance does not imply that land outside the Special Flood
Hazard Areas and Future Conditions Flood Hazard Areas or uses permitted within
such areas will be free from flooding or flood damages. This ordinance shall not create
liability on the part of Durham City or County or by any officer or employee thereof for
any flood damages that result from reliance on this ordinance or any administrative
decision lawfully made hereunder.

8.4.2 Applicability

This section shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the
City and County of Durham as identified by the Federal Emergency Management Agency (FEMA) or produced u
the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood
Insurance Study (FIS) and its accompanying flood maps, such as the Flood Insurance Rate Map(s) (FIRM) for Dur
Environmental Protection

Latest Revision June 27, 2011
Unified Development Ordinance

County dated May 2, 2006; February 2, 2007; April 16, 2007; June 4, 2007; August 2, 2007; or May 16, 2008, are adopted by reference and declared to be a part of this ordinance. Also adopted by reference and declared to be a of this ordinance are associated Physical Map Revisions and Letters of Map Change issued by FEMA as of [date on which ordinance has been adopted by both governing bodies]. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This include but is not limited to, detailed flood data:

A. generated as a requirement of Sec. 3.22.2, Duties and Responsibilities;
B. preliminary FIRMs where more stringent than the effective FIRM; or
C. post-disaster Flood Recovery Maps.

8.4.3 Standards

A. General
In all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas the following provisions are required:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
3. All new construction or substantial improvements shall be constructed by methods and practices minimize flood damages;
4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable box appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches;
5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
8. Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with provisions of this ordinance, shall meet the requirements of new construction; and
9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yard and chemical storage facilities shall not be permitted. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevate floodproofed to at least the regulatory flood protection elevation and certified according to the certification requirements in Sec. 3.22, Floodplain Development Permit.
10. Fill material shall be used for all new construction and substantial improvements to create an elevation that is two feet above base flood elevation, or future conditions flood elevation, except as
otherwise authorized pursuant to Sec. 8.4.4, Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The fill material shall be required to extend for a distance of 40 feet from the exterior walls of a building. Where the distance to the property line is less than 40 feet, the shall extend to the property line. The required fill material distance shall include a sloped edge with maximum 3:1 slope [for example, for a fill three feet deep: 31 feet of flat fill plus nine feet of sloped fill] or a retaining wall in lieu of the slope [for example, a side yard of flat fill and a retaining wall]. Residence accessory structures which are defined as nonhabitable structures by the North Carolina Building Code are exempt from requirements to extend the fill material away from the base but are required to be placed on fill which is two feet, or five feet in Zone A, above base flood elevation. Exceptions from any of these requirements resulting from special storm water considerations shall be forwarded to approving authority, if other than the Floodplain Administrator, with a recommendation from the Floodplain Administrator.

B. Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where future conditions flood elevations data has been provided, as set forth in Sec. 8.4.2, Applicability, or Sec. 3.24.2 B (11 & 12), Duties and Responsibilities, the following provisions are required:

1. Subdivisions

   a. Land in the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas may be used for the following purposes, provided that such uses are designed and constructed to minimize clearing, grading, erosion and water quality degradation and are in compliance with the Sec 8.4, Floodplain and Flood Damage Protection Standards. Land within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall not serve to meet minimum lot size requirements, except in the Rural Tier and on property zoned RR or RS-20 in the Suburban Tier where at least 50% of the required lot area is located outside the floodway or non-encroachment area or floodway fringe.

   b. When permitted, development proposals located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall:

      1. be consistent with the need to minimize flood damage;

      2. have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;

      3. have adequate drainage provided to reduce exposure to flood hazards; and,

      4. have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Sec. 8.4.2, Applicability, to be utilized in implementing this code.

2. Residential Construction

   New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation.

3. Non-Residential Construction

   New construction or substantial improvement of any commercial, industrial (other than hazardous solid waste, salvage yards, chemical storage facilities or similar uses which are prohibited) or other non-residential structure shall have the reference level, including basement, elevated no lower than
the regulatory flood protection elevation. Structures located in AE and X (Future) Zones may be
floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas
the structure below the required flood protection elevation are watertight with walls substantially
impermeable to the passage of water, using structural components having the capability of resistiti
hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer
architect shall certify that the standards of this subsection are satisfied. Such certification shall be
provided to the official as set forth in the certification requirements in Sec. 3.22, Floodplain
Development Permit.

4. **Manufactured Homes**

   a. New or replacement manufactured homes shall be elevated so that the reference level of the
      manufactured home is no lower than the regulatory flood protection elevation.

   b. Manufactured homes shall be securely anchored to an adequately anchored foundation to re
      flotation, collapse, and lateral movement in accordance with the State of North Carolina
      Regulations for Manufactured Mobile Homes, 1995 Edition, and any revision thereto adopte
      the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered
      foundation. Additionally, when the elevation would be met by an elevation of the chassis
      thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by
      reinforced piers or other foundation elements of at least equivalent strength. When the eleva
      of the chassis is above thirty-six (36) inches in height, an engineering certification is require

   c. All foundation enclosures or skirting shall be in accordance with Sec. 8.4.3.B.5, Elevated
      Buildings.

   d. All new, substantially improved or substantially damaged manufactured home parks or
      subdivisions located within Special Flood Hazard Areas or Future Conditions Flood Hazard
      Areas shall prepare an evacuation plan for evacuation of all residents. The plan shall be filec
      with the Inspections Director, or designee (as the Floodplain Administrator) and the Emerg
      Management Coordinator prior to the time of site plan approval, plat approval, or building
      permit, if site plans or plats are not required.

   e. Manufactured homes. except replacement manufactured homes located in an existing
      manufactured home park or subdivision, shall not be permitted in the floodway or non-
      encroachment area, Permitted manufactured homes shall be subject to the non-encroachme
      standards of Sec. 8.4.3E, Floodway and Non-Encroachment Areas.

5. **Elevated Buildings**

   New construction or substantial improvements of elevated buildings that include fully enclosed a
that are below the regulatory flood protection elevation shall not be designed to be used for human
habitation, but shall be designed to be used only for parking of vehicles, building access, or limited
storage of maintenance equipment used in connection with the premises, be constructed entirely of
flood resistant materials below the regulatory flood protection level in Zone AE and X Zone (Future
and meet the following design criteria:

   a. Measures for complying with this requirement shall be designed to automatically equalize
      hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
     meet this requirement, the foundation must either be certified by a professional engineer or
     architect or meet the following minimum design criteria:

        1. Provide a minimum of two openings on different sides of each enclosed area subject t
2. The total net area of all openings must be at least one (1) square inch for each square foot of each enclosed area subject to flooding.

3. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;

4. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and

5. Openings may be equipped with screens, louvers, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions. For purposes of this provision, vinyl or sheet metal skirting shall not be considered an enclosure for regulatory and flood insurance rating purposes and therefore shall not require hydrostatic openings.

b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

6. Additions/Improvements

a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

   1. not a substantial improvement the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure; or

   2. a substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.

b. Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.

c. Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure are:

   1. not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction; or

   2. a substantial improvement, the existing structure and the addition and/or improvements must comply with the standards for new construction.

d. Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

e. Manufactured homes, except replacement manufactured homes located in an existing manufactured home park or subdivision, shall not be permitted in the floodway or non-encroachment area. Permitted manufactured homes shall be subject to the non-encroachment standards of Sec. 8.4.3E, Floodway and Non-Encroachment Areas.

7. Recreational Vehicles

Recreational vehicles shall not be located within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas for 180 days or more and shall be licensed and ready for highway use (on whe
attached to a site by quick-disconnect type utilities with no permanently attached additions). Recreational vehicles not meeting these standards shall meet the standards of manufactured home above.

8. **Temporary Structures**

Prior to the issuance of a floodplain development permit for a temporary structure, Applicants must submit to the Floodplain Administrator a written plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:

   a. a proposed time period for which the temporary use will be permitted;

   b. the name, address, and phone number of the individual responsible for the removal of the temporary structure;

   c. the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

   d. a copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed; and

   e. designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area to which the temporary structure will be moved.

9. **Accessory Structures**

When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

   a. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);

   b. Accessory structures shall be designed to have low flood damage potential;

   c. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

   d. Accessory structures shall be firmly anchored in accordance with Sec. 8.4.3, General;

   e. All service facilities such as electrical and heating equipment shall be installed in accordance with Sec. 8.4.3, Specific Standards;

   f. Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with Sec. 8.4.3, Standards; and

   g. An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with the certification requirements in Sec. 3.22, Floodplain Development Permit.

C. **Floodplains without Base Flood Elevations**

Within the Special Flood Hazard Areas established in Sec. 8.4.2, Applicability, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or five times the width of stream whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any
increase in flood levels during the occurrence of the base flood discharge.

2. The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

   a. If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sec. 8.4.2 (A & B.)

   b. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Sec. 8.4.2, Applicability, to be utilized in implementing this ordinance.

   c. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above five feet above the highest adjacent grade.

D. **Floodplains with Base Flood Elevations but no Established Floodway or Non-Encroachment Areas**

   Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

E. **Floodway and Non-Encroachment Areas**

   Located within the Special Flood Hazard Areas established in Sec 8.4.2, Applicability, are areas designated as floodways or non-encroachment areas, which are extremely hazardous due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. In such areas no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

F. **Standards for Areas of Shallow Flooding (Zone AO)**

   Located within the Special Flood Hazard Areas established in Sec 8.4.2, Applicability, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to the general standards in 8.4.3.A, all new construction and substantial improvements shall meet the following requirements.

   1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 2 feet, above the highest adjacent grade; or a least five feet above the highest adjacent grade if no depth number is specified.

   2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Sec. 8.4.3.F.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and...
effects of buoyancy. Certification is required as per Sec. 3.22.6, Certification Requirements, and Sec. 8.4.3.B.3, Non-Residential Construction.

3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

### 8.4.4 Development in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

Development and land disturbing activity within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas shall be prohibited, except as provided below. The Floodplain Administrator and the governing bodies shall not approve development that is located below the regulatory flood protection elevation if such development is otherwise required to be located at or above the regulatory flood protection elevation or is not permitted within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas. Development addressed under Sec. 3.22, Floodplains without Base Flood Elevations, and Sec. 8.4.3D, Floodplains with Base Flood Elevations but no Established Floodway or Non-Encroachment Areas, shall be deemed floodway development for purposes of this section.

#### A. Development Allowed

Land in Special Flood Hazard Areas may be used for the following purposes, with no special approvals required:

1. Agricultural uses, including active agriculture, pasture forestry, wildlife sanctuary, game farms, and similar uses; and
2. Lawns and gardens.

#### B. Development Requiring Floodplain Administrator Approval

1. Development of, or substantial improvements to, one single-family or duplex residence on a single lot of record that exists as of January 1, 2006, may utilize fill, pursuant to a floodplain development permit issued under Sec. 3.22, Floodplain Development Permit, in the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) if the Floodplain Administrator determines that:
   a. The proposed fill provides for a better balance between overall efficiency of the site design and improved conservation elsewhere on the site than would be possible without intrusion in the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO); and
   b. The proposed fill represents the minimum amount of floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) intrusion to achieve this better balance.
2. Floodproofing or elevation by design in lieu of required fill for new construction or substantial improvements on lots of record that exist as of January 1, 2006 pursuant to a floodplain development permit issued under Sec. 3.22, Floodplain Development Permit. If the Floodplain Administrator approves floodproofed or elevated-by-design construction or improvements rather than use of fill in Zone AE or Zone X (Future), the approval shall specify the minimum foundation opening requirement and limitations on below-BFE enclosures uses, if applicable.

#### C. Development Requiring Development Review Board Approval

1. Land in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas may be used for the following purposes, provided that the DRB determines that such uses are designed and shall be constructed to minimize clearing, grading, erosion and water quality degradation.
   a. Active and passive recreational activities.
   b. Wetlands constructed or restored for mitigation purposes.
2. Land in the floodway fringe, or non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) may be used for the following purposes, and may be filled in support of such uses, provided the DRB determines that such uses are designed and shall be constructed to minimize clearing, grading, erosion and water quality degradation.
   a. Crossings by streets, driveways, pedestrian walkways, and railroads provided that they cross the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas as nearly perpendicular to the stream as possible. Such facilities may run within and parallel to the stream if no other access to the property is feasible.
   b. Intakes, docks, piers, utilities (including water and wastewater treatment, stormwater control and sedimentation and erosion control facilities), bridges, other public facilities and water-dependent structures.

3. Land in the floodway or non-encroachment area may be used for the following purposes, and may filled in support of such uses, if the certification required under Sec. 8.4.3C, Floodplains without Base Flood Elevations, Sec. 8.4.3D, Floodplains with Base Flood Elevations but no Established Floodway Non-Encroachment Areas, or Sec. 8.4.3E, Floodway and Non-Encroachment Areas, as appropriate, has been provided, and if the DRB determines that such uses are designed and shall be constructed to minimize clearing, grading, erosion and water quality degradation.
   a. Crossings by streets, driveways, pedestrian walkways, and railroads provided that they cross the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas as nearly perpendicular to the stream as possible. Such facilities may run within and parallel to the stream if no other access to the property is feasible.
   b. Intakes, docks, piers, utilities (including water and wastewater treatment, stormwater control and sedimentation and erosion control facilities), bridges, other public facilities and water-dependent structures.
   c. Other encroachments authorized by FEMA.

D. Development Requiring Governing Body Approval

1. Fill or Development in the Floodway Fringe or Non-Encroachment Area Fringe
   Fill or development (e.g., parking or floodproofing or elevation by design) in the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) that is not authorized above is permitted unless it is in support of otherwise permissible uses and authorized by a major special use permit issued under Sec. 3.9, Special Use Permit, and provided that the appropriate governing body finds that:
   a. The proposed fill or development provides for a better balance between overall efficiency of site design, and improved conservation elsewhere on the site than would be possible without intrusion into the floodway fringe, non-encroachment area fringe, or Areas of Shallow Flood (Zone AO); and
   b. The proposed fill or development represents the minimum amount of floodway fringe, non-encroachment area fringe, or Areas of Shallow Flooding (Zone AO) intrusion to achieve this better balance.

Commentary: Intrusion within the floodway fringe or non-encroachment area fringe may allow preservation of other significant resources on the site, and the governing body is empowered to review the balancing of these two concepts.
E. No credit shall be allowed for land in the floodway or non-encroachment area, except in the RR District where 100% density credit may be given for land in the floodway or non-encroachment area in Conservation Subdivisions pursuant to Sec 6.2.4, Conservation Subdivision.

F. The amount of land in the floodway fringe or non-encroachment area fringe may be credited for residential density on adjacent land in the same development at a rate of 50% of that allowed by the zoning, except in the RR District where 100% density credit may be given for land in the floodway fringe or non-encroachment area fringe in Conservation Subdivisions pursuant to Sec 6.2.4, Conservation Subdivision.

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### Sec. 8.5 Riparian Buffer Protection Standards

#### 8.5.1 Purpose

The primary purpose of Sec. 8.5, Riparian Buffer Protection Standards (which may be referred to herein as “this section”) is to maintain land adjacent to surface waters in a vegetated state in order to enhance and maintain water quality, protect stream channel wetlands, minimize stormwater runoff, reduce sedimentation and erosion, provide nutrient removal, conserve plant and wildlife habitat and protect wildlife movement corridors.

#### 8.5.2 Applicability

This section shall apply to any person or entity conducting activities within the City or County of Durham, except where such activities are otherwise regulated by the State of North Carolina or the United States. Outside of the Neuse River Basin, activities otherwise regulated by the State include forest harvesting and agricultural activities, activities conducted by a local, state, or federal government, and activities under multiple jurisdictions except where such multiple jurisdictions are the City and County of Durham exclusively. This section shall supersede any locally implemented buffer requirements stated in 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-I and WS-IV waters in the Jordan watershed. Where any requirement of this section conflicts with any other valid law, the most stringent requirement shall apply.

The requirements of this section shall apply in all cases, including where State standards are less stringent. Review and approval by the City or County is always required, except in the case of an exempt use, and shall occur pursuant to the applicable process in each case (e.g., Preliminary Plat, Major Site Plan, etc.). Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

#### 8.5.3 Definitions

Within the Neuse River Basin, the definitions contained or referenced in 15A NCAC 02B .0233 and .0242 shall apply to this section. Outside of the Neuse River Basin, the definitions contained or referenced in 15A NCAC 02B .0263, .0267, and .0268 shall apply to this section. Such definitions shall supersede any conflicting UDO definition for purposes of this section.

#### 8.5.4 Riparian Buffers Protected

A. **Regulated Activities**

This section shall apply to any activity conducted within any riparian buffer, and to any activity conducted outside of any riparian buffer that has hydrologic impacts upon that buffer in violation of the diffuse flow
requirements of paragraph 8.5.5, Diffuse Flow Requirements. There is no disturbed area minimum for
regulated activities and they include but are not limited to activities conducted pursuant to building per-
As stated in Sec. 8.5.2, Applicability, compliance with this entire section is required even where State
standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur
after any State action is completed.

B. **Buffers Protected**

1. **General Riparian Buffers**

Riparian buffers as depicted on the table below shall be required adjacent to the following surface
waters: intermittent streams; perennial streams; modified natural streams; lakes; and ponds includ-
beaver ponds. The table includes the additional buffer width required for certain surface waters in
watershed protection overlays. It does not include the 10-foot setback required under Sec. 8.5.10C
below. A lake or pond shall receive the same buffer as the stream to which it is connected at the po-
of initial connection. A gap of 300 feet or less in a stream, as determined by the City or County, shall
receive the same buffer as the upstream portion of such stream.

![Commentary](UDO Sec. 16.3, Defined Terms, defines “adjacent” as “[p]roperty abutting
directly on the boundary of, touching, or sharing a common point.” The applicable state
rules define “modified natural stream” as “an on-site channelization or relocation of a
stream channel and subsequent relocation of the intermittent or perennial flow as
evidenced by topographic alterations in the immediate watershed. A modified natural
stream must have the typical biological, hydrological, and physical characteristics
commonly associated with the conveyance of water.”

| Watershed Protection Overlay (Riparian Buffer Widths by Tier and Overlay) |
|-----------------------------|----------------|----------------|----------------|----------------|
| Key: P = Perennial; I = Intermittent; NA = Not applicable because not located therein; M/LR-A = Lake Mitchie/Little River Critical Area; M/LR-B = Lake Mitchie/Little River Protected Area; E-A = Eno River Critical Area; E-B = Eno River Protected Area; F/J-A = Falls/Jordan Critical Area; F/J-B = Falls/Jordan Protected Area |
| Tier | None | M/LR-A | M/LR-B | E-A | E-B | F/J-A | F/J-B |
| Downtown and Compact Neighborhood |
| Stream Type | P | I | P | I | P | I | P | I | P | I | P | I |
| Width | 50 | 50 | NA | NA | NA | NA | NA | NA | NA | NA | NA | 1 |
| Urban |
| Stream Type | P | I | P | I | P | I | P | I | P | I | P | I |
| Width | 50 | 50 | NA | NA | NA | NA | NA | NA | 100 | 50 | NA | NA | 100 |
| Suburban |
2. **Riparian Reservoir Buffers**
   Riparian buffers shall be required adjacent to reservoirs pursuant to Sec. 8.6, Water Supply Reservoir Buffer.

3. **Riparian Wetland Buffers**
   Riparian buffers shall be required adjacent to wetlands pursuant to Sec. 8.9, Wetlands Protection Standards.

4. Wetlands adjacent to, or within 50 feet of, surface waters shall be considered part of the riparian buffers but are regulated pursuant to 15A NCAC 2B .0230 and .0231, 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

C. **Buffer Measurement**
   Riparian buffers shall be measured as follows:
   
   1. For intermittent and perennial streams, begin at the top of the bank and extend landward the required distance on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank;
   
   2. For ponds, lakes and reservoirs located within a natural drainage way, begin at the normal water level and extend landward the required distance, measured horizontally on a line perpendicular to a vertical line marking the normal water level;
   
   3. Where an intermittent or perennial stream begins or ends, including but not limited to when it goes underground, enters or exits a culvert, or enters or exits a wetland, begin at the top of the bank and extend landward the required distance in a radius around the beginning or end; and

   **Commentary:** The radius requirement does not apply to a continuous stream that flows through a culvert within an existing stream buffer.

