



AGENDA

Regular Town Board Meeting

August 15, 2022 - 6:00 PM

TOWN HALL (101 Huntersville-Concord Road)

Persons desiring to address the Board during a public comment period or a public hearing shall list their full name, address, telephone number, and subject matter to be discussed on the speaker sign-up sheet as provided by the Town Clerk prior to the beginning of the meeting. Once the meeting has begun, a person may not sign up to speak.
(Public Comment and Public Hearing Policy - Adopted April 19th 2021)

1. Pre-meeting - 5:15 p.m.

1.A. New Town Hall Update. *(Anthony Roberts)*

1.B. American Rescue Plan Act (ARPA) Funds from State of North Carolina Update.
(Bobby Williams)

2. Call to Order

3. Invocation/ Moment of Silence

4. Pledge of Allegiance

5. Staff Questions

6. Public Comments, Requests, or Presentations

7. Agenda Changes/Adoption of Agenda

8. Consent Agenda

8.A. Approve the minutes of the June 6, 2022 Regular Town Board Meeting. *(Janet Pierson)*

- 8.B. Receive as information the 2022 Progress Report on Mitigation Actions as Part of Implementation of Mecklenburg County Multi-Jurisdictional Hazard Mitigation Plan (HMP). *(Bobby Williams)*
- 8.C. Approve Tax Collector's Settlement for Fiscal Year 2022 (Tax Year 2021) and adopt Order of Collection for Fiscal Year 2023 (Tax Year 2022). *(Pattie McGinnis)*
- 8.D. Amend the Town's Social District Ordinance to incorporate legislative changes enacted by HB 211 (S.L. 2022-49). *(Emily Sloop)*
- 8.E. Adopt Joint Proclamation to End State of Emergency. *(Emily Sloop)*
- 8.F. Adopt Resolution to approve Addendum to the Interlocal Agreement for the Cambridge Grove Stream Restoration Project. *(Kevin Fox)*

9. Public Hearings

- 9.A. Conduct public hearing on suggested edits to the Town's Soil Erosion and Sedimentation Control Ordinance to reorganize and rename sections of the Ordinance, include qualifying language, and better align with legislative changes from HB 489. *(Emily Sloop)*

10. Other Business

- 10.A. Consider adopting edits to the Town's Soil Erosion and Sedimentation Control Ordinance. *(Emily Sloop)*
- 10.B. QUASI-JUDICIAL. Conduct evidentiary hearing and consider decision on Bryton Townhomes - Parcel 2 Subdivision Sketch Plan, a request by Northbridge, LLC to subdivide 3.114-acres located at the northeast intersection of Statesville Road (NC 115) and Bryton Riddge Parkway (Parcel # 019-11-137) for a 25-unit townhome development. *(David Peete)*
- 10.C. QUASI-JUDICIAL. Conduct evidentiary hearing and consider decision on Maxwell Avenue Townhomes Subdivision Sketch Plan, a request by Northstate Development to subdivide 2.79-acres located at southeast intersection of Old Statesville Road (NC 115) and Maxwell Avenue, Parcel #s 019-031-05, 019-031-22, 019-031-04, 019-031-03, 019-031-02 & 019-031-23 for a 35-unit townhome development. *(David Peete)*
- 10.D. Consider approving contract with Huntersville Fire Department to provide fire services. *(Jackie Huffman)*
- 10.E. Highway 21 Greenway Tunnel Agreement discussion. *(Michael Jaycocks)*

11. Mayor and Commissioner Reports/Closing Comments

12. Closed Session

12.A. Closed Session pursuant to NCGS 143-318.11(a)(6) to consider the qualifications, competence, and performance of an employee. (*Melinda Bales*)

13. Adjourn

Special Accommodations: Anyone needing special accommodations when attending this meeting and/or if this information is needed in an alternative format please contact the Town Clerk. The Clerk can be reached by phone or fax: 704-875-6541, email: clerk@huntersville.org or at 101 Huntersville-Concord Rd, Huntersville, NC 28078.

We request at least 72-hours' notice prior to the meeting to make the appropriate arrangements.

The Board reserves the right to deviate from the agenda.

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Janet Pierson, Town Clerk

Date: August 15, 2022

Subject: Approval of Minutes - June 6, 2022

EXPLAIN REQUEST:

Consider approving the minutes of the June 6, 2022 Regular Town Board Meeting.

ACTION RECOMMENDED:

Approve Minutes

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Draft Minutes

**TOWN OF HUNTERSVILLE
TOWN BOARD MEETING
MINUTES**

June 6, 2022

**6:00 p.m. – Huntersville Town Hall
101 Huntersville-Concord Road**

PRE-MEETING

The Huntersville Board of Commissioners held a Pre-meeting at Huntersville Town Hall, 101 Huntersville-Concord Road, at 5:15 p.m. on June 6, 2022.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the Pre-meeting to order.

New Town Hall Discussion. Bobby Williams, Assistant Town Manager, reviewed alternate site suggestions for a new Town Hall. *Refer to PowerPoint attached hereto as Exhibit No. 1.*

Following discussion of possible options, it was the general consensus of the Board to have staff get ideas on what something would look like designed on the current town hall property and the adjoining properties to the north to house all departments and also ideas on public engagement for the project.

**REGULAR MEETING
TOWN OF HUNTERSVILLE
BOARD OF COMMISSIONERS**

The Regular Meeting of the Huntersville Board of Commissioners was held at the Huntersville Town Hall, 101 Huntersville-Concord Road, at 6:00 p.m. on June 6, 2022.

GOVERNING BODY MEMBERS PRESENT: Mayor Melinda Bales; Commissioners Dan Boone, Rob Kidwell, Amber Kovacs, Lance Munger, Derek Partee and Stacy Phillips.

Mayor Bales called the meeting to order.

