



## Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting  
December 11, 2012  
7:00 P.M.  
Board of Commissioners Meeting Room  
Cabarrus County Governmental Center

### Agenda

1. Oath of Office to Newly Appointed Board Member
2. Roll Call
3. Approval of October 2012 Minutes
4. **New Business** –Board of Adjustment Function:

Petition Appl2012-00001 – Appeal of Interpretation of Cabarrus County Zoning and Subdivision Ordinance. Request the Board of Adjustment review a Notice of Violation Warning Citation issued on October 9, 2012 for PIN 4692-00-3117

5. Proposed Text Amendments to Zoning Ordinance and Subdivision Ordinance –
  - a. Cabarrus County Zoning Ordinance-Chapter 15 will be removed completely from the Ordinance
  - b. Cabarrus County Subdivision Ordinance-Section 17 will be removed completely from the Ordinance
6. **Old Business** – Proposed Text Changes to Chapter 1 (Draft 2)



Cabarrus County Government – Planning and Development Department

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Planning and Zoning Commission Minutes  
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Ms. Shannon Frye, Vice-Chair, called the meeting to order at 7:00 p.m. Members present in addition to the Vice-Chair were: Ms. Mary Blakeney, Mr. Andrew Deal, Mr. Eugene Divine, Mr. Danny Fesperman, Mr. James Litaker, Mr. Chris Pinto, Mr. Richard Price, Mr. Jonathan Rett and Mr. Aaron Ritchie. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Ms. Arlena Roberts, Clerk to the Board and Mr. Richard Koch, County Attorney.

The Oath of Office was administered to newly appointed alternate member Mr. Chris Pinto.

**Roll Call**

**Approval of October 9, 2012, Planning and Zoning Commission Minutes.**

Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to **APPROVE** the October 9, 2012, minutes. The vote was unanimous.

**New Business –Board of Adjustment Function:**

The Vice-Chair introduced Petition APPL2012-00001 – Appeal of Interpretation of Cabarrus County Zoning and Subdivision Ordinance

Ms. Susie Morris stated that the attorney for the applicant for Petition APPL 2012-00001 – Appeal of Interpretation of Cabarrus County Zoning and Subdivision Ordinance has submitted a letter for the record withdrawing the appeal.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to except the letter of withdrawal for Petition APPL 2012-00001. The vote was unanimous.

The Vice-Chair introduced Proposed Text Amendments to the Zoning Ordinance (Chapter 15) and Subdivision Ordinance (Section 17).

Ms. Susie Morris, Planning and Zoning Manager, addressed the board presenting proposed text changes to Chapter 15. She said due to the final decision of the North Carolina Supreme Court to deny our appeal to rehear our case on the Adequate Public Facilities Ordinance, we need to move forward in removing it from our ordinance. This



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is a request to completely remove Chapter 15 from the Zoning Ordinance and to remove Section 17 from Chapter 4 of the Subdivision Ordinance.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. Richard Price to recommend to the Board of Commissioners that Chapter 15, Adequate Public Facilities Ordinance, be removed from the Cabarrus County Zoning Ordinance. The vote was unanimous.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to recommend to the Board of Commissioners that Section 17, Chapter 4, of the Cabarrus County Subdivision Ordinance be removed. The vote was unanimous.

The Vice-Chair introduced Proposed Text changes to Chapter 1 of the Cabarrus County Zoning Ordinance.

Ms. Susie Morris, Planning and Zoning, Manager, addressed the board stating that the revisions to Chapter 1, requested by the Attorney and the corrections (typos and wording) noted by the Text Amendment Committee have been completed. It is ready to go to the Board of Commissioners. It had been discussed that the text amendments would be taken as a batch to the Board of Commissioners. Since, the APFO Text Amendments have to be advertised, we would like to go ahead and take care of revising Chapter 1, as a part of that advertisement. We would like for the Board to make a recommendation to the Board of Commissioners on those changes this evening.

She asked Mr. Koch if he had any additional comments on Chapter 1 since that is essentially the chapter that sets up the Zoning Ordinance.

Mr. Koch has no additional comments.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Ms. Mary Blakeney to recommend to the Board of Commissioners the Proposed Text Changes to Chapter 1. The vote was unanimous

### **Director Report**

Ms. Susie Morris, Planning and Zoning Manager, addressed the board stating that there were three meetings held for the Connect Our Future project last week, two in Stanley County and one in Kannapolis. The purpose of this, and other Open Houses, is to identify qualities and characteristics that each community values and wants to preserve for the future, as well as to identify the challenges the community and the region face.

There is a series of 30 meetings, and at this point, attendance has been approximately 15 to 20 people from the general public at each meeting. The next meeting is January 15, 2013 in Mooresville.

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The advertising was pushed down to the individual jurisdictions; in Cabarrus, all of our Public Information Officers (PIO's) worked together and did a press release and put information into any newsletters that went out and on the website. But it really did not get stellar attendance at any of them.

We received better attendance for our small area plan meetings, but we also did a direct mailing for those. That was not something that was contemplated for this particular plan. They decided to use different advertising avenues.

They are moving into the mapping phase, so that they can take the different data sets and feed them all into a model, and start proceeding with the final phase of the frame work.

The activity that they presented was an open house; it was a little different than the activity that was presented to this board. The blueprinting activity will become a part of the public activity. That will be the next phase.

The first was an open house to listen to what people had to say, and they asked some questions. She believes toward the summer they will get more into the blueprinting activity.

Ms. Morris said, LandDesign, is the subcontractor for the WSACC project. We really are fortunate because they already know about half of Cabarrus County forwards and backwards from helping us with the other land use plans. She said they are able to get down to the level of detail that we are looking for, for Cabarrus County.

Once that plan is finalized, hopefully, we can use that end product or modeling in proceeding with the study that we talked about several months ago with the UNC Environmental Center group.

We are still working on the text amendments as well. We are working on the landscape chapter right now, trying to get it finalized. Hopefully, some of those revisions will come to you within the next few months.

Mr. Koch, County Attorney, said with reference to the matter that was to be a Board of Adjustment Function tonight, that was withdrawn, (Petition APPL 2012-00001) concerning the wedding facility out near the reservoir. The Board will probably be hearing more about that because we will commence zoning enforcement action against them if they do not immediately cease and desist.

He said their appeal is over as of tonight, but there will probably be more going on with reference to that. They claim that they are not utilizing the facility, but their website and Facebook page and other evidence, indicates to the contrary. It will probably be a developing situation.

Mr. Koch said as far as the Adequate Public Facilities Ordinance (APFO) is concerned, all legal proceedings with reference to it is over, and that is why it was appropriate to go

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ahead and begin the process of removing it from the Subdivision and the Zoning Ordinance. He thinks that there is a reasonable chance that we may be coming back to the Board with some sort of a different APF ordinance. It will not contain any voluntary mitigation payments, but the ability to still try to bring some concurrency between residential development and provision of public facilities; particularly schools. It is something that we haven't really needed so much in the present economic conditions, but those are not going to remain the same, and there will probably be something that the Board will be looking at to consider sometime down the road.

Mr. Koch said as far as the Ben Small matter is concerned, the accessory building has now been reduced to a foundation, some studs, and a piece of plywood, which is propped up against one side of it. The process of deconstructing that building has commenced. It has stayed the same for the last couple of weeks. Mr. Koch thinks in part, because of the separate Register of Deeds election controversy that involves Mr. Small. Mr. Small has probably been preoccupied with that, and has caused Mr. Koch to be preoccupied with that as well. Once we get that to some point of legal certainty, then we will follow up with the other.

Mr. Koch said Mr. Small apparently has done something with the some of the filtration system that was installed at the well head. It appears to be in the process of being changed in some fashion. The time for having it removed has passed, but Mr. Koch has not filed anything because of the other issue. In fairness, to Mr. Small, he has been preoccupied with that, so once we get that one to some state of resolution we will go back to the other one.

Mr. Feserman asked if the county has set deadline, where as they can charge a fee or fine if the violation continues.

Mr. Koch said there is nothing contained in the judge's order to that affect. The remedy at this point is to file a motion for contempt; schedule a show cause order. He said usually when we do that we ask for criminal and civil contempt. They are slightly different in there purposes; criminal contempt is deemed punishment and civil contempt is deemed an urge to comply. They serve different purposes and have different penalties.

Mr. Koch has not filed anything yet and is hoping that Mr. Small will go ahead and finish the job. He has told Mr. Small that if he reworks it, such that it covers the well head and the filtration equipment, at least in Mr. Koch's mind, that would be compliant with the ordinance. Mr. Small's expert witness testified that the filtration equipment does not have to be at the well head, it isn't going to make that much larger building then just a simple well cover. Mr. Koch personally, does not see it as being a problem; it is not his decision and ultimately will be the Boards decision if it were challenged. He said what Mr. Small had out there was way more then what would be considered just a well cover.

Mr. Koch does not know what Mr. Small's intentions are and thought we would wait until after this other matter was dealt with and see what Mr. Smalls' plans are.

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Mr. Fesperman asked what the county's position is on disbursing the APFO fees or will there be?

Mr. Koch said at this point the County is defending any lawsuit that is filed seeking a refund of fees. There is one primary lawsuit that was filed by Jim Scarborough, and that has been a bit of a moving target. It was stayed during the time that the validity lawsuits were on going; now that is all concluded, the stay has been lifted and it is moving forward. Mr. Scarborough keeps signing up new clients and has to keep amending his complaint, so until we get the procedural part of that dealt with, the Commissioners are thinking over their options.

He thinks for the Commissioners, at least in part, it is a political, as well as a legal issue. He thinks it would be fair to say that some of them, and maybe all of them, because we have never taken a vote on it, feel that the person who ultimately paid the fee ought to get the money back. When they speak about the person who ultimately paid the fee, it is the end user; not necessarily the developer/builder who actually wrote the check. He knows that issue troubles them greatly, because there have been a lot of statements made and other evidence that he thinks could be put up that would indicate that those fees while not a line item, were generally added on or attempted to be added on to the final purchase price of a home.

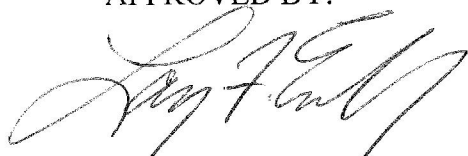
Mr. Scarborough has actually made that statement in public and in the papers, kind of in a reverse way, by saying that now the price of residential real estate would go down in Cabarrus County because the fee is no longer being charged. Mr. Koch said to him, it is the same difference. That is one of the main points of contention and there are certainly others. There were agreements that were signed, and one of the options would be to delay development, but you could pay the fee and develop now; so there are some legal issues in that whole consent agreement and the relative voluntariness; that part of it. There's statute of limitations issue in the case at least in reference to the fees that may have been collected many years ago.

Mr. Koch said it is a complicated situation, not every one of them is the same. In some cases people donated land as a credit against the APFO payment and the County now owns that land and a school is sitting on it; so, how do you deal with that situation? It's one of those circumstances that have a lot of complexity to it. He thinks the commissioners would like to solve it some way and not just have it be protracted litigation. But, there are these different aspects to it and there are definitely different ways to look at it. He said there has been no decision made, as to exactly what to do, other than to deal with the legalities as those deadlines come due.

There being no further discussion, Mr. Aaron Ritchie, **MOTIONED, SECONDED** by Mr. James Litaker to **ADJOURN** the meeting. The vote was unanimous. The meeting ended at 7:30 p.m.

Planning and Zoning Commission Minutes  
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APPROVED BY:

A handwritten signature in cursive script, appearing to read "Larry Ensley".

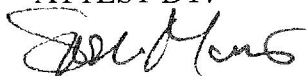
Larry Ensley, Chairman

SUBMITTED BY:

A handwritten signature in cursive script, appearing to read "Arlena B. Roberts".

Arlena B. Roberts

ATTEST BY:

A handwritten signature in cursive script, appearing to read "Susie Morris".

Susie Morris  
Planning and Zoning Manager





Ferguson, Scarbrough, Hayes, Hawkins & DeMay, P.A.

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December 10, 2112

To: Cabarrus County Board of Adjustments

From: Dwight W. Matthews

Re: 8100 Davidson Hwy, Concord, NC  
PIN 46920031170000

Your file: ZNC2012-00052

This is to notify you that I withdraw my appeal in the above referenced file.

  
Dwight W. Matthews

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

**Petition: APPL2012-00001**  
**Appeal of Interpretation of Cabarrus County Zoning and Subdivision Ordinances**

Appellant Information: Dwight Matthews  
Zoning: Agriculture Open with Watershed Overlay Zone  
Township: Number 3, Odell  
Property Location: 8100 Davidson Highway  
PIN#: 4692-00-3117  
Request: Appellant requests that the Board of Adjustment review a Notice of Violation Warning Citation issued on October 9, 2012 for PIN 4692-00-3117.

**History**

**April 18, 2012**

A complaint was registered with the Zoning Office related to the subject property. The complainant stated that a wedding reception facility was being operated on the premises. The caller also indicated that trees had been removed on the site, potentially in the required Watershed Overlay Zone.

**April 19, 2012**

James Lowe, Senior Enforcement Officer, met on site with Nardy James, Cabarrus County Sheriff's Department, Chad VonCannon, WSACC, and the property tenant (Watty Neusome). At that time, it was determined that there did appear to be an encroachment into the required 150' Watershed Overlay Zone buffer. The tenant was also warned about operating any type of business on the property, including a reception facility or bed and breakfast. The tenant stated that he understood and that he had no intentions of operating a business at said location.

**April 26, 2012**

Enforcement Officers Lowe and Foxx returned to the site to measure the required buffer distance and to determine the extent of disturbance.

**August 2, 2012**

Complaint received regarding reception like parties on the property. Complainant stated that party took place the weekend of 7/28/2012.

**October 3, 2012**

Complaint received regarding reception on property in question on or about 9/29/2012.

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**October 9, 2012**

Notice of Violation Warning Citation sent to property owner (Dwight Matthews).

**10/19/2012**

Enforcement Officers Lowe and Foxx met with owners and tenant on site. Some vegetation appears to be planted where encroachment occurred. Officer Lowe explained again that commercial uses were not allowed in the Watershed Overlay Zone.

**Findings**

1. The subject property is located at 8100 Davidson Highway.
2. The subject property is located in the Agriculture/Open Space zoning district.
3. The subject property is accessed by a 45' right-of-way from Highway 73.
4. The subject property is located in the Watershed Overlay Zone. More specifically, the property is located in the Critical Area of the Watershed Overlay Zone and adjoins Lake Howell (AKA Coddle Creek Reservoir).
5. A Reception Facility is defined in Chapter 2 of the Cabarrus County Zoning Ordinance.

*RECEPTION FACILITIES - Establishments located in rural Cabarrus County, meant solely for banquets, wedding receptions, private events, etc. Events are by reservation only, with food and beverage brought on site or prepared in an approved kitchen located on the site. A reception facility shall not be operated as a restaurant with entertainment or as a bed and breakfast.*

6. A Reception Facility is permitted in the AO zoning district as a Conditional Use. However, commercial uses are not permitted in the Watershed Overlay Zone. A reception facility is considered a commercial use based on Table 3-8, Table of Permitted Uses. (See Attached Table)
7. Because the subject property adjoins the Coddle Creek Reservoir (AKA Lake Howell) it is subject to a 150' vegetative buffer. The buffer has been disturbed. Subsequently, the area is to be replanted immediately with appropriate vegetation.

***Section 4-5. Additional requirements to property within the drainage basin and within 1/2 mile of the high water mark for reservoirs.***

*1) No commercial or industrial development shall be permitted. A 150-foot vegetative buffer shall be maintained from the normal pool level on all property adjoining the reservoir. No permanent structures shall be allowed within this buffer area.*

***Section 4-10. Requirements of the Waterbody Buffer Zone***

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*8A) All buffer areas shall remain undisturbed. When agricultural soil disturbing activities such as plowing, grading, ditching, excavating, placement of fill material, or similar activities must occur near the buffer zones, they shall conform to all State and Federal regulations. Other unnamed agricultural activities that would result in significant disturbance of the existing soil, increase soil erosion, or destroy plant and wildlife habitats can only occur with an approved replacement program and shall also be consistent with North Carolina Sediment Control Law and in coordination with the North Carolina Wildlife Resources Commission's District 6 Biologist, and in consultation with the Cabarrus Soil and Water District Representative. Existing agricultural operations, forested or vegetated areas within stream buffer areas shall follow the State's forest practice guidelines which include best management practices (BMPs) as defined by the North Carolina Soil and Water Conservation Commission.*

*8C) In the event that a buffer is disturbed, all disturbed areas within the buffer zone shall be revegetated with appropriate vegetation immediately. Forested areas shall be reforested as detailed in the approved replacement program discussed in 8A above.*

8. Appellant has not secured a permit for a reception facility located on the subject property.

***Section 6-2. Zoning affects every structure and use.***

*Zoning affects every structure and land use throughout Cabarrus County. Accordingly, no structure shall be erected, reconstructed, moved or structurally altered, nor shall any structure or land be used except in compliance with both the general and the applicable district regulations of this ordinance. Unless specific provisions state otherwise, no structure or use shall:*

- 1. exceed its height or bulk limitation,*
- 2. accommodate or house a greater number of families,*
- 3. occupy a greater percentage of lot area, or,*
- 4. have narrower or smaller rear, side or front yards  
or other open space.*

***Section 12-3. Certificates of Zoning Compliance Permit required.***

*A Zoning Compliance permit must be obtained from the Cabarrus County Zoning Administrator prior to the use or occupancy of any building or premises, or both, hereinafter created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure. Additionally, no nonconforming structure or use can similarly be changed or extended without a Zoning Compliance Permit or Certificate of Adjustment. A Zoning Compliance permit must be obtained before a building permit can be issued. The building permit application may be made at the same time as the application for the Zoning Compliance permit or after its issuance.*

PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

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*No permits or certificates shall be issued except in compliance with the provisions of this Ordinance.*

9. Appellant cannot secure a permit for a reception facility at this location. Commercial uses are not permitted in the Watershed Overlay Zone and the subject property is located in the Watershed Overlay Zone, more specifically, in the Critical Area of the Watershed Overlay Zone.