   4. Where an intermittent, perennial, or modified natural stream contains a gap of 300 feet or less, as determined by the City or County, extend the upstream buffer in a straight line through the gap, or an alternative manner if approved by the Planning Director or designee, until it meets the downstream buffer.

D. **Buffer Identification**
   
   1. Riparian buffers shall be clearly indicated on all development plans, site plans, preliminary plats, and final plats.
plats, sedimentation and erosion control plans, any other plans required before, during, or after construction, and any other documents as required under applicable law or policy.

2. Signs or other mechanisms that clearly demarcate riparian buffer boundaries shall be required for new development or redevelopment.
   a. Temporary signs shall be installed before clearing and grading begins and maintained until permanent signs are installed. Tree save or silt fencing may be used in lieu of temporary signs with prior approval from the City or County as appropriate.
   b. Permanent signs shall be installed prior to issuance of certificate of occupancy and maintain in perpetuity.
   c. All signs shall be posted at intervals of one per parcel or every 50 feet, whichever is less.
   d. Each sign shall be [at least, City only] 4” by 6” in size, shall face away from the buffer, and shall read “Riparian Buffer – Do Not Disturb Except as Authorized by the City [County] of Durham.”
   e. All signs must be placed on metal or wood posts installed securely in the ground, except that permanent signs may be placed on permanent fencing along the buffer boundary. If wood posts are used they must be at least 2” x 2” in size and be made of treated wood. Posts must extend a minimum of three feet above ground and be sunk at least two feet below ground.

8.5.5 Diffuse Flow Requirements

Diffuse flow shall be maintained in riparian buffers by dispersing concentrated flow prior to its entry into a buffer and reestablishing vegetation as listed below. These requirements apply to all development, including development that does not propose to impact or conduct an activity within a riparian buffer.

A. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters a riparian buffer except as authorized under paragraph 8.5.10, Uses.

B. Corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies.

C. New stormwater conveyances including drainage ditches, roadside ditches, and stormwater BMPs shall be allowed in or through riparian buffers except as authorized under paragraph 8.5.10, Uses.

8.5.6 Maps and On-Site Determinations

A. Maps
   All of the following maps shall be used to identify surface water subject to the requirements of this section
   1. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, which means the most recent hard copy paper bound map or CD-ROM or PDF of such map; and
   2. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic map prepared by United States Geologic Survey (USGS); and
   3. Outside of the Neuse River Basin, any map approved by the Geographic Information Coordinating Council, the North Carolina Environmental Management Commission and both governing bodies as more accurate than the maps listed in paragraphs 1 and 2 above. However, such map shall not be used for buffer delineation on projects that are existing and ongoing under Sec. 8.5.7, Existing Use Exemption.

Surface water shall be deemed present if it is at least approximately shown on any map. If any surface water is depicted differently on different maps, the most restrictive depiction shall apply.
B. **On-Site Determinations**

1. **Within the Neuse River Basin**
   A landowner or other affected party who believes that surface water is inaccurately depicted shall consult the North Carolina Division of Water Quality (Division) and may request an on-site determination by the Division.

2. **Outside of the Neuse River Basin**
   a. The Division or another party may request an on-site determination by the City or County of the specific origination point of a stream where it is in question.
   b. A landowner or other affected party, including the Division, who believes that one or more maps inaccurately depict, or omit based on site-specific evidence, surface water shall consult the City or County as appropriate and may request an on-site determination by the City or County.
   c. When an on-site determination is requested, a City or County representative, or other party authorized or accepted by the City or County, who has successfully completed the Division’s *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make the on-site determination following submission of any fees, information or documents required by the City or County. An origination point shall be established using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*.
   d. A City or County representative, or other party authorized or accepted by the City or County who has successfully completed the training required above may also make either type of on-site determination absent an outside consultation or request.
   e. An on-site determination shall be valid for five years from the date of the determination unless specified otherwise therein.

3. Surface water shown on a map shall be exempt from Sec. 8.5, Riparian Buffer Protection Standards if it is determined on site to be: 1) a manmade pond or lake located outside of a natural drainage way, meaning the pond or lake is not fed by, and has no direct discharge to, an intermittent or perennial stream; 2) an ephemeral stream; 3) not present on the ground, except for any stream gap of 300 feet or less; or 4) a ditch or other manmade conveyance other than a modified natural stream unless constructed for navigation or boat access.

4. Surface water not shown on a map shall be governed by Sec. 8.5, Riparian Buffer Protection Standards if it is determined on site to be: 1) a pond or lake located in a natural drainage way, meaning the pond or lake is fed by and has a direct discharge to an intermittent or perennial stream; 2) a perennial stream, including any gap of 300 feet or less; 3) an intermittent stream, including any gap of 300 feet or less; or 4) a modified natural stream, including any gap of 300 feet or less.

5. Despite the provisions of Section 2.4, Board of Adjustment, any dispute shall be referred to the Division Director c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director’s determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

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### 8.5.7 Existing Use Exemption

**A. General**

This section shall not apply to the portion of a riparian buffer occupied by the footprint of a legal existing ongoing use. An existing and ongoing use is a use that was present within the riparian buffer as of July 22...
1997 within the Neuse River Basin, or as the effective date of this section outside of the Neuse River Basin, has continued to exist since that time. Such uses may include but are not limited to agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. A use that converts from an existing and ongoing use to another use shall no longer be exempt. Conversion includes but is not limited to changing an agricultural operation to non-agricultural use, failing to maintain a lawn, or failing to meet the criteria specified below for activities allowed.

B. Exemption Maintained
The following activities do not convert an existing and ongoing use to another use:

1. Activities necessary to maintain a use provided that no impervious surface is added to the riparian buffer where it did not exist as of the applicable date, existing diffuse flow is maintained, and either: outside of the Neuse River Basin, the site remains similarly vegetated, or 2) within the Neuse River Basin, no additional vegetation is removed except that grazed or trampled by livestock;
2. Grading and revegetating of the outer 20 feet of a buffer that is not located in a watershed protective overlay, provided that the health of the vegetation in the inner 30 feet of the buffer is not compromised, the ground is stabilized and existing diffuse flow is maintained;
3. Outside of the Neuse River Basin, change of ownership through purchase or inheritance.

C. Outside the Neuse River Basin
Outside of the Neuse River Basin, a project that meets at least one of the following criteria is also existing and ongoing:

1. The project requires a 401 Certification and 404 Permit and they were issued prior to the effective date of this section;
2. The project requires a state permit (e.g., landfill, National Pollutant Discharge Elimination System (NPDES) wastewater discharge, land application of residuals, road construction activity), has start construction or is under contract to start construction, and received all required state permits and certifications prior to the effective date of this section;
3. The project is reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or its immediate successor and reached agreement with the NC Department of Environment and Natural Resources on avoidance and minimization prior to the effective date of this section; or
4. The project can avoid review under the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or its immediate successor due to a Finding of No Significant Impact and received written approval from the City or County as appropriate prior to the effective date of this section.

8.5.8 Piping Streams
Piping of streams is prohibited except where necessary to accomplish a use that is authorized under paragraph 8.5.10, Uses, and approved as required.

Commentary: Approved piping is a use within an existing buffer and the buffer remains in effect. There is no gap in the buffer, so buffer requirements apply along the piped portion of the stream.

8.5.9 Lots and Density Credits
Land within the stream buffer shall not serve to meet minimum lot size requirements, except in the Rural Tier at
on property zoned RR or RS-20, in the Suburban Tier, where at least 50% of the required lot area is outside the stream buffer. No credit shall be allowed for land within stream buffers, except in the RR District, where density credits may be given for stream buffers in conservation subdivisions pursuant to Sec. 6.2.4, Conservation Subdivision.

### 8.5.10 Uses

A. As stated in Sec. 8.5.2, Applicability, compliance with this entire section is required even where State standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

B. No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this section. Parties subject to this section shall abide by all state rules and laws regarding waters of the state including but not limited to 15A NCAC 2B .0230 and .0231, 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

C. Buildings and other features that require grading and construction shall be set back at least ten feet from edge of the riparian buffer.

D. Any use authorized by this section shall be designed, constructed and maintained to minimize the amount of intrusion into the riparian buffer and to minimize clearing, grading, erosion, water quality degradation, and damage to vegetation.

E. Where any use involves temporary land clearing, revegetation shall occur pursuant to an approved vegetation plan. Such plan shall include trees as specified under paragraph 9.2.3B.5, Mixing of Tree Species and the Durham Landscape Guidelines, planted at a density sufficient to provide 320 trees per acre at maturity with at least 50% of those trees having the potential of attaining a two and a half inch or greater dbh within seven years.

F. **Use Category Requirements**

1. **Exempt**
   
   An exempt use may occur without authorization provided it adheres to the limitations contained in the Table of Uses below. In addition, an exempt use shall be designed, constructed, maintained and monitored to minimize soil disturbance and maximize water quality protection.

2. **Allowable**

   An allowable use requires written authorization from the North Carolina Division of Water Quality, City, or County as appropriate and may occur following a finding of “no practical alternatives” and issuance of an Authorization Certificate pursuant to paragraph 8.5.11, No Practical Alternatives/Authorization Certificate.

3. **Allowable with Mitigation**

   An allowable with mitigation use requires written authorization from the North Carolina Division Water Quality, City, or County as appropriate and may occur following a finding of “no practical alternatives” and issuance of an Authorization Certificate pursuant to paragraph 8.5.11, No Practical Alternatives/Authorization Certificate, and approval of a mitigation strategy pursuant to paragraph 8.5.12, Mitigation.

G. **Table of Uses**

   The following table sets out potential new uses within the riparian buffer, or outside of the buffer with impacts upon the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. The requirements for each category are contained in paragraph F, Use Category Requirements, above. All uses categorized as exempt, allowable, or allowable with mitigation are prohibited and may not occur within
riparian buffer or outside of the riparian buffer with impacts on the buffer unless a variance is obtained pursuant to paragraph 8.5.13, Variances. Uses include construction, monitoring, and maintenance activit

<table>
<thead>
<tr>
<th>Use</th>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Outside of the Neuse River Basin, access trails: pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps, overlooks, view points, and other water dependent activities:</td>
<td></td>
</tr>
<tr>
<td>• Pedestrian access trails that are restricted to the minimum width practicable and do not exceed four feet in width of buffer disturbance, and provided that installation and use does not result in removal of any tree and no impervious surface is added to the riparian buffer.</td>
<td>E</td>
</tr>
<tr>
<td>• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of any tree or impervious surface is added to the riparian buffer.</td>
<td>A</td>
</tr>
<tr>
<td>Airport facilities:</td>
<td></td>
</tr>
<tr>
<td>• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer.</td>
<td>X</td>
</tr>
<tr>
<td>• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer.</td>
<td>X</td>
</tr>
<tr>
<td>• Outside of the Neuse River Basin, activities necessary to comply with FAA requirements (e.g. radar uses or landing strips).</td>
<td>A</td>
</tr>
<tr>
<td>Archaeological activities not covered by another specific use.</td>
<td>E</td>
</tr>
<tr>
<td>Bridges not covered by another specific use.</td>
<td>A</td>
</tr>
<tr>
<td>Outside of the Neuse River Basin, canoe access provided that installation and use does not result in removal of any tree and no impervious surface is added to the buffer.</td>
<td>E</td>
</tr>
<tr>
<td>Dam maintenance activities:</td>
<td></td>
</tr>
<tr>
<td>• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3.</td>
<td>E</td>
</tr>
<tr>
<td>• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3.</td>
<td>A</td>
</tr>
<tr>
<td>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</td>
<td></td>
</tr>
<tr>
<td>• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies.</td>
<td>E</td>
</tr>
<tr>
<td>• Outside of the Neuse River Basin, realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations.</td>
<td>A</td>
</tr>
<tr>
<td>• New (or altered if outside of the Neuse River Basin) drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients as directed by the appropriate jurisdiction and attenuate flow before the conveyance discharges through the riparian buffer.</td>
<td>A</td>
</tr>
<tr>
<td>• New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed.</td>
<td>AM</td>
</tr>
<tr>
<td>Driveway crossings of streams and other surface waters subject to this section:</td>
<td></td>
</tr>
<tr>
<td>• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer.</td>
<td>A</td>
</tr>
<tr>
<td>• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer.</td>
<td>A</td>
</tr>
<tr>
<td>• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</td>
<td>A</td>
</tr>
</tbody>
</table>

Key (see Sec. 8.5.10F, Use Category Requirements): E = Exempt; A = Allowable; AM = Allowable with Mitigation; X or not listed = Prohibited; NA = Not applicable.
• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer

• Outside of the Neuse River Basin, driveway impacts other than crossing of a stream or other surface waters subject to this section.

Fences:
• Fences on single-family lots provided that disturbance is minimized and installation does not result in removal of any tree (or, within the Neuse River Basin, forest vegetation).
• Fences on lands other than single-family lots provided that disturbance is minimized and installation does not result in removal of any tree (or, within the Neuse River Basin, forest vegetation).
• Outside of the Neuse River Basin, fences provided that disturbance is minimized and installation results in removal of any tree.

Fertilizer application: one-time application only, to establish vegetation.

Forest harvesting as regulated by the State of North Carolina pursuant to 15A NCAC 02B .0233 and 15A NCAC 02B .0267.

Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.

Historic preservation not covered by another specific use.

Landscaping of the outer 20 feet of a riparian buffer in the Urban, Compact Neighborhood, or Downtown Tier that is not located in a watershed protection overlay in accordance with an approved City or County revegetation plan.

Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.

Mining activities:
• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of this section are established adjacent to the relocated channels.
• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of this section are not established adjacent to the relocated channels.
• Wastewater or mining dewatering wells with approved NPDES permit.

Playground equipment:
• Playground equipment on single family lots that exist as of adoption of this section provided that installation and use does not result in removal of vegetation.
• Playground equipment installed on lands other than single-family lots or that requires removal of vegetation.

Within the Neuse River Basin, ponds in natural drainage ways, excluding dry ponds; outside of the Neuse River Basin, ponds created by impounding streams and not used as stormwater BMPs.
• New ponds provided that a riparian buffer that meets the requirements of this section is established adjacent to the pond.
• New ponds where a riparian buffer that meets the requirements of this section is NOT established adjacent to the pond.

Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel.

Railroad impacts other than crossings of streams and other surface waters subject to this section.

Railroad crossings of streams and other surface waters subject to this section:
• Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer.
• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer.
• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer.
<p>| Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored. | A |
| Road impacts other than crossings of streams and other surface waters subject to this section. | AM |
| Road crossings of streams and other surface waters subject to this section: | |
| • Road crossings that impact equal to or less than 40 linear feet of riparian buffer. | A |
| • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer. | A |
| • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer. | AM |
| Outside of the Neuse River Basin, road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: | |
| • Less than or equal to 2,500 square feet of buffer impact. | A |
| • Greater than 2,500 square feet of buffer impact. | AM |
| Scientific studies and stream gauging. | E |
| Within the Neuse River Basin, stormwater management ponds excluding dry ponds: | |
| • New stormwater management ponds provided that a riparian buffer that meets the requirements of this section is established adjacent to the pond. | A |
| • New stormwater management ponds where a riparian buffer that meets the requirements of this section is not established adjacent to the pond. | AM |
| Outside of the Neuse River Basin, stormwater BMPs: | |
| • Wet detention, bioretention, and constructed wetlands. | AM |
| Streambank or, outside of the Neuse River Basin, shoreline stabilization. | A |
| Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria of paragraph 8.5.12E, Riparian Buffer Restoration or Enhancement. | |
| • Less than or equal to 2,500 square feet of buffer disturbance and not perpendicular to the stream. | X |
| • Greater than 2,500 square feet of buffer disturbance and not perpendicular to the stream. | X |
| • Associated with culvert installation outside of the Neuse River Basin or bridge construction or replacement and not perpendicular to the stream. | X |
| • Perpendicular to the stream. | A |
| Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria of paragraph 8.5.12E, Riparian Buffer Restoration or Enhancement. | |
| • To control impacts associated with uses approved by the appropriate jurisdiction or that have received a variance, provided that sediment and erosion control for upland areas is addressed to the maximum extent possible, outside the buffer. | A |
| • In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act. | A |
| • In-stream temporary erosion and sediment control measures for work within a stream channel. | A |
| Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this section: | |
| • Disturb equal to or less than 150 linear feet of riparian buffer. | E |
| • Disturb greater than 150 linear feet of riparian buffer. | A |
| Utility, electric, aerial, other than perpendicular crossings. | AM |</p>
<table>
<thead>
<tr>
<th>Environmental Protection</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latest Revision June 27, 2011</td>
</tr>
<tr>
<td>Unified Development Ordinance</td>
</tr>
<tr>
<td>27</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Utility, electric, underground, perpendicular crossings</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Disturb less than or equal to 40 linear feet of riparian buffer.</td>
<td>E</td>
</tr>
<tr>
<td>• Disturb greater than 40 linear feet of riparian buffer.</td>
<td>A</td>
</tr>
</tbody>
</table>

| Utility, non-electric, underground, other than perpendicular crossings | E |

<table>
<thead>
<tr>
<th>Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this section</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width.</td>
<td>A</td>
</tr>
<tr>
<td>• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width.</td>
<td>A</td>
</tr>
<tr>
<td>• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width.</td>
<td>A</td>
</tr>
<tr>
<td>• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width.</td>
<td>AM</td>
</tr>
<tr>
<td>• Disturb greater than 150 linear feet of riparian buffer.</td>
<td>AM</td>
</tr>
</tbody>
</table>

| Utility, non-electric, other than perpendicular crossings | AM |

<table>
<thead>
<tr>
<th>Vegetation management, pursuant to applicable City or County guidelines</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Emergency fire control measures provided that topography is restored.</td>
<td>E</td>
</tr>
<tr>
<td>• Planting vegetation to enhance the riparian buffer.</td>
<td>E</td>
</tr>
<tr>
<td>• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised.</td>
<td>E</td>
</tr>
<tr>
<td>• Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or outside of the Neuse River Basin, are imminently endangering stability of the streambank</td>
<td>E</td>
</tr>
<tr>
<td>• Outside of the Neuse River Basin, removal of individual trees that are dead, diseased or damaged.</td>
<td>E</td>
</tr>
<tr>
<td>• Removal of poison ivy.</td>
<td>E</td>
</tr>
</tbody>
</table>

Outside of the Neuse River Basin, vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet. | A |

Water dependent structures as defined in 15A NCAC 02B .0202, including their installation, maintenance, use, and removal. | A |

<table>
<thead>
<tr>
<th>Water supply reservoirs:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• New reservoirs where a riparian buffer that meets the requirements of this section is established adjacent to the reservoir.</td>
</tr>
<tr>
<td>•New reservoirs where a riparian buffer that meets the requirements of this section is not established adjacent to the reservoir AM</td>
</tr>
</tbody>
</table>

Water wells: |
|• Single family residential water wells. E |
|• All other water wells. A |

<table>
<thead>
<tr>
<th>Wetland, stream and, outside of the Neuse River Basin, buffer restoration:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Wetland, stream and buffer restoration that requires NC Division of Water Quality approval for the use of a 401 Water Quality Certification.</td>
</tr>
<tr>
<td>• Wetland, stream and buffer restoration that does not require Division of Water Quality approval for the use of a 401 Water Quality Certification.</td>
</tr>
</tbody>
</table>

Outside of the Neuse River Basin, wildlife passage structures. | A |

1 Provided that: |
• No heavy equipment is used. |
• Vegetation in undisturbed portions of the buffer is not compromised. |
• Felled trees are removed by chain. |
8.5.11 No Practical Alternatives/Authorization Certificate

A. A person who wishes to undertake a use designated as allowable or allowable with mitigation shall first submit a request for a “no practical alternatives” determination. Within the Neuse River Basin, the request shall be submitted to the North Carolina Division of Water Quality (Division). Outside of the Neuse River Basin, the request shall be submitted to the City or County as appropriate. In the request, the applicant shall certify that the project meets all of the following criteria:

1. The basic project purpose cannot be practically accomplished to better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

2. The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

3. Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
B. The applicant shall also submit at least the following information:

1. The name, address and phone number of the applicant;
2. The nature of the activity to be conducted by the applicant;
3. The location of the activity, including the jurisdiction;
4. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of the riparian buffers, and the location and dimensions of any disturbance in riparian buffers associated with the activity;
5. An explanation of why the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
6. Best management practices proposed to control the impacts associated with the activity.