Mayor Bales called for a moment of silence.

Mayor Bales led the Pledge of Allegiance.

STAFF QUESTIONS

Commissioner Boone expressed appreciation to retiring Officer Eric Johnston and K-9 Officer Cirro for their work to the community.

PUBLIC COMMENTS, REQUESTS, OR PRESENTATIONS

Mayor Bales proclaimed June 26, 2022 as Jonahville AME Zion Church Day in the Town of Huntersville.

Town of Huntersville Proclamation

Whereas, June 26, 2022 marks the 155th Anniversary of Jonahville AME Zion Church which was founded one hundred fifty-five years ago in the year 1867. Jonahville was organized with the mission of meeting the needs of the people and connecting with the community of Huntersville by sharing the love of Christ with others; and

Whereas, we give pause, honor and praise this day for the countless years and numerous ways Jonahville has served the community, including feeding and providing clothing for those in need. Jonahville AME Zion Church has offered summer camp programs for the surrounding community while providing a safe and affordable place for working families to bring their children for care. One of Jonahville's visions is for the Huntersville community to be a safe place for all people as Jonahville continues to be a church that focuses on social justices as well as equality for all; and

Whereas, it is a pleasure to extend this expression of our esteem and best wishes to the members of this congregation on the memorable occasion of this Anniversary.

Now, Therefore, I, Melinda Bales, Mayor of the Town of Huntersville, do hereby proclaim June 26, 2022, as **Jonahville AME Zion Church Day** in the Town of Huntersville.

In Witness Whereof, I do hereby set my hand and cause the Seal of the Town to be affixed, this the 6th day of June 2022.

BeeJay Caldwell, 14521 New Haven Drive, said when it comes to gentrification, it does not bother anyone whose home is not in the designated area. I live in Pottstown, a targeted site. We are living in a resurgence of time when the same type of power that forced out the Native Americans may be forcing us out. My goal is to keep Pottstown gentrification on the minds of the citizens of Huntersville and make them aware of what is happening to us and that it could happen to them and their little piece of Heaven on earth. Before residents are completely erased, we are planning to commemorate its first and possible last Juneteenth celebration on Sunday, June 19, 2022, at Huntersville Rosenwald School No. 2 for Black Children. A formal program will begin at 5:15 p.m. to unveil its certification detailing its designation as a historic landmark. Mayor Bales, Board members and Town staff, you are cordially invited to join in this celebration at 508 Dellwood Drive in Huntersville. It is free and open to the public.

Rachel Zwipf, 13021 Central Avenue, said I just want to thank everybody that came out to the Pottstown pick-up a few weeks ago. It went well. Thank you to all the volunteers for a successful clean-up day. The residents got a lot out and we are very happy and pleased with the efforts. Secondly, I would like to ask the commissioners, I'm not sure if you guys are aware of this yet, but the summer hours have come out for the County's recreation centers and Waymer will be closing at 1 p.m. on Saturdays. I'm here asking if you guys can reach out to your colleagues at the County and ask them if we can please continue to keep those hours to the 4 p.m. timeframe that they are right now. They are proposing that the center be open from 9 a.m. to 1 p.m. which really takes a lot of community activities. The boys go down there and play basketball literally all day. And being that it's in the summer, we definitely would like to keep that open. We appreciate your efforts with the Juneteenth event coming up with the County. I know that you guys have a strong relationship with them. I will be addressing the County Commissioners tomorrow about this issue. It's just not at our rec center, but it's actually at a lot of the neighborhood recreational centers that they are closing early, so I'm going to be asking for a plea for those centers to please stay open. I ask if you will join me in that action.

Carol Swartz, 15305 Merlon Court, said I am here to support the LGBTQ+ non-discrimination ordinance. At the last Board meeting, speakers asserted that we don't have that problem here. Absence of evidence is not evidence of absence. We cannot know the extent of discrimination here until we provide a process for people to insist that they be treated fairly. The NDO is that process. As TV Detective Harry Bosch says, all of us matter or none of us matter. Another claim was that the NDO will hurt our businesses. One thing that is guaranteed to hurt any business is turning away paying customers and qualified employees because of what you imagine they do in their own homes. A reputation for discrimination can spread like wildfire. Can any business tolerate missing out on the top candidates for employment. Can any business afford to lose sales to the growing number of us who support the LGBTQ+ community. We know that all of us matter or none of us matter. Finally, an assertion was made that the NDO might force people to violate their deeply held religious beliefs. This is a claim that is often used selectively. Do you refuse service to those who take the name of your Lord in vain. Do you refuse to hire those who worship a different deity or none at all. Discriminating against LGBTQ+ people is not an act of love. All of us matter or none of us matter. We are living with problems of our own creation. We are building an uncertain and dangerous future. Our very nation is at risk. I look into this world and I know we have a choice. I try to choose the path of kindness, respect and hope. I work to choose tolerance for those who are not like me. I ask you to do the same. All of us matter or none of us matter. Pass the LGBTQ Non-discrimination ordinance.

Ann Kabaklian, 8712 Lindholm Drive, said I am the General Manager of Birkdale Village. I'm here tonight on behalf of North American Properties to thank you for considering our request to implement a social district within Birkdale Village. If approved, the social district will further enhance the sense of community we are cultivating at Birkdale. I'm happy to say that our tenants are eagerly awaiting the approval of the Birkdale Social District and have expressed great interest in participating and to be a part of the vision to bring our community together. As the stewards of Birkdale Village, North American Properties realizes the value our tenants bring to the community every single day. Our goal is to develop and hone our business model to ensure that our tenants have the opportunities that will contribute towards their success. It is our hope that the social district will become one of those opportunities. Thank you in advance for your consideration for the social district ordinance.