***Section 4-4. Requirements for all lots in the Coddle Creek and Dutch Buffalo Watersheds.***

*All lots in the following watersheds shall meet the following requirements:*

*Watershed:*

- 1. Coddle Creek*
- 2. Dutch Buffalo Creek*

*Requirements:*

*1) All lots within the drainage basin's critical area, that is land within 1/2 mile of the high water mark or the ridge line of the watershed (whichever comes first) for the reservoirs, shall have a minimum of two (2) acres. If a cluster development is approved, the density for the site shall remain one dwelling per two (2) acres for development.*

*2) All lots (or dwelling units per acre in cluster developments) in the remaining area of the drainage basin for the reservoirs shall have a minimum square footage of one acre or one dwelling unit per acre or meet requirements of the Cabarrus County Zoning Ordinance, whichever is more stringent.*

***Section 4-5. Additional requirements to property within the drainage basin and within 1/2 mile of the high water mark for reservoirs.***

*2) No commercial or industrial development shall be permitted. A 150-foot vegetative buffer shall be maintained from the normal pool level on all property adjoining the reservoir. No permanent structures shall be allowed within this buffer area.*

*3) A stream buffer shall be established on all perennial streams as detailed in the River/Stream Overlay Zone section of this Ordinance. (Part II)*

*4) All non-single family residential and nonresidential development of lots within the critical area shall have an impermeable area of less than six percent (6%).*

*5) No industrial or commercial hazardous material shall be used or stored in this 1/2-mile area.*



PLANNING STAFF REPORT  
CABARRUS COUNTY PLANNING AND ZONING COMMISSION

Staff Use Only:  
Approved: \_\_\_\_\_  
Denied: \_\_\_\_\_  
Tabled: \_\_\_\_\_

**Exhibits**

- A. Application and exhibits, submitted by Appellant
- B. Zoning complaint notes, submitted by Staff
- C. Maps (Aerial-County, Aerial-Google Maps, Zoning, Watershed Overlay, Reservoir Buffer, Survey of Buffer) submitted by Staff
- D. Definition of Reception Facility from Chapter 2, submitted by Staff
- E. Table 3-8, Permitted Use Table, submitted by Staff
- F. Watershed Overlay Zone text, submitted by Staff
- G. General Statute §143-214.5, Water supply watershed protection, submitted by Staff
- H. Photograph of buffer area on 10/19/2012, submitted by Staff
- I. Copy of Department of the Army Permit for Coddle Creek Reservoir, submitted by Staff
- J. Copy of Coddle Creek Reservoir Mitigation Program, submitted by Staff
- K. Photographs and information from Internet search, submitted by Staff
- L. Photographs of gate on 9/29/2012, submitted by Complainant

EXHIBIT A

NOV 08 2012



Staff Use Only: \_\_\_\_\_  
 Application/Accel# \_\_\_\_\_  
 Reviewed by: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Amount Paid: \_\_\_\_\_

## APPEAL OF ADMINISTRATIVE DECISION OR INTERPRETATION OF THE ZONING ORDINANCE

In order to request an appeal from an interpretation or administrative decision made by the Zoning Administrator, the applicant must submit the following:

1. Complete application
2. Fee of \$250.00 + 3% technology fee
3. Copies of any documentation to be submitted to the Board of Adjustment as evidence.  
(If large format copies are included in the documentation, applicant must submit 18 copies.)

If there are additional questions concerning this process, please call the Commerce Department at (704) 920-2141, Monday through Friday, 8AM to 5PM.

*Incomplete applications will be returned to the applicant and will not be processed.*

To the Cabarrus County Board of Adjustment:

I Dwight Matthews, hereby appeal the following decision of the Zoning Administrator to the Board of Adjustment:

See Attached Exhibit A

*You may attach additional sheet(s) if needed.*

I request an interpretation of:

       The Zoning Atlas (Zoning classification of subject property)

  X   The following section(s) of the Zoning Ordinance:

Section 03-07

Section 06-02

Section 08-01

Section 12-03

*You may attach additional sheet(s) if needed.*

As it relates to the use of the property located at:

Address: 8100 Davidson Hwy

Parcel Identification Number (PIN): 46920031170000

Property Owner: Dwight Wayne Matthews

In the space provided below, present your interpretation of the Zoning Atlas or Zoning Ordinance provision(s) in question and state what reasons you have for believing that your interpretation is the correct one. In addition, state the facts you are prepared to present to the Board of Adjustment to show that the decision was erroneous.

See Attached Exhibit B

*You may attach additional sheet(s) if needed.*

**Required Vote:** The vote requirement for an appeal of the Administrator's decision or interpretation to be upheld or overturned is 80% or greater.

### APPLICATION CERTIFICATION

I certify that all of the information presented by me in this application is, to the best of my knowledge, true and correct.

  
Signature of Applicant

8100 Davidson Hwy

Address

Concord, NC 28027

City, State, Zip Code

(704) 756-1010

Phone Number

Fax Number

dwmattthews@ctc.net

E-mail Address

James E. Scarbrough

Represented By

PO Box 444

Address

Concord, NC 28026-0444

City, State, Zip Code

(704) 788-3211

Phone Number

(704) 784-3211

Fax Number

js@fspa.net

E-mail Address



10/9/2012

File #: ZNC2012-00052

Matthews Dwight Wayne

Inspection Date: 10/09/2012

8100 Davidson Hwy  
Concord, NC 28027**NOTICE OF VIOLATION**

RE: 8100 DAVIDSON HWY

Zoning: AO

Parcel(s): 46920031170000

Nature of Violation: Possibly running illegal business  
Possibly grading too close to watershed

The following provision(s) of the CABARRUS COUNTY Zoning Ordinance has been violated:

03-07 CONDUCTING A LAND USE THAT IS NOT PERMITTED IN A PARTICULAR ZONE

06-02 ZONING AFFECTS EVERY STRUCTURE AND USE

08-01 OPERATION OF A CONDITIONAL USE WITHOUT A CONDITIONAL USE PERMIT

12-03 ZONING COMPLIANCE PERMIT REQUIRED

Dear Matthews Dwight Wayne,

An on-site inspection of your property has found you to be in violation of the Cabarrus County Zoning Ordinance.

It seems that you continue to operate a commercial use (reception facility) at the property in question. We have spoken to you about this violation in the past. We have also spoken to the tenant that resides on the premises on numerous occasions.

Yet it seems that you are unwilling to comply.

Therefore, our office feels that we have no other choice but to continue with our violation procedures.

**This notice is to serve as a Warning Citation*****In order to correct this violation you must:***

Stop all illegal commercial activity.

Also, it seems that you have graded too close to the Lake Howell reservoir and encroached into the "Water body Buffer".

This plant material will need to be replaced.

**You have 10 days from the receipt of this letter to comply with this ordinance.**

You may appeal this decision to the Board of Adjustment within thirty (30) days. This department reserves the right to exercise the following remedies per NC G.S.153A-123:

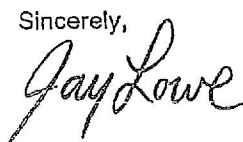
- Issue a civil starting at \$100.00 and if unpaid a judgment could become a lien on the property.
- File lawsuit against a property owner in North Carolina Superior Court for violation of the Zoning Ordinance.

In order to avoid any monetary citations please correct this matter within the aforementioned time frame.

If you have any questions concerning this matter or if you are in the process of clearing this matter, please call our office at (704) 920-2159 so we can make appropriate arrangements.

Thank you in advance for your cooperation.

Sincerely,

 704-920-2140 (Direct # for Jay)

James Lowe, Senior Zoning Inspector



## ***Cabarrus County Zoning Ordinance Reference***

### **Section 12-27. Violations**

In addition to any other remedies cited in this section for the enforcement of the provisions of this Ordinance, the regulations and standards herein may be enforced through the issuance of citations by the Zoning Office in accordance with G.S. 153A-123. These citations are in the form of a civil penalty. The County may recover this penalty in a civil action in the nature of a debt if the offender does not pay the penalty within 72 hours after being cited for a violation. In addition, failure to pay the civil penalty within 72 hours may subject the violator to criminal charges.

The following civil penalties are established for violations under this Ordinance:

<b>Warning Citation</b>	<b>Correct the violation within ten days</b>
First Citations	\$ 100.00
Second Citation for the same offense	\$ 200.00
Third and subsequent citations for the same offense	\$ 400.00
Disturbed Acre in Required Open Space	\$ 500.00 plus Replacement Planting Equal to 20 Large Maturing Trees and 40 Large Shrubs per Acre (tree and shrub sizes shall be in accordance with the buffer standards)
Disturbed Acre in Required Buffer	\$ 500.00 plus Replacement Planting to Meet Buffer Standard

These civil penalties are in addition to any other penalties which may be imposed by a court for violation of the provisions of the zoning ordinance.

### **Section 12-28. Penalties**

Any person adjudged in violation of this ordinance shall be guilty of a misdemeanor and shall be punished as provided in General Statute 14-4.

### **Section 12-29. Remedies**

If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, moved or maintained, or any building, structure or land is used in violation of this Ordinance, the Zoning Administrator, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, moving, maintenance or use, to restrain, correct or abate the violation, to prevent occupancy of the building, structure or land, or to prevent any illegal act, conduct business or use in or about the premises.

1. The notice of violation does not contain adequate allegations of fact.
2. The county knew about the proposed use of the property for weddings and the improvements to be made and approved same. We followed the guidelines given to us by Robbie Fox.
3. There is not a commercial use of the premises. There is no charge for the weddings. Also, use of the property for Friday night religious services has existed for years. The church is Bethelwood Ministries Inc., a N.C. non-profit corporation, and a 501(c)(3) IRC charitable institution.
4. The plant material has been replaced.
5. The use does not violate 03-07.
6. The use does not violate 06-02.
7. The use does not violate 08-01.
8. The use does not violate 12-03.
9. The county has exceeded its authority and has acted arbitrarily in prohibiting weddings at a residence.

## EXHIBIT B

### Zoning Complaint: ZNC2012-00052

Wednesday, April 18, 2012

**Inspector:** James Lowe  
**Jurisdiction:** Cabarrus County  
**Complaint:** Possibly running illegal business  
Possibly grading too close to watershed  
**Violator** MATTHEWS DWIGHT WAYNE  
**Zoning:** AO  
**Parcel:** 46920031170000  
**Location:**  
**Address:** 8100 DAVIDSON HWY

#### Complaint History

**04/19/2012** **Type: Initial**  
onsite with Jay Lowe, Dept. Nardy James, Chad Von Cannon, WSACC, and property tenant

**04/19/2012** **Type: Initial**  
Met on the site with people mentioned above.  
Does appear that owner has cleared into the 150ft required buffer  
He was told that he would have to plant that back and that we would work on getting the specs for him.  
Also, owner was warned about operating any type business in the area including wedding receptions and bed & breakfast.  
He seemed to understand and told us that he had no intentions on doing so.

**04/26/2012** **Type: Follow Up**  
Followup with Jay Lowe to measure buffer disturbance

**04/26/2012** **Type: Follow Up**  
Site inspection was made with Robbie to measure disturbed area

**08/02/2012** **Type: History**  
Another complaint was phoned in concerning owner having reception like parties on the property.  
Party supposedly took place on the weekend of 7-28-12.

**10/03/2012** **Type: History**  
Another complaint phoned into our office concerning another reception that took place on the property in question on or about 9-29-12.  
Complainant also sent pictures.

**10/09/2012** **Type: History**  
Letter sent

**10/19/2012** **Type: Follow Up**  
Robbie and Jay met owners and tenant on site.  
Looked as though they had replanted some of the vegetation that had been removed previously.  
Also explained in great detail the nature of other violations concerning commercial type activity in the critical area.  
They seem to understand and indicated that they would comply.

10/19/2012

**Type: Follow Up**

Robbie and Jay met owners and tenant on site.

Looked as though they had replanted some of the vegetation that had been removed previously.

Also explained in great detail the nature of other violations concerning commercial type activity in the critical area.

They seem to understand and indicated that they would comply.

10/25/2012

**Type: History**

Jay, Susie and Jim Scarboro (attorney) met at our office.

We informed him of the rules and regulations.

Also, answered any questions that he asked.

Gave him handouts of any paper work that he thought was necessary.





## Aerial Map

Petition: APPL2012-00001

Appellant: Dwight Matthews

Property Location: 8100 Davidson Hwy

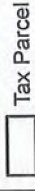
Parcel ID #: 4692-00-3117



Subject Property

### Legend

Subject Property



Tax Parcel

Streets



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources for these data were provided by the applicant. These data are provided for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, December 2012.





## Aerial Map

Petition: APPL2012-00001

Apellant: Dwight Matthews

Property Location: 8100 Davidson Hwy

Parcel ID #: 4692-00-3117



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed as a legal document. Primary sources of data which the data were compiled from have been consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, December 2012.

Source: 2012 Google



LAKE HOWELL



## Zoning Map





Petition: APPL2012-00001

Apellant: Dwight Matthews

Property Location: 8100 Davidson Hwy

Parcel ID #: 4692-00-3117

### Legend

-  Subject Property
-  Tax Parcel
-  Streets
-  AO- Agricultural Open Space



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which the data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services,  
December 2012.





## Watershed Map




Petition: APPL2012-00001

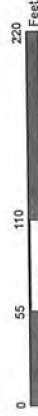
Apellant: Dwight Matthews

Property Location: 8100 Davidson Hwy

Parcel ID #: 4692-00-3117

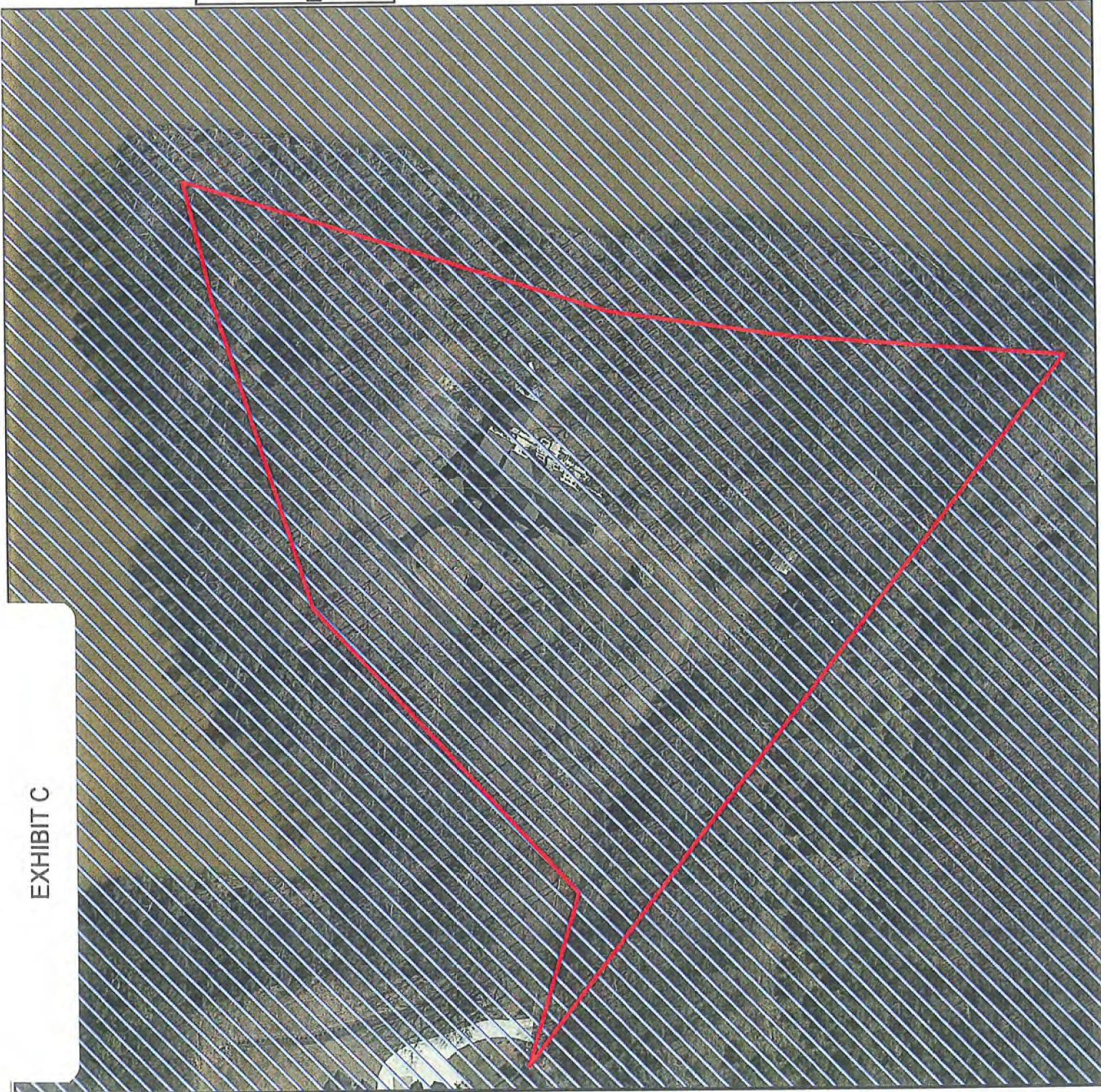
### Legend

-  Subject Property
-  Critical Area Watershed
-  Streets



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, December 2012.







## Approximate 150 Ft. Buffer



Petition: APPL2012-00001

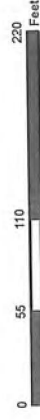
Appellant: Dwight Matthews

Property Location: 8100 Davidson Hwy

Parcel ID #: 4692-00-3117

### Legend

-  Approx. 150' Buffer
-  Subject Property



Cabarrus County shall not be held liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

Map Prepared by Cabarrus County Planning Services, December 2012.





THE JOHN ROBERSON BRADFORD TRACT,  
DB. 711 PG. 73

REBAR INSIDE PVC PIPE

#4 REBAR

S 76°56'11" W 100.01'

S 17°09'30" E 386.05'

N 04°12'36" E 226.82'

N 06°27'53" E 152.22'

S 51°33'25" E 720.44'

S 47°10'33" W 319.09'

S 72°17'18" W 262.15'

N 14°31'53" W 317.53'

SHASTA HATLEY-MATTHEWS  
DB. 614S PG. 12  
4692-00-3117

REBAR INSIDE PVC PIPE

#4 REBAR

#4 REBAR

#4 REBAR

#4 REBAR

ES, INC. 202 10

59°11" E 3.33'

DB. 618 PG. 617

Lake Don T. Howell

THE JOHN ROBERSON BRADFORD TRACT,  
DB. 711 PG. 73

Lake Don T. Howell

DB. 618 PG. 617

RACE TEAM COMPLEX - A facility used for the production, testing, and repair of competitively raced motor vehicles inclusive of offices, warehousing of vehicles and souvenirs. Race Team complexes may include multiple buildings for multiple teams or separate fabrication, chassis construction, or painting facilities.

RADIO AND TELEVISION STUDIO - A facility for the production of films and/or the production and broadcast of television and radio programs.

RAIL STATION, RAIL TERMINAL - A railway facility where trains regularly stop to load or unload passengers or freight.

RAIL STORAGE YARD - A complex series of railroad tracks for storing, sorting, or loading or unloading, railroad cars or locomotives.

RECEPTION FACILITIES - Establishments located in rural Cabarrus County, meant solely for banquets, wedding receptions, private events, etc. Events are by reservation only, with food and beverage brought on site or prepared in an approved kitchen located on the site. A reception facility shall not be operated as a restaurant with entertainment or as a bed and breakfast.