C. Within 60 days of a complete submission, the appropriate jurisdiction (the Division acting pursuant to 15 NCAC 02B .0233 (8)) shall review the entire project and make a finding of fact as to whether the criteria in paragraph 1 above have been met. If they have, “no practical alternatives” has been established and the jurisdiction shall issue an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of “no practical alternatives” and an Authorization Certificate shall be issued to the applicant. Outside of the Neuse River Basin, however, such 60-day deadline may be extended if one of the following occurs:

1. The applicant agrees, in writing, to a longer period;
2. The jurisdiction determines that the applicant requires an additional reasonable period of time in which to furnish requested information the jurisdiction deems necessary to its decision; or
3. The final decision is to be made pursuant to a public hearing.

D. The appropriate jurisdiction may attach conditions to an Authorization Certificate that support the purpose, spirit and intent of the state riparian buffer protection program and/or this section.

E. Outside of the Neuse River Basin, the Authorization Certificate shall be denied if the applicant refuses access to its records or premises for the purposes of gathering information the appropriate jurisdiction deems necessary to its decision or if the jurisdiction determines that the applicant has failed to furnish requested information the jurisdiction deems necessary to its decision within the 60-day period or an additional period as authorized under paragraph C.2 above.

F. Despite the provisions of Section 2.4, Board of Adjustment, appeals from Authorization Certificate determinations shall be to the Division Director, c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director’s decision is subject to review as provided in Articles 3 and 4 of G.S. 15

### 8.5.12 Mitigation

Mitigation is required where: 1) a person wishes to undertake a use designated as allowable with mitigation and obtained a “no practical alternatives” determination; and 2) a person is required to perform mitigation as a condition of variance approval under this section. Within the Neuse River Basin, the proposal shall be submitted to the North Carolina Division of Water Quality (Division), which shall proceed pursuant to 15A NCAC 02B .0242. Outside of the Neuse River Basin, the proposal shall be submitted to the City or County as appropriate, which shall proceed pursuant to this section as authorized under 15A NCAC 02B .0268.

The appropriate jurisdiction (the Division acting pursuant to 15 NCAC 02B .0242) shall issue a mitigation approval upon determining that a proposal meets the requirements of this section. Within the Neuse River Basin, the
approval shall specify the required area and location of mitigation. Outside of the Neuse River Basin, the approval shall identify at a minimum the option chosen, the required and proposed areas, and the mitigation location or payment amount as applicable. As stated in Sec. 8.5.2, Applicability, compliance with this entire section is required even where State standards are less stringent. Within the Neuse River Basin, final review by the City or County shall occur after any State action is completed.

A. **Mitigation Options**
   The mitigation requirement may be met through one of the following options:
   
   1. Participation in a private compensatory mitigation bank in the same hydrologic area, as defined in NCGS 143.214(11), as the proposed impact that is approved by the NC Department of Environment and Natural Resources.
   
   2. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B.0269 contingent upon acceptance of payments by the North Carolina Ecosystem Enhancement Program. This option is available to a non-government applicant only if option 1 is available;
   
   3. Donation of real property or of an interest in real property pursuant to paragraph D, Donation of Real Property, below to satisfy a compensatory mitigation fee in whole or in part; or
   
   4. Restoration or enhancement of a non-forested riparian buffer pursuant to paragraph E, Riparian Buffer Restoration or Enhancement, below.
   
   5. Construction of an alternative measure that reduces nutrient loading as well as or better than the riparian buffer that is lost in the same river basin as the riparian buffer that is lost and that is approved by the Division.

B. **Mitigation Area**
   The appropriate jurisdiction shall determine the required area of mitigation as follows:
   
   1. Add the following areas to determine the impacts in square feet to each portion of the riparian buffer:
      a. The area of the footprint of the use causing the impact to the riparian buffer;
      b. The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
      c. The area of any ongoing maintenance corridors within the riparian buffer associated with the use; and
   
   2. Apply the following multipliers to the impacts determined in paragraph 1 to each portion of the riparian buffer:
      a. Impacts to the inner 30 feet of the riparian buffer shall be multiplied by three;
      b. Impacts to the outer 20 feet of the riparian buffer shall be multiplied by one and one-half; and
      c. Impacts to wetlands within those two portions of the riparian buffer that are subject to mitigation under 15A NCAC 2H.0506 shall comply with the mitigation ratios in 15A NCAC 2H.0506.

C. **Mitigation Location**
   
   1. Within the Falls Reservoir Watershed, mitigation shall be located within the Upper Falls Watershed as defined in 15A NCAC 2B.0275 and .0276, and the same distance from, or closer to, the Upper Falls Reservoir, as defined in 15A NCAC 2B.0275 and .0276, as the proposed impact, and as close to the location of the impact as feasible. Alternatively, mitigation may be located anywhere within the U-
Falls Watershed provided that the mitigation proposal accounts for differences in delivery of nutrients to the Upper Falls Watershed resulting from differences between the locations of the buffer impact mitigation.

2. Within the Jordan Reservoir Watershed, mitigation shall be located within the same subwatershed defined in 15A NCAC 02B.0262, and the same distance from, or closer to, the reservoir as the proposed impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed, as defined in 15A NCAC 02B.0262, provided the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of the reservoir resulting from differences between the locations of the buffer impact and mitigation.

3. In any location, mitigation of riparian buffer loss in the watershed of a drinking water supply shall be performed in the watershed of that drinking water supply and as may be further limited by the North Carolina Environmental Management Commission.

Additional location requirements for the property donation option are enumerated in paragraph D, Donation of Property, below.

D. Donation of Property

1. Donation of real property interests that meet the requirements listed below may partially or fully satisfy payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund, calculated pursuant to 15A NCAC 02B.0269. The value of the property interest shall be determined by an appraisal performed in accordance with paragraph 4 below. The donation shall satisfy the mitigation requirement if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee, the applicant shall pay the balance.

2. A conservation easement shall be accepted only if it is granted in perpetuity.

3. Any property interest shall be accepted only if it meets all of the following requirements:

   a. In addition to the location requirements of paragraph C, Mitigation Location, above, the property shall be located within an area that is identified as a priority for restoration in, or otherwise consistent with the goals of, the Division’s Basinwide Wetlands and Riparian Restoration Plan (within the Neuse River Basin) or its Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin (outside of the Neuse River Basin), both developed pursuant to NCGS 14214.10;

   b. The property shall contain riparian buffers not currently protected by the State’s riparian buffer protection program that are in need of restoration as defined in paragraph E.4 below;

   c. The restorable riparian buffer on the property shall have a minimum length of 1000 linear ft along a surface water and a minimum width of 50 feet measured horizontally on a line perpendicular to the surface water;

   d. The size of the restorable riparian buffer on the property shall equal or exceed the area of mitigation responsibility determined under paragraph B above;

   e. Outside of the Neuse River Basin, restoration shall not require removal of man-made structures or infrastructure. Within the Neuse River Basin, the property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure, and restoration of the property shall be fully capable of offsetting the adverse impacts of the requested use;

   f. The property shall be suitable to be successfully restored, based on existing hydrology, soils...
environmental protection

and vegetation;

g. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;

h. The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 47, as amended;

i. The property shall not contain any hazardous substance or solid waste;

j. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at the expense of the applicant or donor in accordance with state and health and safety regulations;

k. The property and adjacent properties shall not have prior, current, or known future land use that would inhibit the function of the restoration effort; and

l. The property shall not have any encumbrances or conditions on the transfer of the property interests.

4. At the expense of the applicant or donor, the following information shall be submitted to the appropriate jurisdiction with any proposal for donation or dedication of interest in real property:

a. Documentation that the property meets the requirements laid out in paragraph E.3 below;

b. US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property along with information on existing site conditions, vegetation types, and existing structures and easements;

c. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina";

d. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice"

e. A title certificate.

E. Riparian Buffer Restoration or Enhancement

Mitigation through riparian buffer restoration or enhancement shall meet the following requirements:

1. The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

a. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to paragraph B, Mitigation Area, above; or

b. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to paragraph B, Mitigation Area, above;

2. The location of the riparian buffer restoration or enhancement shall comply with the requirements of paragraph C, Mitigation Location, above;

3. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet me
horizontally on a line perpendicular to a vertical line marking the top of the bank for a stream or the normal water level for a pond, lake, or reservoir;

4. Outside of the Neuse River Basin, enhancement and restoration shall each have the objective of establishing a forested riparian buffer. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, meaning greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer shall be enhanced. Where existing woody vegetation is absent, meaning less than 100 trees per acre, a buffer shall be restored;

5. The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of paragraph 8.5.11, No Practical Alternatives/Authorization Certificate. The applicant shall then submit a restoration or enhancement plan to the City or County as appropriate. The restoration or enhancement plan shall contain the following:
   a. A map of the proposed restoration or enhancement site;
   b. A vegetation plan. The vegetation plan shall include trees as specified under paragraph 9.2.3B, Mixing of Tree Species, and the Durham Landscape Guidelines, planted at a density sufficient to provide 320 trees per acre at maturity with at least 50% of those trees having the potential of attaining a two and a half inch or greater dbh within seven years;
   c. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
   d. A fertilization plan; and
   e. An implementation schedule.

6. Within one year after restoration or enhancement plan approval, the applicant shall present proof to the appropriate jurisdiction that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, the applicant shall be in violation of both the State and local riparian buffer protection programs;

7. The mitigation area shall be placed under a perpetual conservation easement that provides for protection of the property’s nutrient removal functions;

8. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

8.5.13 Variances

A person who wishes to undertake a prohibited use shall first submit a request for a minor or major variance to the appropriate jurisdiction as stated below. A minor variance is required for any activity that impacts only the outer 20 feet of a riparian buffer. A major variance is required for any activity that impacts any portion of the inner 30 feet of a riparian buffer. Such variances are separate from variances authorized under Sec. 3.15, Variance.

A. Within the Neuse River Basin

1. Minor Variance
   Pursuant to 15 NCAC 02B .0233 (9), a minor variance request shall be submitted to the North Carolina Division of Water Quality (Division) for review and decision. The Division may attach conditions to approval that support the purpose, spirit and intent of the riparian buffer protection program. Approval from the Division decision shall be to the Office of Administrative Hearings.
2. **Major Variance**

   Pursuant to 15 NCAC 02B .0233 (9)(c), a major variance request shall be submitted to the Division for initial review. If the Division determines that the request meets the requirements of paragraph 3, Variance Requirements, below, it shall submit preliminary findings to the NC Environmental Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Unit or its successor. Within 90 days after receipt by the Director of a complete application, the Commission shall approve, approve with conditions or stipulations, or deny the request. Upon and in accordance with the Commission's decision, the Division shall issue a final decision granting, granting subject conditions or stipulations, or denying the major variance. Appeal from either the initial Division determination or the Commission decision shall be to the Office of Administrative Hearings.

3. **Variance Requirements**

   Pursuant to 15 NCAC 02B .0233 (9)(a), the Division shall make a finding of fact as to whether the following requirements have been met:

   a. There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements; Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
      1. If the applicant complies with the provisions of this section, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Division shall consider whether the variance is the minimum possible deviation from the terms of this section that shall make reasonable use of the property possible;
      2. The hardship results from application of this section to the property rather than from other factors such as deed restrictions or other hardship;
      3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property;
      4. The applicant did not cause the hardship by knowingly or unknowingly violating this section;
      5. The applicant did not purchase the property after the effective date of 15A NCAC 02B .0233, Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, and then requesting an appeal; and
      6. The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

   b. The variance is in harmony with the general purpose and intent of this section and preserve spirit; and

   c. In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

B. **Outside the Neuse River Basin**

   1. **Minor Variance**

      A minor variance request shall be submitted to the City or County as appropriate for review and
decision. The City or County may attach conditions to approval that support the purpose, spirit or
intent of the riparian buffer protection program and this section. Despite the provisions of Section 1,
Board of Adjustment, appeal from the City or County decision shall be to the Division Director, c/o
401 Oversight Express Permitting Unit, or its successor. The Director’s decision is subject to review
provided in Articles 3 and 4 of G.S. 150B.

2. **Major Variance**
A major variance request shall be submitted to the City or County as appropriate for initial review
the City or County determines that the request meets the requirements of paragraph 3, Variance
Requirements, below, it shall submit preliminary findings to the North Carolina Environmental
Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Uni
ts successor. Within 90 days after receipt by the City or County of a complete application, the
Commission approves, approves with conditions and stipulations, or denies the request. Despite the
provisions of Section 2.4, Board of Adjustment, appeal from the initial City or County determinatic
the Commission decision shall be to Superior Court.

3. **Variance Requirements**
The City or County shall make the following three findings of fact in order to determine that the
variance requirements are met:

a. There are practical difficulties or unnecessary hardships that prevent compliance with the
   riparian buffer protection requirements. The following criteria must all be met in order to m
   such finding:
   1. If the applicant complies with the provisions of this section, he/she can secure no
      reasonable return from, nor make reasonable use of, his/her property. Merely proving
      that the variance would permit a greater profit from the property shall not be consid
      adequate justification for a variance. Moreover, the variance shall be the minimum
      possible deviation from the terms of this Ordinance that shall make reasonable use of
      property possible;
   2. The hardship results from application of this section to the property rather than from
      other factors such as deed restrictions or other hardship;
   3. The hardship is due to the physical nature of the applicant’s property, such as its size
      shape, or topography, such that compliance with provisions of this section would no
      allow reasonable use of the property;
   4. The applicant did not cause the hardship by knowingly or unknowingly violating this
      Ordinance;
   5. The applicant did not purchase the property after the effective date of this Ordinance,
      and then request a variance; and
   6. The hardship is rare or unique to the applicant’s property.

b. The requested variance is in harmony with the general purpose, spirit and intent of the state
   riparian buffer protection requirements and/or this section; and

c. In granting the variance, the public safety and welfare have been assured, water quality has
   been protected, and substantial justice has been done.

**Sec. 8.6 Water Supply Reservoir Buffer**

**8.6.1 Reservoir Buffer Standards**
A. A reservoir buffer shall be maintained from the normal pool of each water supply reservoir as shown in the table below, except that the buffer requirement of this section shall not apply to land that does not naturally drain to that reservoir. If the land around any reservoir does not naturally drain to that reservoir, the riparian buffer requirements of Sec. 8.5, Riparian Buffer Protection Standards, shall apply.

<table>
<thead>
<tr>
<th>Reservoir</th>
<th>Buffer Width</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lake Michie</td>
<td>250 feet</td>
</tr>
<tr>
<td>Little River Reservoir</td>
<td>250 feet</td>
</tr>
<tr>
<td>Jordan Reservoir</td>
<td>250 feet(^1)</td>
</tr>
<tr>
<td>Falls Reservoir</td>
<td>250 feet(^1)</td>
</tr>
</tbody>
</table>

\(^1\) On nonresidential uses, the buffer width shall extend to 1,000 feet in accordance with Sec. 4.11.4, Nonresidential Land Use Restrictions.

B. Reservoir buffers shall remain in natural undisturbed vegetation, except for intrusions allowed pursuant Sec. 8.5, Riparian Buffer Protection Standards.

**8.6.2 Buffer Reductions**

A. At the request of a property owner, the governing body may reduce the reservoir buffer requirements through the issuance of a Major Special Use Permit, pursuant to Sec. 3.9, Special Use Permit, whenever it determines that:

1. The reservoir buffer would result in exceptional hardship, depriving the property owner of all reasonable use of the property.
2. The proposed intrusion into the reservoir buffer is the minimum amount necessary to relieve that exceptional hardship.

The maximum reduction permitted is to the riparian buffer width required under Sec. 8.5, Riparian Buffer Protection Standards.

B. In making its determination, the governing body shall consider topography, erosion potential, and the size of the parcel, in addition to the review factors specified in Sec. 3.9.8, Criteria for Approval or Major and Minor Special Use Permits.

**Sec. 8.7 Watershed Protection Overlay Standards**

**8.7.1 Applicability**

The watershed protection overlay standards of this section shall apply to the Watershed Protection Overlay as set forth in Sec. 4.11, Watershed Protection Overlay.

**8.7.2 General Requirements**

A. **Minimum Lot Size**

1. In all Watershed Protection Overlays, except F/J-B and E-B, the minimum lot sizes indicated in the following table shall be applied in all new subdivisions unless the subdivision uses the cluster provision in accordance with Sec. 6.7, Cluster Subdivision, or the conservation subdivision provision of Sec. 6.2.4, Conservation Subdivision.
2. In the F/J-B and E-B overlays, developers of single-family subdivisions shall comply with the requirements of the underlying zoning district.

B. Impervious Surface Limits

1. Any development in a Watershed Protection Overlay shall be subject to limits on the amount of impervious surfaces permitted in accordance with the following table. Development plans, site plans, preliminary plats, and final plats shall clearly identify the amount of existing and proposed impervious surfaces.

<table>
<thead>
<tr>
<th>Overlay</th>
<th>Low Density Option Impervious Surface Limit</th>
<th>High Density Option Impervious Surface Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>M/LR-A</td>
<td>6%</td>
<td>Not permitted</td>
</tr>
<tr>
<td>M/LR-B</td>
<td>6%</td>
<td>Not permitted</td>
</tr>
<tr>
<td>F/J-A</td>
<td>Within one-half mile of the normal pool: 6%;</td>
<td>Not permitted in the Rural Tier.</td>
</tr>
<tr>
<td></td>
<td>Between one-half and one mile from the normal pool: 9%</td>
<td>40%, for all areas not in the Rural Tier and for those uses allowed in Sec. 4.11.4;</td>
</tr>
<tr>
<td>F/J-B, E-B</td>
<td>24%</td>
<td>70%</td>
</tr>
<tr>
<td>E-A</td>
<td>24%</td>
<td>Not permitted</td>
</tr>
</tbody>
</table>

2. The impervious surface limit provisions of this section may be exceeded through an impervious surface credit transfer. Credit for the impervious surfaces allowed on one or more parcels ("donor parcels") may be transferred to non-contiguous parcels ("receiving parcels"), such that the amount impervious surface available for a development project would be the total of what is normally allowed on the receiving parcel plus what is transferred from the donor parcel(s). Impervious surface credit transfer is subject to the following provisions:

   a. The donor parcel and receiving parcel shall be located within the same water supply watershed.

   b. The impervious surface credit transfer shall not be from a donor parcel in Area B to a receiving parcel in Area A, or from a donor parcel in an F/J-A area with a 9% limit to a receiving parcel in an F/J-A area with a 6% limit.

   c. The portion of the donor parcel which is restricted from development as part of the impervious...
surface credit transfer shall remain in a vegetated or natural state or used for crop production or pasture provided that best management practices (BMPs) as developed by the Soil and Water Conservation District are utilized. The portion of the donor site restricted from development shall be protected from all future development through use of a permanent conservation easement in favor of either:

1. Durham County or the City of Durham; or
2. A land trust or similar conservation-oriented non-profit organization with legal authority to accept such easements (the organization shall be bona fide and in perpetuity existence and the conveyance instruments shall contain an appropriate provision for retransfer to the County or City, as appropriate, in the event the organization becomes unable to carry out its functions). If the entity accepting the easement is not the County or City, then a third right of enforcement favoring the County or City, as appropriate shall be included in the easement.

d. The impervious surface credit transfer shall be reviewed and approved through use of the site plan process pursuant to Sec. 3.7, Site Plan Review.
e. The donor parcel shall be deemed appropriate for acceptance by the County or City, as appropriate, under the Durham County Review Criteria for Acceptance of Conservation Easements for Impervious Surface Transfer.

C. **Stormwater Control Requirements**

Where development proposes intensity greater than the maximum authorized by the Low Density Option, engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall in order to meet water quality concerns.

D. **Ownership, Design and Maintenance of Engineered Stormwater Controls**

1. Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owner's association, which shall be responsible for the continued care and maintenance of such controls.

2. Engineered stormwater controls shall be designed and constructed in accordance with standards and specifications established by the City Public Works Director or County Engineer, or their designees, as appropriate.