Alex Lacy, OrthoCarolina 10315 Hamptons Park Drive, said we built and opened our new office location in October 2020. We have 45 staff and medical professionals that work at our office daily and average 250 patient visits a day, with a maximum of over 300 on some days. Sixty percent of our patients are age 60 or older, many of whom will be or have recently had a major surgery. Many of those patients have expressed concern with the safety of having to exit our location due to the volume and speed of traffic on Route 21. Staff and physicians have to deal with the traffic on a daily basis. Around noon every day, the Ivybrook School lets out and cars get backed up trying to turn left onto Route 21. Our staff and providers only have a certain amount of time in between patient appointments for their lunchbreak and end up spending at least 10 minutes or longer trying to get out. Many staff and I have personally experienced close accidents trying to turn out. Not only do you have to watch for cars going upwards of 45 mph both ways, you have to watch for cars turning into Hamptons Park, as well as cars turning out of the Hamptons neighborhood, many times not knowing if they are turning or coming straight across. The volume of cars coming in and out of Hamptons Park only continues to increase with the new Arbor Ridge retirement community opening and another medical facility that is currently being built. In summary, I support and request a traffic light to be installed at the intersection of Route 21 and Northdowns Lane for the safety of all.

Bob Inskeep, 15801 Delancey Lane, said I'm in the Hamptons neighborhood and you've seen me before. With me also tonight is Leslie Welch who is the vice president of our Homeowners Association. I previously spoke at the March 21 Board meeting about the need for a traffic light at the intersection of Statesville Road, Northdowns Lane and Hampton Park Drive. Since that meeting, I've sent each of you a follow-up letter dated May 18 summarizing the continued interest in this temporary remedy on the part of the Hampton Park Professional Center businesses, Hamptons, and Greenfarm neighborhoods. That letter mentions the meeting that Hampton Board Member Leslie Welch and I attended on April 12 with Town Manager Anthony Roberts, Engineer Director Stephen Trott and Transportation Engineer Lora Mastrofrancesco. We appreciate the time and attention you all are devoting to this matter. As I mentioned, Alex is here and she has spoken. I'm here to request the Board's consideration for approving and funding a traffic light at this unsafe intersection that Alex spoke of, which will soon become busier when this final medical center opens. This is what we know at this time. First from the NCDOT on March 4, 2022, and I quote "We have evaluated the intersection and determined that it meets signal requirements." They call it warrants. "This means we would be agreeable to allowing a signal to be installed there." Second, from the same transmission, "At this time we do not have a funding source identified for the project." And third, still quoting, "The road widening project which is U-5771 is programmed to let in December 2024. We anticipate being able to meet the current let unless we run into significant issues with acquiring rights-of-way or getting utilities moved. While not determined for certain yet this project would anticipate taking three years to complete." We realize the light would be temporary. We know that. We still believe this intersection needs to operate in a more safe manner and to not operate in that manner until at least 2028 and we all know what happens to construction projects. They tend to get delayed. It's just too many opportunities for accidents. In fact, I'm seeing school buses take left turns out of our neighborhood and I've contacted Charlotte-Mecklenburg Schools to see if they want that to happen. I think it's unsafe for left turns for school buses anywhere, but especially right there at that intersection. That's our request is to hopefully get a light installed there at least for the time being until that road construction project is finished.

Traffic Signal – Statesville Road at Northdowns Lane. Stephen Trott, Director of Engineering, provided information related to a proposed traffic signal at US 21 at Northdowns Lane. *Refer to Exhibit No. 2.*

The Town received a request last fall for a traffic signal at the intersection. We collected traffic count data. Based on data collected, it did meet the volume warrants for a traffic signal. That information was forwarded to NCDOT. NCDOT concurred that a traffic signal was warranted but did not have the funding available to install one. NCDOT indicated they would allow the installation of a traffic signal if someone else funded it.

It was the general consensus of the Board to have Staff bring back options for installation of a traffic signal at Statesville Road at Northdowns Lane.

AGENDA CHANGES

Commissioner Phillips made a motion to adopt the agenda.

Commissioner Partee seconded motion.

Motion carried unanimously.

CONSENT AGENDA

Approval of Minutes – Winter Retreat. Commissioner Phillips made a motion to approve the minutes of the Town Board 2022 Winter Retreat. Commissioner Kovacs seconded motion. Motion carried unanimously.

Approval of Minutes – April 4, 2022. Commissioner Phillips made a motion to approve the minutes of the April 4, 2022 Regular Town Board Meeting. Commissioner Kovacs seconded motion. Motion carried unanimously.

Approval of Minutes – April 18, 2022. Commissioner Phillips made a motion to approve the minutes of the April 18, 2022 Regular Town Board Meeting. Commissioner Kovacs seconded motion. Motion carried unanimously.

Property Tax Refund Reports. Commissioner Phillips made a motion to approve Property Tax Refund Reports from Mecklenburg County. Commissioner Kovacs seconded motion. Motion carried unanimously.

Property Tax Refund Reports attached hereto as Exhibit No. 3.

Budget Amendment – Grant Funds. Commissioner Phillips made a motion to approve budget amendment appropriating grant funds by the Huntersville Police Department in the amount of \$22,719.99 to the Grant Revenue Account, Equipment Expense and Training Expense. Commissioner Kovacs seconded motion. Motion carried unanimously.

Budget Amendment – Greenway. Commissioner Phillips made a motion to approve budget amendment appropriating fund balance in the General Fund in the amount of \$120,000 for the Greenway Connection for the new Torrence Creek Trib #2 Greenway to the new Rosedale Nature Park. Commissioner Kovacs seconded motion. Motion carried unanimously.