RECREATIONAL FACILITY, INDOOR - An establishment providing amusement, entertainment or recreation indoors typically for an admission charge. Types of indoor recreational facilities include but are not limited to:

- a. Dance halls
- b. Live theater
- c. Bands, orchestra and other musical entertainment
- d. Bowling alleys
- e. Billiard and pool establishments
- f. Membership sports and recreation clubs
- g. Indoor swimming pools
- h. Skating rinks
- i. Indoor kart racing

RECREATIONAL FACILITY, OUTDOOR - An establishment providing amusement, entertainment or recreation outdoors, typically for an admission charge or membership fee. Types of outdoor recreational facilities include but are not limited to:

- a. Ball field, ball field complex
- b. Soccer field, soccer field complex
- c. Miniature golf
- d. Outdoor Adventure Facilities, including zip lines, ropes courses and rock climbing walls
- e. Amphitheater
- f. Campground
- g. Non-competitive kart racing
- h. Radio controlled race car or truck course
- i. Radio controlled airplane flying fields

## EXHIBIT E

## Section 3-8 TABLE OF PERMITTED USES

PERMITTED USE TABLE											
"P" - Permitted, "C" - Conditional, "PBS" - Permitted Based on Standards											
	AO	CR	LDR	MDR	HDR	OI	LC	GC	LI	GI	
<b>COMMERCIAL, RETAIL AND OFFICE USES (Continued)</b>											
Office professional, 30,000 Square Feet or Less						P	P	P	P	P	
Office professional, 30,000 Square Feet or More						P	P	P	P	P	
Parking Lot, Parking Garage, Commercial or Private							P	P			
Pawn Shop (NCGS Chapter 91A)					P		P	P			
Pet Shop, Grooming, Enclosed Facility							P	P			
Photographic Studio						P	P	P	P	P	
Printing and Reprographic Facility											
Race Shop, Race Team Complex (8-4, 19)	C							P	P	P	
Race Shop, Race Team Complex								P	P	P	
Radio and Television Studio											
Reception Facilities (8-4, 21)	C	C			PBS	PBS	PBS	P	P		
Recreational Facility, Indoor (7-3, 38)	C	C	C	C	C	C	C	C	C	C	
Recreational Facility, Outdoor (8-4, 22)	C	C									
Recreational Therapy Facility, Rural Setting (8-4, 23)								P	P	P	
Recreational Vehicle Sales, With Outdoor Storage or Sales Lot						PBS	PBS	PBS	PBS	PBS	
Recyclable Materials Drop Off (7-3, 40)	PBS						PBS	P	P		
Repair Garage, Automobile (7-3, 42)	PBS								P	P	
Repair Shop, Farm Machinery (7-3, 43)	PBS						PBS	P	P		
Repair Shop, Small Engine (7-3, 44)	PBS	PBS	PBS	PBS	PBS		P	P	P	P	
Restaurant, Excluding Drive-thru (7-3, 46)							PBS	PBS	PBS	PBS	
Restaurant with Drive-Thru Facility (7-3, 47)				C	C						
Restaurant with Drive-Thru Facility (8-4, 27)											
Retail Sales, Neighborhood Market 5,000 Square Feet or Less (7-3, 48)	PBS					P	P	P			
Retail Sales, Shopping Centers, 10,000 Square Feet and Less							P	P			
Retail Sales, Shopping Centers, 10,000 - 50,000 Square Feet								P			
Retail Sales, Shopping Centers, 50,000 - 100,000 Square Feet								C			
Retail Sales, Shopping Centers, 100,000 Square Feet or More (8-4, 28)	PBS	PBS							P	P	
Sawmill (7-3, 50)						PBS	PBS	PBS	PBS		
Scientific Research and Development (7-3, 52)							PBS	PBS	PBS		
Self-Service Storage Facilities (7-3, 53)							PBS	PBS	PBS		
Shooting Range, Indoor (7-3, 54)	C	C							C	C	
Shooting Range, with Outdoor Target Practice (8-4, 30)											
Signs, Off-Premise	See Chapter Eleven, Table Six for Regulations										
Signs, On-Premise											
Sports and Recreation Instruction or Camp (8-4, 31)	C	C					PBS	PBS	PBS	PBS	
Sports and Recreation Instruction or Camp (7-3, 55)	P	PBS	PBS				PBS	PBS	PBS		
Stables, Commercial (7-3, 57)							PBS	PBS	PBS		
Storage Building Sales, with Display Area (7-3, 55)	PBS	PBS	PBS	PBS	PBS	PBS	PBS	PBS			
Swim Club, Tennis Club, Country Club (7-3, 58)							P	P			
Tattoo Studio							P	P	P		
Taxidermy Studio, No Outdoor Processing								PBS	P	P	
Towing Service, with Towed Vehicle Storage Yard, No Salvage or Part Sales (7-3, 60)	PBS									PBS	
Towing Service, with Salvage (7-3, 59)											
Towing Service, No Towed Vehicle Storage Lot, Office Only, Storage of Tow Trucks, Car Haulers Permitted On Site							P	P	P	P	
Veterinarian (8-4, 37)	C	C					C	C	C	C	
Wireless Telecommunications Services (8-4, 36)	C	C	C	C	C	C	C	C	C	C	
Wireless Telecommunications Services, Stealth Antennae, 65 Feet or Less (8-4, 36)	P	P	P	P	P	P	P	P	P	P	
Wireless Telecommunications Services - Co-locations (7-3, 66)	PBS	PBS	PBS	PBS	PBS	PBS	PBS	PBS	PBS	PBS	

**PART I. WATERSHED OVERLAY ZONE****Section 4-3. Application of Zone.**

The provisions of this district shall apply within the areas designated as a "Public Water Supply Watershed" by the North Carolina Environmental Management Commission. The designated areas are established on the map entitled "Watershed Protection Map of Cabarrus County, North Carolina" which is adopted simultaneously with this section. Any and all amendments to this overlay district shall take effect and be in force at the date of enactment by the Cabarrus County Board of Commissioners.

**Section 4-4. Requirements for all lots in the Coddle Creek and Dutch Buffalo Watersheds.**

All lots in the following watersheds shall meet the following requirements:

Watershed:

1. Coddle Creek
2. Dutch Buffalo Creek

Requirements:

- 1) All lots within the drainage basin's critical area, that is land within 1/2 mile of the high water mark or the ridge line of the watershed (whichever comes first) for the reservoirs, shall have a minimum of two (2) acres. If a cluster development is approved, the density for the site shall remain one dwelling per two (2) acres for development.
- 2) All lots (or dwelling units per acre in cluster developments) in the remaining area of the drainage basin for the reservoirs shall have a minimum square footage of one acre or one dwelling unit per acre or meet requirements of the *Cabarrus County Zoning Ordinance*, whichever is more stringent.

**Section 4-5. Additional requirements to property within the drainage basin and within 1/2 mile of the high water mark for reservoirs.**

- 1) No commercial or industrial development shall be permitted. A 150-foot vegetative buffer shall be maintained from the normal pool level on all property adjoining the reservoir. No permanent structures shall be allowed within this buffer area.
- 2) A stream buffer shall be established on all perennial streams as detailed in the River/Stream Overlay Zone section of this Ordinance. (Part II)
- 3) All non-single family residential and nonresidential development of lots within the critical area shall have an impermeable area of less than six percent (6%).



## EXHIBIT G

### § 143-214.5. Water supply watershed protection.

(a) Policy Statement. — This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. — The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection requirements applicable to each classification to protect surface water supplies by (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(c) Classification of Water Supply Watersheds. — The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. — The Department shall assist local governments to develop water supply watershed protection programs that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). Local governments shall administer and enforce the minimum management requirements. Every local government that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes

water supply watershed management requirements that are more stringent than those adopted by the Commission, a county must comply with the notice provisions of G.S. 153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(e) Assumption of Local Programs. — The Commission shall assume responsibility for water supply watershed protection, within all or the affected portion of a water supply watershed, if a local government fails to adopt a program that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of an approved local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) State Enforcement Authority. — The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management requirement.

(g) Civil Penalties. — A local government that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply

watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(h) Planning Grants to Local Governments. — The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such criteria shall give priority to local governments that are not then administering zoning ordinances in affected water supply watershed areas.

(i) Every State agency shall act in a manner consistent with the policies and purposes of this section, and shall comply with the minimum statewide water supply watershed management requirements adopted by the Commission and with all water supply watershed management and protection ordinances adopted by local governments. (1989, c. 426, s. 1; 1991, c. 342, s. 9; c. 471, s. 2; c. 579, s. 1; 1991 (Reg. Sess., 1992), c. 890, s. 14; 1998-215, s. 62.)



EXHIBIT H





EXHIBIT I



DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890

October 30, 1990

IN REPLY REFER TO

Regulatory Branch

SUBJECT: File No. CESAW-CO88-N-013-0061

Mr. James W. Lentz, Chairman  
Cabarrus County Board of Commissioners  
Post Office Box 707  
Concord, North Carolina 28025-0707

Dear Mr. Lentz:

In accordance with your written request of November 5, 1987, and the ensuing administrative record, enclosed are two copies of a permit to discharge dredged or fill material into waters of the United States for the construction of an earthen dam and water supply reservoir on Coddle Creek, west of Concord, Cabarrus County, North Carolina.

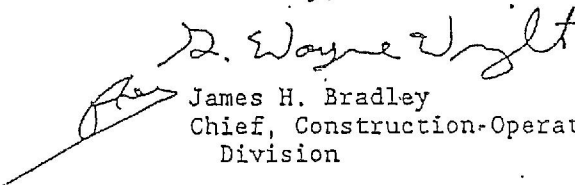
The proposed project consists of the construction of an earthen dam across a narrow part of the Coddle Creek Valley upstream of N.C. Highway 73, a raw water intake structure, related site piping, and provisions for a future new pump station. Implementation of the project will also require the realignment of N.C. Highway 73, the relocation of (a) a power transmission line, (b) two high pressure refined petroleum pipelines, and (c) an existing raw water pump station and intake for the City of Kannapolis, in addition to construction of a new bridge and approaches for Mooresville Road (N.C. Highway 136).

The proposed dam will have a length of approximately 2,400 feet with a height at the maximum section of 45 feet above the creek bed. The elevation of the top of the dam will be 660 feet mean sea level (MSL). The principal spillway will be a 225-foot-wide concrete ogee crest with a chute spillway and stilling basin, together with a 300-foot-wide concrete spillway. A 500-foot-wide earthen emergency spillway will be located on the left abutment. Excavation from the spillways will be utilized in construction of the embankment.

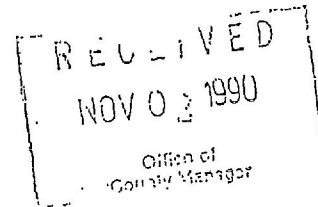
You should acknowledge that you accept the terms and conditions of the enclosed permit by signing and dating each copy in the spaces provided ("Permittee" on page 3). All pages of both copies of the signed permit with drawings should then be returned to this office for final authorization. A self-addressed envelope is enclosed for your convenience.

After the permit is authorized in this office, the original copy will be returned to you; the duplicate copy will be permanently retained in this office. Should you have questions, contact Mr. David Franklin, Regulatory Branch, telephone (919) 251-4952.

Sincerely,

  
James H. Bradley  
Chief, Construction-Operations  
Division

Enclosures



DEPARTMENT OF THE ARMY PERMIT

Cabarrus County  
Post Office Box 707

Permittee Concord, North Carolina 28025-0707

Permit No. CESAW-C088-N-013-0061

Issuing Office CESAW-CO-E

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

To discharge dredged or fill material into waters of the United States for the construction of an earthen dam and water supply reservoir on Coddle Creek, west of Concord.

Project Location:

Concord, Cabarrus County, North Carolina.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 1993. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

See attached. All work required by Special Conditions must be completed prior to impoundment, except as provided for in Special Conditions.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.  
CABARRUS COUNTY

\_\_\_\_\_  
(PERMITTEE)

\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

THOMAS C. SUERMANN, LIEUTENANT COLONEL  
(DISTRICT ENGINEER)

\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)



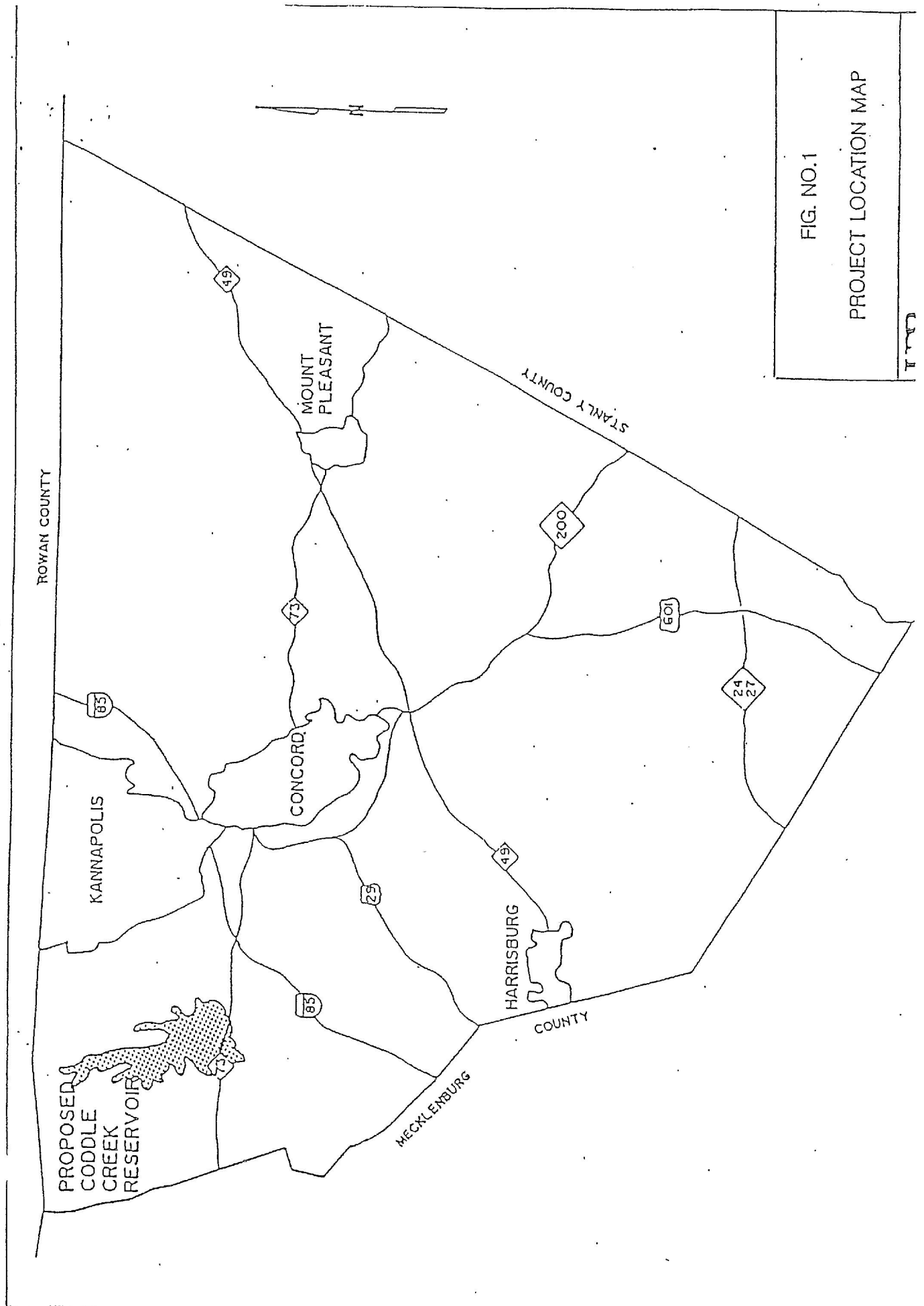


FIG. NO.1

PROJECT LOCATION MAP

11

CODDLE CREEK RESERVOIR  
GENERAL SITE PLAN

FIGURE 2  
APRIL 90

NC 136 BRIDGE  
BYPASS  
CONSTRUCTION

MOOREVILLE

MAXIMUM POOL  
ELEVATION 850' MSL

PROPOSED DAM  
& SPILLWAY  
TOP OF DAM  
660' MSL

NC 73  
RELOCATION

PROPOSED  
PUMP STATION

0 2000 4000  
GRAPHIC SCALE

APRIL 90

### SPECIAL CONDITIONS

1. Surrounding the reservoir pool, 526 acres are to be used as mitigation lands. This will include the creation of 186 acres of wetland habitat creation (bottomland hardwoods), reforestation of 170 acres of upland fields, 6 acres of wildlife feed plots, and preservation of 164 acres of forested uplands and wetlands (140 acres of existing upland hardwood forest and 24 acres of bottomland hardwoods). All habitat creation areas will be developed in accordance with a habitat creation mitigation plan to be approved by the U.S. Fish and Wildlife Service, the N.C. Wildlife Resources Commission, EPA, and the Corps of Engineers (COE).

a. Reservoir Shoreline. Surrounding the reservoir pool, 526 acres are proposed for mitigation. Mitigation in this areas will include 188 acres of habitat creation (bottomland hardwoods), 170 acres of upland reforestation, 6 acres of wildlife feed plots, and preservation of 164 acres of moderate quality forested uplands and wetlands (24 acres of wetlands, 140 acres of uplands). Due to the large area involved, each of these various land uses has been plotted out on the attachments (Figures 1, 2, and 3A through 3J). All remaining lands between the maximum pool of 650 feet and 660 feet mean sea level (MSL) (reservoir buffer area) will be reforested/preserved.

(1) Habitat Creation. Three types of habitat creation are proposed for this area: 1) wetland creation through flooding by the reservoir of shoreline areas within the maximum pool area and planting with bottomland hardwoods; 2) reforestation of cleared fields in the upland buffer area surrounding the reservoir, and; 3) vegetating a few small cleared upland areas with wildlife feed sources such as grains, legumes, etc.

(a) Wetland Creation. Cabarrus County is directed by rules developed by the North Carolina Division of Health Services to clear and grub an area from 5 feet below to 2 feet above the normal pool of the reservoir. The normal pool elevation was determined by data developed in the Reservoir Operation Preliminary Report by HDR Engineering (December 1987). The normal pool is defined as the average pool elevation over the period modeled under the following parameters:

Rainfall Data Period	1951-1986
Maximum Pool Elevation	650 feet MSL (gates fully closed)
Water Supply Demand Year	2020

The normal pool for the reservoir is therefore estimated to be at 646 feet MSL, and so the area for 641 feet to 648 feet will be cleared and grubbed of all vegetation.