3. Except as allowed in paragraph c. below, no building permit shall be issued for a site proposed for development, until:

   a. The City Public Works Director or County Engineer, or their designees, as appropriate, has approved plans and specifications for the proposed engineered stormwater controls and the property owner has entered into an Agreement and Covenants or Operation and Maintenance Agreement with the City or County, as appropriate, in accordance with the terms established by either the City Public Works Director or County Engineer, or their designees, as appropriate.

   b. The property owner has posted a performance bond, other surety instrument, or other payment satisfactory to the City or County, as appropriate, in an amount determined by the City Public Works Director or County Engineer, or their designees, as appropriate, to assure construction, maintenance, repair, and/or reconstruction necessary for adequate performance of the engineered stormwater controls.
c. For office, institutional, commercial, industrial and multi-family projects, building permits may be issued but construction drawing approval or water or sewer permit approval shall be withheld until compliance with paragraphs a. and b. above.

The Agreement and Covenants or Operation and Maintenance Agreement required under paragraphs a. and b. above may be required prior to site plan or preliminary plat approval.

4. No certificate of compliance shall be issued for any structure constructed within a site proposed for development, other than as allowed below, until the City Public Works Director or County Engineer or their designees, as appropriate, has approved construction of the engineered stormwater controls and after review and approval of submitted “as-built” drawings. Notwithstanding this requirement the Stormwater Division of the City may allow for delay in approval of construction of stormwater controls and submission and approval of as-built drawings for single family housing, duplexes, and townhouses in accordance with adopted policies of the City.

E. Riparian Buffers
   Riparian buffers are required in accordance with Sec. 8.5, Riparian Buffer Protection Standards.

F. Wastewater Treatment and Facilities

1. Wastewater Treatment
   Except as indicated below, wastewater treatment facilities shall be prohibited in all Watershed Protection Overlays.
   
   a. Individual on-site ground absorption systems shall be permitted, subject to the approval of Durham County Health Department or the State of North Carolina, as applicable.
   
   b. A spray irrigation wastewater treatment system to serve a single-family house shall be permitted, provided that:
      
      1. The owner enters into a written agreement with the Durham County Health Department which:
         a. Provides for Health Department access to the property for the purpose of monitoring the system during its construction and operation; and
         b. Provides that the owner and certified operator shall provide to the Health Department copies of any and all applications, plans, permits, reports and any other documents concerning but not limited to the permitting, system, design, construction, operation, monitoring or repair of the system.
      
      2. The owner shall not act as the certified operator for a spray irrigation system to be installed on his or her property.
   
   c. Publicly-owned wastewater treatment facilities, and replacement and expansions of such facilities, shall be allowed in F/J-B and E-B overlays.
   
   d. Wastewater treatment facilities may be permitted in the F/J-A overlay through the issuance of a Major Special Use Permit pursuant to Sec. 3.9, Special Use Permit, subject to the restrictions described in Sec. 12.7, Water and Sanitary Sewer Systems.

2. Sanitary Sewer Services
   a. Except in the Rural Tier, public and private sanitary sewer lines, force mains, and pump stations shall be permitted within all Watershed Protection Overlays. Public and private pump stations shall be equipped with the following safety features:
      
      1. Battery-backed alarm systems activated by pump failure or power outage, connectec
an automatic dialer to a 24-hour maintenance service approved by the City Public W
Director or County Engineer, or their designees, as appropriate.

2. Provision for connection of a portable generator. The City Public Works Director or
County Engineer, or their designees, as appropriate, may require the pump station to
equipped with on-site, stand-by power.

b. Within the Rural Tier, new public or private sanitary sewer lines or outfalls, including
necessary force mains and pump stations, may be permitted within the Watershed Protecti-
Overlays subject to City Council or Board of Commissioners approval, as appropriate:

1. Only to serve an existing use or structure for which a health hazard has been
documented by the County Health Department or the State of North Carolina; or

2. If associated with a wastewater treatment facility permitted pursuant to Paragraph
Wastewater Treatment, above.

c. In considering such extensions, all reasonable alternatives shall be considered prior to a
decision to extend the sewer services. All service connections, installed in accordance with t
North Carolina Plumbing Code, shall be permitted only in accordance with Article III, Wate
and Sewer Main Extensions*, of Chapter 70, Utilities*, of the Durham City Code.

G. Hazardous and Nuclear Materials

1. Prior to site plan approval, an Emergency Contingency Plan shall be prepared and submitted thro
the Planning Department to the Durham County Fire Marshall and the Water Management
Director for review and approval. The Emergency Contingency Plan shall be prepared in accordan
with the requirements in the Superfund Amendments and Reauthorization Act (SARA), Title III an
shall be updated annually. In addition, the Emergency Contingency Plan shall include:

a. A plan for the site showing buildings and the locations of points of storage, transfer and use
nuclear and hazardous materials;

b. A list of nuclear and hazardous materials kept on-site in any quantities;

c. The location of spill control valves on any bridges and causeways; and

d. The person responsible for on-site spill control and containment, and the appropriate means
contacting that person on a 24-hour basis.

2. Any container or tank used to store hazardous materials shall be equipped with leak detection dev
and shall be double-walled or have other secondary containment features.

3. Points of storage, transfer and use of substantial quantities of hazardous materials shall be protect
by a dike or comparable containment structure, constructed of a material resistant to hazardous
material the dike or structure is designed to contain. The dike or structure shall be sized to handle
least the maximum amount of material to be stored or used and shall be constructed and installed
manner to exclude rainwater and stormwater runoff.

4. All floor drains that could collect hazardous materials shall be connected to a corrosion resistant ti
or catch basin sized to handle the maximum amount of hazardous material to be stored or used. Ti
floor drains shall not be open to the site's natural drainage system and discharges to the site's stor
drainage system or to adjacent surface waters shall be prohibited.

5. Points of storage, transfer and use of hazardous or nuclear materials shall have roof coverage.

8.7.3 Exceptions
All development within Watershed Protection Overlays shall be subject to the restrictions in this section, with the following exceptions:

A. **Existing Development**
   For the purposes of this section, existing development shall be considered to include any impervious surfaces constructed before January 1, 1994. All new uses and activities and all expansions of previously-existing uses and activities shall conform to Sec. 4.11.4, Nonresidential Land Use Restrictions and Sec. 8.7.2, General Requirements.

B. **Existing Single-Family Lots**
   New construction and additions to existing residential buildings on single-family residential lots recorded prior to January 1, 1994 shall be constructed in accordance with the watershed protection regulations, if in effect at the time the lot was created.

C. **Stormwater Control Exemptions**
   Proposed development projects not in the Rural Tier, and in F/J-B or E-B overlays involving less than one cumulatively, of land disturbing activity shall be exempt from the stormwater control requirements indicated in this Section.

8.7.4 High Density Option Approval

Any development utilizing the High Density Option within the F/J-A overlay shall require site plan approval by appropriate governing body.

8.7.5 Changes to Tier Boundaries

The City or County shall not extend the Urban or Suburban Tier boundaries further into the M/LR-A or F/J-A overlays.

Sec. 8.8 Steep Slope Protection Standards

8.8.1 Purpose

The primary purpose for the slope protection standards is to minimize grading, land instability and the removal of vegetation in order to:

A. Protect the quality of wetlands and water courses below the slope from increased sedimentation;

B. Protect steep slope plant and animal habitat from disturbance and development; and

C. Preserve the aesthetic quality of the natural terrain.

8.8.2 Exception, Sedimentation and Erosion Control

Notwithstanding the requirements of this section, steep slopes for purposes of sedimentation and erosion control are defined in Sec. 12.10.4B, Stabilization of Disturbed Land, and regulated under Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control.

8.8.3 Steep Slope Areas

A. Slope is the relationship of vertical rise to horizontal run, expressed as a percentage. Steep slope areas shall be defined as land areas that:

   1. Have a grade of 25% or more;

   2. Have an area of 5,000 square feet or greater; and

   3. Are located within 200 feet of any floodway fringe or perennial stream or within 100 feet of an
intermittent stream.

B. Steep slope areas refer to natural grades and shall not include man-made grades. Slope calculations shall use the smallest contour interval for which maps are available. Steep slope areas shall be determined irrespective of tract boundaries.

C. Steep slope areas shall be clearly indicated on all site plans, development plans, preliminary plats, and final plats. When a property owner or developer believes that the presence or location of a steep slope area is different than what is shown on the appropriate topographic map, the Development Review Board shall have the authority to determine the location or presence of the moderate or steep slope area for purposes of meeting the requirements of this section.

8.8.4 Steep Slope Development Limitations

Development and land disturbing activity on steep slope areas shall be conducted only in accordance with the following requirements. Compliance with these requirements shall be determined by the approving authority.

A. Development shall be designed and constructed in order to minimize disturbance to the natural landform as much as possible. Development shall demonstrate appropriate terrain-adaptive design and construction techniques. An inability to design a particular development allowed by the underlying zone without significant disturbance to the natural landform may indicate that the site should not accommodate the full amount of proposed development. Alternate site design and construction measures shall be encouraged to mitigate the effects of development on steep slopes. The grade of reconstructed slopes shall not exceed 50%. Non-load bearing retaining walls shall be encouraged in order to reduce the amount of disturbance to the natural slope.

B. In order to accommodate building placement on steep slope areas, street and side yard setbacks on lots or interior of the development may be reduced by up to 50% by the Development Review Board.

C. On any tract proposed for construction, no more than 15% of the steep slope area on the tract shall be graded. For purposes of this calculation, the land areas of individual steep slope areas on the tract shall be added together to establish the total steep slope area for the tract.

D. Development shall be designed and arranged in order to minimize the impact of street construction on steep slope areas. Proposed right-of-way for major thoroughfares, minor thoroughfares and collector streets shall be exempt from the steep slope area grading limits of this section, provided that the Development Review Board determines that proposed rights-of-way are designed and arranged in order to minimize the impact on steep slope areas.

8.8.5 Density Credits

The amount of land designated as steep slopes may be credited for residential density on adjacent land in the same development at a rate of 15% of that allowed by the zoning.

Sec. 8.9 Wetlands Protection Standards

8.9.1 Purpose

The primary purpose of the wetlands protection standards is to conserve and maintain natural wetlands in an undisturbed vegetated state in order to provide storage of stormwater runoff, minimize degradation of preserve wetlands from the impacts of adjacent development, improve water quality and preserve plant and wildlife habitat.

8.9.2 Application of Wetlands Protection

The City and County acknowledge the pre-eminence of the Federal and State governments with regard to the
identification and regulation of wetlands. Accordingly, the standards contained within this section shall not
duplicate the requirements of the US Army Corps of Engineers (the Corps) or the North Carolina Department of
Environment and Natural Resources (DENR), Division of Water Quality (Division), but shall require the buffering
wetland areas, identified by these agencies, on development plans, site plans, preliminary plats, final plats, and
otherwise required under Sec. 8.5, Riparian Buffer Protection Standards.

8.9.3 Wetland Buffer Applicability

A. A wetland buffer shall not be required for any wetland approved for dredging or filling under a Section 404
   Permit issued by the Corps or a Section 401 Water Quality Certification issued by the Division.

B. A wetland buffer shall not be required for wetland areas associated with man-made ponds unconnected to
   intermittent or perennial streams or to man-made drainage ditches.

C. A wetland buffer shall be required for any wetland area one acre or greater in size.

8.9.4 Wetland Buffer Width

The wetland buffer shall be provided along the perimeter boundary of the wetland area and shall be at least 25 feet
in width.

8.9.5 Wetland Buffer Standards

Wetland buffers shall be governed by Sec. 8.5, Riparian Buffer Protection Standards, except where it may conflict
with this section, in which case this section applies.

Sec. 8.10 Durham Inventory Site Protection Standards

Sites listed in the Durham County Inventory of Important Natural Areas, Plants and Wildlife, which in case of a
conflict may be superseded or supplemented by more current information from the North Carolina Heritage
Program as determined by the Planning Director, are protected through a series of development standards,
including, but not limited to:

A. Site plan review procedure in Sec. 3.7;

B. Special use permits in Sec. 3.9;

C. Conservation subdivisions in Sec. 6.2.4;

D. Open space in Sec. 7.2; and

E. Tree protection and tree coverage in Sec. 8.3.
Article 15 Enforcement

Sec. 15.1 Violations; Violators

15.1.1 Applicability

Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, shall apply to enforcement provisions of this Ordinance and state statute or regulation governing sedimentation and erosion control. Sec. 15.6, Floodplain and Flood Damage Protection Enforcements and Penalties, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing floodplain and flood damage protection. Sec. 15.8, Riparian Buffer Protection Enforcement, shall apply to enforcement of provisions of this Ordinance and state statute or regulation governing riparian buffers, including reservoir and wetland buffers. The provisions of those sections, where applicable, shall supersede conflicting provisions of this Article.

15.1.2 Violation

A. It shall be unlawful and a violation of this Ordinance to establish, create, expand, alter, occupy, or maintain any use, land development activity, or structure, including but not limited to signs and buildings, that violates or is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance. Approvals and authorizations include, but are not limited to: special use permits, sign permits, certificates of compliance, variances, building permits, development plans, site plans, and conditions of such permits, variances, and plans.

B. It shall also be a violation to engage in any construction, land development activity, or use, without all approvals and authorizations required by this Ordinance.

C. Each day of a violation may be considered a separate and distinct violation.

15.1.3 Violator

A. General

Violators may include any person who owns, leases, occupies, manages, or builds any structure or engages in any land development activity in violation of this Ordinance and any person who owns, leases, or occupies a use in violation of this Ordinance. A violation may be charged against more than one violator.

Commentary: The definition of violator and the ability to charge more than one violator means that both tenant and landlord, where applicable, may be in violation and subject to penalties.

B. Sedimentation and Erosion Control (Sec. 3.8, Sec. 12.10, Sec. 15.5)

The person responsible for violations of Sec. 3.8, Sedimentation and Erosion Control or Sec. 12.10, Sedimentation and Erosion Control, or Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, consistent with the provisions of NCGS, §113A-64 shall mean:

1. The developer or other person who has, or holds himself out as having, financial or operation control over the land-disturbing activity; or
2. The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act), Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan.

15.1.4 Responsibility

The Planning and/or Inspections Director, and/or County Engineer, or appropriate designees, shall enforce this Ordinance and the remedies authorized under this section. The responsible individual shall have the authority to settle any violations that involve the payment of money to the governing entity in exchange for a written release from actual or potential claims.

Sec. 15.2 Determination of Violation

15.2.1 Notice of Violation

A. When a violation is discovered, and is not remedied through informal means, written notice of the violation shall be given. This notice shall be delivered by:
   1. Hand delivery or certified mail to the violator’s last known address; or
   2. Certified mail or hand delivery to the property in violation; or
   3. Posting the notice at the property in violation.

B. When service is made by certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after mailing.

C. The notice shall include a description of the violation and its location, the measures necessary to correct it, the possibility of civil penalties and judicial enforcement action, and notice of the right to appeal. The notice shall also state the time period allowed, if any, to correct the violation, which time period may vary depending on the nature of the violation and knowledge of the violator.

D. This notice shall be an administrative determination subject to appeal as provided below.

E. A notice of violation shall not be required where a notice of the same violation has been issued to the same violator at the same property within the previous two years. In such cases, the violator may be charged with a continuing violation without further notice. A notice shall also not be required where action is taken under Sec. 15.3.5, Judicial Action to Collect Civil Penalty or Sec. 15.3.6, Permit Denial or Conditions.

15.2.2 Appeal to Board of Adjustment

A. A violator who has received a notice of violation may appeal the Director’s determination that a violation has occurred to the Board of Adjustment by making a written request and paying the appropriate fee within 30 days of receipt of the notice of violation.

B. Citations that follow the original notice of violation may not be appealed to the Board.

C. The Board shall hear the appeal and may affirm, modify, or revoke the determination of a violation.
If there is no appeal, the Director's determination of the nature and degree of violation are final.

**15.2.3 Failure to Comply with Notice or Board of Adjustment Decision**

If the violator does not comply with a notice of violation which has not been appealed, or with a final decision of the Board of Adjustment, the violator shall be subject to enforcement action as prescribed in State law or by this Ordinance.

**Sec. 15.3 Remedies; Enforcement Action**

**15.3.1 General**

Enforcement may be by any one, all, or a combination of the remedies described below or in other sections of this Ordinance or otherwise authorized by common law or statute. Such statutes include but are not limited to NCGS §153A, Sections 123, 324, 334, and 361 et. seq. and §160A Sections 175, 365, 375, 389, and 421 et. seq.

**15.3.2 Options for Remedying a Violation**

A violator shall have several options available to come into compliance with this Ordinance, as listed below. During the efforts to correct the violation, enforcement actions may be stayed.

A. Meet the Ordinance requirements cited in the Notice of Violation or citation.
B. Where appropriate, obtain a zoning map change for the property to a district in which the activity would be permitted, in accordance with Sec. 2675, Zoning Map Change. Failure to obtain the zoning map change shall mean that the violation has not been corrected.
C. Where appropriate, request a variance to the provisions of this Ordinance, in accordance with Sec. 3.15, Variance. Failure to obtain the variance shall mean that the violation has not been corrected.
D. Amend the text of this Ordinance to eliminate the violation, in accordance with Sec. 3.20, Text Amendment. Failure to obtain the approval of the text change shall mean that the violation has not been corrected.

**15.3.3 Injunctive Relief in Superior Court**

A violation may be corrected by any appropriate equitable remedy, a mandatory or prohibitory injunction, or an order of abatement as authorized by NCGS §160A-175 and NCGS §153A-123. The governing entity shall have the authority to execute an order of abatement if the violator does not comply with such order, and the costs of execution shall be a lien on the property in the nature of a mechanic's or materialman's lien.

**15.3.4 Criminal Penalties**

A violation shall constitute a misdemeanor or infraction, as provided by NCGS §14-4, subject to a maximum fine of $500 and imprisonment of up to 30 days for each violation.

**15.3.5 Judicial Action to Collect Civil Penalty**

A civil action in the nature of debt may be filed in any court of competent jurisdiction to collect an unpaid civil penalty imposed under Sec. 15.8, Penalties Other than Sedimentation and Erosion Control Penalties.

**15.3.6 Permit Denial or Conditions**

Any permit, certificate, or other authorization that has been issued for property on which there is an uncorrected violation may be withheld, or may be conditioned on the correction of the violation and/or
payment of a civil penalty, and/or posting of a compliance security.

15.3.7 Permit Revocation or Voiding

A. Any permit, certificate or other authorization may be revoked or voided upon a written determination by the Planning Director, the Inspections Director, or the County Engineer, or designees, that the violation is substantial. The determination of such substantial violation shall be subject to appeal as provided in Sec. 15.2.2, Appeal to Board of Adjustment.

B. Any permit or certificate mistakenly issued in violation of State law or local ordinance, or issued on the basis of misrepresentations by the applicant, owner, or owner’s agent may be revoked or voided without such written determination as required above.

15.3.8 Stop Work Order

A. When the violation pertains to construction or alteration of a structure, a stop work order may be issued in accordance with NCGS §160A-421 and NCGS §153A-361 or the NC Building Code. All zoning requirements pertaining to the location and siting of structures are considered local building laws for application of NCGS §160A-421 and NCGS §153A-361.

B. Appeal of an order relating to a local building law shall initially be to the Inspections Director or designee who shall conduct a hearing within 10 working days of the issuance of the order. Further appeal may be made to the Board of Adjustment.

15.3.9 Additional Remedies for Sign Violations

In addition to the other remedies provided in this Section, violations of Article 11, Sign Standards may be remedied through the following:

A. The Inspections Director, or designee, may revoke the sign permit for a sign or sign structure in violation, including violations of restrictions on sign copy or the content of a sign face, and may require that the sign copy or sign face be removed, or that the structure on which such copy or face appears be removed. Removal of a sign structure shall not be required where the sign structure could legally be constructed in accordance with the provisions of Article 11, Sign Standards, in effect at the time the violation occurs and where the owner or operator of such sign structure can demonstrate to the Inspections Director’s, or designee, satisfaction that he or she had no knowledge concerning the requirements of Article 11, Sign Standards.

B. The Planning Director, or designee, may remove unpermitted signs, faces, and structures that are located in the public right of way, or on utility poles or structures within the public right of way, or signs, faces, and structures for which no owner can be located, or which present a danger to the public health or safety, or signs in violation of this Ordinance.