PUBLIC HEARINGS

Petition #R21-13. Mayor Bales called to order public hearing on Petition #R21-13, a request by Caldwell Station Properties, LLC to amend the Traditional Neighborhood Development Overlay District for the Caldwell Station Senior Living Center at 11130, 11124, and 11116 Will Knox Road (Parcels # 00544332, 00544328, 00544329), to increase the units allowed and to modify the rezoning plan to a single unit senior living facility.

Brad Priest, Principal Planner, entered the Staff Report into the record and reviewed request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 4.*

The Caldwell Station development was rezoned to Neighborhood Residential and Traditional Neighborhood Development Overlay in 1998. At that time, the parcels in question were proposed to be developed as office buildings. In 2006 the rezoning plan was amended for this parcel to allow senior living condominiums rather than office.

The purpose of this request is to modify the site plan again to increase the allowable senior living units from 108 units to 134 units and permit one single 3-story building versus the five 3-story buildings currently approved.

The applicants wish to keep the vesting of the plan intact. Staff is supportive of keeping the original vesting in this case. Staff recommends the applicants add a note to the plan requesting the Town Board continue the vesting through the zoning modification. Aspects of the plan that would remain vested include tree save, storm water, lighting, landscaping, and traffic impact analysis determination.

The rezoning modification changes the senior living facility from five separate 3-story buildings to one large 3-story building. The result along the street is a continuous 300' wide building along Will Knox Road. On the other side of Will Knox Road are existing individual single-family homes. The large massing of the proposed building then is inconsistent with the smaller buildings on the other side of the street. West of the proposed structure are townhome buildings that although larger than the single-family homes, are smaller in mass than the proposed complex. Article 3.2.3 D1 of the 1998 Zoning Ordinance (NR Zoning) requires that new development respect the massing of existing adjacent development. Staff has worked with the applicant to break up the footprint and setbacks of the building to more resemble two different masses, closer to the original 2006 plan. The applicant has broken that up with an updated plan they recently submitted.

The 2006 approved plan had a required 20' buffer around the perimeter of the property. This buffer is currently wooded with existing mature trees. The plan proposes to grade much of the buffer to the property line. Staff recommends a modification note be added to the plan requesting approval of grading in the buffer and a note describing how the buffer would be replanted.

The Caldwell Station apartments to the south of the development established a walking trail that stubs to this parcel for future connection. The applicants are proposing to continue the trail near the sidewalk stub, but the plan shows it stopping short of connecting. Staff recommends the trail include a bridge over the stream to finish the connection.

Staff recently received an updated plan from the applicant, but it was after the agenda deadline for the public hearing. On the updated plan the applicant moved the storm water pond and altered the foundation of a building to help with massing.

Staff supports the application. Staff supports the vesting as it is consistent with the Town Core principles in the 2040 Huntersville Plan. Staff will continue to work with the applicant to break up the mass along the front and make it consistent with what's across the street and then there is the recommendation to connect the amenity trail which the applicant is willing to do and then just the minor notes in the Staff Report.

Commissioner Partee said my question is centered around the building of quite a few senior complexes in the Town of Huntersville. As you know we have a plan to build a senior housing complex at the corner of Beatties Ford Road and Mt. Holly-Huntersville Road. There's a proposal that's going to build a senior complex at Neck Road and April Mist Road. Is the market still there for us to fill all these projects that are in the pipeline as far as senior housing?

Mr. Priest said I can't speak to the market at this time. That's something that we can try to take a look at in regard to seeing what resources we have available to do that. What I would say is that we do have it in the 2040 Plan that it's something that's encouraged and that we are looking to accommodate it. The market continues to bring them, so that's a telltale sign that people are willing to occupy them. At this time, as far as we know, the market is there and we're planning to encourage them in our 2040 Plan.

Commissioner Phillips said over the years as we have been given numbers on senior living like facilities – what’s been built, what’s not. Do you know if these numbers (the original numbers for this plan) have been included all that time?

Mr. Priest said my assumption would be yes, but I will double-check that.

Commissioner Kovacs said do we know what caused the change from that original plan with the different buildings into this one elongated one.

Mr. Priest said I would let the applicant speak to that. They are here, so if you would like to ask that question, the applicant could probably give you some background on the market in regard to that.

Commissioner Munger said what would the impact of this development for tree save, storm water, lighting, landscaping and traffic impact analysis be if the developer was required to adhere to today’s standards as opposed to the 1998 or 2006 standards that they are being allowed to follow

Mr. Priest said I went ahead and put a slide together (included in Exhibit No. 3) just to discuss that coordination between the old code and the new code and what they are proposing to do.

The 1998 ordinance didn’t really have a tree save ordinance. There was a general section in the code that said try to save as much as you can. Significant trees should be saved. In the updated plan we did get a tree survey back and there are a significant amount of trees in the green highlighted area where the stream is. There aren’t a lot of what we call in our ordinance now specimen trees. I think I counted five or six of them. I counted the rest of the area, there’s about 20-22 specimen trees on the site. They’re probably around the 30-40 percent tree save. Right now in our current ordinance, they’d only be required to save 10 percent of the specimen trees, so for tree save it’s probably a push. They are probably meeting the old ordinance and the new ordinance with what they are proposing to do right now.

The lighting ordinance, that could be a difference. We didn’t have too much of a lighting ordinance back in 1998 either. Everybody is going to LED, so if I had to guess they are going to be doing LED lights. They are going to be probably coming up to most of our code anyway, so there’s not going to be that much of a difference but something that we can talk to the applicant on and see what they are proposing to do.

We didn’t have an LID water quality ordinance back in 1998. However, if you are looking at the grading plan, the storm water plan, even though they are asking for vesting, they are actually proposing to do a sand filter, which is a water quality device which filters the water and cleans it. That’s something that they are proposing to do in this plan. It’s not a big difference with the current plan.