The dam facility will be constructed to include a concrete spillway designed with an overflow elevation of 645 feet MSL. Above the spillway, there will be 5-foot gates which will allow the reservoir pool to be raised to maximum pool elevation 650 feet MSL. During certain times of the year, based upon rainfall and withdrawal rates, the pool will temporarily reach this maximum elevation (Figure 1).

All upland areas between 648 feet and 650 feet MSL around the reservoir pool will be cleared of existing vegetation and replanted with bottomland hardwood saplings such as green ash, red maple, box-elder, American sycamore and sweetgum (Figure 2). Species which exhibit higher tolerance to inundation will be planted at the lower elevations within this vegetated zone. The reservoir will be operated to minimize inundation of these species during their early stages of development thereby increasing survivorship. A large number of areas which are presently above 650 feet MSL will be excavated to 650 feet MSL, while a number of other areas which are presently below 648 feet MSL will be filled to 648 feet MSL (Figures 3A-3J). The excavated material will be the source for fill areas; in no instance will more than 3 vertical feet of material be removed from excavation areas, or 2 vertical feet of material placed in fill areas. This effort will only be made in upland areas, while wetlands which occur at these elevations around the reservoir will be preserved.

The hardwood species mentioned above will be bare-root saplings planted on 10-foot centers perpendicular to the shoreline. Before planting, a 4-inch layer of mulch will be spread throughout the planting areas to increase the organic content of recipient soils. For all habitat creation areas, planted trees will be obtained from and installed according to sound horticultural practices by the North Carolina Forest Service.

(b) Upland Reforestation. As illustrated in Figure 2, several agricultural fields in the buffer surrounding the reservoir will be cleared and replanted with upland forest species. Species to be used include shortleaf and Virginia pine, with smaller plots planted with hardwoods such as yellow poplar, red oak and shagbark hickory as stock of these species is available.

(c) Wildlife Feed Plots. Two 3-5 acre agricultural fields (one on each side of the reservoir) will be cleared and replanted with wildlife feed source vegetation by the North Carolina Forest Service with support from the ASCS of Cabarrus County. These two plots are illustrated on Figures 3-C and 3-F.

(2) Preservation. In addition to the creation areas described above, an additional 140 acres of existing forested uplands, and 24 acres of existing forested wetlands, will be preserved. These areas occur within the buffer surrounding the pool. Public access to these areas will be limited to the two public access areas for fishing and canoe launch illustrated on Figures 3-D and 3-F.

2. The County shall implement monitoring programs for vegetation survivorship, growth and recruitment in creation areas, water quality and biotic recruitment in the reservoir pool, and succession and community dynamics within preservation areas, including wildlife utilization of the

project area. Management efforts shall include removal of nuisance vegetation from creation areas, enhancement of project area habitats for wildlife (particularly rare species), and elimination of pest control problems associated with the reservoir pool.

The Cabarrus County Utilities Department or its agent will be responsible for the operation of the reservoir dam facilities according to the approved Reservoir Operations Plan. The Utilities Department, in conjunction with the Cabarrus County Department of Parks and Recreation, will be responsible for the successful development (creation) and management of all mitigation lands. The Utilities Department and/or its agent(s) will conduct biotic monitoring of the pool and created lands. The Utilities Department will be responsible for the timely submittal of all monitoring reports to the appropriate regulatory agencies.

a. Monitoring. A periodic monitoring program will be implemented for: evaluation of growth, recruitment and survivorship of planted vegetation species in creation areas; water quality in the reservoir pool; and assessment of the natural development and wildlife utilization of preservation lands in the project areas. Each of these programs is described in detail below, including information regarding methodology, scheduling and reports.

(1) Wetland Creation. The wetland areas described above will be monitored for survivorship of planted species, recruitment, percent coverage of planted and recruited wetland vegetation, and growth of installed woody vegetation. Periodic monitoring reports will be submitted to the Corps of Engineers (COE).

(a) Methodology. A specific monitoring scheme using standard techniques, including regularly spaced parallel transects, shrub and herbaceous quadrats, photographic stations and qualitative evaluation of recruitment, will be developed for the wetland creation areas. Monitoring will be performed by experienced wetlands biologist.

(b) Survivorship and Replanting. Installed vegetation such as bare-root saplings will be provided and installed by the North Carolina Forest Service. The saplings will be of high quality, and plants are to be installed according to sound horticultural practices. Survivorship of at least 80% of planted individuals is required at the ends of years 1, 2, and 3. An 80% areal coverage of non-nuisance wetland vegetation is required through the end of the 7-year monitoring period. If it is noted on any monitoring events during years 1-3 that percent survivorship of installed species has dropped below 80%, replanting will be done as necessary to accomplish an 80% survivorship level.

In most cases, vegetation will be installed in rows perpendicular to streams. Should it become evident that certain species are not surviving well, either in specific locations around the reservoir or more generally at particular

elevations (i.e. closer to, or in deeper water, or farther up the hill shallower water), then a suitable substitute species will be selected as a replacement. For instance, if survivorship of sweetgum in a certain area is 20% while survivorship of box-elder is 93%, then the dead sweetgum saplings in the sweetgum row will be replaced with box-elder. In the same way, if red maples inundated by 1-2 feet of water at maximum pool all die, but green ash does well in this area, then the dead red maples in the red maple rows will be replaced with green ash. In every instance an effort will be made to maintain the highest diversity attainable while providing for the highest percent survivorship possible.

(c) Scheduling and Reports. Monitoring of habitat creation areas will be done at the beginning, middle, and end of the growing season each year during the first four years, and at the beginning and end of the growing season during years 5, 6 and 7. An initial monitoring report will be due within 60 days after the completion of mitigation construction, and a schedule for the monitoring events will be submitted at that time. An annual progress report will be submitted each year which will summarize the year's vegetation monitoring events and analyze all data collected to date. Required maintenance due to nuisance species problems (described later) will be performed within 60 days of the monitoring events. Required replanting will be performed annually at the beginning of the growing season.

(2) Water Quality. Monitoring of water quality in the pool of the reservoir will be routinely performed as part of the Reservoir Operations Plan. However, it is important to note that data collected to assess compliance with State and Federal drinking water standards will also provide insight into the ecological processes that occur in association with lake eutrophication. Evaluation of such data will be conducted as part of the monitoring of the mitigation areas.

(3) Preservation Lands and Wildlife. As partial mitigation of impacts to 520 acres of wetlands, the 164 acres of moderate to high quality forested uplands and wetlands will be preserved. This acreage occurs in buffer areas around the reservoir. These areas will be periodically monitored to assess the natural process of succession and wildlife utilization.

(a) Methodology. Associated with monitoring of the various habitat creation areas, transects will be established across areas proposed for preservation. For areas requiring more than one transect, these will be spaced approximately 100 meters apart and will span the width of the preserve area. Parameters recorded will include species of trees, number of individuals of each species, and the diameter of breast height (dbh) of each tree within 5 meters of each side of the transect. Other vegetative cover, including shrubs and herbs, along with the distribution and approximate percent cover of each, will be qualitatively assessed within the transect corridor.

Wildlife observations will be made while the vegetation monitoring is being done. A written record will be made of mammal, bird, reptile and amphibian species which are observed or for which calls, scat or tracks are confirmed.

(b) Scheduling and Reports. Monitoring will be done in conjunction with the monitoring efforts in the habitat creation areas. Reports assessing the status and condition of preservation areas, along with wildlife observed or expected, will be submitted to the COE as appendices to the monitoring reports for creation areas.

b. Maintenance. Maintenance of mitigation sites (planted areas, etc.) will be prescribed to remove nuisance species. Vegetation species identified as being of low value due to their opportunistic nature, dominating growth form, toxic secretions, etc. are considered to be a nuisance to the perpetuation on high quality, self-sustaining vegetated systems. Such species in the project area would include Sesbania spp., Ludwigia spp., Crotalaria spp., Alternanthera philoxeroides, and to a much lesser extent Typha spp., and Cephalanthus occidentalis.

Should individuals of any of these species come to dominate more than 20% of the total areas of the site, all individuals will be hand removed from the habitat creation areas and removed from the project area. Such removal will allow for the dominant establishment of planned and/or otherwise propagated desirable wetland species of vegetation. This maintenance will be done immediately following the monitoring events described above. Maintenance for nuisance species will be done as necessary for years 1-7.

c. Management. The applicant (Cabarrus County) will be responsible for all monitoring, maintenance, reports, success requirements and remedial actions associated with this mitigation plan. The County assumes responsibility for the permanent conservation (throughout the life of the reservoir), through whatever means available, of all lands herein described for purposes of habitat creation, preservation, restoration and enhancement.

3. The Cabarrus County Board of Commissioners, through the Cabarrus County Planning Department, shall implement and maintain a county-wide mandate (ordinance) which strictly limits development within a buffer zone along all perennial streams within the county. This ordinance contains several features which will protect water quality and will also provide benefits to fish and wildlife resources. The ordinance is enforced by the county inspections department. This ordinance must be in full force and effect before the permitted action will be allowed. The buffer zone shall be established as that area which extends 50 feet from the stream bank perpendicular to the centerline of the stream. If the buffer strip is presently wooded, it cannot be disturbed. Perennial streams are defined as those which are illustrated as solid blue lines on the USGS Quadrangle topographic maps for the county. Additional requirements are described in Cabarrus County Zoning Text Amendment: 3.13 - River/Stream Overlay Zone (RSOZ) (see attached).



Failure to adequately implement or enforce the zoning amendment or unacceptable modification of the zoning amendment will require alternative mitigation measures to be implemented. The alternative mitigation requirement will include the restoration or creation of approximately 300 acres of forested wetlands as per a plan developed in conjunction with the N.C. Wildlife Resources Commission, the U.S. Fish and Wildlife Service, the EPA, and the Corps of Engineers.

4. There shall be a continuous release of water of at least 6 cfs from the reservoir at all times to augment downstream flows during drought conditions. This shall be accomplished under normal flow conditions from water flowing over the spillway and discharging into the creek below the dam, thereby providing the minimum water requirements necessary to maintain aquatic life. When the water level drops below the crest of the spillway (elevation 645), such as during periods of low flow into the reservoir, the minimum downstream release requirement will be maintained by the discharge through the low level outlet. The low level outlet, which remains open at all times, is located at elevation 624.67. The bottom of the intake structure is at elevation 612. Water will flow into the structure and then through a 48-inch diameter pipe through the dam and discharge into Coddle Creek. Prior to discharge into the creek, the water will flow through an energy dissipator structure and over an 18-foot long riprap lined channel. A staff gauge will be installed immediately downstream of the release.

5. A sedimentation and erosion control plan will be developed and approved by the N.C. Department of Environment, Health and Natural Resources prior to the start of construction. The plan will conform to requirements of the N.C. Sedimentation Control Act. The county will assure that the plan's sedimentation and erosion control measures will be employed to minimize turbidity and siltation impacts.

6. The county will manage fish and wildlife resources in the new reservoir in accordance with a plan developed in consultation with the N.C. Wildlife Resources Commission.

7. The county will assure that the activity be conducted in such a manner as to prevent significant increase in turbidity outside the area of construction or construction-related discharge (increases such that the turbidity in the Stream is 50 NTU's or less are not considered significant).

8. The results of mitigation monitoring shall be sent to the Division of Environmental Management at their Headquarters Office and Mooresville Regional Office. Addresses that should be used are as follows:

N.C. Division of Environmental Management  
Water Quality Planning  
Post Office Box 27687  
Raleigh, North Carolina 27611-7687

N.C. Division of Environmental Management  
Water Quality Regional Supervisor  
919 North Main Street  
Mooresville, North Carolina 28115



## **CODDLE CREEK RESERVOIR MITIGATION PROGRAM**

### **Monitoring Methodology Manual - Spring 1997 Iteration**

#### **I. Purpose**

This report provides a detailed description of the methods and procedures to be used in monitoring the Coddle Creek Reservoir Mitigation Program. Coddle Creek Reservoir (see Location Map 1) was constructed to provide the residents of Cabarrus County with a reliable supply of potable water through the year 2020. The projected demand at that date is 34.5 million gallons per day (MGD); the estimated 30.0 MGD yield from Coddle Creek Reservoir, plus an existing 6.0 MGD supply from Lake Fisher, will provide the County with a sufficient raw water supply (36 MGD) to meet this projected demand. Construction of the reservoir was authorized by the U.S. Army Corps of Engineers and was implemented under the governance of permit number CESAW-C088-N-013-0061.

#### **II. Site Overview**

##### **A. Created Wetland and Upland Reforestation Areas**

There are 357 acres of created wetland and reforested upland areas adjacent to and surrounding this Cabarrus County project. Reforestation areas were historically cleared land used primarily for row crops and pasture. As mitigation for the loss of forested, scrub/shrub and herbaceous wetland acreage to reservoir clearing and inundation, created wetland and upland areas were planted with seedlings appropriate for the expected hydrologic conditions. The initial planting proceeded in two phases: Phase 1, in which most of the designated acreage was planted, occurred in February and March of 1993; Phase 2, the completion of the planting, began in December 1993 and concluded in May 1994. Phase 2 of the planting included installation of both bare-root seedlings and 3-gallon containerized stock. The bare-root seedlings were planted during the winter months of 1993-94; the containerized materials were planted later in the Spring 1994. The 3-gallon trees were planted primarily near the site of the Rocky River Waste Water Treatment Plant (RRWWTP) in Cabarrus County, south of the

Coddle Creek Reservoir (see Location Map 1). *Some additional planting occurred in March 1997, to compensate for dieback in the wetland creation area and impacts resulting from pipeline relocation efforts. This work also included 2.75 acres of additional buffer area planting.*

In the Methodology Appendix, Tables 1, 2, and 3 list the scientific and common names of the species that were planted in both wetland and upland areas; these tables also illustrate how the wetland areas were subdivided into areas closest to the reservoir water level ("low wet") and areas higher up from the water level ("high wet"). Some of the species planted were considered to be appropriate for a range of hydrologic conditions.

All bare-root seedlings were obtained as 1-year-old nursery stock specimens. Planting occurred at approximately 7-foot intervals within rows, which followed the elevation contours and were separated by 10-foot spacings. Seedlings were bundled at a N.C. state forestry nursery into "low wet", "high wet" or "upland" mixtures (Table 1) and then packed into Kraft bags so that the bags were filled with only one of the three types of mixes; the bags were subsequently marked and labeled accordingly. At the project site, bundles were pulled from the bags and seedlings were planted in areas with the appropriate hydrology. The choice of species planted at each point along a row was a matter of random draw by the planters from their tree planting bags; the planters carried only one type of seedling mix at a time.

In the interest of logistics for site preparation and planting, the wetland and upland planting areas were designated numerically, often with alphabetical sub-designations. For example, LW14 refers to the low wet planting area #14; in turn, LW14 was sub-divided into LW14A, LW14B and LW14C. Approximately 150 areas were so designated as wetland forest creation areas (containing both low wet and high wet sub-areas) or upland reforestation areas. Each site was planted with tree mixes appropriate to its hydrology.

## **B. Preservation Areas and Wildlife**

As part of the mitigation program, a buffer zone of moderate to high quality forested wetlands and uplands is being maintained as a preservation boundary around the reservoir. These areas will be periodically monitored to assess the natural process of succession and wildlife usage. Wildlife observations in these areas and throughout the entire project area will be recorded for each monitoring event.

### C. Aquatic Environment

The Coddle Creek Reservoir Project will create approximately 1,100 acres of aquatic habitat. This body of water will be monitored for water quality and biotic recruitment, with particular attention given to mosquito and mosquito-predatory fish (e.g. *Gambusia* spp.) population development.

## III. Monitoring Program

### A. Created Wetland and Restored Upland Forest Areas

#### 1. Events

Monitoring will consist of 18 events, including the initial set-up and post-planting inspection event which occurred 60 days after the completion of the mitigation construction. Following the post-planting inspection, monitoring events will take place 3 times during the growing seasons in years 1, 2, 3 and 4, and twice during the growing seasons of years 5, 6 and 7. Thirty-nine transects, most of which will cross both wetland and upland areas, have been established at various locations around the reservoir perimeter. These transects will be monitored for survival rate of the planted species at the ends of years 1, 2, and 3, and areal coverage of non-nuisance vegetation by the end of the 7-year monitoring period. Success criteria for this mitigation effort have been established as a minimum survival rate of 464 trees/acre through year 3 and an 80% cover of non-nuisance vegetation by the end of year 7.

#### 2. Site Locations

Two sets of criteria have been used to determine the location of the monitoring transects. First, the planting areas selected for monitoring were chosen to provide a general representation of conditions around the reservoir, yet also include unusual or significant conditions present in certain areas (e.g. a particularly large planting area or an area whose landscape was modified prior to planting). Second, within the selected planting area the transect was oriented to maximize the number of planted rows crossed while maintaining its perpendicularity across the rows. Final locations of the monitoring sites were determined upon completion of construction and are indicated by appropriate figures included in the individual monitoring reports.

### 3. Vegetation Evaluation

#### a. Quantitative Data Collection

Data collected from the monitoring sites address three issues: 1) the condition of the planted trees and shrubs, 2) the recruitment of additional woody vegetation in the planted areas and 3) the recruitment of herbaceous vegetation in the planted areas. Data on the condition of planted trees will be collected using transects established in a non-random fashion at selected sites; monitoring of the woody and herbaceous vegetation was originally performed with quadrat plots using the tree transect as one side of the quadrat (See previous reports, and Figure 1 next page). As results of this process have been analyzed, it was decided to implement an alternative approach of sampling with 1/100th acre radial plots.

#### TRANSECTS

To set the transects, a tape measure was drawn from the low end of the monitored site to extend uphill, across the planted rows, to the high end of the site. The compass bearing of the high end, as sighted from the low end, was recorded and permanent stake markers were driven into the ground (on the right hand side of the tape facing uphill) at the low and high ends. At each row crossed by the transect, one tree on each side of the transect was marked with a numbered tree tag and data on those trees will be recorded over the course of the monitoring program. This transect data will serve to measure the health, survivorship and growth of the planted trees. Data collected include species, caliper, height, canopy cover and a vigor quality rating of 3-2-1-0, where 3=good, 2=fair, 1=poor and 0=dead (or apparently so). These data will be recorded on the Tree Transect Data Form and used to document survivorship, growth and vigor (see Appendix for data forms).

#### RADIAL PLOTS

Due to the density of the developing herbaceous vegetation in many planted areas, it became impractical to monitor woody and herbaceous recruitment with quadrat plots. Beginning with the Summer 1994 event, 1/100th acre radial plots were used to estimate volunteer woody density; thereafter, these plots are used

to measure total live tree density within a planting area. The procedure, similar to the forestry practice for estimating tree planting densities, is performed by establishing a center of a circle and sweeping an 11'9" radius 360 degrees to define the circumference of the plot. The number of live trees within the circle is counted and used to estimate a density throughout the area. Radial plots of 1/100th acre will be used to estimate tree densities in three locations: near a wooded edge, halfway between the edge and the center, and near the center. Taking measurements in these three locations will provide a more complete assessment of the dynamics of revegetation. The original woody quadrats were aligned along the transects, which generally are situated in the central zones of a planting area; the areas closer to the propagule source of a wooded edge will likely display a different level of revegetation than the central zone.