C. Any repeated violation of the same provision of Article 11, Sign Standards, by the same individual or corporation at an identical or different location may result in immediate action against the individual or corporation, and may be considered a subsequent violation for the same offense, and each day a separate violation.

Sec. 15.4 Penalties

15.4.1 General

The Planning Director, or designee, may issue one or more citations and impose one or more civil penalties for a violation, as provided below. If the violator does not pay the civil penalty, the governing entity may collect it in court through a civil action in the nature of debt.
15.4.2 Citation

The Planning Director, or designee, may issue a citation and civil penalty for a violation.

15.4.3 Notice

Notice of the citation and civil penalty shall be given in the same manner as provided in Sec. 15.2.1, Notice of Violation, above. The notice shall include a copy of the notice of violation, the amount of the civil penalty, information about where to pay the civil penalty, the deadline for payment (which shall be 15 days from the date of receipt of the notice), and the possibility of civil and/or criminal enforcement.

15.4.4 Amount

A. The Planning Director, or designee, may impose a civil penalty of up to $500 per violation.

B. The Planning Director, or designee, shall formulate written guidelines for zoning enforcement officers to use in assessing civil penalties. Criteria for assessing civil penalties shall include, but not be limited to:
   1. The violator’s knowledge of legal requirements;
   2. Whether the violator has been guilty of past violations;
   3. The possible profit to the violator in continuing the violation;
   4. The impact of the violation on the community;
   5. The degree of noncompliance; and
   6. The cost and time required to remedy the violation.

15.4.5 Settlement of Violations

A. The Planning Director, or designee, shall be authorized to determine the amount of payment that shall be accepted in full and final settlement of some or all of the claims the City or County may have in connection with the violation. The Planning Director, or designee, shall indicate in writing the claims from which the violator is released.

B. If the violation has not been remedied, payment shall not release a violator from potential criminal prosecution or a claim for injunctive relief and/or an order of abatement.

15.4.6 Continuing Violations

A. The Planning Director, or designee, may issue a citation for a violation that continues without being corrected.

B. The violator in such cases may be assessed a civil penalty for each day of the continuing violation.

C. An initial citation for a single violation shall be issued before a citation for a continuing violation may be issued. If the violator has failed to pay the civil penalty and correct the violation after the initial citation, the violator shall be subject to a citation for a continuing violation with a daily civil penalty.

D. An initial citation shall not be required if the Planning Director, or designee, has previously issued a notice of violation to the violator for the same violation within the previous two years, or if the violator has been specifically warned concerning the violation.

Commentary: "Specifically warned concerning the violation" includes any previous violator
E. The Planning Director, or designee, may give a single citation for a continuing violation. The citation shall contain a copy of the notice of violation and shall state the violation is continuing, that a daily civil penalty of a specified amount is being imposed, and that the penalty shall be cumulative.

15.4.7 Special Penalties for Destruction of Existing Vegetation

A. General

1. Any trees preserved on a development tract in order to meet Ordinance requirements or otherwise indicated to be preserved shall meet the standards of Sec. 8.3.2, Protection of Existing Vegetation.

2. Damaging or destroying any tree preservation area that is indicated on any site plan, development plan, preliminary plat, or final plat shall constitute a violation of this Ordinance.

B. Any new trees planted as part of required landscaping under Article 9, Landscaping and Buffering, shall be maintained and, if necessary, replaced with vegetation. Failure to maintain and/or replace said vegetation shall be subject to the provisions of this section.

C. Damage or destruction of preserved trees by an act of God shall not be subject to the provisions of this section.

D. Applicability and Penalties

1. Where any tree with a diameter of eight inches dbh or greater in an area indicated on approved plans to be preserved is damaged, destroyed or removed, such violation shall be penalized as follows:
   a. A fine in an amount equal to one and one-half times the monetary value of the trees damaged, destroyed or removed. For purposes of such determination the Planning Director, or designee, shall apply the most current standards of the Council of Tree and Landscape Appraisers or a similar method in common use; and
   b. Trees shall be replaced by new trees of a similar species with at least a two and one-half inch caliper and a cumulative total caliper greater than the original tree.

2. Where tree preservation areas are damaged, destroyed or removed and no documentation exists about previous tree cover, such violation shall be penalized as follows:
   a. A fine of up to $2.00 per square foot of disturbed area, not to exceed $40,000 per violation; and
   b. Replacement vegetation shall be provided in accordance with the buffer landscaping standards of Article 9, Landscaping and Buffering.

E. Certificate of Compliance

Any fine shall be paid and required replacement trees planted before a Certificate of Compliance is issued. Enumeration of these civil penalties shall not be construed to prohibit the use of any other remedy authorized by ordinance or state law.

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties
Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer or designee may periodically inspect land-disturbing activities to ensure compliance with the North Carolina Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (the Act), Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and to determine whether the measures utilized or required in the plan are effective in restraining erosion and retaining sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each sedimentation and erosion control plan.

No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

The Sedimentation and Erosion Control Officer or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as prescribed in this section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

The Sedimentation and Erosion Control Officer or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to land-disturbing activity.

Revocation of Permits

A. The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control. When the Sedimentation and Erosion Control Officer or designee proposes to the County Engineer that a land-disturbing permit be revoked, the Officer or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.
B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee or other responsible person with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds other than those so specified may be argued.

D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer or designee has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.5.7 Civil Penalties

A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land-disturbing activity for which a sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be $5,000.00, or $5,000.00 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation.

B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount and the reason for the penalties. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, or Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS §1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS §150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision
and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS §150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS §150B, art. 4.

C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney’s Office for initiation of a civil action to recover the amount of the civil penalties. Civil penalties that are not contested are due when the violator is served with a notice of civil penalties. Civil penalties that are contested are due at the conclusion of administrative and judicial review.

D. The clear proceeds of civil penalties collected pursuant to this section shall be credited to the Durham Public Schools in accordance with the provisions of NCGS §115C-437.

15.5.8 Criminal Penalties

Any person who knowingly or willfully violates any provision of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who knowingly or willfully initiates or continues a land-disturbing activity for which an approved sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed $5,000.00, as provided in NCGS §113A-64.

15.5.9 Enforcement Alternatives

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under Sec. 3.8.3.

A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this section, institute a civil action as provided in Sec. 15.3.3, Injunctive Relief in Superior Court, for injunctive relief to restrain the violation or threatened violation in superior court.

B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalties assessed under this section.

C. Land-disturbing activities undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8, Sedimentation and Erosion Control, to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalties assigned per Sec. 15.5.7, Civil Penalties.

D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder’s obligations under the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, any rule or order adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan until such time as a substitute, or succeeding, permit is approved by the Sedimentation and Erosion Control Officer or designee.

15.5.10 Restoration of Areas Affected by Failure to Comply
The Sedimentation and Erosion Control Officer or designee may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by NCGS §113A-57(3) and Sec. 12.10, Sedimentation and Erosion Control, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section or the Act.

Sec. 15.6 Floodplain and Flood Damage Protection Enforcements and Penalties

15.6.1 Corrective Procedure

A. Violations to be Corrected
   When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

B. Actions in Event of Failure to Take Corrective Action
   If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner’s last known address or by personal service, stating:

   1. that the building or property is in violation of the requirements of Sec. 8.4, Floodplain and Flood Damage Protection Standards;
   2. that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
   3. that following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

C. Order to Take Corrective Action
   If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

D. Appeal
   Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

E. Failure to Comply with Order
   If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

15.6.2 Penalties for Violations
In addition to the penalties specified on Sec. 15.3.4, Criminal Penalties, the following penalties may also be imposed:

A. **Stop Work Order**

The Inspections Director, or designee, (acting as the Floodplain Administrator) may order work on any site within a Special Flood Hazard Area to be immediately stopped whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop work order shall constitute a misdemeanor.

B. **Revocation of Permits**

The Inspections Director, or designee, (acting as the Floodplain Administrator) may revoke and require the return of a permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable State or local law may also be revoked.

C. **Correction of Violations**

The owner or occupant of any building or property notified of a violation by the Inspections Director, or designee, shall immediately remedy each of the violations.

D. **Actions in the Event of Failure to Take Corrective Action**

1. If the owner or occupant of any building or property notified of a violation fails to take corrective action, the Inspections Director, or designee, (acting as the Floodplain Administrator) shall provide written notice consistent with the requirements of Sec. 15.2.1, Notice of Violation, that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards.

2. The Inspections Director (acting as the Floodplain Administrator) shall schedule a hearing at a designated place and time, not later than ten days after the date of notice, at which time the owner or occupant of the building or property shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the violation.

3. If, following the hearing, the Inspections Director finds that the building or property is in violation of the provisions of Sec. 8.4, Floodplain and Flood Damage Protection Standards, he/she shall issue an order in writing to the owner or occupant of the building or property to correct the violation by altering, vacating, or demolishing the building or removing any fill, whichever is appropriate, within a period deemed reasonable by the Inspections Director. Such period shall not be less than 60 days unless the Inspections Director finds that the violation results in imminent danger to life or other property, in which case a shorter period to correct the violation may be imposed.

### Sec. 15.7 Inspections and Investigations

#### 15.7.1 Authorization of Inspection Program

A program of inspection and investigations to determine compliance with this Ordinance and orders, plans, permits, and authorizations issued under this Ordinance is hereby authorized. This program shall be conducted under the general authority of the Planning Director, or designee, and shall be carried out

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**Latest Revision** June 27, 2011

**Unified Development Ordinance**
by zoning enforcement officers designated by the Planning Director, or designee.

15.7.2 Inspections of Private Property

A. Inspections on private property to determine compliance may be made at any reasonable time with the consent of the occupant of the property, except that, on projects being developed within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee (acting as the Floodplain Administrator) shall have authority to make as many inspections of the work as may be necessary to ensure that it is being done according to the requirements of this ordinance and the terms of the permit. In exercising this authority within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, the Inspections Director, or designee, shall have a right, upon presentation of credentials, to enter on any premises within the jurisdiction at any reasonable hour for the purposes of inspection and/or enforcement.

B. Inspections may also be made when an administrative search and inspection warrant has been issued pursuant to NCGS §15-27.2 by a proper judicial official. To obtain a warrant, the enforcement officer shall show through facts supplied in a sworn affidavit that either:

1. The inspection is being conducted as part of an administrative plan to inspect all properties of a certain type, and the determination of the properties to inspect was made in accordance with neutral criteria; or

2. That there is probable cause for believing that a violation may exist.

Sec. 15.8 Riparian Buffer Protection Enforcement

15.8.1 Applicability

The City or County as appropriate shall conduct enforcement pursuant to this section, except where enforcement of an ordinance violation is reserved to the State under this Ordinance and/or State law.

15.8.2 Violation

A. In accordance with paragraph 15.1.2, Violation, a violation under this section occurs where a person fails to comply with any riparian buffer requirement of this Ordinance, which are contained in Sec. 8.5, Riparian Buffer Protection Standards, Sec. 8.6, Water Supply Reservoir Buffer, Sec. 8.7, Watershed Protection Overlay Standards, Sec. 8.9, Wetlands Protection Standards, Sec. 15.8, Riparian Buffer Protection Enforcement, and any rule, authorization, approval, or order adopted or issued pursuant to those sections.

15.8.3 Inspections

A. Agents or employees authorized by the City or County as appropriate may inspect riparian buffers, including reservoir and wetland buffers, to ensure compliance with this Ordinance. Such authorized agents or employees shall have the power to conduct such investigations as they may reasonably deem necessary to carry out their duties, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of inspecting any riparian buffer or conducting a related investigation.

B. No person shall willfully resist, delay, or obstruct an authorized agent or employee while that person is lawfully inspecting or attempting to inspect a riparian buffer under this section, nor shall any person interfere with an authorized agent or employee while he or she is in the process of carrying out other official duties.
C. Notice of the right to inspect shall be included in any riparian buffer approval.

**15.8.4 Power to Require Statements**

The City or County as appropriate shall have the power to require written statements, or the filing of reports under oath, with respect to riparian buffers.

**15.8.5 Notice of Violation**

If it is determined that a person has violated any riparian buffer requirement of this Ordinance, a notice of violation shall be issued and served upon that person pursuant to paragraph 15.2.1, Notice of Violation. As stated therein, the notice shall include remedial measures, which may include revegetation, to be performed, and a deadline for compliance if immediate compliance is not required. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

**15.8.6 Civil Penalties**

A. **Penalties**

Any person who violates any riparian buffer requirement of this Ordinance shall be subject to a civil penalty. The civil penalty for a violation may be a maximum of ten thousand dollars ($10,000) per day. For a continuing violation, the civil penalty may be a maximum of twenty-five thousand dollars ($25,000) per day. Each day of a continuing violation shall constitute a separate violation.

B. **Notice**

The City or County as appropriate shall issue and serve notice of the civil penalty pursuant to paragraph 15.4.3, Notice, and shall also provide information on the basis for the penalty. The notice shall be an administrative determination subject to appeal under paragraph 15.8.7, Appeal.

C. **Payment**

A civil penalty is due when the violator is served with notice of the civil penalty. If the penalty is not paid within 30 days of service, or, if appealed, within 30 days of the conclusion of any appeals, the City or County as appropriate may institute a civil action to recover the penalty amount.

D. **Use**

Civil penalties collected pursuant to this section and used to defray the cost of enforcement or conduct any remediation related to the violation(s) shall be credited to the general fund of the City or County as appropriate as nontax revenue.

**15.8.7 Appeal**

Appeal from a notice of violation issued under paragraph 15.8.5, Notice of Violation, or a notice of civil penalty issued under paragraph 15.8.6, Civil Penalties, shall be to the Durham Board of Adjustment, which shall conduct a hearing and affirm, modify, or revoke the administrative determination. Notice of appeal must be submitted, and the appropriate fee paid, within 30 days of receipt of the notice of violation or notice of civil penalty as appropriate. If notice of appeal is not submitted in a timely manner, the administrative determination shall be final. Appeal from the Board of Adjustment decision shall be to Superior Court.

**15.8.8 Injunctive Relief**

Whenever there is reasonable cause to believe that any person is violating or may violate the riparian buffer requirements of this Ordinance, the City or County as appropriate may, either before or after the institution of any other action or proceeding authorized by this section, institute an action for injunctive relief pursuant to paragraph 15.3.3, Injunctive Relief in Superior Court. The institution of such action shall
not relieve any party to such proceedings from any penalties assessed or obligations otherwise imposed under this section.

15.8.9 Criminal Penalties

Pursuant to NCGS 143-215.6B, any person who violates any riparian buffer requirement of this Ordinance shall be guilty of a crime as follows:

A. Negligent violation: Class 2 misdemeanor with a maximum fine of fifteen thousand dollars ($15,000) per day of violation, and a maximum cumulative total of two hundred thousand dollars ($200,000) for each 30-day period of a continuing violation;

B. Knowing or willful violation: Class I felony with a maximum fine of one hundred thousand dollars ($100,000) per day of violation, and a maximum cumulative total of five hundred thousand dollars ($500,000) for each 30-day period of a continuing violation; or

C. Knowing violation: Class C felony with a maximum fine of two hundred fifty thousand dollars ($250,000) per day of violation, and a maximum cumulative total of one million dollars ($1,000,000) for each 30-day period of a continuing violation.

Commentary: The terms “knowing or willful” as in paragraph B and “knowing” as in paragraph C are explained in NCGS 143-215.6B.

Sec. 15.9 Sedimentation and Erosion Control Enforcement and Penalties

15.9.1

Agents, officials or other qualified persons authorized by the Sedimentation and Erosion Control Officer may periodically inspect land-disturbing activities to ensure compliance with the North Carolina State Sedimentation Pollution Control Act of 1973, as amended, and all rules and orders adopted pursuant to it (hereafter referred to as “the Act” in this Section), Sec. 3.8, and Sec. 12.10 of this Ordinance or rules or orders adopted or issued pursuant to these sections, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of plan approval of each erosion control plan.

15.9.2

No person shall willfully resist, delay or obstruct an authorized representative, employee or agent of Durham County while that person is lawfully inspecting or attempting to inspect a land-disturbing activity under this section.

15.9.3

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, Sec. 3.8, and Sec. 12.10 of this Ordinance, or rules or orders adopted or issued pursuant to them, or has failed to obtain a land-disturbing permit or has failed to comply with an approved plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this Article, or rules, or orders adopted pursuant to this Article and inform the person of the actions that need to be taken to comply with the Act, Sec. 3.8, and Sec. 12.10 of this Ordinance, or rules or orders adopted pursuant to these sections. However, no time period for compliance need be given for failure to submit an
erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his/her official duties. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated.

15.9.4
The Sedimentation and Erosion Control Officer, or designee shall have the power to conduct such investigations as he/she may reasonably deem necessary to carry out their duties as prescribed in this Section, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

15.9.5
The Sedimentation and Erosion Control Officer, or designee shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

15.9.6 Revocation of Permits

A. The County Engineer shall have the power to revoke land-disturbing permits issued pursuant to Sec. 3.8, and Sec. 12.10. When the Sedimentation and Erosion Control Officer, or designee, proposes to the County Engineer that they revoke a land-disturbing permit, the Sedimentation and Erosion Control Officer, or designee shall serve the permittee or other responsible person with a notice of intent to revoke specifying the time and date of a pre-termination hearing to be held before the County Engineer. The notice shall be delivered at least three working days, Monday through Friday, before the date specified for the pre-termination hearing.

B. Should the County Engineer determine that the land disturbing permit should be revoked, he/she shall serve the permittee, or other responsible person, with a notice of revocation. Upon receipt of the notice of revocation, the responsible person shall immediately cause or order the cessation of all land-disturbing activities except those activities which are specifically directed towards bringing the site into a state of compliance.

C. The person responsible for the land-disturbing activity may appeal the revocation of a land-disturbing permit to the Board of Commissioners by submitting a written demand to the Clerk to the Board of Commissioners for a hearing within 15 days after receipt of the written notice of revocation. The written demand must specify, in detail, the factual and/or legal basis for the appeal. No grounds, other than those so specified, may be argued.

D. No person shall resume or continue any land-disturbing activity other than those necessary to bring the site into a state of compliance after receipt of a revocation notice and before reissuance of a land-disturbing permit or decision of the Board of Commissioners reinstating a land-disturbing permit. After the Sedimentation and Erosion Control Officer, or designee, has inspected the site and approved the remedial work, the responsible party may reapply for a land-disturbing permit. The fee for reapplication shall be 100% of the current application fee.

15.9.7 Civil Penalties

A. Any person who violates any of the provisions of this Section, Sec. 3.8, or Sec. 12.10, or who initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved erosion control plan and/or land-disturbing permit shall be subject to a civil penalty.
The maximum civil penalty for a violation shall be $5,000.00. A civil penalty may be imposed from the date the violation was detected. Each day of continuing violation shall constitute a separate violation.

B. The Sedimentation and Erosion Control Officer shall impose the civil penalty authorized by this section. The Sedimentation and Erosion Control Officer shall notify the person upon whom the civil penalty is imposed, of the amount of the penalty and the reason for the penalty. In determining the amount of the penalty the Sedimentation and Erosion Control Officer shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with Sec. 3.8, Sec. 12.10, or this Section. The notice of civil penalty shall be served by any means authorized under North Carolina NCGS § 1A-1, rule 4, and shall direct the violator to either pay the civil penalty or contest the civil penalty, within 30 days after receipt of the notice of civil penalty, by filing a petition for a contested case under North Carolina NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of North Carolina NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

C. If payment is not received within 30 days after demand for payment is made the matter will be referred to the County Attorney’s Office for initiation of a civil action to recover the amount of the civil penalty. A civil penalty that is not contested is due when the violator is served with a notice of civil penalty. A civil penalty that is contested is due at the conclusion of the administrative and judicial review of the civil penalty, if the violator is found at fault.

D. The clear proceeds of civil penalties collected pursuant to this Article shall be credited to the Durham Public Schools in accordance with the provisions of NCGS § 115C-437.

15.9.8 Criminal Penalties

Any person who knowingly or willfully violates any provision of Sec. 3.8, Sec. 12.10, or this Section, or who knowingly or willfully initiates or continues a land-disturbing activity for which an erosion control plan and/or land-disturbing permit is required except in accordance with the terms, conditions and provisions of an approved plan and/or land-disturbing permit, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed $5,000.00, as provided in North Carolina NCGS § 113A-64.