There was not a lot of landscaping requirements back in the 1998 ordinance. However, here we are surrounded by residential and what’s proposed is actually residential. In our current ordinance, they don’t necessarily need to have a buffer. What staff was requesting them to do was their altering and keeping vesting from an old plan that showed a 20’ buffer. We are simply asking if you are grading into the buffer, what kind of replanting are you doing, and to put that on there for clarification.

The TIA determination that was done was based on what was vested in 2006. If we just completely took out the 2006 plan and said you are coming in with 134 units, senior living, would it trip our threshold and the answer is no. Either way, old code, new code, the TIA would be the same. There would not be

one required. Again, going back to my first statement, there's just not a lot of difference between what's proposed on this plan and our current ordinance.

Commissioner Kidwell said I'm only counting about 141 parking spaces. Are we only factoring in one car per unit?

Mr. Priest said that's correct. They are meeting the minimum requirement and part of the way that they are meeting that requirement is the garages that are shown on the site. They are including that. A lot of times we'll get senior living complexes come in and when it's age restricted the general understanding that they continually come and tell us is that our clientele don't drive as much and so there's some validity to that because when you talk to Engineering and you are doing TIA trip thresholds, the numbers are lower for senior living facilities. They are meeting the bare minimum that it's very close for comfort, but at the same time they're meeting it and we're trusting that the market is going to be able to prove true with senior facilities.

Commissioner Kidwell said let's say this moves forward and it's senior living for a while and then it falls out of favor, market tanks and they sell the building and someone is going to turn it into apartments. Would it have to come back to a future board to be rezoned.

Mr. Priest said it would. There's a description on the rezoning plan saying it's going to be deed restricted senior living and my understanding is the applicant is proposing to put that in the deed so it could not be changed later.

Commissioner Kidwell said I don't want you to fail, I'm just looking at different possibilities.

Commissioner Kovacs said you explained the difference between the 1998 and current zoning. What would be the benefit of keeping the 1998 one? I'm worried about setting a precedent, so I'm just asking what would be the benefit.

Mr. Priest said I've had a recent talk with the applicant and there's not a lot. If they kept the vesting from 1998, they wouldn't be required to do water quality, they would only be required to do detention, which is different and less restrictive. They would not be required to do specific lighting on their building that might be a little bit more dark sky friendly. They wouldn't be required to do that, but looking at their plan, a lot of it they are already proposing to do what the current code is asking, so there might not be a need for it, but I would let the applicant answer that.

Jim Jervis, Calamar, presented information on their Connect55+ active lifestyle community. *Refer to PowerPoint presentation attached hereto as Exhibit No. 5.* We have about 38 or 40 existing properties spread in 10 states and so Huntersville is on our radar and has been. I grew up in Mecklenburg County. I live in Fort Mill now. I work for Calamar. All of our projects are deed restricted at 55 and above.

We are 55 and above community. It's one and two bedrooms. There's not a swimming pool or anything else like that. Turn over averages out to about 15 percent a year. This is independent living. We hire an activity director so there's all kinds of events and activities. We want people to be able to come and be with people with like interests. These folks want to lock it and leave it. They don't want the upkeep and the maintenance. We've got some properties out there that are going to spend several thousand dollars a month. We are going to be slightly more of what regular apartments are.

Commissioner Kovacs said what caused the change from the previous plan to this plan.

Mr. Jervis said I can't speak to the previous plan. I think the owner at the time was working with someone to buy and build condos, but it was going to be assisted living and skilled nursing. It wasn't independent living. Looking back at the history it led me to believe that they couldn't find the financing for what they needed to do. That's not really an issue for us because this is all we really do. We owned the first asset we ever developed. We're going to own it, we're going to manage it, it's not a flip or anything else like that. This will be corporate owner.

Commissioner Phillips said something I've heard about some of the places that have age restriction is that the applicant puts in 55 and up but sometimes they're moving their kids in, their grandkids.

Mr. Jervis said with the way our deed restrictions are written, and it's not a scenario where we want somebody moving in where you have one person that's 55 and they bring their kid. There's not a swimming pool so they are not going to be going to grandma's and grandpa's to go swimming. We've been doing this for 33 years and haven't had issue with it. When they sign the lease, it's explained.

Commissioner Boone said if you would give us your local address for the record, I don't think that was given.

Mr. Jervis said 306 Tinderbox Lane, Fort Mill, SC.

Commissioner Boone said I've been to several of these sites and the HVAC units that are on the roof work a lot better than those on the ground, just the fact that if you are outside talking and 132 A/C units come on, it's just not a pleasant atmosphere. I hope you look into that.

Mr. Jervis said I will definitely have discussions with our folks.

Commissioner Boone said you said you've been in business for 32 years. Can you tell me where your closest facility is to Huntersville.

Mr. Jervis said the closest facility that we have right now is Burlington. I think it's about 85 percent complete right now. We have property under contract in Concord. I have property under contract in Fort Mill.

Commissioner Boone said will you have staff on site 24/7 or just a program director during the day.

Mr. Jervis said there will be staff there during the day. We typically don't monitor it 24 hours, so we don't have someone overnight.

Commissioner Boone said I think you said that there will be no kitchens in these units.

Mr. Jervis said there will be kitchens, no central kitchen. It's like a regular apartment.

Commissioner Munger said so these are rental units, they do not own them.

Mr. Jervis said correct.

Commissioner Munger said you had mentioned and maybe I misheard it, what was the price point you were looking at. Give me an approximate.

Mr. Jervis said we look at the average rental rates, the market, then we factor in is there anybody else. I would guess that our one bedroom will probably be in the \$1,300 range and I think our two bedrooms will probably be in the \$1,500-1,600 range.

Commissioner Munger said our staff member spoke about LED lighting. Would you be willing to commit to providing LED lighting externally.