Associated with the above change in monitoring volunteer woody vegetation is a discontinuance of using quadrats to monitor herbaceous vegetation. It has been observed that the herbaceous conditions in a planted area can best be described qualitatively; for example, a site may be dominated herbaceously with *Erigeron* (80% areal cover) plus scattered *Aster* species. Maintenance prescriptions can be satisfactorily determined by such qualitative observations without quantifying the presence of numerous occasional species.

#### **b. Qualitative Observations**

Qualitative observational data for all transect planting areas will be recorded on a site description form and will consist of observations of general development and condition of the planted area, including disturbance, growth of desirable volunteers and encroachment of nuisance vegetation. During the course of each monitoring event, wildlife observations in the planted areas will also be recorded on a Wildlife Observations data sheet. Additionally, a photographic record of all mitigation planted areas will be maintained. Photo-stations have been established at various select points for each planting area so as to provide a virtually comprehensive overview of all mitigation planting around the reservoir. The photographic record will be kept in the project record file and will be available for review at any time. Representative photos of several planting areas will be included in the inspection reports with photos of the

same areas contained in subsequent reports to visually document the development of the planted areas.

## **B. Preservation Areas and Wildlife**

### **1. Events**

Monitoring of preservation areas will be done in conjunction with the monitoring efforts in the wetland creation and upland reforestation areas. Reports on the preservation areas, and wildlife observations in these areas, will be a part of the monitoring report. The vegetation data forms will be included in the report appendices, along with all other monitoring forms (see Appendix, Section 5). The wildlife observations will be compiled as part of the Wildlife Observations data sheet for each event.

### **2. Site Locations**

Sites for monitoring preservation areas were selected to represent the general condition of existing woodlands around the reservoir, and to include unusual or significant conditions found in certain areas. Locations of the monitoring transects are indicated by appropriate figures included in the monitoring reports.

### **3. Vegetation Evaluation**

Line transects have been established at 9 locations around the reservoir. Each transect is 60 meters in length and varies in orientation, relative to the shoreline, depending on the ecological factors and property boundaries of the area. Within 5 meters of each side of the transect line, each tree of a minimum 2" diameter at breast height (dbh) has been number tagged and recorded as to its species. Data recorded during the course of the monitoring program will chart the changes in dbh and survivorship for each tagged tree at each monitoring event and will reflect successional development as new recruits attain the minimum dbh and are subsequently tagged and charted.

Other woody vegetation, i.e. seedlings, shrubs and vines, will be monitored by means of 5m x 5m quadrats established along the transect line. The quadrats were established at approximately 10, 30 and 50 meters along the transect line and are set to one side or the other of the transect, depending upon the local conditions (e.g. a localized concentration of tree fall due to storm damage may have dictated that a



quadrat be set at 35 rather than 30 meters along the transect, or to the right side rather than the left). Each individual quadrat will be maintained in its place, unless severe disturbance dictates a relocation. Vegetation data will be recorded on the Preserved Area Monitoring - Tree Transect and Woody Vegetation Quadrats Data forms, the latter of which will include comments addressing the condition and development of herbaceous vegetation in the area.

## C. Aquatic Environment

### 1. Events

Monitoring of the aquatic environment will begin with the first monitoring event after the reservoir level has reached 640' (which is 6' below normal pool) and will be scheduled thereafter to be done in conjunction with the other monitoring efforts described above. Reports assessing the status and condition of the aquatic environment, along with wildlife observed or expected, will be submitted as appendices to the monitoring reports for the creation and restoration areas.

### 2. Site Locations

Monitoring transects will be situated in the middle of the reservoir and in 3-5 finger areas around the perimeter; final determination of the location of these sites will be made after completion of construction and will be indicated by appropriate figures included in the inspection reports.

### 3. Biotic Recruitment

Monitoring of biotic recruitment will focus primarily on the development of populations of mosquito-eating fish (e.g. *Gambusia* spp.) and will be carried out with the use of non-destructive sampling techniques such as Breder fry traps and/or fine mesh bag seines. The traps will be set, and/or the seines used, at selected, non-random locations around the periphery of the reservoir and will be adjusted to sample for fish of various age and size classes. Following a preliminary test-sampling investigation, the method, or combination, that proves most effective in obtaining the samples will be used consistently thereafter to provide comparable data for each report. Sample data will be recorded on the Aquatic Environment form (Methodology Appendix) and with the Wildlife Observations Forms.



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Concord, North Carolina  
28025

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Email nevahestates@gmail.com  
Website http://twitter.com/t/NevaehEstates

Basic Info

Started	2012
Parking	Parking Lot

About

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## FEATURE OF THE WEEK: The Grounds!

Updated on Monday



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Nevaeh Estates Photos

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Photos of Nevaeh Estates



Photos



Albums

## FEATURE OF THE WEEK: Ceremony Site #1!

Updated about 3 weeks ago



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3 people like this.



Sandra Bridges Love it Angela. We have appointments with some of your Brides. Can't wait to work with yall.  
October 18 at 10:27pm Like

1

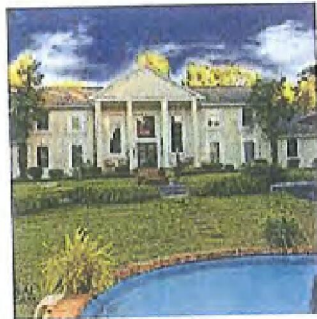
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FEATURE OF THE WEEK: Cere...

3 photos



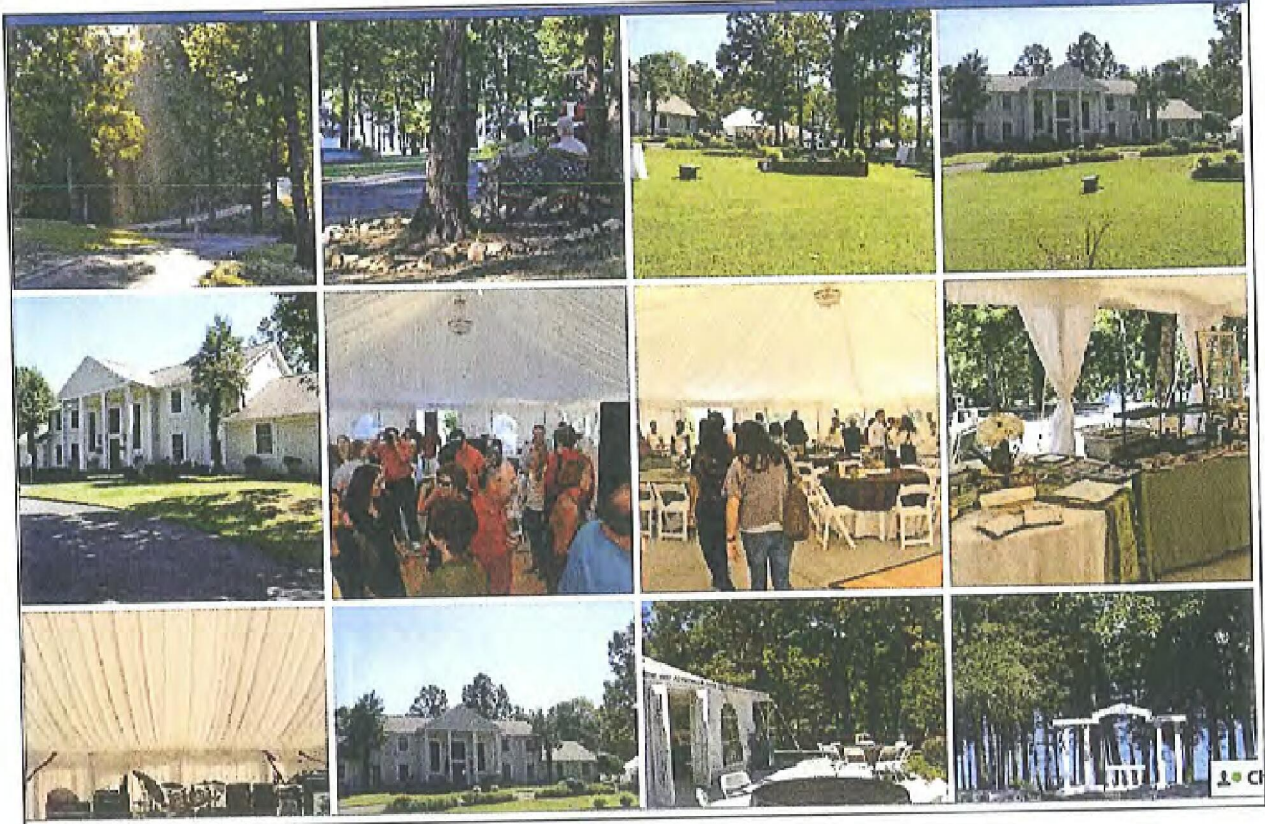
Timeline Photos

3 photos

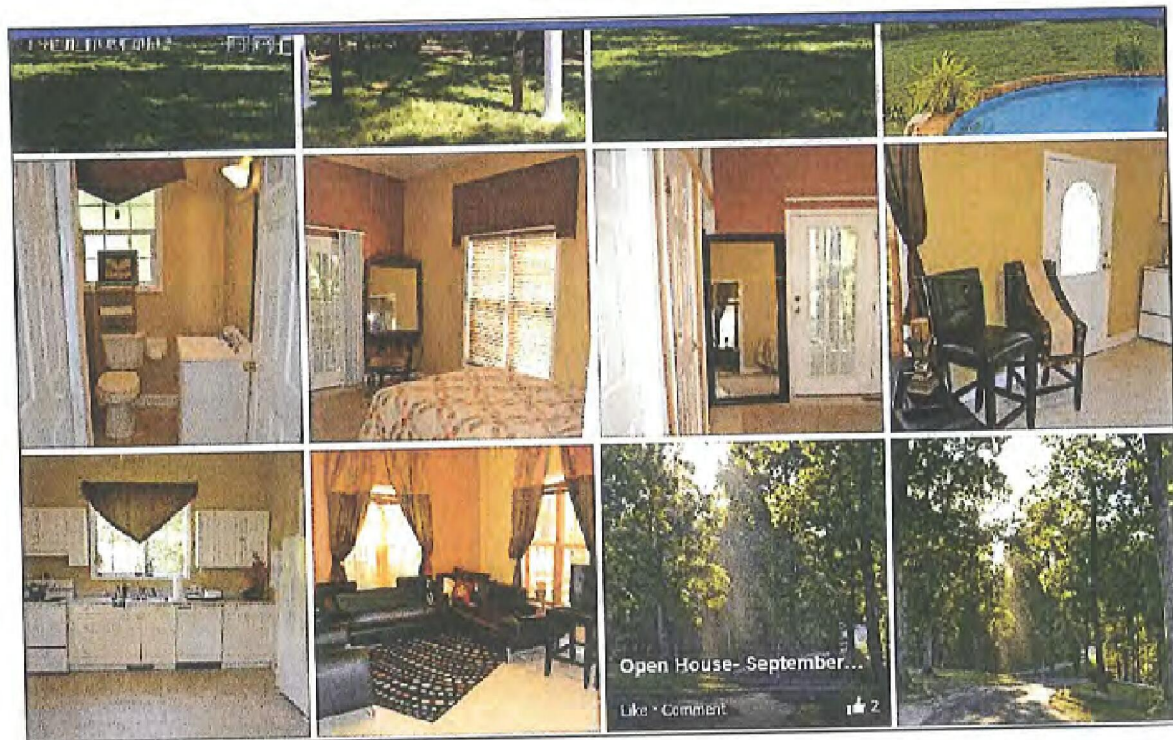


Open House- September 23, 2012

72 photos









### Events @ Nevaeh

Updated about 4 months ago



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Photos of Nevaeh Estates



Photos



Albums

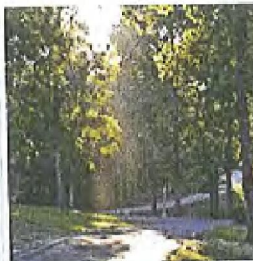
### Weddings @ Nevaeh

Updated about 4 months ago



### FEATURE OF THE WEEK: The Grounds!

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**OPEN HOUSE!**

NEW WEDDING. PRIVATE EVENT. CORPORATE PARTY  
VENUE ON A BEAUTIFUL, PRIVATE LAKEFRONT SETTING!

*Nevaeh Estates*



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Price Ranges: \$\$  
Outdoor Ceremony Areas: Yes  
Indoor Ceremony Areas: Yes  
Outdoor Reception Areas: Yes


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<ul style="list-style-type: none"> <li>Caterers</li> <li>Wedding Cakes</li> <li>Wedding Bands</li> <li>Limousine Services/Valet Services</li> <li>Ceremony Musicians</li> <li>more categories</li> <li>Invitations &amp; Stationers</li> <li>Makeup Artists &amp; Hair</li> <li>Jewelers</li> <li>Wedding Ideas</li> <li>Ceremony Officials</li> <li>Party Rentals</li> <li>Photo Booths</li> <li>Favors</li> <li>Rehearsal Dinners &amp; Bridal Showers</li> <li>Tuxedos and Formal Wear</li> <li>Gift Registries</li> </ul>	<table border="0"> <tr> <td>Price Range:</td> <td>\$</td> </tr> <tr> <td>Outdoor Ceremony Area:</td> <td>Yes</td> </tr> <tr> <td>Indoor Ceremony Area:</td> <td>Yes</td> </tr> <tr> <td>Outdoor Reception Area:</td> <td>Yes</td> </tr> <tr> <td>On the Waters:</td> <td>Yes</td> </tr> <tr> <td>Tented Area:</td> <td>Yes</td> </tr> <tr> <td>Wheelchair Accessible:</td> <td>Yes</td> </tr> <tr> <td>Onsite Catering:</td> <td>Yes</td> </tr> <tr> <td>Outside Caterers Allowed:</td> <td>Yes</td> </tr> <tr> <td>Kosher Available:</td> <td>Yes</td> </tr> <tr> <td>Liquor License:</td> <td>Yes</td> </tr> <tr> <td>Onsite Overnight Accommodations:</td> <td>Yes</td> </tr> <tr> <td>Onsite Parking:</td> <td>Yes</td> </tr> <tr> <td>Valet Parking:</td> <td>Yes</td> </tr> <tr> <td>Onsite Wedding Consultant:</td> <td>Yes</td> </tr> <tr> <td>Liability Insurance:</td> <td>Yes</td> </tr> <tr> <td>Site Fee:</td> <td>No</td> </tr> <tr> <td>Capacity:</td> <td>Up to 300</td> </tr> <tr> <td>Styles:</td> <td>Banquet/Reception Hall, Mansion/Historic Site, Unusual/Alternative</td> </tr> </table>	Price Range:	\$	Outdoor Ceremony Area:	Yes	Indoor Ceremony Area:	Yes	Outdoor Reception Area:	Yes	On the Waters:	Yes	Tented Area:	Yes	Wheelchair Accessible:	Yes	Onsite Catering:	Yes	Outside Caterers Allowed:	Yes	Kosher Available:	Yes	Liquor License:	Yes	Onsite Overnight Accommodations:	Yes	Onsite Parking:	Yes	Valet Parking:	Yes	Onsite Wedding Consultant:	Yes	Liability Insurance:	Yes	Site Fee:	No	Capacity:	Up to 300	Styles:	Banquet/Reception Hall, Mansion/Historic Site, Unusual/Alternative
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**Debilito22**  
 Verified User  
 9/28/2012  
 Member Since  
 10/24/2010

**YOUR 13 REVIEW**

★★★★★

Not perfect, but they're working on it. posted 10/30/2012

Angela and Vlaty are two of the nicest people you will ever meet! Nevaeh Estates is a gorgeous property with tons of natural beauty! This is a relatively new venue (just opened in April 2012), we were married at the end of September. When it comes to giving you the most bang for your buck, they definitely try to go above and beyond your expectations. They also own the Concord Wedding and Tea Center and offer discounts on bridesmaids dresses, tuxedos and I think even wedding dresses. They can provide everything from table linens, centerpieces, tables and chairs to dj and limo services. Communication is somewhat of an issue; it's often difficult to get a return text, call, or email. They have recognized this as an issue and are trying to improve. There isn't enough support staff for a venue of Nevaeh's size. They have a small circle of staff...some are fantastic, others are not. Vlaty and Angela genuinely tried to accommodate our wishes any way they could, but some areas were lacking. Biggest regret is not hiring a day of wedding planner to ensure everything and everyone was where they should be. The package we purchased included Angela acting as wedding director, but honestly there is too much for her to oversee with normal venue setup to also have the attention to detail of the final product that I expected. I have no doubt that in time they will work all the kinks out and it will be flawless....

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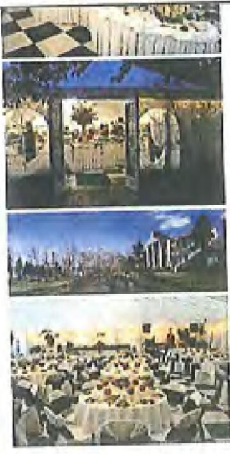
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11/20/2012

Hammim posted on 11/20/2012 at 11:00 AM. She needs to really step it up to create a wedding venue. I had several people ask me how I worked with the lady. Let me start, the place is beautiful, but several tasks that were told to us that would be done were never done. They had a pile of trash they said would be removed next week, gold was in April and at our wedding in July was still there. Also, broken glass on the floor that was to be fixed, was still broken the day of my wedding. She does not return your phone calls either which is frustrating and we almost didn't book the venue because of such. She had cars parked where I ordered the ceremony when I called her not to and so my photographer did not get there in the pictures. She did not clean the wedding tent as it had dirt on it. Thought porta johns were acceptable for a wedding. Had her worker leave the light hat on a table at my reception and was never removed so it was there during the reception. Had goose poop on the drive where I walked after they said they cleaned it. Had rocks for the walkway of the ceremony, women usually wear heels to weddings, they could have stones there which would be smarter. Also, could have planted flowers but no, just left dead plants and dirt. Needs to pressure wash their house. Has a camping tent on the property that needs to be taken down. Worked on setting up a different event the day of my wedding when she told my mom she would be there. Told my matron of honor she would set the cake out when the time came and my matron of honor went to look for her and she was in her house counting money and then told the matron of honor that she could do it herself and Angela stayed in the house while counting money. My matron of honor was furious. Did not stand by the price they told us for limo rental. It went from 75 bucks on our contract to 300!!! She needs to get her stuff together. The place could be beautiful and ran smoothly. Also, painted the fountain blue, blue???? I felt like I had to keep reminding her to get things accomplished and even then I did not trust they would be done. If it wasn't for my mom then I don't know how the day would have turned out. Even other vendors commented on some of her actions and stated she was lacking. Overall nice day but just needs to get...