15.9.9 Enforcement

Violation of any provision of this Article shall result in forfeiture of any applicable security or portion thereof required under Sec. 3.8.3.

A. Whenever there is reasonable cause to believe that any person is violating or threatening to violate
Sec. 3.8, or Sec. 12.10, or any rule or order adopted or issued pursuant to the Act, these sections or any term, condition or provision of an approved erosion control plan, the County Attorney may, either before or after the institution of any other action or proceeding authorized by this Section, institute a civil action as provided in Sec. 15.5.7 of this Code, above, for injunctive relief to restrain the violation or threatened violation in superior court.

B. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of Sec. 3.8, Sec. 12.10.

C. Land-disturbing activities exceeding 12,000 square feet undertaken without first obtaining a land-disturbing permit, but which are required by Sec. 3.8 to obtain a land-disturbing permit, shall be subject to a permit fee of 200% of the current applicable fee, in addition to any civil penalty assigned per Sec. 15.9.7.

D. Conveyance of the property subject to the permit, in whole or in part, shall not terminate the permit holder’s obligations under this Article until such time as a substitute, or succeeding, permit is approved by the sedimentation and erosion control officer, or their designee.

15.9.10 Restoration of Areas Affected by Failure to Comply

The Sedimentation and Erosion Control Officer may require a person who engaged in a land disturbing activity and failed to retain sediment generated by the activity, as required by North Carolina NCGS §113A-57(3) and Sec. 12.10.4C of this Article, to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this Section or the Act.
Article 16 Definitions

Sec. 16.1 Word Usage

For the purpose of this Ordinance, certain terms are defined as indicated in this section. These definitions and all other provisions of this Ordinance are subject to the following rules of interpretation:

A. The present tense includes the past and future tenses and the future tense includes the present, unless stated otherwise.

B. The singular number includes the plural number and vice-versa.

C. The word "shall" is mandatory.

D. The word "building" includes the word "structure".

E. Any term not herein defined shall be as defined elsewhere in the County or City Code or, if not defined elsewhere in the County or City Code, as defined in Webster’s New International Dictionary, most recent edition, unless the result does not effectuate the intent of the governing bodies, leads to absurd or illogical results, or is inconsistent with the surrounding textual context.

F. The time within which any act required by this Ordinance is to be performed shall be computed by excluding the first day and including the last day, unless the last day is a Saturday or Sunday or a holiday declared by the United States Congress or the State of North Carolina, in which event it shall also be excluded.

G. The word "person" or “applicant” includes individuals, firms, partnerships, joint ventures, trusts, trustees, estates, corporations, associations and any other similar entities.

H. In case of any difference of meaning or implication between the text of this Code and any caption, illustration or table, the text shall control.

Sec. 16.2 Abbreviations

- BFE: Base Flood Elevation
- BMP: Best Management Practices
- BOA: Board of Adjustment
- CC: Commercial Center
- CG: General Commercial
- CLOMR: Conditional Letter of Map Revision
- CN: Neighborhood Commercial
- dbh: Diameter at breast height
- DD: Downtown Design
- DD-C: Downtown Design - Core
Definitions

DD-S1: Downtown Design - Support 1
DD-S2: Downtown Design - Support 2
DDRT: Design District Review Team
DENR: North Carolina Department of Environment and Natural Resources
DOST: Durham Open Space and Trails Commission
DRB: Development Review Board
DWQ or Division: North Carolina Division of Water Quality
FAR: Floor Area Ratio
Fc: Foot-candles
FEMA: Federal Emergency Management Agency
FIRM: Flood Insurance Rate Map
FIS: Flood Insurance Study
GIS: Geographic Information System
-H: Historic District Overlay
HAG: Highest Adjacent Grade
HPC: Historic Preservation Commission
HQW: High Quality Water
I: Industrial
IL: Light Industrial
IP: Industrial Park
JCCPC: Joint City-County Planning Committee
L: Permitted Subject to Limitations
LAG: Lowest Adjacent Grade
LOMR: Letter of Map Revision
m or M: Minor or Major Special Use Permit, respectively
MU: Mixed Use
NCDOT: North Carolina Department of Transportation
NCGS: North Carolina General Statute
NRCS: Natural Resource Conservation Service
NFIP: National Flood Insurance Program
NGVD: National Geodetic Vertical Datum
OI: Office Institutional
P: Permitted Use
PDR: Planned Density Residential
RC: Residential Compact
ROW: Right-of-way
RR: Residential Rural
RS: Residential Suburban
RU: Residential Urban
SARA: Superfund Amendments and Reauthorization Act
SFHA: Special Flood Hazard Area
SRP: Science Research Park
SUP: Special Use Permit
TDM: Transportation Demand Management
TIA: Traffic Impact Analysis
TUA: Transitional Use Areas
UC: University and College
UDO: Unified Development Ordinance
USDA: United States Department of Agriculture
USGS: United States Geologic Survey
WSE: Water Surface Elevation
(-A60, -A65): Airport Overlay
(-DDO): Downtown Design Overlay
(-MTC): Major Transportation Corridor Overlay
(-P): Neighborhood Protection Overlay
(-TO): Transitional Office Overlay

Sec. 16.3 Defined Terms

A

Accelerated Erosion: means Any increase over the rate of natural erosion as a result of land-disturbing activity.

Accessory Dwelling Unit: A dwelling that exists as part of a principal dwelling or on the same lot as the principal dwelling and is subordinate in size to the principal dwelling.

Accessory Use or Structure: A use or structure that exists on the same lot with the principal use or structure and is subordinate in size and purpose to the principal use.

Act of God: An event, such as an earthquake or hurricane, that is caused by natural forces and cannot be prevented or foreseen.

Active Recreation: Leisure activities usually of an organized nature, often performed with others and often requiring equipment, taking place at prescribed places, sites, or fields.
**Addition (to an existing building):** An extension or increase in the floor area or height of a building or structure.

**Adequate Erosion Control Measure, Structure or Device:** means one which controls the soil material within the land area under responsible control of the person conducting the land disturbing activity.

**Adjacent:** Property abutting directly on the boundary of, touching, or sharing a common point.

**Adopted Land Use Plans:** Any land use plan adopted by a governing body including, specifically, the Comprehensive Plan.

**Adult Establishment:** A business as defined in North Carolina General Statute (NCGS) 14-202.10(2). This definition includes adult bookstores, adult motion picture theaters, adult mini-motion picture theaters, adult live entertainment businesses or massage businesses. These uses are further defined in NCGS 14-202.10 and the definitions are adopted by reference; however, those massage businesses where all employees associated with massage meet the ethical and educational requirements specified by the American Massage Therapy Association, or equivalent national or state standards, are exempt from this definition.

**Interpretation:** Massage businesses meeting these educational and ethical standards may be classified as "Offices" in the Permitted Use chart.

**Affiliate:** A person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

**Afforestation:** The act of establishing forest cover.

**Agency:** A sales or service establishment dealing in services or intangible commodities, or commodities not on site, such as a broker's office, travel agency, temporary employee agency, etc.

**Agricultural Uses:** Land used as pasture or in the commercial production of crops, horticultural products, fish hatcheries or aquaculture. Also for the purposes of this Ordinance, the keeping of livestock for commercial or noncommercial purposes is defined as an agricultural use. Livestock includes but is not limited to poultry and hoofed animals such as cattle, horses, goats, sheep and swine; however, swine commonly referred to as Miniature, Vietnamese or Oriental Pot-Bellied pigs (sus scrofa vittatus) shall not be considered livestock if the animals are no more than 18 inches in height and the owner has proof of registry with the International Potbellied Pig Registry (IPPR). No more than two such Potbellied Pigs may be kept at any household to qualify for this definition. Also included in this definition of agricultural uses are agricultural accessory buildings, and sales of agricultural products grown or raised on the premises. Not included in this definition are any use conducted pursuant to a valid permit issued under Sec. 3.23, Limited Agriculture Permit, apiculture, the commercial slaughtering of animals for marketing, and farm tenant dwellings.

**Airport:** A place where aircraft may takeoff and land, be repaired, take on or discharge passengers or cargo, be stored or refueled.

**Alley:** A strip of land, typically no more than 20 feet in width, either publicly or privately owned, that is set aside primarily for vehicular service access to the rear or side of properties otherwise abutting on a street.

**Antenna:** Any apparatus designed for the transmitting and/or receiving of electromagnetic waves to include but is not limited to telephonic, radio or television communications. Types of elements include, but are not limited to: omni-directional (whip) antennas, sectorized (panel) antennas, multi or single bay (FM & TV), yagi, or parabolic (dish) antennas.
**Antenna Array**: A single or group of antennae and their associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

**Antenna, Combined**: An antenna or an array of antennas designed and utilized to provide services for more than one wireless provider for the same or similar type of services.

**Antenna-Supporting Structure**: A vertical projection composed of metal, or other substance with or without a foundation that is for the express purpose of accommodating antennas at a desired height above grade. Antenna-supporting structures do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet.

**Anti-Climbing Device**: A piece or pieces of equipment which are either attached to antenna supporting structure, or which are free-standing and are designed to prevent people from climbing the structure. These devices may include but are not limited to fine mesh wrap around structure legs, “squirrel-cones”, the removal of climbing pegs on monopole structures, or other approved devices, but excluding the use of barbed or razor wire.

**Apartment**: A multifamily structure on a single tract or parcel of land containing three or more units.

**Appeal**: Request for review of a final order, interpretation or decision by any administrative official authorized to make such decision.

**Area of Shallow Flooding**: A designated AO Zone on a community’s Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, where a clearly defined channel does not exist, the path of flooding is unpredictable and indeterminate, and velocity flow may evident.

**Articulation**: An emphasis given to architectural elements (including windows, balconies, porches, entries, etc.) to create a complementary rhythm or pattern; modulation of building facades, massing and detail to create variety.

**Attached Wireless Communication Facility**: An antenna or antenna array that is secured to an existing building with any accompanying pole or device which attaches it to the building, transmission cables, and an equipment enclosure, which may be located either on the roof, inside, or outside of the existing building. An attached wireless communications facility is considered to be an accessory use to the existing principal use on a site.

**B**

**Bar**: See "Night Club"

**Base Flood**: The flood having a one percent chance of being equaled or exceeded in any given year based on current conditions hydrology.

**Base Flood Elevation (BFE)**: The water surface elevations for the Base Flood as published in the Flood Insurance Study. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the Freeboard, establishes the Regulatory Flood Protection Elevation in Special Flood Hazard Areas.

**Basement**: The lowest level or story which has its floor sub-grade on at least three sides.

**Bed and Breakfast Inn**: A building or group of buildings containing one or more guest rooms for an overnight stay which are rented at a daily rate and where breakfast is the only meal served to guests.

**Being Conducted**: A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
Best Management Practice or BMP: Stormwater and runoff pollution control practices designed to reduce the amount of flow or pollutants contained in discharges to the stormwater conveyance system and receiving waters.

Block: A usually rectangular space enclosed by streets and occupied by or intended for buildings.

Block Face: One side of a street between two consecutive intersecting streets.

Boarding House: A building, other than a hotel, rooming house, or bed and breakfast inn, containing at least four, but not more than nine guest rooms. At least one meal is provided to guests. Individual guest rooms may not contain kitchens.

Borrow: Fill material which is required for on-site construction and is obtained from other locations.

Brewery: A brewery that produces 15,000 or more US beer barrels (460,000 US gallons) per year.

Broadcast Antennae, TV/HDTV/AM/FM Broadcast Facility: Broadcast antenna-supporting structures and/or towers, including replacements, which contain antennae/towers that transmit signals for television and radio communications.

Buffer: A portion of property designated to mitigate impacts between land uses or transportation routes, or to protect water features from pollutants.

Buffer Zone: The strip of land adjacent to a lake or natural watercourse.

Build-To Line: The line a set distance from the back of curb establishing the required building location.

Build-To, Percent of Frontage: The percent of the principal structure's frontage that shall be constructed to a fixed line designed to pull structures forward on a lot. The required minimum build-to is set out as a percentage of the frontage.

Building: As defined in the North Carolina Building Code, as amended, or the North Carolina Residential Code for One and Two-Family Dwellings, as amended, as applicable.

Building Articulation: See Articulation.

Building Coverage: The horizontal area within the outside of the exterior walls of the ground floor of all principal and accessory buildings. Building coverage is set forth as a percentage of the total lot area.

Building Elevation: One of the exterior vertical faces of a building.

Building Envelope: The area between all required setbacks within which a structure may be located.

Building Front: The side of the building closest to and most nearly parallel with the street which provides access to the lot. In the case of a corner lot or through lot, either side abutting a street may be considered to be the front, provided the building is situated so that it meets all front, side and rear yard requirements.

Building Height: The vertical distance from the average of the finished ground level to the finished roof surface of a flat roof, or to the point at the average height of a roof having a pitch, except for a mansard roof, to the highest finished surface. Height for any building with multiple roof levels shall be determined by the highest roof level.

Building Line: The edge of a building closest to the street.

Building, Main: A building which contains the principal use. In a residential district, any dwelling shall be deemed to be a main building on the lot which it is situated.

Building Permit: A permit issued by the Inspections Department in conformance with the State Building
Definitions

Building Separation: The required separation between any two buildings located on the same lot or parcel of land.

Bulk Storage: Storage material in containers or tanks for sale to retail dealers, distributors, or outlets or for storage prior to disposal.

Caliper: The diameter of plant material, measured at 6 inches above grade for calipers of up to four inches, and 12 inches above grade for larger calipers.

Canopy: A roof-like cover extending over an outdoor area for the purpose of sheltering individuals or equipment from the weather.

Cardinal Direction: One of the four principal compass points: north, south, east, or west.

Cemetery: A place used or to be used and dedicated or designated for interment of human remains or pet animal remains.

Certificate of Compliance: A statement, signed by an administrative officer, setting forth that a building, structure, or use complies with this Ordinance and Building Codes and that the same may be used for the purposes stated on the permit.

Chemical Storage Facility: means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

Chicken: Poultry or fowl of the species Gallus gallus/G. gallus domesticus. The species includes many different breeds of chicken.

Chicken Coop: A structure for the sheltering of chickens. An existing shed or garage can be used for this purpose under Sec. 5.4.12B, Domestic Chickens, if it meets the standards contained in paragraph 5.4.12B.7, Construction and Design. A chicken coop is an accessory structure under Sec. 5.4, Accessory Uses and Structures, and requires a building permit from the City-County Inspections Department.

Chicken Pen: An enclosure that is connected to and/or surrounding a chicken coop for the purpose of allowing chickens to leave the coop while remaining in an enclosed predator-safe environment.

Clear-cut: To remove all trees within a given area.

Clerestory Window: A window set in a roof structure or high in a wall (above eye-level), typically used for daylighting.

Clinic: Establishments where humans receive treatment of illnesses or pregnancy, or examinations by a doctor, dentist, optician, psychologist, or other similar medical professional on an out-patient basis.

Club or Lodge: A building or site used by a non-profit membership organization for recreational or social purposes.

Cluster Development: A residential subdivision that concentrates development on a portion of a site, leaving the remainder in open space. Cluster developments achieve the land use intensity objectives by virtue of limits to overall density rather than minimum lot sizes.

Collector Street: A local street which serves as a connector street between local residential streets, commercial development and the thoroughfare system; such streets typically collect traffic from 250 to 400 dwelling units.

Collocation: The practice of installing and operating multiple and various wireless carriers, service
providers, and/or Radio Common Carrier licensees from the same supporting structure or attached wireless communication facility, using different and separate antennae, feed lines, and Radio Frequency generating equipment.

**Columbarium**: A structure or building substantially exposed above ground intended to be used for the interment of the cremated remains of a deceased person or animal.

**Commercial Dormitory**: A structure specifically designed for a long term stay by students of a college, university, or non-profit organization for the purpose of providing rooms for sleeping purposes. One common kitchen and some common gathering rooms for social purposes may also be provided.

**Committed Elements**: See Commitments.

**Commitments**: Elements submitted as part of a development plan associated with a zoning map change, which are binding and establish the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance. Formerly known as “committed elements”.

**Common Signage Plan**: A plan for all signs associated with a development project. If the project consists of several buildings or businesses which are related in a single development, the signage plan shall include all signs within the development including out parcels. The signage plan elements shall include: colors, dominant lettering style, location, materials, and size.

**Completion of Construction or Development**: that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

**Comprehensive Plan**: The overall development plan for the community which has been officially adopted to provide long-range development policies including all specified individual elements thereof among which are the plans for land intensities; land subdivision; circulation; and community facilities, utilities and services.

**Concealed Wireless Communications Facility**: A wireless communications facility, ancillary structure, or WCF equipment compound that is not readily identifiable as such, and is designed to be aesthetically compatible with existing and proposed uses on a site. A concealed facility may have a secondary function, including, but not limited to the following: church steeple, windmill, bell tower, clock tower, cupola, light standard, flagpole with or without a flag, or tree. A non-concealed wireless communication facility is one that is readily identifiable such as a monopole or lattice tower.

**Conditional Letter of Map Revision (CLOMR)**: A formal review and comment issued by the Federal Emergency Management Agency as to whether a proposed project complies with the minimum NFIP floodplain management criteria, and direction on revisions that will need to be made to the NFIP maps and/or study upon completion of the project.

**Condominium**: A form of property ownership whereby the owner gains ownership of an interior space within a building. The building structure, the land under the building, and all of the surrounding land is commonly owned by all the inhabitants on a proportional basis.

**Congregate Living Facility**: A residential use which undertakes, for a period exceeding 24 hours, care, housing, food service and one or more personal services for persons not related to the owner or administrator.

**Contractors**: Individuals or firms engaged in the construction of buildings, either residences or commercial structures, as well as activities such as paving, highway construction, and utility construction.

**Convalescent Center or Nursing House**: A facility that provides nursing services and custodial care on
a 24 hour basis for three or more unrelated individuals who for reasons of illness, physical infirmity, or advanced age require such services.

**Convenience-Oriented Use**: An establishment that provides frequently or recurrently needed items for household use.

**Convenience Store**: A retail store with a floor area of less than 5,000 square feet that sells groceries and may also sell gasoline but not including vehicle service stations (limited or full).

**Correctional Facilities**: Publicly or privately operated facilities housing persons awaiting trial or persons serving a sentence after being found guilty of a criminal offense.

**Cul-de-sac**: A short street having only one end open to traffic and the other being permanently terminated with a vehicular turn-around provided.

**Current Conditions Hydrology**: The flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical flood study information are published in the Flood Insurance Study.

**Date of Approval**: The date of approving authority action.

**Day Care Facility**: A place other than a day care home, as defined below, that provides for the care of children or adults. Those receiving care are not all related to each other by blood or marriage and are not legal wards or foster children of the attendant adults, and for which care a payment, fee, or grant is made.

**Day Care Home**: A dwelling in which a permanent occupant provides for the care of no more than five preschool children (including the caregiver’s children) and /or three school-aged children (not including the caregiver’s children) or adults. Those receiving care are not all related to the occupant or to each other by blood or marriage and are not the legal wards or foster children of the attendant adults. Those receiving care and not dependents of the occupant, do not reside on the site. For the purpose of this Ordinance, such activities shall meet all requirements for home occupations.

**Dedication**: The transfer without payment of ownership or other interest in real property from a private entity to a public agency.

**Density**: The number of dwelling units per net developable acre, except in the case of conservation subdivisions, where gross area shall be used in accordance with Sec. 6.2.4 Conservation Subdivision.

**Dedication**: The transfer without payment of ownership or other interest in real property from a private entity to a public agency.

**Design District**: Any zoning district or overlay district within which architectural design elements are required.

**Developer**:

A. The person, firm, corporation or legal entity that has financial or operational control over the land-disturbing activity; or

B. The person, firm, corporation or legal entity in possession or control of the land when he/she directly or indirectly allowed the land-disturbing activity, has benefited from it, or has failed to comply with any provision of this Ordinance.

**Development**: Any human caused change to improved or unimproved real estate that requires a permit
or approval from any agency of the City or County of Durham, including but not limited to, constructing or changing buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations and storage of equipment or materials.