Mr. Jervis said I think certainly from our perspective we are looking to be a good neighbor. I think downlighting LED lighting makes perfect sense. Obviously, we want to try to save as many trees as possible. When people come to live here it's like any of the rest of us, we don't always look at a big parking lot or busy road, so we want to keep trees and everything because people are coming for a lifestyle.

Commissioner Munger said one of the issues I do have with this is it's a monstrous building compared to the buildings previously approved and you are right up on that road with houses across the street.

Mr. Jervis said we worked at trying to break up that building so it didn't have quite the massing. It's our position that we want to come back and build something that is a compliment.

Commissioner Partee said how has the neighborhood response been to public hearings to your project.

Mr. Jervis said I'll let Steve respond.

Steve Singleton, Director of Planning and Landscape Architecture with Bohler, said we are serving as Calamar's consultant on the rezoning process. Just a few slides (*refer to Exhibit No. 4*). I want to point out the 2040 Land Use Plan for Huntersville indicates the growing need for the 55 plus age group specifically. This kind of addresses that. This is the new plan that we kind of come up with and in reading the Staff Report and working with Brad and Planning we realized the biggest issue is the massing and we have had not one but two neighborhood meetings as well to address that with the neighbors specifically across the street. I think the biggest concern from neighbors was the scale and the removal of some of the vegetation. The latter I think for the vegetation we have addressed that. There's street trees along Will Knox that would be retained and/or replanted in the event they had to be removed or damaged. The other thing that we were going to try to do was soften further the massing of that building and so this plan shows where architecturally that building's been carved at. The idea is just to break up the building and create two different masses. One thought that we had and we are still working through is utilizing that space that's been carved out now in the front as an amenity for the building and for the users and still provide additional breaking up of that massing along Will Knox. This will be kind of hashed out during more of the design, but a thought is just kind of adding more trees and creating maybe a grove or a shady space. Adding more trees, creating that density of trees and just graphically you can kind of see that also further breaks up the massing and helps us. On the site plan previously submitted we had the water quality structure flow down on the site and it was impacting what ended up being identified as streams and so we have pushed that further south.

Commissioner Kidwell said I just pulled up the map. Lakeside Charter is right there. I've been down Old Statesville Road doing some inspections over in that neighborhood before and I've seen the cars kind of pile up and then go down that road. How will you guys integrate with the school.

Mr. Singleton said we actually had a representative from Lakeside Charter at our last neighborhood meeting. We got first-hand some of that same concern you just mentioned. The proposed driveway on the plan on the east side of the site, and this is per NCDOT, will be a right-in/right-out only, so there will be a median required on Will Knox. I'm not sure if that helps with Lakeside Charter or not, but their exit is further east towards Old Statesville Road, so they were okay with that plan at that time during the meeting.

Mr. Jervis said I think just to piggyback on what Steve is saying, I think right now they have limited access to left-hand turns during peak hours from Will Knox Road and from our perspective because we are such a low impact....we don't have people going to work or anything else like that during peak times, so we kind of followed the lead in what NCDOT told us and again meeting with the charter school and getting them involved in the talks, they feel it's less of an impact than what could be built.

Mayor Bales said you think that the residents that will live here would not work. Is that the expectation.

Mr. Jervis said if your average age is 67 up to 80 years old, you are going to have probably some folks that work part-time, but the vast majority of these folks are not working or are working part-time.

Mayor Bales said going back to a question that was asked earlier in regards to parking, how many parking spots do you currently have for this site.

Mr. Jervis said 141 spaces, plus I believe there are 45 or 48 garages that we will also have here that will add to the total. What I have done in the past has been able to showcase on previous projects that our parking ratios are typically much lower. About 80 percent of the folks that have a car, they have one car, not multiple cars. We have 20 percent that don't have a car.

Commissioner Kidwell said at your other locations what is your public transit system like, because up here you've got to go away to get to the bus.

Mr. Jervis said we're not typically located anywhere in most of the markets because we are in secondary or tertiary markets. We're not going to be in a Boston. We'll be 45 miles outside of a Boston or something like that. Huntersville is kind of very typical of what we do and where we like to plan our plat and build and so from public transportation, we've never really kind of factored into that because if it's there it's there. We don't rely a lot on public transportation.

Commissioner Phillips said could staff go ahead and put this on CATS radar because the last time they came and gave a presentation we talked about making sure that CATS was aware of senior living coming this way because of situations like this. It's not a request, it's not a demand, it's just some history. Your neighboring senior living in this area gave us 15 affordable units. They weren't vouchered units, but median income units, so just wanted to put that on your radar.

Commissioner Munger said given its location, have we had any communications with Cornelius and let them know that we might be doing this there?

Mr. Priest said no, we haven't.

Commissioner Munger said being a good neighbor you take one step in the right direction, let's just give them a heads up that we are potentially going to do something.

There being no further questions or comments, Mayor Bales closed the public hearing.

Petition #TA22-05. Mayor Bales called to order continuation of public hearing on Petition #TA22-05, a request by the Huntersville Town Board to amend the Subdivision and Zoning Ordinance by changing subdivision sketch plan decisions from a quasi-judicial process (Planning Board recommendation, Town Board decision) to an administrative process (staff decision).

Jack Simoneau, Planning Director, entered the Staff Report into the record and reviewed the request. *Staff Report and Staff PowerPoint attached hereto as Exhibit No. 6.*

This public hearing was continued from May to give the Huntersville Ordinances Advisory Board an opportunity to review the petition.

The Huntersville Ordinances Advisory Board first heard this on April 7, 2022. On May 5, 2022, the HOAB recommended by a 5-4 vote making subdivision sketch plan an administrative staff approval subject to the text being thoroughly reviewed at the June HOAB meeting.