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During the wedding the goose poop on the drive where I walked about they said they cleaned it. Had rocks for the walkway of the ceremony, women usually wear heels to weddings, they could have stones there which would be smarter. Also, could have planted flowers but no, just left dead plants and dirt. Needs to pressure wash their house. Has a camping tent on the property that needs to be taken down. Worked on setting up a different event the day of my wedding when she told my mom she would be there. Told my matron of honor she would set the cake out when the time came and my matron of honor went to look for her and she was in her house counting money and then told the matron of honor that she could do it herself and Angela stayed in the house while counting money. My matron of honor was furious. Did not stand by the price they told us for limo rental. It went from 75 bucks on our contract to 300!!! She needs to get her stuff together. The place could be beautiful and ran smoothly. Also, painted the fountain blue, blue???? I felt like I had to keep reminding her to get things accomplished and even then I did not trust they would be done. If it wasn't for my mom then I don't know how the day would have turned out. Even other vendors commented on some of her actions and stated she was lacking. Overall nice day but just needs to get...



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Hootchmums Wednesday, November 01, 2012 **2 Replies**

#### Rebecca and Matthew

Dennis Lee Hollis and Rhonda Hinson Hollis of Iron Station announce the engagement of their daughter, Rebecca Diana Hollis to Matthew Christopher Slayton of Charlotte.

Rebecca is a 2006 graduate of Appalachian State University with a Bachelor of Science degree in Food and Nutrition, a 2009 graduate of East Carolina University with a Masters of Science in Food and Nutrition, a 2011 graduate of the University of Northern Colorado with Dietetics and is employed as a Registered Dietitian at the Cleveland County Health Dept.

Matthew is the son of Don Slayton and Susan Singh of Fla. He is a 2011 graduate of the University of North Carolina - Charlotte with a Bachelor of Art in Elementary Education. He is employed at Millard Creek Elementary in Charlotte.

A July 28, 2012 wedding is planned at Nereah Estates on the Lake, Concord.

Posts with tag: "Nereah Estates"

### Sean and Debbie's Wedding! Cassie Leigh Wedding Photographer

Friday, October 12, 2012 8:43AM  
By Cassie Leigh Photography

0 0 25 0

Sean and Debbie were recently married at Concord's newest wedding venue, Nereah Estates. It was a very rainy day in Concord and if they say its good luck for it to rain on your wedding day, these two are in for a lifetime of happiness! It rained... and rained some more... but 15 minutes before the ceremony the rain stopped! We were thrilled that Sean and Debbie were able to have the outdoor ceremony that they dreamed of! As they said their vows they stood surrounded by tall trees on a peninsula overlooking the water. The setting was absolutely breathtaking! The reception was just as gorgeous. It took place under a draped tent with glowing chandeliers. Lily Greenthumb's Floral Artistry outdid themselves again with gorgeous floral arrangements. I LOVED the color palette and thought the pinks and greens went beautifully against the bridesmaid's dresses. Debbie had the idea of handing out little trees as favors, and they so were adorable!

Thank you to Sean and Debbie for letting us share in your special day, we wish you nothing but the best! <3





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### nevaeh estates on the lake | lake norman/concord, nc



★★★★★ (3 reviews)

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[Charlotte.perfectweddingguide.com/fall/.../nevaeh-estates-on-the-lake-33...](http://charlotte.perfectweddingguide.com/fall/.../nevaeh-estates-on-the-lake-33...)

★★★★★ Rating: 5 - 3 reviews

Nevaeh Estates on the Lake in Lake Norman/Concord NC - Profile - NEVAEH ESTATES is a little piece of "HEAVEN" on a Private Lake Setting. Located on a ...

#### [Nevaeh Estates on the Lake in North Carolina](#)

[local.weddingchannel.com/fall/.../Nevaeh-Estates-on-the-Lake-Profile?](http://local.weddingchannel.com/fall/.../Nevaeh-Estates-on-the-Lake-Profile?)

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[Charlotte.weddings.com/local/.../Nevaeh-Estates-on-.../CAR-503574](http://charlotte.weddings.com/local/.../Nevaeh-Estates-on-.../CAR-503574)

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#### [Nevaeh estates in Concord, NC | Concord Nevaeh estates - YP.com](#)

[www.yellowpages.com/concord-nc/nevaeh-estates](http://www.yellowpages.com/concord-nc/nevaeh-estates)

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He is a 2011 graduate of the University of North Carolina - Charlotte with a ... A July 28, 2012 wedding is planned at Nevaeh Estates on the Lake, Concord.

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Oct 12, 2012 - Posts with tag: "Nevaeh Estates". Sean and ... Sean and Debbie were recently married at Concord's newest wedding venue, Nevaeh Estates. ... Tags: concord nc photographer, nc wedding photographer, concord nc wedding ...

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Let's have a contest! TELL YOUR FRIENDS ABOUT Nevaeh Estates! Get your friends to "like" us and post on our wall... [fb.me/2bO5AaZ3H](#)  
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15 Aug




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Is it too early to start a countdown for our OPEN HOUSE featuring too MUCH SyLVIA? [fb.me/2KNAa9PVJ](#)  
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12 Jul



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Hey Brides: What is the #1 most important thing in choosing the perfect venue for your big day?  
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9 Jul




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What are you excited about seeing most at the Open House on September 23rd? The bridal suite? The ceremony site?... [fb.me/1OGnlu0N](#)  
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ITS THE WEEKEND! What are you doing this weekend?  
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I posted 6 photos on Facebook in the album "Feature of the Week: The Reception Tent!" [fb.me/1XE5ZIV4H](#)  
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29 Oct



**Nevaeh Estates** [@NevaehEstates](#)  
FABULOUS shots from our Open House by Irresistible Portraits by Karen Goforth! [fb.me/2440ZSK8o](#)  
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16 Oct



**Nevaeh Estates** [@NevaehEstates](#)  
I posted 4 photos on Facebook in the album "FEATURE OF THE WEEK #3: Ceremony Site #1!" [fb.me/1VFOTveLl](#)

10 Oct



by Karen Gaborian fb.me/244025KRB9  
Expand

**Nevaeh Estates** @NevaehEstates 18 Oct  
I posted 4 photos on Facebook in the album "FEATURE OF THE WEEK #3: Ceremony Site #1" fb.me/1VPOTveLJ  
Expand

**Nevaeh Estates** @NevaehEstates 8 Oct  
I posted 5 photos on Facebook in the album "FEATURE OF THE WEEK: Ceremony Site #2" fb.me/2IUINp50x  
Expand

**Nevaeh Estates** @NevaehEstates 4 Oct  
Check out these great deals on wedding, prom, formal, semi-formal, and homecoming dresses from Concord's Wedding...  
fb.me/2JqTuv91l  
Expand

**Nevaeh Estates** @NevaehEstates 4 Oct  
What is YOUR favorite part of the bridal suite? The full kitchen, the lounge area? The secludedness of the suite... fb.me/1SPpZD033  
Expand

**Nevaeh Estates** @NevaehEstates 3 Oct  
CONGRATS to Debbie Garrison and Sean Spidel!!! Nevaeh Estates newest Married couplet. Mr. and Mrs. Sean Spidel....  
fb.me/2qIMkUJB  
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**Nevaeh Estates** @NevaehEstates 3 Oct  
CONGRATS to Debbie Garrison and Sean Spidel!!! Nevaeh Estates newest Married couplet. Mr. and Mrs. Sean Spidel....  
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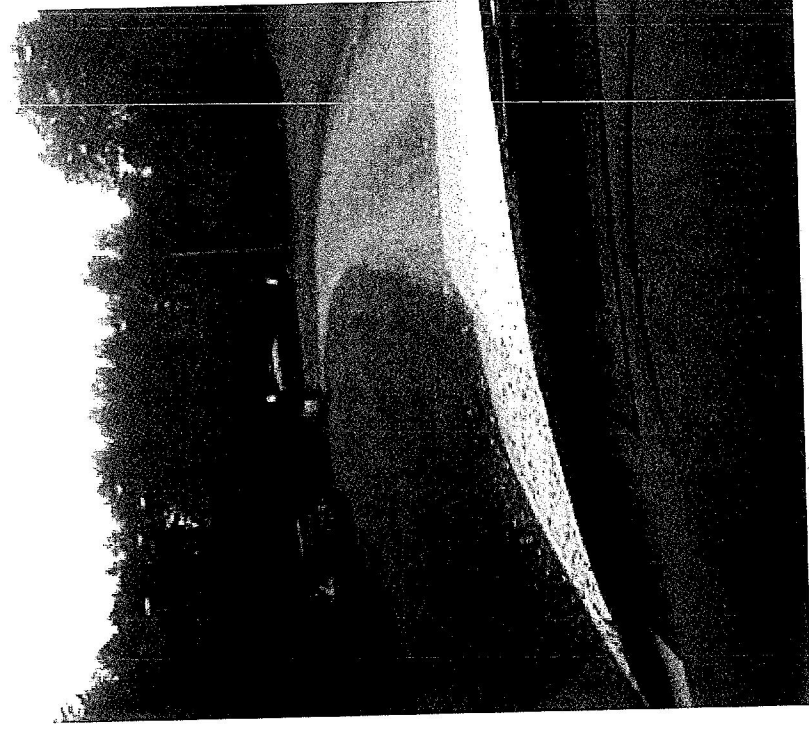
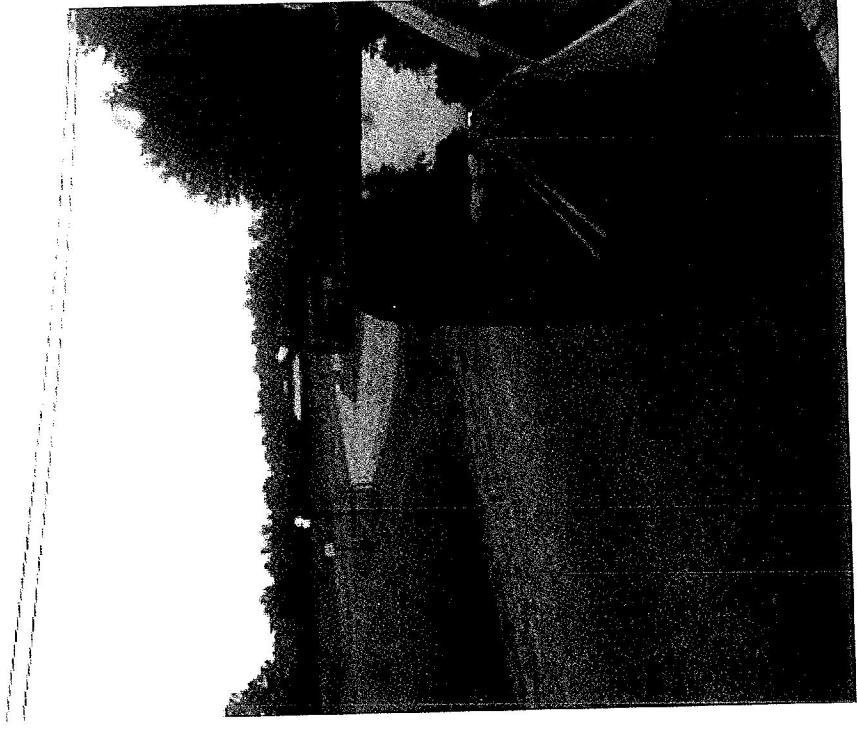
**Nevaeh Estates** @NevaehEstates 1 Oct  
Today we are starting Nevaeh Estates' FEATURE OF THE WEEK! This week's feature will be THE BRIDAL SUITE! Stay tuned for pictures & info!  
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**Nevaeh Estates** @NevaehEstates 27 Sep  
We did not officially congratulate SUSAN HALL on winning our contest!! Susan ROCKS & we cannot wait until her wedding in April!  
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I posted 73 photos on Facebook in the album "Open House-September 23, 2012" fb.me/1YqtcVmFR  
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**Nevaeh Estates** @NevaehEstates 23 Sep

EXHIBIT L



Pictures of Gate on 9/29/2012

# Memo

**To:** Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 11/19/2012  
**Re:** Proposed Text Amendments to Zoning Ordinance and Subdivision Ordinance

---

- Due to the final decision of the North Carolina Supreme Court, the Cabarrus County Zoning Ordinance needs to be amended as follows: REMOVE Chapter 15, Adequate Public Facilities Ordinance, from the Ordinance. (TEXT2012-00003)
- The Cabarrus County Subdivision Ordinance also needs to be amended as follows: REMOVE Section 17, Adequate Public Facilities Ordinance, from the document. (TEXT2012-00002)
- Please be prepared to make a recommendation to the Board of Commissioners regarding these changes at the next Planning and Zoning Commission meeting.

4. The final map of the subdivision shall be approved and recorded.

Prior to the reduction or release of the 125% amount required in step 3 above for completion of improvements(s), the following information must be provided, on an application form provided by the Cabarrus County Department of Commerce, when applicable:

1. Proof satisfactory to the County that the applicable improvement(s) has been made to the required specifications.
2. Proof satisfactory to the County that payment in full has been made to the applicable contractor and/or agency for the improvement(s).

Upon proof of completion satisfactory to the County, of the required improvement(s), the amount that had been required for that improvement(s) may be released from the total amount required. The total amount of the letter of credit or bond for required improvements may be released when all improvements are complete, and the above information has been provided. The County may employ a consulting engineer to review requests for full or partial releases. The applicant shall be responsible for all costs associated with the outside engineering review.

#### **Section 16. Reservation of School Sites**

Schools sites must be reserved within the agreement of the Board of Education, in accordance with adopted plans of the Planning and Zoning Commission and/or Cabarrus County Board of Commissioners. Whenever a subdivision includes all or part of a site identified for new school construction, the Board of Education will be notified. That Board shall then notify the Planning and Zoning Commission whether it still wishes the site to be reserved. If the Board of Education does not wish for it to be reserved, no reservation will be required. If that board wishes for the site to be reserved the subdivision may not be approved without that reservation. The Board of Education must acquire the site within 18 months of the date of reservation. If the Board of Education has not acquired the site or begun the proceedings to condemn the site within the 18 months, the land is freed of the reservation.

#### **Section 17. Adequate Public Facilities Standards**

To ensure public health, safety and welfare the Planning and Zoning Commission shall review each subdivision, multi-family development, and mobile home park to determine if



public facilities are adequate to serve that development in accordance with Chapter 15 of the Cabarrus County Zoning Ordinance.

## **CHAPTER 5 RECREATIONAL AREAS**

### **Section 1 . Parks--Required**

- A. **Applicability.** The provisions of this section shall apply to any application for approval of a residential subdivision plat. This requirements shall apply to any housing type proposed, including multi-family and condominium development. Residential developments with minimum one acre or larger lots, while encouraged to incorporate recreational areas, are exempt from these requirements. Further, nothing within these regulations should be construed as preventing the establishment of additional recreational amenities in any residential development.
- B. **Location Shown.** The location and extent of all parks shall be indicated on all plats subject to this section or an optional fee-in-lieu designated.
- C. **Park Land Quantity.** A minimum of one acre of park land shall be dedicated for each 80 residential dwelling units (544.5 square feet per residential dwelling unit).
- D. **Improvements Required.** Each type of park (as set out in Section 2 below) requires improvements in addition to land area, as specifically set out below.
- E. **Connection to Parks.** The Administrator may require connection to an open space network and/or trails system if the proposed development is adjacent to the boundary of an established community public open space as included in the Livable Communities Blueprint for Cabarrus County, which is hereby incorporated by reference. The open space/trail system shall be maintained by the applicant or subsequent owners provided, however, that the applicant may request to publicly dedicate any trail.

### **Section 2. Park standards**

- A. **Required Improvements.**

## **Section 15-1 Introduction**

This Section:

- Establishes phasing standards for new development based on the carrying capacity of Public Facilities; and
- Ensures that Public Facilities needed to support new development meet or exceed the Level of Service standards established in this section; and
- Ensures that no applications for development approval are approved that would cause a reduction in the levels of service for any Public Facilities below the Adopted Level of Service established in this Section; and
- Ensures that adequate Public Facilities needed to support new development are available concurrent with the impacts of such development, or within a reasonable period of time;
- Encourages development in areas where public services are available and underutilized; and
- Establishes uniform procedures for the review of development applications subject to the standards and requirements of this Section; and
- Establishes standards for the phasing, changes in site and development design, or proffering of public facilities in order to establish flexibility, avoid the unreasonable delay of development approval, and to promote the County's planning policies.

## ***Section 15-2 How to Use this Chapter***

Information in this Chapter is organized as follows:

What do the words and phrases used in this Chapter mean?	Section 15-3
What types of uses and permits does this Chapter apply to?	Section 15-4
What do I submit with my application?	Section 15-5
How is my application processed? Who determines whether facilities are adequate?	Section 15-6 and 15-7
What happens if facilities are adequate? What if facilities are presently inadequate? What conditions will apply to my application if facilities are inadequate?	Section 15-7
If facilities are not adequate, do I always have to phase my development or wait until they are adequate? Or, do I have the option to provide the facilities so that I can move my plans forward?	Section 15-7
Where (over what area) are facilities required to be adequate? What if my project has impacts outside of Cabarrus County, or is located in a municipality in the County?	Section 15-9, with some particular rules in Sections 15-9 through 15-20.
If facilities are determined to be adequate or conditions are imposed, how long does this determination last? What effect does it have on other permits that I need? If my project does not build out for awhile, will I have to go through the determination again?	Section 15-6
What are the standards for assessing whether or not facilities are "adequate"?	Sections 15-10 through 15-20
What if I am already partially through the permitting process? Do I have to comply with this Chapter? If so, what requirements apply?	Section 15-21

## ***Section 15-3 Basic Terms and Definitions***

### **Adopted Level of Service**

A measurement that quantifies a specific amount, frequency, capacity, or response time of a public facility. The Adopted Level of Service is established in Section 15-9.

### **Adequate or Adequacy**

A determination that facilities that are considered available comply with the Adopted Level of Service standard.

**Applicant**

Any person, corporation, or entity who submits an application that is subject to this Chapter (refer to Section 15-4).

**Available**

"Available" means that a Public Facility either: (1) exists and is operational, or (2) the Public Facility is Planned Capacity that is included in the methodology for determining compliance with this Chapter for a specific facility (refer to Sections 15-12 through 15-20).

**Available Capacity**

Existing or Planned Capacity of Public Facilities that is not already committed to existing or planned development, as provided in Section 15-11.

**Application for Development Approval or Application**

Any application that would permit the development or establishment of a use that is subject to this Chapter (refer to § 15-4). This includes any application for subdivision plat approval or administrative site plan approval for multi-family projects.