**Development Plan**: A type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance.

**Diameter at Breast Height (dbh)**: The diameter of a tree measured four and one-half feet above the ground.

**Diet House or Diet Facility**: A facility housing a dietary treatment program supervised by trained professionals which may also contain temporary living quarters for clients.

**Discharge Point**: that point at which runoff leaves a tract of land.

**Disposal**: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, is defined as in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**Drive-Through Facility**: An establishment that dispenses products or services to patrons who remain in vehicles. Fuel sales are not included.

**Driveway**: A private roadway located on a parcel or lot used for vehicle access.

**Duplex**: A building containing two individual dwellings. This definition does not include a single family dwelling with an accessory dwelling unit.

**Durham Inventory, Natural Inventory, or Inventory**: The Durham County Inventory of Important Natural Areas, Plants and Wildlife, which in the case of a conflict may be superseded or supplemented by more current information from the North Carolina Heritage program as determined by the Planning Director. The Durham Inventory does not include the Durham Architectural and Historic Inventory; the Durham County Archaeological Inventory; the Durham County Inventory of Cultural and Natural Resources; or the Durham County and Durham ETA Inventories of Historic Sites, which are referenced separately in the Ordinance.

**Dwelling Unit**: A room or group of rooms in a structure that serves as an independent, self-contained housekeeping establishment containing independent cooking, sleeping, and toilet facilities, physically separated from any other such units located within the same structure. Excluded are boarding houses, hotels, and dormitories.

**E, F**

**Easement**: A grant by a property owner for use by the public, a corporation or persons of an area of land for specific purposes.

**Elevated Building**: A non-basement building: (a) built in a Special Flood Hazard Area to have the top of the elevated floor, above the ground by means of pilings, columns (posts or piers), shear walls parallel to the flow of water or adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood; or (b) elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters.

**Encroachment**: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, the advance or infringement of uses, fill, excavation, buildings, permanent structures or development
into a floodplain, which may impede or alter the flow capacity of a floodplain.

**Energy Dissipater**: a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

**Engineered Stormwater Control**: A structural BMP used to reduce pollution or peak flow rates to receiving waters in order to achieve water quality or water quantity control.

**Erosion**: The wearing away of land surface by the action of wind, water, gravity or any combination thereof.

**Erosion Control Plan**: A plan designed to control both erosion and sedimentation.

**Extended Stay Residence**: An establishment containing 10 or more guest rooms that contain kitchen facilities or other home-like amenities not ordinarily provided in hotels or motels, for overnight guests staying five or more consecutive nights, and providing on-site registration and management.

**Existing Conditions**: Conditions that existed at time of plan or plat submittal.

**Existing Manufactured Home Park or Manufactured Home Subdivision**: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original adoption of flood damage protection ordinances which occurred in the City of Durham on October 18, 1971 and in Durham County on August 21, 1972.

**Family**: One or more individuals residing in a dwelling unit, living as a single housekeeping unit, and complying with the following rules:

A. Any number of individuals related by blood, marriage, or adoption may occupy a dwelling unit;

B. Where some or all of the occupants are unrelated by blood, marriage, or adoption, the total number of occupants that are unrelated, shall not exceed three. In applying this provision, children who are under the age of 23 and who are children of the owner or a person renting an entire dwelling unit from the owner shall be counted as a single occupant. In addition, in all cases, the limitation set out in subsection C. below shall apply.

C. The presence of household employees or children in foster care shall not disqualify any premises otherwise satisfying the above rules.

**Family Care Home**: A dwelling that provides room and board for not more than six persons who because of age, illness, handicap, or specialized program, require personalized services or a supervised living arrangement in order to assure their safety and comfort that is regulated by the State of North Carolina.

**Farm**: See: "Agricultural Uses"

**Feed Lines**: Cables used as the interconnecting media between a transmission/receiving base station and an antenna.

**Fenestration**: The design and arrangement of windows and other exterior glazed openings of a building.

**Final Plat**: The final map of all or a portion of a subdivision which is presented for final approval.
Firing Range: A property prepared, equipped and delineated for the purpose of shooting at targets by rifles [excluding air rifles], pistols, shot guns or archery. Excluded from this definition are residential sites and properties with hunting leases.

Flex Space: Buildings designed and marketed as multipurpose facilities with at least 10,000 square feet of leasable space providing opportunities for a mix of office, showroom, distribution, and/or laboratory space. Facilities tend to be single-story.

Flood or flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland waters; and/or,
2. The unusual and rapid accumulation of runoff of surface waters from any source.

Flood Insurance: The insurance coverage provided under the National Flood Insurance Program.

Flood Insurance Rate Map (FIRM): An official map on which the Federal Emergency Management Agency has delineated the areas of special flood hazard, the Future Conditions Flood Hazard Areas and the risk premium zones.

Flood Insurance Study (FIS): A report that includes an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs).

Flood Zone: A geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

Floodplain (or Flood Prone Area): Any land area susceptible to being inundated by water from any source.

Floodplain Administrator: The individual appointed to administer and enforce the floodplain management regulations. The Inspection Director or designee serves as the Floodplain Administrator pursuant to Sec. 3.22.2, Floodplain Administrator.

Floodplain Development Permit: means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

Floodplain Management: means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Management Regulations: means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than one (1) foot.
**Floodway Fringe:** The portion of the Special Flood Hazard Area that is outside the Floodway.

**Floor Area:** Area of built space, excluding any unfinished area used exclusively for storage or mechanical elements, uncovered steps and uncovered porches.

**Floor Area Ratio (FAR):** The ratio of building area to parcel area. Floor area ratio is a measure of nonresidential land use intensity.

**Forestry:** The act of growing trees, harvesting timber or replanting trees in accordance with a management plan endorsed by the NC Division of Forest Resources.

**Freeboard:** The height added to the Base Flood Elevation (BFE) or the future conditions flood elevation to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation."

**Freeway:** A multi-lane, controlled or limited access major road connecting this region, major activity centers or major roads with other regions, major activity centers or major roads. It is designed to accommodate large traffic volumes at high speeds. Such facilities may be part of the Interstate, Federal, or State primary highway system and are identified on the adopted Thoroughfare Plan.

**Frontage:** The dimension of a property that is adjacent to a street.

**Future Conditions Flood:** The flood having a one (1) percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

**Future Conditions Flood Elevation:** A determination of the water surface elevations of the one percent (1%) annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

**Future Conditions Flood Hazard Area:** The land area that would be inundated by the one percent (1%) annual chance flood based on future conditions hydrology as determined in Section 8.4.2, Applicability, of this ordinance.

**Future Conditions Hydrology:** The flood discharges associated with projected land-use conditions based on Durham City’s and County’s zoning maps or comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

**G, H, I**

**Geographic Search Area:** An area designated by a wireless provider or operator for a new base station facility, produced in accordance with generally accepted principles of wireless engineering.

**Glazing:** The portion of the building facade or external materials which are composed of glass. Glazing is used in transparency calculations and is includes glass used in the doors and windows of the building.

**Golf Course:** An area laid out for playing golf, which may include some or all of the following accessory facilities: clubhouses, putting greens, swimming and tennis facilities, concessions for food and supplies. Driving ranges may also be included, unless specifically excluded by provisions of this Ordinance. This definition does not include Par 3 or miniature golf.

**Grandfathering:** An exemption based on previously existing circumstances.
Green Roof: A vegetated roof treatment that has a layer of soil and a drainage system and is planted with vegetation.

Gross Vehicle Weight (GVW): The weight of a vehicle and its equipment with a full tank of fuel, a full maximum load of cargo, and passengers.

Ground Cover: Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Group Home: A dwelling operated under State regulations that provides room and board for more than six, but less than 13 individuals who as a result of age, illness, handicap or some specialized program, require personalized services or a supervised living arrangement in order to assure their safety and comfort. Additional requirements may be imposed by the North Carolina Building Code.

Guest Room: A room or suite used as living accommodations for one or more paying visitors.

Guyed: A style of antenna-supporting structure consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of guy wires that are connected to anchors placed in the ground or on a building.

Handoff Candidate: A wireless facility that receives call transferrence from another particular wireless facility, usually located in an adjacent first “tier” surrounding the initial wireless facility.

Hazardous Material: Materials, or mixtures containing those materials, which pose a physical, environmental or health hazard by virtue of their carcinogenic, corrosive, highly toxic, irritant, sensitizing or toxic properties as defined in 29 CFR 1910.1200. Included in this definition are materials included in EPA’s most recent Priority Pollutants List and substances which are regulated, or caused to be regulated, under provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act (SARA); or any subsequent amendments of these Acts. Hazardous materials shall include hazardous wastes, which are the byproducts resulting from the use of hazardous materials, materials which have been used to clean up spills of hazardous materials, and hazardous materials which have reached their shelf-life or have been used or contaminated. Also included in this definition are hazardous wastes regulated, or caused to be regulated by the Resource Conservation and Recovery Act (40 CFR 261, Subpart C and Subpart B).

Hazardous Waste Facility: means, as defined in NCGS Article 9 of Chapter 130A, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Heavy Equipment: Vehicles such as buses, tow trucks, furniture trucks, fuel trucks, refrigerated trucks, dump trucks, or cement mixers; vehicles with a Class of 7 or above that would typically have a Gross Vehicle Weight (GVW) of at least 13 tons, or any construction equipment, or, within City limits, any farm equipment (except in the RS-20 or RR districts).

Heliport: An area of land, water, or structural surface designed, used, or intended to be used for landing or takeoff of passengers or cargo from or by helicopters, plus accessory buildings and uses.

Helistop: An area of land, water, or structural surface designed, used, or intended to be used for landing or takeoff of passengers or cargo from or by helicopters, without any appurtenant area, facility, structure or building designed, used, or intended for use in the operation or maintenance of the helistop or in the service or maintenance of helicopters.

High Density Option: One of two approaches available for development in Watershed Protection Overlays. The high density option relies on impervious surface limits and engineered stormwater...
controls to minimize risk of water pollution.

**High Quality Water (HQW) Zones:** Areas in the coastal counties that are within 575 feet of high quality waters and, for the remainder of the state, areas that are within one mile and drain to HQWs.

**High Quality Waters:** Those classified as such in Title 15A NCAC 2B.0101(e)(5) general procedures, which is incorporated herein by reference to include further amendments pursuant to NCGS §150b-14 (c).

**Highest Adjacent Grade:** The highest natural elevation of the ground surface, prior to construction next to the proposed walls of the structure.

**Historic Structure:** Any structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”; or (d) certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program” Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

**Home Occupation:** Any occupation conducted by the inhabitants of the dwelling, which is secondary to the main use as a dwelling, and causes no change in the exterior of the dwelling.

**Hospital:** An institution providing human health services primarily for in-patient medical and surgical care for the physically or mentally sick and injured and including related support facilities such as laboratories, out-patient departments, staff offices, food services, and gift shop.

**Hotel or Motel:** An establishment containing 10 or more guest rooms, for short term guests, and containing registration facilities, on-site management, cleaning services and combined utilities, except for an Extended Stay Residence or Facility.

**Impervious Surfaces:** A surface composed of any material that impedes or prevents natural infiltration of water into the soil. Impervious surfaces shall include but are not limited to roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces. Wooden slatted decks and the water area of swimming pools shall be considered to be pervious. Calculation of impervious surfaces for streets shall include the area compacted for pavement or gravel base.

**Intermodulation Distortion:** The preventable and avoidable results of the mixture of two certain and specific radio frequencies (3rd Order); or more certain or specific radio frequencies (5th Order), that creates at least one other unwanted, undesirable, and interfering radio frequency (3rd Order), or multiple other unwanted, undesirable, and interfering radio frequency signals (5th Order).

**Internal Campus:** All areas within the UC District that are not included within a transitional use area.

**Inventory:** See Durham Inventory.

**J, K, L**

**Junk Vehicle:** A vehicle which does not lawfully display a current license plate and which is partially
dismantled or wrecked, or cannot operate under its own power.

**Junk Yard**: An establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, or waste, or for operation and maintenance of a place of business for storing, keeping, buying, or selling wrecked, scrapped, ruined, or dismantled motor vehicles or motor parts.

**Kennel**: An establishment engaged in boarding, breeding, buying, selling, grooming or training of pet animals.

**Laboratory**: A place where scientific studies are conducted, including testing, research, or analysis of a medical, chemical, physical, biological, mechanical, or electronic nature.

**Lake or Natural Watercourse**: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

**Land Disturbing Activity**: Any use of land by any person in residential, industrial, educational, institutional or commercial development, and in highway and road construction and maintenance, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This includes borrow and waste disposal activity not regulated by the provisions of the Mining Act of 1971 or the Department of Health and Human Resources, Division of Health Services. Land disturbing activities over which the State has exclusive regulatory jurisdiction as provided in NCGS §74-46 through 74-68, or NCGS §113A-56 (a) shall not be included in this definition.

**Landfill, Demolition**: A facility for disposing of stumps, limbs, leaves, concrete, brick, wood, uncontaminated earth and other solid wastes resulting from construction, demolition or land clearing.

**Landfill, Sanitary**: A facility where waste material and refuse is placed in the ground in layers and covered with earth or some other suitable material each work day.

**Lattice**: A tapered style of antenna-supporting structure that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas.

**Least Visually Obtrusive**: A Wireless Communication Facility (WCF) that is designed to present a visual profile that is the minimum profile necessary for the facility to properly function.

**Letter of Map Amendment (LOMA)**: An official determination by FEMA that a property has been inadvertently included in a Special Flood Hazard Area as shown on an effective FIRM and is not subject to inundation by the one percent annual chance flood. Generally, the property is located on natural high ground at or above the BFE or on fill placed prior to the effective date of the first NFIP map designating the property as within a Special Flood Hazard Area. Limitations of map scale and development of topographic data more accurately reflecting the existing ground elevation at the time the maps were prepared are the two most common bases for LOMA requests.

**Letter of Map Change (LOMC)**: A term used to inclusively define a FEMA issued letter related to a Flood Insurance Rate Map or Flood Hazard Boundary Map using one or more of the following processes: Letter of Map Amendment, Letter of Map Revision, as well as conditional Letter of Map Amendment and conditional Letter of Map Revision.

**Letter of Map Revision (LOMR)**: A letter issued by the Federal Emergency Management Agency that confirms amendment of a special flood hard area boundary.

**Level of Service**: A measure of capacity per unit of demand for a public service or facility. An indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility.
**Linear Block:** That property abutting one side of a street between the two nearest intersecting or intercepting streets, natural barrier, or between such cross-street and the end of a dead end street or cul-de-sac. Where a street curves so that any two adjacent 100 foot chords thereof form an angle of 120 degrees or less, measured on the lot side, such curve shall be construed as an intersecting street.

**Loading Area:** A space used to transfer goods and material between vehicles and a building or lot.

**Local Street:** Streets less than one mile in length that do not connect thoroughfares, or major traffic generators, and do not collect traffic from more than 100 dwelling units; or loop streets less than 2,500 feet in length.

**Lot:** A parcel of land that is to be used, developed or built upon.

**Lot, Corner:** A lot abutting two or more streets at their intersection.

**Lot, Double-Frontage:** A lot, other than a corner lot, with frontage on more than one street.

**Lot, Flag:** An irregularly shaped lot which has an appendage or extension which does not meet the lot width requirements of the district at the street.

**Lot Area:** The total area within the lot lines of a platted lot.

**Lot of Record:** A parcel of land described by metes and bounds or a lot that is part of a subdivision where the description or plat has been recorded in the office of the Register of Deeds of Durham County prior to the adoption of this Ordinance.

**Lot Width:** The distance between the side lot lines, measured along a straight line parallel to the front property line or parallel to the chord of the front property line at the street yard setback line or at the building line on flag lots or gore shape lots.

**Lowest Adjacent Grade (LAG):** means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building’s lowest floor provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**Low Density Option:** One of two approaches available for development in Watershed Protection Overlays that relies on non-structural means, specifically lower intensity limits, to minimize the risk of water pollution.

**M, N**

**Mailed Notice:** Either surface mail or e-mail, unless one is explicitly directed.

**Major Local Street:** Streets less than one mile in length that do not connect thoroughfares or major traffic generators and do not collect traffic from more than 250 dwelling units; or a loop street less than 2,500 feet in length.

**Manufactured Home (Class A, B, C):** A residential unit that is not constructed in accordance with the standards set forth in the North Carolina State Building Code and is composed of one or more components, each of which was substantially assembled in a manufacturing plant designed to be...
transported to a site on its own chassis, and designed to be used with or without a permanent foundation when connected to the required utilities. Within the text of this Ordinance, the term “manufactured home” shall only apply to Class A or B manufactured homes unless explicitly stated to include Class C manufactured homes. Class A and Class B are manufactured homes constructed after July 1, 1976 that meet or exceed the construction standards promulgated by the US Department of Housing and Urban Development that were in effect at the time of construction. Class C manufactured homes are manufactured homes that do not meet the definition of a Class A or Class B manufactured home. The term “manufactured home” does not include “recreational vehicles.”

**Manufactured Home Park:** A residential development under single ownership with sites for manufactured homes of Class A or B and various other facilities for the residents of the development.

**Manufactured Home Park or Manufactured Home Subdivision:** When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Marina:** A dock or basin providing securing moorings for boats and supplies, boat repair or other facilities.

**Market Value:** The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

**Marquee:** A permanent canopy projecting over an entrance.

**Mass Grading:** The grading of one acre or more at one time to prepare multiple lots for construction, rather than lot-by-lot grading at the time of building construction or any project that would require the preparation of a Sedimentation and Erosion Control Plan pursuant to Sec. 3916, General Requirements. This definition does not include grading necessary to install required infrastructure such as roads and utilities.

**Mausoleum:** A building with places for entombment of the dead above ground.

**Mean Sea Level:** The National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

**Microbrewery:** A brewery that produces less than 15,000 US barrels (460,000 US gallons) per year.

**Mining:** The development or extraction of a mineral from its natural occurrences on affected land.

**Mitigation (for wireless communications facilities):** A modification to increase the height of an existing antenna support structure, or to improve the structural integrity of an existing support structure, or to replace or remove one or more antenna support structure(s) located in close proximity to a proposed new antenna support structure in order to encourage compliance with the Ordinance or improve aesthetics or functionality of the overall wireless network.

**Mixed Use:** A development that includes both residential and nonresidential uses as principal uses on the same development site. See Sec. 2866, Mixed Use, and Sec. 6.11.7, Mixed Use (MU).

**Modular Unit or Modular House:** A factory-fabricated, transportable building or dwelling in compliance with the North Carolina Building Code, that is designed to be used by itself or to be incorporated with other units into a structure that will be a finished building on a permanent location on a permanent foundation. A modular unit shall not be considered a or manufactured home for the
Monopole: A style of free-standing antenna-supporting facility that is composed of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of antenna-supporting facility is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building’s roof.

Multi-family: As described ub Sec. 7.1, Housing Types: townhouses; multiplex; or apartment. This definition does not include duplex.

Multiplex: A building containing three or four individual dwellings with separate cooking facilities and toilet facilities for each dwelling.

Museums: Establishments for the display of art or historic or science objects.

Natural Erosion: The wearing away of the earth’s surface by water, wind or other natural agents under natural environmental conditions undisturbed by man.

Natural Inventory: See Durham Inventory.

New Construction: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, structures for which the “start of construction” commenced on or after the effective date of the original version of the community’s Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

Night Club: An establishment that stays open after 10:00 p.m. on weekends or on more than an occasional basis that offers food and beverages or entertainment or amusements. This definition includes but is not limited to establishments that serve beverages to persons aged 21 and older, dance halls, discotheques, and similar establishments. Excluded from this definition are restaurants that meet both the requirements established by definition in this Ordinance and in NCGS §18B-1000(6), adult establishments, retail stores, convenience stores, clubs used by nonprofit organizations, lodges used by nonprofit organizations, theaters, health athletic facilities.

Non-Encroachment Area: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

Non-Encroachment Area Fringe: The area within the special flood hazard area that is adjacent to, but not within, the non-encroachment area and is within the 100 year floodplain and is inundated by the base flood.

Noncommercial Sign: A sign which contains no message, statement, or expression related to commercial interests. Noncommercial signs include, but are not limited to, signs expressing political views, religious views, or information about and/or announcements of non-profit organizations related to their tax-exempt status.