Rachel Zwipf, 13021 Central Avenue, said I come to you asking that the Board of Commissioners keep the quasi-judicial decision and hearing at the Board level and not pass it down to the administrative process. I believe that this is an important matter where other residents, whether or not they have standing or not, should be heard and their concerns be voiced to the commissioners. These are the people that I personally voted for and I'm pretty sure that most of the town had voted for the commissioners to come into place and I believe that it is important that they be able to come and speak to you guys on those matters because they are quasi-judicial for a reason. There are some areas that are not so clear but that they just be able to have that voice and you just be able to hear what they have to say. I think as your constituents the highest honor knowing that we can look you in the eye and that our voices and our pleas are being heard from you on these matters and that's why I think that the quasi-judicial should stay within the Board's realm for decision and not be passed down to administrative process.

Commissioner Kidwell said why wouldn't a variance appeal go to the Board of Adjustment.

Mr. Simoneau said it could. Huntersville has had any variance or appeal or interpretation of the Subdivision Ordinance go to the Town Board since the 90's, so it could go to the Board of Adjustment, but we just kept it the way it is today.

Commissioner Munger said the variance appeal process, if it went to the Town Board or Board of Adjustment, that's a process that's available to the applicant as well as neighbors or people with standing, so it's not just for the applicant, everyone would have that process.

Mr. Simoneau said yes.

Commissioner Munger said just a general statement. It's a very frustrating process and I absolutely understand what you are saying. One of the things that was kind of mentioned was that people's voice needs to be heard during this process. The part of the problem with quasi-judicial is if you don't have standing, your voice can't be heard. That is the frustration for us and we're trying to figure out the best way forward. I do hear what you are saying. It's a frustrating process.

Commissioner Partee said this is directed toward Ms. Sloop. On Page 6, the 5th paragraph, where K. Jones had asked you a question and your answer was “E. Sloop added that if everyone is allowed to speak at a quasi-judicial hearing it is a slippery slope because it becomes difficult to determine if a Board member, after hearing so many different things from people without standing, can remain impartial when making a quasi-judicial decision. She referenced the findings emailed to the NC Supreme Court fining Board members for compensatory damages when even one member of a Board is biased in a quasi-judicial decision.”

Emily Sloop, Town Attorney, said that’s actually not a direct quote. As to when someone could speak, let’s say that this Board decides to keep the process quasi-judicial and not move it to administrative, if someone wants to come and speak they are able to come and speak during the public comment period, but not actually at the quasi-judicial hearing itself and act as if they have standing. Even if they did come and speak at the public comment period, this Town Board cannot consider those public comments, however we can’t prevent them from speaking during the public comment period. As to the evidentiary hearing itself, to be able to actually participate as a party, meaning present evidence, call witnesses, call experts, etc., you have to establish standing. The statute does set forth who has standing and one of those categories would be someone who can prove special damages, but that does require very specific evidence. If we were to allow those that do not have standing to speak, I said that was a slippery slope because there’s no way to tell that this Board hasn’t improperly incorporated in testimony or comments from those without standing and thereby have their impartiality destroyed. If you based your decision on evidence that doesn’t meet the evidentiary standard, then a court could invalidate that decision.

Commissioner Kovacs said I have a question because we keep coming back to one of the same things about quasi-judicial is defining who has standing and I feel like every time we get a different answer when quasi-judicial comes up and observing meetings in the past and what not I see people that are allowed to speak but then someone in the same situation isn’t allowed to speak and it seems like there’s nothing set in stone. I know you referenced it’s written, but then it’s open to interpretation.

Ms. Sloop said it’s based on the facts presented so it’s really a case-by-case determination. There’s no clearcut rule as to who has standing when they are basing it on special damages. It is clearcut in the statute that the applicant, the owner, the Town has standing. Those are clearcut. But when it comes to basing it off of special damages, you have to take into consideration the evidence presented in that specific case.

Commissioner Kovacs said for instance, I’ve seen where the applicant is an owner of property and they are considered an expert and they can talk about property value, but a neighbor who has property just across the street isn’t considered an expert on their own property value.

Ms. Sloop said the difference is that the applicant already has standing automatically per the statute, so they can talk about their own property, but someone who is a neighbor, they don’t necessarily automatically have standing. They would have to prove special damages. They cannot speak to how approving the subdivision or disapproving it would affect the value of their property, which is not subject to the application without an expert witness. They would have to have expert testimony from an appraiser to establish that.

Commissioner Kovacs said I’m trying not to get into details about what I’m thinking about, but that situation didn’t play out that way, but nonetheless I’m not okay with this going to the Planning Department for some of the reasons that residents have expressed. They want to be able to have their voice heard. I echo the fact that it’s unbelievably frustrating to have to walk out of a room if people

want to talk about a quasi-judicial process that's going to be happening or to not be able to talk to our constituents that elected us, but at the same time at least being able for them to speak during the public hearing they got to say something, they didn't have decisions made behind closed doors. So as much as I hate doing quasi-judicial, if it's between that and going directly to Planning Staff, then I'm not okay with this.

Commissioner Partee said I'm trying to follow administrative. If we decide to move it administratively, would it be the Planning Board that would make decisions or the Board of Adjustment.

Mr. Simoneau said as we prepared the draft, it would be the Planning Staff. It would not have to go to the Planning Board. It would not go to the Board of Adjustment. It would not go to the Town Board. It would be staff.

Commissioner Partee said I was concerned about the Board of Adjustment.....somewhere in there the Board of Adjustment would have to be able to hear the variance.

Ms. Sloop said during the HOAB process a question had come up about if someone doesn't agree with staff's decision, where would the appeal go. As of right now the draft is written as it would remain the same as it is right now. The appeal would go to the Town Board with a recommendation from Planning Board prior to going to the Town Board. We didn't change that. But there was a question that was raised could it go to the Board of Adjustment instead of the Town Board and so that's where we kind of had some dialogue, some discussion, that yes that is allowed per the statute, but the current draft has it coming to the Town Board and that's no change from the current ordinance as written.