**Capacity**

The maximum demand that can be accommodated by a Public Facility without exceeding the Adopted Level of Service.

**Capital Improvement**

A public facility with a life expectancy of three or more years, to be owned and operated by or on behalf of the County, Cabarrus County School District, Kannapolis School District, special district, or a public service provider.

**Capital Improvement, Planned**

See "Planned Capital Improvement."

**Capital Improvements Program**

A plan that describes the capital improvements that will be provided over a given time period. A "Capital Improvements Program" may refer either to the plan for a particular service area or to the aggregation of capital improvements and the associated costs programmed for all service areas for a particular category of public facilities. The Capital Improvements Program includes the most recent: Cabarrus County Capital Improvement Program (CIP), and 15-Year Facilities Plan for the applicable school district.

**Committed Development**

Committed Development includes:



- development with an approved determination that public facilities are adequate; and
- developments that are approved, but are unbuilt. This includes unbuilt preliminary subdivision plats, minor plats, final plats, or building permits.

#### **Currently Available Revenue Sources**

An existing source or amount of revenue that:

- is presently available to the County or the entity providing a Public Facility; and
- may be allocated towards capital expenses; and
- has been budgeted for the capital disbursements or debt service account applicable to a planned capital improvement.

This term does not refer to a mere intent to increase the future level or amount of a revenue source, nor to a revenue source that is contingent on ratification by a public referendum. Mitigation that is guaranteed in a Public Facilities Mitigation Agreement is considered a Currently Available Revenue Source.

#### **Public Facilities Mitigation Agreement**

An executed contract between the County and an Applicant that formally sets forth development approval and requirements to achieve Adequacy. A Public Facilities Mitigation Agreement is a regulatory document containing specific conditions of development approval designed to implement the policies and criteria contained in this Article and, where the denial or deferral of development approval is disputed by the Applicant, to effectuate the public policy favoring the settlement of disputes. A Public Facilities Mitigation Agreement includes any Reimbursement Agreement (G.S. Section 153A-451, 160A-499), Public Enterprise Improvement Agreements (G.S. Section 153A-280 or 160A-320), Development Agreement (G.S. Sections 153A-379.1 et. seq. or 160A-400.20 et seq), or Site Specific Development Plan or Phased Development Plan (G.S. Section 153A-344.1, 160A 385.1), in which the Applicant lawfully agrees to provide improvements that mitigate the impacts of the Proposed Development.

#### **Development Order**

An official decision to approve any application that is subject to this Chapter. This includes any decisions to approve a subdivision plat or to administratively approve a site plan (for projects not requiring subdivision approval).

### **Existing Demand**

The present, actual utilization of Public Facilities capacity from existing (built) development. Examples include existing school enrollment, trip counts, or calls for service.

### **High School Feeder Area**

A grouping of schools consisting of one or more high schools and one or more middle and elementary schools, as determined by the School District.

### **Impact Area**

The area in which a proposed residential development is presumed to create a demand for Public Facilities. This area is evaluated to determine adequacy. (Refer to Sections 15-9 and 15-12 through 15-20 of this Chapter.)

### **Level of Service**

Level of Service indicates the capacity per unit of demand for each public facility. It is an indicator of the extent or degree of service provided by a facility. This indicator is based upon and related to the operational characteristics of the facility.

### **Minor Subdivision**

A "minor subdivision," as defined in Chapter 2, Section 2 of the Cabarrus County Subdivision Regulations.

### **Mitigation**

An agreement by the applicant, as a condition of approval and as part of a Public Facilities Mitigation Agreement, to advance Public Facilities by mitigating its impacts. (Refer to Section 15-7.3 d) and e) for mitigation conditions). Mitigation may involve a monetary Voluntary Mitigation Payment (VMP) to the County, the actual construction or provision of needed facilities to Cabarrus County for the School District, or any other mechanism that adds student capacity to the School District as approved by the Cabarrus County Board of Commissioners.

### **Mobile Home**

A "mobile home" or "manufactured home" as defined in Chapter 2 of the Cabarrus County Zoning Ordinance.

### **Mobile Home Park**

A "mobile home park" as defined in Chapter 2 of the Cabarrus County Zoning Ordinance.

### **Multi-family**

Any "multi-family" dwelling as defined in Chapter 2 of the Cabarrus County Zoning Ordinance.

**Phasing**

A condition of approval that imposes a buildout schedule that is tied to future increments of Planned Capacity.

**Planned Capacity**

Unbuilt capacity that is included in the Capital Improvements Program, consistent with the standards provided in Section 15-10.

**Planned Capital Improvement**

A Capital Improvement that is scheduled for completion of construction within a period not to exceed six (6) years in a Capital Improvements Program.

**Proposed Development**

The development that is proposed in an Application for Development Approval, including all dwelling units, non-residential floor area, or other increments of demand on Public Facilities that would be created if the Application were approved.

**Public Facilities**

For purposes of this section, Capital Improvements for Public Schools.

**Residence, single family detached**

A "residence, single family detached" as defined in Chapter 2 of the Cabarrus County Zoning Ordinance.

**Reviewing Agency**

The agency that reviews and that has jurisdiction to approve, approve with conditions, or deny an Application. (Refer to Section 15-6 for a summary of the Reviewing Agencies).

**Student Generation Rate**

The figure (stated as the number of students per dwelling unit) to be multiplied by the number of proposed dwelling units, by type, in order to determine projected enrollment. This may be computed using the school district or North Carolina Student Information Management System data, Census data, or similar data, and actual numbers of dwellings to determine expected students/dwelling.

**Subdivision**

A "subdivision," as defined in Chapter 2, Section 1 of the Cabarrus County Subdivision Regulations.

**Townhouse**

A one family dwelling in a row of at least three such units in which each unit has its own front and rear access to the outside, no unit is located over another unit, and each unit is separated from any other unit by one or more common walls.

**Voluntary Mitigation Amount**

A figure that represents the per-unit cost of providing mitigation, which may be used as a basis for providing voluntary payments to the County or the School Districts in lieu of deferring development.



***Section 15-4 Applicability***

1. This Chapter applies to any:
  - a) any division of property, except for a minor subdivision (as defined in Chapter 2, Section 2 of the Cabarrus County Subdivision Regulations), and
  - b) attached single-family units, townhouse projects, or multi-family buildings,
  - c) mobile home park located in Cabarrus County, including any incorporated areas or
  - d) any other project creating an increase in the amount of residential units within Cabarrus County.
2. This Chapter does not apply to any use, development, project, structure, fence, sign or activity that does not create an impact on Public Facilities.
3. For multi-family buildings, mobile home parks or other residential projects that do not require subdivision plat approval, this Chapter shall apply to any site plan required for approval of the proposed development.

***Section 15-5 Submittal Requirements for Reservation of Capacity***

1. An application for Reservation of Capacity Certificate must include all information required by this Chapter and all required processing fees. No application for consideration subject to this Chapter will be accepted, approved, granted or issued unless it provides sufficient information to determine whether the capacity of Public Facilities is adequate to support the proposed development.
2. For purposes of this Chapter, the following information must be submitted with the application for development approval:
  - a) the number of proposed dwelling units; and
  - b) the applicable high school feeder area; and
  - c) if the applicant has determined that public facilities are not presently available after initial consultation with staff, a phasing schedule or plan

for the advancement of capacity must be provided as part of the application; and

- d) the name of the development.
3. Staff will determine whether the Reservation of Capacity Certificate application is complete and whether it complies with the applicable submission requirements. If the application is incomplete or the submission requirements have not been complied with, staff will notify the Applicant and specify the deficiencies.
  4. If the application is complete and the submission requirements have been complied with, staff from the School Districts and the Cabarrus County Commerce Department will evaluate the application for compliance with the Adopted Level of Service and submit a recommendation in the form of a staff report to the Cabarrus County Board of Commissioners.
  5. If the application is incomplete, staff will return the application to the applicant with an explanation of the deficiencies, and no further processing will occur until the deficiencies are corrected.

Reservation of capacity applications shall not be submitted or processed with rezoning application requests or conditional use rezoning requests.

At the time of application for reservation of capacity, all applicable zoning designations and zoning districts must be in place.

### ***Section 15-6 Application Processing***

#### **1. Staff Review**

If the application for the Reservation of Capacity Certificate is complete and the submission requirements have been complied with, Cabarrus County Commerce Department and the School District Staff will evaluate the application for compliance with the Adopted Level of Service and submit a recommendation in the staff report.

#### **2. Determination**

The determination of whether public facilities are adequate is made as part of the procedure for approving the Reservation of Capacity Certificate application (see Criteria).

If the Reservation of Capacity Certificate review determined that mitigation is required for the project to proceed, once a Development Order has been granted from the

appropriate jurisdiction, the applicant shall enter into a Public Facilities Mitigation Agreement with the Cabarrus County Board of Commissioners for the project.

### **3. Decision**

The Reviewing Agency's decision must include the following, based upon the application and evidence in the record:

- the number of dwelling units proposed by the Applicant, by type, for each Public Facility;
- the phasing of the proposed development, if applicable;
- the specific Public Facilities impacted by the proposed development;
- the extent of the impact of the proposed development in the applicable Impact Areas;
- the Capacity of existing Public Facilities in the Impact Areas that will be impacted by the proposed development;
- the demand on existing Public Facilities in the Impact Areas from existing and approved development;
- the availability of Existing Capacity to accommodate the proposed development; and
- if Existing Capacity is not available, Planned Capacity and the year in which such Planned Capacity is projected to be available.

### **4. Duration of Reservation of Capacity**

Once the applicant has submitted an application for a Reservation of Capacity and said application is reviewed, if the Reservation of Capacity Certificate is approved, said Certificate shall be valid for a period of 12 months from date of issue by the Cabarrus County Board of Commissioners. In the event that a Reservation of Capacity of Certificate expires, the applicant shall begin the process again and shall be subject to any ordinances, regulations, policies or resolutions in place at that time.

### **5. Extensions for Reservation of Capacity Certificate**

No extensions shall be granted for a Reservation of Capacity Certificate that has been issued by the Cabarrus County Board of Commissioners.

### **6. Public Facilities Mitigation Agreement.**

Applicant shall enter into a Public Facilities Mitigation Agreement with the Cabarrus County Board of Commissioners once a Development Order has been granted from the appropriate jurisdiction. Said Public Facilities Mitigation Agreement shall identify and incorporate the terms of the approved Reservation of Capacity Certificate.

- a) The Public Facilities Mitigation Agreement is a regulatory document containing specific conditions of development approval as defined in the Reservation of Capacity Certificate and designed to implement the

policies and criteria contained in this Chapter and, where the denial or deferral of development approval is disputed by the applicant, to effectuate the public policy favoring the settlement of disputes.

- b) The Public Facilities Mitigation Agreement must contain an integrated development scheme for a particular phase or phases of development approval, along with maps, diagrams and other appropriate materials showing future conditions consistent with the provisions of this Chapter.
- d) The Public Facilities Mitigation Agreement must be approved by the Cabarrus County Board of Commissioners. The Public Facilities Mitigation Agreement will be reviewed at a normal meeting of the Board of County Commissioners, unless a special meeting is convened for this purpose. The meeting may be continued from time to time as needed to resolve issues raised by the applicant or Commissioners.

### ***Section 15-7 Determination of Adequacy for Reservation of Capacity Certificate***

When the Reservation of Capacity Certificate application is reviewed by the Cabarrus County Board of Commissioners, the Board shall take one of the following actions:

#### **1. Approval of the Reservation of Capacity Certificate**

If the Cabarrus County Board of Commissioners concludes that public facilities are presently available at the Adopted Level of Service, including the overall enrollment projected to be generated by the proposed development, it shall approve the Reservation of Capacity Certificate application without any of the conditions required by this Chapter.

#### **2. Denial of the Reservation of Capacity Certificate**

If the Cabarrus County Board of Commissioners determines that any Public Facility will not be available at the Adopted Level of Service based upon Available Capacity, the Cabarrus County Board of Commissioners may deny the application or as an alternative, the Cabarrus County Board of Commissioners may approve the Reservation of Capacity Certificate application with conditions as provided in subsection 3, below.

#### **3. Conditions of the Reservation of Capacity Certificate**

The Cabarrus County Board of Commissioners may require, or the Applicant may consent to, conditions that reduce or mitigate the impacts of the proposed development. Conditions may include a combination of the following:

- a) deferral of final plats, building permits or certificates of occupancy until all Public Facilities are available and adequate if Public Facilities in the Impact Area are not adequate to meet the Adopted Level of Service for the



entire development proposal, consistent with the requirements of this Chapter;

- b) phasing of final plats, building permits or certificates of occupancy so that future increments of development are constructed to coincide with available capacity;
- c) reduction of the density or intensity of the proposed development to a level consistent with the Available Capacity of Public Facilities;
- d) provision by the Applicant of the Public Facilities necessary to provide Capacity to accommodate the proposed development at the Adopted Level of Service and at the time that the impact of the development will occur;
- e) conditions agreed upon by the applicant to advance, or partially advance the Public Facilities necessary to provide capacity to accommodate the proposed development at the Adopted Level of Service and at the time that the impact of the development will occur. Provisions for advancement of capacity are included in Section 15-8; or
- f) any other reasonable conditions to ensure that all Public Facilities will be adequate and available concurrent with the impacts of the proposed development.

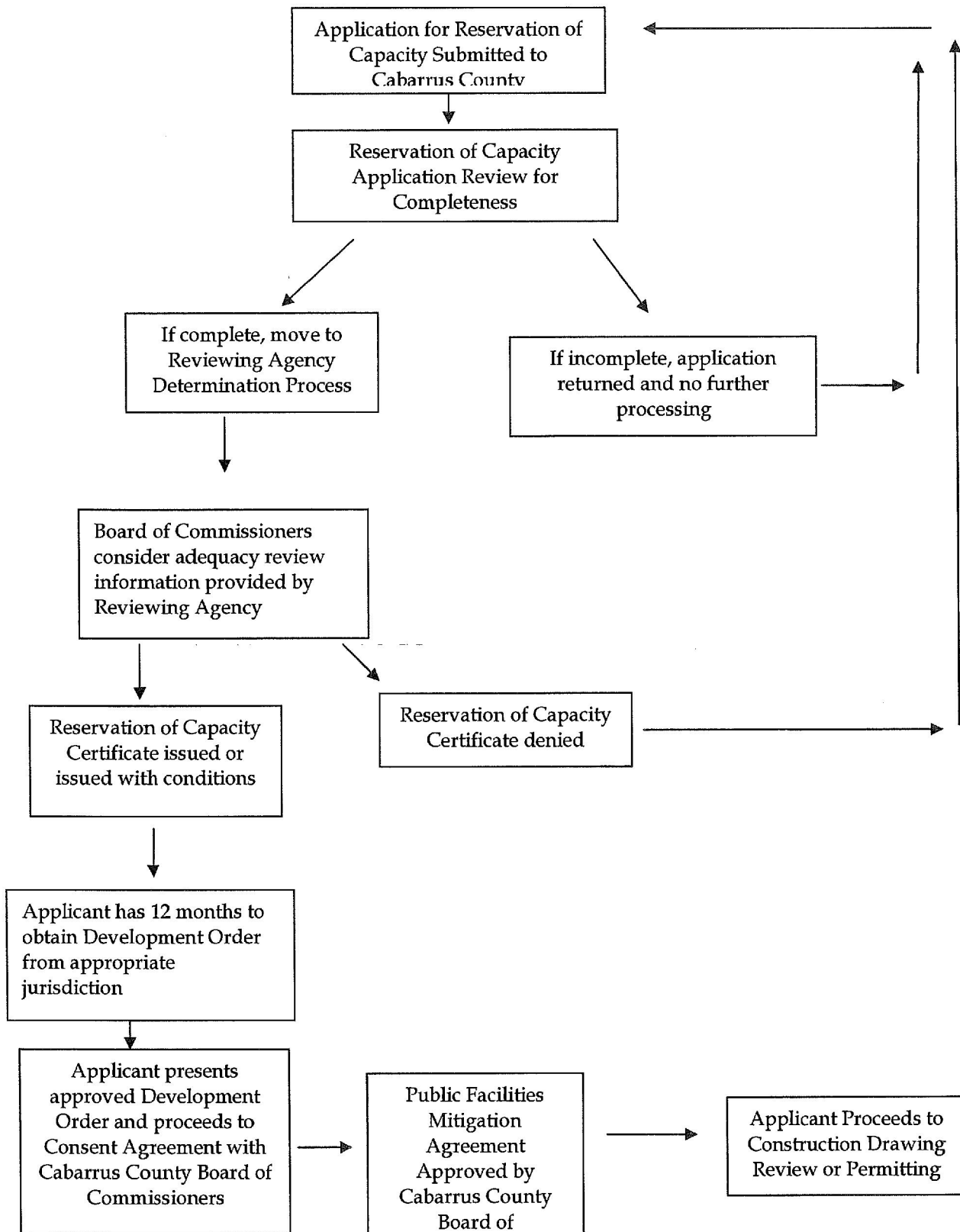
***Section 15-8 Mitigation Measures for Reservation of Capacity Certificate Consideration***

1. Applicants may propose mitigation measures to overcome a failure to meet one or more LOS standards including, but not limited to, payment of a pro rata share of facility capacity costs necessary to accommodate the demand generated by the proposed development.
2. Any Mitigation, including any monetary contribution, land donation or construction of Public Facilities, shall be paid or completed prior to the issuance of any affected building permit within the subject development.
3. The method to address Adequacy and a requirement that it shall be completed prior to the time of building permit application shall be included in the Public Facilities Mitigation Agreement.
4. If mitigation involves the construction of Public Facilities, the commitment to construction of Public Facilities prior to the issuance of a building permit shall be

included as a condition of the determination. The determination must include the following, at a minimum:

- a) For Planned Capital Improvements, a finding that the Planned Capital Improvement is included within the Capital Improvements Program of the school district or applicable service provider;
- b) an estimate of the total financial resources needed to construct the Planned Capital Improvement and a description of the cost participation associated with the improvement;
- c) a schedule for commencement and completion of construction of the Planned Capital Improvement with specific target dates for multi-phase or large-scale Capital Improvement projects;
- d) a statement, based on analysis, that the Planned Capital Improvement is consistent with the applicable *Area Plan*; and
- e) at the option of the County Commission and only if the Planned Capital Improvement will provide Capacity exceeding the demand generated by the proposed development, reimbursement, or a method to affect reimbursement, to the Applicant for the pro rata cost of the excess Capacity.