Nuclear Material: Any natural or man-made material which undergoes radioactive decay, during which process it releases energy in the form of ionizing radiation; this also includes any mixture of materials which contains nuclear material.

Obstruction: When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel,
refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**Office**: A room, group of rooms, or building whose primary use is the conduct of a business, professional service, or governmental activity of a non-retail nature; including administration, record keeping, clerical work, and similar functions. This definition is not meant to include manufacturing, processing, repair, or storage of materials or products.

**Opacity**: The surface area of a fence, wall or buffer that is impenetrable to light when viewed perpendicularly to the plane of the fence, wall or buffer.

**Open Space**: Areas of a development that allow for light, air, wildlife habitat, and for scenic and recreational use. Also included are areas designed to enhance the privacy or general appearance of a development. Private open space is open space that is owned by a corporation, individual, or house owners association. Public open space is open space owned by a governmental jurisdiction.

**Orientation**: The directional placement of a structure or element in relation to its surroundings, the street and other structures.

**Outparcel**: Individual retail sites in a retail center that, when combined, are less than the square footage of the attached retail spaces which form the majority of the square footage of the center.

**Owner**: Any person having charge of any real property according to the records held by the Register of Deeds.

**Parent**: means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.

**Parking Block**: A wheel stop.

**Parking Lot**: An area of land where vehicles are kept on a daily, overnight, or temporary basis; not to include the storage of wrecked or abandoned vehicles, vehicle parts, or the repair of vehicles.

**Parking Space**: A designated off-street area designed to accommodate the parking of one vehicle.

**Passive Recreation**: Recreational activities that do not require a developed site. This includes such activities as trails for walking, hiking, and horseback riding; and areas for picnicking.

**Pedestrian Mall**: A private, improved area intended for public pedestrian and non-motor use that is permanently preserved for such use through limited easements or rights of enforcement granted to the City, or other similar legal techniques.

**Person**: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

**Personal Wireless Service**: Commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

**Pervious Paving**: Surface improvements such as interlocking concrete paving blocks, brick pavers, grid pavers, or other similar improvements which permit the infiltration of water through the improved surface. Gravel shall not be considered a pervious paving surface.

**Phase of Grading**: one of two types of grading, rough or fine.

**Philanthropic Institution**: An organization distributing or supported by funds set aside for
humanitarian purposes.

**Pilot Plant**: A building or operation in which processes planned for use in production elsewhere can be developed and/or tested, but not including the production of any goods on the premises primarily for sale or for use in production operations.

**Place of Worship**: A building primarily used by a non-profit organization for organized religious services and supporting uses.

**Plant Unit**: The measure of plant material required for 100 linear feet of buffer area to meet landscape requirements and ensure variety in buffer plantings.

**Plat**: A map, chart or plan of a tract or parcel of land which is to be or which has been, subdivided.

**Porte Cochere**: A roofed structure extending from the entrance of a building over an adjacent driveway and sheltering those getting in or out of vehicles.

**Podium Height**: The initial height that a building may reach at the build-to line before upper story setbacks are required in a design district.

**Post-FIRM**: Construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.

**Pre-FIRM**: Construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.

**Preliminary Plat**: A map indicating the proposed layout of a development and related information that is submitted for preliminary review.

**Principal Use or Primary Use**: The main use of land or buildings as opposed to a secondary or accessory use.

**Principally Above Ground**: At least 51 percent of the actual cash value of the structure is above ground.

**Property Owner or Owner**: The owner of a parcel of land as shown on the Durham County tax records.

**Protective cover**: See "ground cover."

**Public Antenna-Supporting Structure**: An antenna-supporting structure, appurtenances, equipment enclosures, and all associated ancillary structures used by a public body or public utility for the purposes of transmission and/or reception of wireless communication signals associated with but not limited to: public education, parks and recreation, fire and police protection, public works, and general government.

**Public Facility**: A building or area owned or used by any department or branch of the Durham City Government, Durham County Government, the State of North Carolina, or the Federal Government.

**Public Park or Playground**: A park or playground available to the general public.

**Public Safety and/or Nuisance**: When used in reference to Sec. 8.4, Floodplain Development Permit and Sec. 8.4, Floodplain and Flood Damage Protection Standards, means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

**Public Safety Communications Equipment**: All communications equipment utilized by the City/County of Durham for the purpose of operation in the interest of the safety of the citizens of Durham and operating within the frequency range of 806 MHz and 1,000 MHz and future spectrum allocations at the direction of the FCC.
Public Utility: A business or service that provides the public with electricity, gas, water and sewer service, telephone or cable television service.

Radio Frequency Emissions: Any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna-supporting structure, building, or other vertical projection.

Receiving Watercourse: A lake, natural watercourse or other natural or manmade area into which stormwater runoff flows from a land-disturbing activity.

Recreational Vehicle: A vehicle, which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Recreational Vehicle (RV) Park: Land used or intended to be used, let, or rented for occupancy by vacationing transient campers traveling by automobile or otherwise, or for occupancy by tents, or other movable or temporary sleeping quarters of any kind, together with automobile parking spaces and incidental utility structures and facilities required and provided in connection with the use. This definition shall not include trailer sales lots where unoccupied trailers are parked for inspection and sale.

Recycling Center: A building or an area where the primary activity is the separation of materials prior to shipment for remanufacture into new materials. This shall not include junkyards or wrecking yards.

Recycling Drop-Off Site: A site providing containers for the collection of recyclable materials, typically an accessory use. Recyclable materials are transported from the drop off site to another location for processing.

Reference Level: The top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, A99, AO, or X (Future).

Regulatory Flood Protection Elevation: The elevation above mean sea level to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

1. In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two feet of freeboard.
2. In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least five feet above the highest adjacent grade.
3. In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus two feet of freeboard.

Remedy a Violation: To bring a structure or other development into compliance with the requirements of this ordinance and, when appropriate, State requirements.

Repair Shop: A structure or area where the principal activity is the repair of equipment, and which is conducted in a totally enclosed building. This does not include vehicle repair.

Repetitive Loss: Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.
Definitions

**Reservation**: The withholding by a private entity of specific real estate from development pending acquisition by a public agency.

**Residential Street**: Streets less than one mile in length that do not connect thoroughfares or major traffic generators and do not collect traffic from more than 25 dwelling units; or a loop street less than 2,500 feet in length.

**Residential District**: Any zoning district with the "R" designation, (RD, R-20, etc) including the PDR district.

**Restaurant**: An establishment where food and drink are served as a principal activity, including the dispensing of food or drink to patrons who remain in vehicles.

**Retail Stores and Shops**: Establishments selling goods to the public for consumption but not for resale, usually in small quantities, as well as services incidental to the sale of these goods including the leasing or repairing of merchandise for public consumption.

**Right-of-Way**: A strip of land acquired by reservation, dedication, prescription or condemnation and intended to be occupied by a street, trail, or public utility.

**Riverine**: means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Roadside Stand**: A structure (generally an open air structure) used for display and sale of products grown or produced on-site and the incidental sale of products from off-site. Sales are conducted on a temporary or seasonal basis.

**Rooming House**: A building other than a motel, hotel, bed and breakfast inn or boarding house, containing not more than nine guest rooms. A rooming house may not contain kitchen facilities within the guest rooms, and no meals are served to guests.

**Root Protection Zone**: The land area around the base of a tree in which disturbances are prohibited in order to protect the roots of a tree and aid the trees survival. Root protection zones are measured as the greater of:

A. Six-foot radius around the tree; or
B. One-foot radius for every inch of dbh.

**Runoff**: Water from precipitation that flows off a property.

**Salvage Yard**: Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

**Satellite Dish Antenna(s) (Satellite Earth Stations)**: A single or group of satellite parabolic (or dish) antennas. These dishes are mounted to a supporting device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include the associated separate equipment enclosures necessary for the transmission or reception of wireless communications signals with satellites.

**School, Public or Private**: A public or private institution offering a curriculum of education authorized by the State of North Carolina giving regular instruction at the primary, secondary level, or a school for the mentally or physically handicapped. Included in this definition are preschool programs. However, this definition does not include day care facilities, individual instruction, or classes in a specialized subject.

**School, Trade, or Business**: An institution offering instruction beyond high school level with a course
Definitions

Screening: The use of plant materials and other landscape or architectural elements used separately or in combination to obscure views.

Sediment: Solid particulate matter, both mineral and organic, that has been, or is being, transported by water, air, gravity or ice from its site of origin.

Sedimentation: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Setback: The minimum distance between a property line and a building or structure. Unless specifically noted in the text, ground level parking and security gatehouses may be located within the setback area.

Shopping Center: A group of retail businesses developed under a uniform development scheme and served by common off-street parking facilities.

Sign: Any words, lettering, parts of letters, figures, numerals, phrases, sentences, emblems, devices, structures, designs, trade names, or trade marks by which anything is made known such as are used to designate an individual, a firm, an association, a corporation, a profession, a business, or a commodity or products, which are legible from any public street or adjacent property and used to attract attention. This definition includes the structure or the face on which a sign message is displayed. For the purposes of this Ordinance, this definition shall not include "trade dress" i.e.: architectural features identified with a product or business, as a sign.

Siltation: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

Single-Family: As described in Sec. 7.1, Housing Types: single-family detached house; zero lot-line house; traditional house; patio house; or semi-attached house. Not to include manufactured housing.

Single-Loaded Street: A roadway serving property (street yard) on one side only with no need for access on the other side.

Site Area: The minimum area required for a particular type of development. The site may then be divided into smaller lots.

Site Plan: An accurately scaled development plan that shows existing conditions on a site as well as depicting details of proposed development.

Solid Waste Disposal Facility: Means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

Solid Waste Disposal Site: Means, as defined in NCGS 130A-290 (a) (36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

Special Flood Hazard Area (SFHA) or Area of Special Flood Hazard: The land in the floodplain subject to a one percent or greater chance of being flooded in any given year based on current conditions hydrology.

Specimen Tree: Any evergreen canopy tree eighteen (18) inches dbh or greater, any deciduous canopy tree twelve (12) inches dbh or greater and any understory tree (deciduous or evergreen) eight (8) inches dbh or greater, except any tree listed as a non-native invasive plant by the US Forest Service or listed as Prohibited for Any Use in the Landscape Guidelines for Durham, North Carolina.

Start of Construction: Includes substantial improvement, and means the date the building permit was
issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

**Storm Drainage Facilities:** The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

**Stormwater:** The flow of water which results from precipitation and which occurs immediately following rainfall or snowmelt.

**Stormwater Runoff:** The direct runoff of water resulting from precipitation in any form.

**Story:** The horizontal division of a building made up of the space between two successive floors, or a floor and the roof.

**Stream:** Means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

**Stream Buffer:** A natural or vegetated area adjacent to a stream through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for the infiltration of runoff and filtering of pollutants.

**Stream, Intermittent:** Except under Sec. 8.5, Riparian Buffer Protection Standards, a watercourse that collects surface runoff and is shown as a dashed blue line on the most recent United States Geologic Survey (USGS) 7½-minute quadrangle topographic maps, is shown as an intermittent stream on the most recent US Department of Agriculture (USDA) Soil Survey, or is shown as an intermittent stream on the Natural Resource Conservation Service (NRCS) maps.

**Stream, Perennial:** Except under Sec. 8.5, Riparian Buffer Protection Standards, a watercourse that collects surface runoff and is shown as a solid blue line on the most recent USGS 7½-minute quadrangle topographic maps, is shown as a perennial stream on maps in the most recent US Department of Agriculture (USDA) Soil Survey, or is shown as a perennial stream on the Natural Resource Conservation Service (NRCS) maps.

**Street Frontage:** The boundary of a property adjacent to one side of a street.

**Street Width:** The horizontal distance between the side lines of a street, measured at right angles to the side lines.

**Street, Private:** An area intended for local vehicular traffic, owned and maintained by a private corporation, individual, or group of individuals.

**Street, Public:** An area for vehicular traffic that is dedicated to or maintained by a public agency.

**Strip Commercial:** Intense commercial development extending along a roadway at a shallow depth along that roadway. It is typically characterized by multiple curb-cuts, unconnected vehicular use areas and a proliferation of signs.
Definitions

Structure: A walled and roofed building that is principally above ground, or a manufactured home or when used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, a gas or liquid storage tank that is principally above ground.

Stub Out: The extension of a street to an external property line to facilitate future roadway connection and reduce traffic impacts on the road network.

Subsidiary: An affiliate that is directly or indirectly through one or more intermediaries, controlled by another person.

Subdivisions: All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) or any division of land involving the dedication of a new street or a change in existing streets.

Substantial Damage: Damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either: (1) any project or improvement of a structure to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or (2) any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as an historic structure.

Substantial Quantities: An amount of hazardous materials equal to or exceeding the Threshold Planning Quantities listed in the provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act (SARA); or any subsequent amendments of these Acts. Where no Threshold Planning Quantities have been identified for a particular material, the amount considered to be a substantial quantity shall be determined by the Director of Emergency Management or the Durham County Fire Marshall.

Support Equipment (WCF): Any and all devices utilized to attach or hold antennas, feed lines, or any related equipment to a WCF.

Ten-Year Storm: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest, under average antecedent wetness conditions.

Telecommuting: A work arrangement in which an employee uses technology to perform assigned duties at home or at another site away from the traditional work site during some or all of regularly scheduled work hours, reducing or eliminating the employee’s commute or travel to and from the traditional work site.

Twenty-Five Year Storm: The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
Theater: A building or structure which contains an assembly hall for the performing arts and/or for the showing of motion pictures.

Thoroughfare, Major: Major streets, excluding freeways but not excluding limited access facilities, that provide for the expeditious movement of large volumes of traffic within and through the urban area. These facilities are shown on the adopted Thoroughfare Plan.

Thoroughfare, Minor: Streets that perform the function of collecting traffic from local access streets and carrying it to the major thoroughfare system. Such streets may be used to supplement the major thoroughfare system by facilitating minor through movements and may also serve abutting property. They are identified on the adopted Thoroughfare Plan.

Tool Repair Shop: A structure or area where the principal activity is the repair of equipment, and which is conducted in a totally enclosed building. Vehicle repairs are a separate definition.

Towers for Transmitting and Receiving Electronic Signals: Structures whose principal function is to support communication antenna(s).

Townhouse: A building made up of three or more attached dwellings units when the units are lined up in a row and share side walls.

Tract: Contiguous land under one ownership or under multiple ownership either developed as a single unit or recorded as a single unit.

Transfer Station: A facility where waste materials from residences, commercial and industrial establishments are transferred to vehicles which will take the materials to a landfill or other disposal site.

Trash Handling Facilities: Stationary solid waste collection containers, yard waste containers, recycling containers and roll-out containers for the above.

U, V

Ultimate Right-Of-Way: A line running more or less parallel to the centerline of certain existing or proposed streets for the purpose of determining future width as established by the officially adopted Thoroughfare Plan.

Uncovered: The removal of ground cover from, on, or above the soil surface.

Undertaken: The initiating of any activity, or phase of activity, which results, or will result, in a change in the ground cover or topography of a tract of land.

University or College: An institution other than a trade school that provides full-time or part-time education beyond high school.

Upper Story Step-backs: The articulation of upper story height by recessing the building facades back from the build-to line to allow light and air access to street level.

Urban Growth Area (UGA): Those portions of Durham, Orange and Wake Counties indicated in the Comprehensive Plan which are expected to receive urban services and to develop an urban character over the next 20 to 30 years and that are not within the Rural Tier.

Use: The purpose for which a building, structure, or area of land may be arranged or occupied or the activity conducted or proposed in a building, structure, or on an area of land.

Variance: A grant of relief to a person from the requirements of this Ordinance which permits construction or use in a manner otherwise prohibited by this Ordinance where specific enforcement would result in unnecessary hardship.
Vehicle Repair Shops: Buildings and premises where mechanical work, servicing, and repair of motor vehicles is conducted as the primary activity. Excluded from this definition are dwellings where not more than 2 vehicles owned by the lawful residents of the dwelling are repaired on-site.

Vehicle Service: Buildings and premises for uses such as alignment shops, auto body shops, auto paint facilities, auto upholstery shops, and towing service.

Vehicle Service, Limited: Buildings and premises for uses such as auto detailing, auto repair, battery sales and installation, fuel sales (other than with a convenience store), quick lubrication facilities, and tire sales and mounting.

Vehicle Storage Areas: A holding facility for the storage of operable or inoperable vehicles awaiting adjustment or settlement of insurance claims or motor vehicles that have been impounded by the police. No dismantling of vehicles is permitted.

Vehicles: All motorized vehicles as defined by the State of North Carolina Department of Motor Vehicles, including but not limited to: automobiles, trucks, buses, all terrain vehicles (ATVs) and motorcycles. This definition shall not include “Heavy Equipment” as defined elsewhere.

Velocity of Flow: The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Vested Rights: The right of property owner to develop according to the terms of an approved site specific development plan or building permit even if the zoning or zoning district requirements are changed prior to development.

Violation: The establishment, creation, expansion, alteration, occupation or maintenance of any use, land development activity, or structure, including but not limited to signs and buildings, that is inconsistent with any provision of this Ordinance or any order, approval, or authorization issued pursuant to this Ordinance.

Waste: As used in Sec. 12.10, Sedimentation and Erosion Control, surplus materials resulting from onsite construction and disposed of at other locations.

Water Surface Elevation (WSE): When used in reference to Sec. 8.4, Floodplain and Flood Damage Protection Standards, the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Water-Dependent Structure: A structure which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Watercourse: A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Watershed: All of the land area draining to a particular point on a water course or to a water body.

Wetlands: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of
vegetation typically adapted for life in saturated soil conditions, commonly as hydrophytic vegetation, as defined by responsible State or Federal agencies.

**Wireless Ancillary Structures:** Forms of development associated with a wireless communications facility, including but not limited to: foundations, concrete slabs on grade, guy wire anchors, generators, and transmission cable supports; however, specifically excluding equipment enclosures.

**Wireless Communications:** Any personal wireless service, which includes but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing Part 15 devices (i.e. wireless internet services) and paging.

**Wireless Communication Facility (WCF):** Any manned or unmanned location for the transmission and/or reception of radio frequency signals, or other wireless communications, and usually consisting of an antenna or group of antennae, transmission cables, and equipment enclosures, and may include an antenna-supporting formation. The following facility types shall be considered as a Wireless Communication Facility: developments containing new or existing antenna-supporting structures, public antenna-supporting structures, replacement antenna-supporting structures, collocation on existing antenna-supporting structures, attached wireless communications facilities, and nonconcealed wireless communication facilities; but excluding amateur wireless facilities, satellite dish antennae and antenna supporting structures, and antennae and/or antenna arrays for TV/HDTV/AM/FM broadcasting transmission facilities.

**Wireless Communication Facility Equipment Compound:** A fenced outdoor area surrounding a wireless communication facility including the areas inside or under the antenna-support structure’s framework and WCF support structure.

**Working Days:** Days exclusive of Saturday, Sunday and (a) when used other than in reference to Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control, legal holidays recognized by the City or County; or (b) when used in reference to Section 3.8 and 12.10 days during which weather conditions or soil conditions permit land disturbing activity to be undertaken, as determined by the sedimentation and erosion control officer, or their designee, except where the context clearly indicates otherwise.

**Yard:** A space on the same lot with a building or group of buildings, which space lies between the building or group of buildings and the nearest lot line.
**Yard, Rear**: That portion of a yard between the required rear setback and the rear property line extending the full width of the lot between side lot lines. The rear yard width is measured perpendicular to the rear lot line. The rear yard shall be the yard on the opposing side of the primary structure from the main or primary entrance to the primary structure.

**Yard, Side**: That portion of a yard between the required side setback and the side lot line extending from the street yard to the rear yard. The side yard width is measured perpendicular to the side lot line.

**Yard, Street**: That portion of a yard extending between the edge of the street right-of-way (or easement, for private streets) and the required street setback; the portion of a lot adjoining a street as measured from the right-of-way. The street yard width is measured perpendicular to the street right-of-way. Corner lots and through lots shall be considered to have two street yards. A street yard does not exist adjacent to an alley.

**Zero Lot Line**: A detached dwelling unit positioned on one property line without any setback.