## Reservation of Capacity Process



## Section 15-9 *Impact Areas*

### 1. General

- a) Except as provided below, availability and adequacy of Public Facilities are determined only with respect to Public Facilities located within the unincorporated areas of Cabarrus County. If part of the impact area lies in a municipality in the County or an unincorporated area of Mecklenburg, Union, or Rowan Counties, absent an intergovernmental agreement with the County or municipality, availability and adequacy are determined only with respect to Public Facilities located within unincorporated Cabarrus County.
- b) Per Session Law 2004-39, H.B. 224, Cabarrus County may review proposed developments within an incorporated area of the County for compliance with the Level of Service standards for schools.

### 2. Intergovernmental Agreement.

If the County Commission has entered into an intergovernmental agreement with an adjacent county or with a municipality to evaluate Public Facilities in such areas, an Applicant is subject to the evaluation of the Level of Service standard for the facility as adopted by the adjacent county or municipality. Prior to the request for Reservation of Capacity Certificate being presented to the Board of Commissioners, the Zoning Administrator will require that the adjacent county or municipality certify the proposed development will not cause a reduction in the Level of Service standards for those facilities lying within the adjacent county or the municipality.

1. For purposes of this Ordinance, the student generation rate for each category of schools shall be as follows:

Type of Unit	Type of School			
	Elementary	Middle	High	Total
Single Family Detached	.318	.139	.124	.581
Townhouse	.165	.057	.082	.304
Multi-Family/Other	.150	.055	.072	.277

Sources: Cabarrus County Planning Services Department; Cabarrus County Schools-Facility Planning Division, *Schools Voluntary Mitigation Payment Study*, TischlerBise, December 19, 2006.

Projected enrollment from the proposed residential development and enrollment generated by Committed Development consists of the sum of all proposed dwelling units or dwelling units permitted on platted lots, multiplied by the student generation



rate. The above-referenced figures may be adjusted from time to time by the County Commission by amending this Ordinance to reflect updates to the student generation rate calculated by the Cabarrus County Planning Services Department.

2. The Reviewing Agency will determine whether public schools within the County have sufficient available capacity and acreage to accommodate the demand generated by the proposed residential development at the adopted level of service. Available capacity shall be calculated for the applicable high school feeder area and shall be expressed in terms of possible student enrollment which can be accommodated, in accordance with the following formulae:

Formula #1:  $CAC = (EC) - (E + C)$

Formula #2:  $FAC = (EC + PC_2) - (E + C)$

Formula #3:  $FAC = (EC + PC_5) - (E + C)$

where:

Variable	Meaning
CAC	Current Available Capacity, in student enrollment.
FAC	Future Available Capacity, in student enrollment.
EC	110% of Existing Capacity, in enrollment, for elementary, middle and high schools within the high school feeder area. The capacity of school facilities shall be computed in accordance with the North Carolina Public Schools, <i>Facilities Guidelines</i> (January 1997), "Class Sizes and Teacher Allotments," This document is hereby incorporated by this reference and made a part of this Ordinance.
PC	Planned Capacity, in enrollment, for funded but unbuilt elementary, middle and high schools within the high school feeder area based upon the applicable School District 15 Year Facilities Plan, more specifically the Critical Project List, which are incorporated by this reference.
PC <sub>2</sub>	PC (Planned Capacity), as defined above, based on the first two (2) years of the School District 15 Year Facilities Plan Critical Project List.
PC <sub>5</sub>	PC (Planned Capacity), as defined above, based on the first five (5) years of the School District 15 Year Facilities Plan Critical Project List.
E	Current enrollment based upon the most recent enrollment counts per monthly membership report as provided by the School District Staff
C	Enrollment generated by all Committed Development within the high school feeder area

3. If current available capacity is equal to or greater than zero (0) (Formula #1 of subsection 1, above), and adequate capacity exists to accommodate the enrollment projected to be generated by the proposed development, school facilities are *adequate*.

If current available capacity for any school type is a negative number, adequate capacity does not currently exist to accommodate the enrollment projected to be generated by the proposed development.

4. If current available capacity is inadequate, Formula #2, above, is applied (**two (2) years of planned capacity**). If future available capacity is equal to or greater than the projected enrollment that will be produced by the proposed development for all school types, the development may be approved with conditions related to phasing or mitigation, and the applicant shall be permitted to proceed through the development approval process.

If future available capacity pursuant to Formula #2, above, is less than zero (0), the applicant is permitted the following number of dwelling units per year:

- 1) For a subdivision that consists of single family detached residences, the greater of 5 dwelling units per year or 10% of the proposed number of dwelling units, but no more than 15 dwelling units per year.
- 2) For townhouses, 10 dwelling units each year or 10% of the number of dwelling units, whichever is greater, but no more than 15 dwelling units per year.
- 3) For multifamily or other residential units, 11 dwelling units each year or 10% of the total number of units, whichever is greater, but no more than 20 dwelling units per year. This subsection applies to a proposed development that includes a mix of housing types that includes both single family detached residences and townhouses or multifamily/other dwelling units.

- b) These dwelling units shall not be constructed until the two years has expired unless the applicant agrees to provide mitigation measures for the project that defray the pro-rata impacts on school facilities for each dwelling unit constructed during the initial two year period.

5. If future available capacity pursuant to Formula #2 is less than zero (0), Formula #3, above, is applied (**five (5) years of planned capacity**). If future available capacity is then greater than or equal to the projected enrollment that will be produced by the proposed development for all school types, the application will only be approved with the following conditions:

- a) that Currently Available Revenue Sources are committed to all Public Facilities in the Capital Improvements Program that are needed to accommodate the impacts of the development; and
- b) that phasing conditions are included that link the timing of new development to Planned Capacity that will be available, as shown in the Capital Improvements Program or that is guaranteed by Mitigation as provided in subsection c), below; and
- c) the applicant has agreed to Mitigation for its pro-rata share of Planned Capacity.

6. If future available capacity pursuant to Formula #3, above, is less than zero (0), the applicant is permitted the following number of dwelling units per year:

- 1) For a subdivision that consists of single family detached residences, the greater of 5 dwelling units per year or 10% of the proposed number of dwelling units, but no more than 15 dwelling units per year.
  - 2) For townhouses, 10 dwelling units each year or 10% of the number of dwelling units, whichever is greater, but no more than 15 dwelling units per year.
  - 3) For multifamily or other residential units, 11 dwelling units each year or 10% of the total number of units, whichever is greater, but no more than 20 dwelling units per year. This subsection applies to a proposed development that includes a mix of housing types that includes both single family detached residences and townhouses or multifamily/other dwelling units.
- b) These dwelling units shall not be constructed until the five years has expired unless the applicant agrees to provide mitigation measures for the project that defray the pro-rata impacts on school facilities for each dwelling unit constructed during the initial five year period.
- b) For any year where a phasing schedule as provided in subsection a) applies, the applicant may elect to retest its remaining development against future available capacity. If the remaining development then meets Formula #1, Formula #2, or Formula #3, above, as certified by the Cabarrus County Commerce Department, the applicant may proceed subject to the conditions that apply to that formula. This subsection does not apply unless the Cabarrus County Commerce Department determines that the subsequent buildout, phasing or mitigation complies with this section.
6. Applicants may propose mitigation measures to overcome a failure to meet one or more LOS standards including, but not limited to, payment of a pro rata share of facility capacity costs necessary to accommodate the demand generated by the proposed development or timing the proposed development so that phasing is linked directly to available capacity.
7. Mitigation measures that involve the payment of money to the County or School District to defray the per-unit impacts of school facilities must be based on calculated capital costs associated with new construction. The capital costs shall be re-assessed every five years. The Board of Commissioners shall adopt the minimum mitigation amount based upon that calculation and the annual rate of inflation. The Marshall and Swift valuation service shall be the index used to calculate the rate of inflation. The



minimum amount of the Voluntary Mitigation Payment shall be adjusted and the new amount shall be effective as of January 1 of each year.

The Board of County Commissioners may reduce the Voluntary Mitigation Payment if the applicant demonstrates that actual per-unit costs are less than the amount shown. This demonstration may take into consideration a reduction in the payments due to other contributions of taxes, fees, or similar payments from the proposed development that are reserved for capital improvements.

**Section 15-10 to 15-20      *Reserved***

**Section 15-21 *Approved Projects and Projects Currently Under Review***

1. Either approval of a subdivision preliminary plat by an incorporated municipality in the County or approval by the County of a preliminary plat prior to the effective date of this chapter and prior to the June 18, 2007, resolution of the Board of County Commissioners increasing the Voluntary Mitigation Payment shall permit the applicant to pay the following Voluntary Mitigation Payment amount previously adopted by the Cabarrus County Board of Commissioners:

Residence, single-family detached	\$4,034
Apartment	\$1,869
Townhouse	\$2,825
Mobile home	\$3,865
Duplex, triplex, or quadruplex	\$2,938

2. The Board of County Commissioners may accept substitute or additional mitigation offered by the applicant in order to settle pending or threatened litigation, and to advance public policy favoring the settlement of disputes.
3. All other applications pending with the County or with any incorporated municipality within the County must comply with this Chapter. However, applicants may appeal this requirement using any procedures established by this Chapter or the Subdivision Ordinance.
4. If any portion, clause or sentence of this ordinance shall be determined to be invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions of this ordinance.
5. This ordinance shall take effect and be in force from and after August 20, 2007.

# Memo

**To:** Planning and Zoning Commission  
**From:** Susie Morris, AICP, CZO, Planning and Zoning Manager  
**CC:** File  
**Date:** 11/30/2012  
**Re:** Proposed Text Changes, Chapter 1

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Attached please find the following:

Draft Chapter 1 (DRAFT 2)

- Please look over the proposed text changes to Chapter 1 of the Zoning Ordinance. Chapter 1 will be completely replaced by the new Chapter 1. This document has been edited since it was last presented based on comments from the county attorney.
- Additions are in red text. Deletions are in strikethrough text. Blue text reflects changes since the last time you reviewed the document.
- If there are any items that you have questions or concerns about, please note those items so that we can discuss the proposed changes at the meeting on Tuesday.

## General Provisions

### Section 1-1 Title and Intent

This Ordinance shall be known and may be cited as the Cabarrus County Zoning Ordinance. It is the intent of this Ordinance to provide a system of intelligent land usage through the creation of zoning districts and accompanying standards, the creation of an administrative mechanism, and such other allied rules and regulations that enable Cabarrus County government to fulfill its obligation to provide for and to promote the public safety, health, and general welfare of its residents. To that end, these regulations may address, among other things, the following public purposes: to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to lessen congestion in the streets; to secure safety from fire, panic, and dangers; and to facilitate the efficient and adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

These regulations have been made with reasonable consideration as to, among other things, the character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of land and buildings and encouraging the most appropriate use of land throughout the county. In addition, the regulations have been made with reasonable consideration to expansion and development of any cities within the county, so as to provide for their orderly growth and development.

### Section 1-2 Authority

This Ordinance is adopted pursuant to the authority contained in North Carolina General Statutes Chapter 153A, Article 18 (Planning and Regulation of Development).

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, the Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

### Section 1-3 Jurisdiction

This Ordinance shall be effective:

- everywhere throughout the County outside corporate municipalities except for any areas that lie within the extraterritorial planning areas now or hereafter established by for any such municipality; and



## **Cabarrus County Zoning Ordinance**

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- everywhere within the corporate limits **or extraterritorial planning areas** of any municipality that has adopted a resolution authorizing the Ordinance to be applicable within such **municipality areas**.

#### **Section 1-4 Bona fide farms exempt**

The provisions of this Ordinance shall not affect bona fide farms, owner-operated or leased, but any use of farm property used for non-farm purposes shall be subject to the provisions of this Ordinance. For purposes of this Ordinance, ~~a bona fide farm is any tract (or tracts of land under common ownership or control) ten acres in size or greater on which a party is actively engaged in a substantial way in the commercial production or growing of crops, plants, livestock or poultry. See definitions for further clarification.~~ **see Chapter 2, Rules of Construction and Definitions, for the definition of a Bona Fide Farm.**

#### **Section 1-5 Re-enactment and repeal of existing zoning Ordinance**

This Ordinance carries forward by enactment some of the provisions of the prior Cabarrus County Zoning Ordinance, originally adopted February 2, 1982, and as subsequently amended ~~(herein referred to as the prior or former Ordinance The "1982 Ordinance as Amended" or the "Prior Ordinance"). It is not the intention to fully repeal The 1982 Ordinance as Amended, but rather to re-enact and continue in force several provisions of the former such Ordinance so that all rights and liabilities that have accrued thereunder are preserved and may be enforced under this Ordinance. Other provisions of the prior that Ordinance as subsequently amended that are not re-enacted herein or vested according to the following provisions are hereby repealed.~~

#### **Section 1-6 Vesting**

Recognizing that it is necessary and desirable as a matter of public policy to:

1. provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land use planning process, and
2. secure the reasonable expectations of landowners, and
3. foster cooperation between the public and private sectors in the area of land-use planning, a vesting process is described through which the ~~prior Ordinance's zoning districts and schedule of uses of the 1982 Ordinance as Amended, may be claimed to secure either a zoning permit, a building permit or to seek an established vested right as described in Sections 1-7, 1-8, and 1-9. This vesting process does not cover any other components of the prior Ordinance which are hereby repealed.~~ Except as specifically granted by this Ordinance, the vesting provisions of the Prior Ordinance are repealed.

#### **Section 1-7 Vesting process during transition period**



For a period of ninety (90) days beginning on the date of enactment of this Ordinance, a landowner may claim use of the former zoning district and that district's accompanying schedule of uses to secure a zoning permit for a particular use. Alternatively, a landowner who desires a vesting of a former zoning district's use but does not wish to secure the necessary zoning permit or is unable to do so within the ninety day time period, shall submit a "site specific plan" (drawn in accordance with Section 5.4 and 5.5 of the Prior Ordinance) or a "phased development plan" (drawn in accordance with the Cabarrus County Subdivision Regulations) within one hundred eighty (180) days of the enactment of this Ordinance.

#### **Section 1-8 Establishment of vested right**

A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site specific development plan or a phased development plan, following notice and public hearing by the Cabarrus County Planning and Zoning Commission (the "Commission"), ~~hereinafter referred to as Commission.~~ **acting as the Board of Adjustment** Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said such property for a period of two years. The Commission may approve a site specific development plan or a phased development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare. Such conditional approval shall result in a vested right. ~~although~~ Failure to abide by any such terms and conditions will result in a forfeiture of ~~any~~ or all vested rights. The Commission ~~shall~~ cannot require a landowner to waive his vested rights as a condition of developmental approval. A site specific development plan or a phased development plan shall be deemed approved upon the effective date of the County's action or an ordinance relating thereto.

If a conditional use as identified in the Prior Ordinance is being sought, the use shall be heard by the Commission, ~~(acting as a Board of Adjustment),~~ **acting as the Board of Adjustment** in accordance with the pertinent provisions of Sections 8 and 9 of the Prior Ordinance. Approval of the use and any related conditions imposed as part of that approval process shall constitute ~~as~~ **be** sufficient for purposes of vesting the development rights for that property.

#### **Section 1-9 Duration and termination of vested right.**

A right which has been vested through public hearing, as provided for in this section, shall remain vested for a period of two years. Following approval or conditional approval of a site specific development plan or a phased development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the County to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said the original



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approval. Nothing in this section shall prohibit the Zoning Administrator from revoking the original approval for failure to comply with applicable terms and conditions of the approval or the ~~Zoning~~-applicable Ordinance.

Upon issuance of a building permit, the provisions of **North Carolina** General Statutes §153A-358 and §153A-362 shall apply, except that a permit shall not expire or be revoked because of the running of time while a vested right under this section is outstanding.

A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

This provision shall be valid for 180 days beginning on the date of enactment running consecutively and terminating on the 181st day. The zoning permit or approved site specific plan and/or phased development plan shall be issued during this period in order to be considered valid.

**Section 1-10 Enforcement**

All suits at law or in equity and/or all prosecutions resulting from ~~the~~ a violation of the Prior ~~Zoning~~ Ordinance which are now pending in any courts of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this Ordinance but shall be prosecuted to their finality the same as if this Ordinance had not been adopted. Further, any prosecution of any and all violators of the Prior Ordinance which has not yet been instituted may be hereafter filed and prosecuted. ~~pending, whether filed or not.~~

**Section 1-11 Relationship to land development plan**

It is the intention of the Cabarrus County Board of Commissioners (~~hereinafter referred to as the~~ "Board") that this Ordinance implement the planning policies adopted by the Board for the County as reflected in the Land Development Guide, Area Plans, and other planning documents.

**Section 1-12 No use or sale of land or buildings except in conformity with Ordinance provisions**

- a. ~~Subject to~~ **Notwithstanding** Chapter ~~Fourteen~~ 14 of this Ordinance, Nonconformities, no person may use, occupy or sell any land or buildings or authorize or permit the use, occupancy or sale of land or buildings under ~~his~~ **that person's** control except in accordance with all of the applicable provisions of this and/or other **County** ordinances.

- b. For purposes of this section, the "use" or "occupancy" of a building or land relates to anything and everything that is done to, on or in that building or land.

#### **Section 1-13 Severability**

It is hereby declared to be the intention of the Board that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable. If any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Ordinance since the same would have been enacted without the incorporation into this Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause or phrase.

#### **Section 1-14 Computation of time**

~~Whenever~~ If the **Ordinance** Zoning Administrator or other person is requires to take a certain action (e.g., mailing or publishing a notice) on or before a specified number of days prior to the occurrence of an event (e.g., a public hearing), then, ~~in~~ when computing such **time** period, the day of the event shall not be included but the day of the action shall be included. For example, if notice of a public hearing is required to be published at least ten days before the hearing, then notice published on the first **day** of the month would be satisfactory for a hearing on the eleventh **day of the month**.

#### **Section 1-15 Repeal of conflicting ordinances**

All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect. The adoption of the this Ordinance, however, shall not affect ~~nor~~ or prevent any pending or future prosecution of or **an** action to abate an existing violation of ~~said regulations as amended~~ **such prior ordinance provision**.

#### **Section 1-16 Relationship to other ordinances**

It is not intended that this Ordinance shall in any way repeal, annul, or interfere with the existing provisions of any other law or ordinance except any ordinance which this Ordinance replaces. It is not intended that this Ordinance shall interfere with any easements, covenants, or other agreements between parties except such which are subsequent to this Ordinance and which are in conflict with the Ordinance. ~~However,~~ If the provisions of this Ordinance impose greater restrictions or higher standards for the use of a building or land, for yards, or for the size of structures than is called for by



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other ordinances, permits, easements, or agreements, then the provisions of this Ordinance shall control.

**~~Section 1-17 Bi-annual review~~**

~~Beginning the second year following the year of adoption of this Ordinance, the Zoning Administrator will render to the Board of Commissioners a bi-annual, end of the calendar year, report on the state of the Zoning Ordinance and set forth a summary of those changes necessary to both update and/or refine the Ordinance. Changes summarized in December are to be implemented the following quarter with all due speed.~~

PZ DRAFT 2