Commissioner Phillips said I would like this quasi-judicial stuff to never go to the Planning Board because we as a Board can watch their meetings. I don't because I'm terrified of going to jail if you guys haven't caught on over the years. Also, Planning Board seems to get a little political sometimes and they are not the ones who do the ethics training etc. that we have to do. I think all this is great and lovely and everything my dreams are made of, but I would like to get rid of the Planning Board part of it. I think that this town is going to mess around with quasi-judicial one day and we are going to get sued and we are going to get sued big time. If you look at the list of all the other municipalities that don't do this, we are living in Mayberry times but yet trying to keep up and we can't even keep up with places half our size like Cornelius. I have sat here and watched people not disclose information that sat on this board that should have disclosed during quasi-judicial, like campaign donations, being friends with people that were speaking, etc. I overshare which is a problem, but a good problem sometimes. And the thing is, it's not even about this Board sitting up here, it's about our town and at the end of the day by-right is by-right is by-right and you may not like what your neighbors are doing, but it's their right and I feel like we're in the weeds with quasi-judicial and as I keep watching it over and over again I think that we are doing a disservice to our town and making things really complicated because I'd rather be able to sit and talk to a citizen about an issue, maybe be able to go talk to staff.....just like we did earlier with our presenters, we can't make requests, we can't make demands, but we can at least gently lead like these are concerns coming this way. I see it as an opportunity to actually be able to communicate with our citizens more and do it in a way that none of us are giving up our integrity or the morals of this town and the values that we swore to when we took our oaths.

Commissioner Kidwell said this is just a mess. Bottom-line is the process still allows us to talk to people. It still will allow me to go talk to the citizens as long as I disclose that I talked to citizens. But there is no way on God's green earth you can't say after talking with the people out there, whether it's developers or the citizens, that doesn't have some impact on you. I don't care if they're staff or if you are an

elected official, Planning Board, anybody. I don't know what the right answer is. I'm going to continue to do my job. I'm going to talk to the individuals that are involved. I'm going to hear their case and I'm going to weigh it all out up here and I'll either get recused or spill the beans up here and say everything I know and then let it fall. But I did watch as Commissioner Kovacs talked about one landowner in standing, one person was told they're not in standing due to some reason or other, but in my opinion every taxpaying citizen has standing in this town and should be allowed to come up and speak on these matters and be heard.

There being no further questions or comments, Mayor Bales closed the public hearing.

Traffic Calming – Greenway Drive. Mayor Bales called to order public hearing regarding Traffic Calming Measures on Greenway Drive.

Lora Mastrofrancesco, Transportation Engineer/Project Manager, reviewed data collection results and options for traffic calming. *Refer to Exhibit No. 7.*

Emily Sloop, Town Attorney, suggested Commissioner Kovacs be recused from the discussion since an option for speed hump location is in front of her home.

Commissioner Boone made a motion to recuse Commissioner Kovacs during this discussion. Commissioner Munger seconded motion. Motion carried unanimously.

Commissioner Boone requested staff contact Fire Chief Dotoli to get his feedback on speed humps being installed on Greenway Street.

Commissioner Boone made a motion to bring back Commissioner Kovacs.

Commissioner Munger seconded motion. Motion carried with five (5) yes votes.

The Town Board requested staff bring this back for a decision on July 18, 2022.

There being no further business, Mayor Bales closed the public hearing.

Proposed Budget for FY23. Mayor Bales called to order continuation of public hearing to receive comments on the proposed budget for FY 2023.

Anthony Roberts, Town Manager, highlighted updates to the Town Manager's Recommended Budget. *Refer to PowerPoint attached hereto as Exhibit No. 8.*

There being no questions or comments, Mayor Bales closed the public hearing.

OTHER BUSINESS

Budget Ordinance FY 2023. Commissioner Kidwell made a motion to recuse Commissioner Phillips, Commissioner Munger and Dan Boone from Item 10.A

Motion died due to lack of second.

Commissioner Kidwell said according to an e-mail sent by the Town Attorney back in December, the SB473 which was passed into law under 14-234-3, now prohibits public officials from knowingly participating in making or administering contracts with any non-profit with which the official is associated. Associated is defined in this section as being director, officer, board member of the non-profit. Organizations created by the state or local governments are excluded. It should also be noted that 14.234.3 under Other External Agencies we are putting \$150,000 of taxpayer money to non-profits in which Board members are sitting on, therefore I reinstate my thing where they should be recused and they are in violation of state law. I contacted the State Attorney's Office on it and a personal attorney to confirm.

Emily Sloop, Town Attorney, said back at one of the pre-meetings we already had with regards to this budget process, the Town Board did go through the proper recusal process when determining the amounts that would be going to the external agencies and at that time we went ahead and drew up the contracts. They've already been sent, obviously contingent on budget funding, so technically this would not be making a contract. Those have already been approved with the proper recusals in place and entered into again pending budget approval. We also, meaning myself and Staff Attorney Jacob Glass, contacted UNC School of Government experts as well as experts from the League of Municipalities, as well as conferred with all of the attorneys that are members of the local government lawyer list serve across the state of North Carolina, and they recommended that the process that we followed would not violate SB473 and so that is the process that we went with and I also in my own personal opinion do not believe we are violating that statute.

Commissioner Kidwell said this budget gives a huge increase to elected official pay. When we talk about when the senate up in Washington, DC decides to give themselves an increase in pay everybody out here in the public are always like oh my God, I can't believe you voted yourselves a pay increase when this is going on, yet it happens locally. So those few watching at home, pay attention to your budgets locally here at the municipalities because the increase is not just this year, it will be an increase year after year, as currently written.

Commissioner Munger made a motion to adopt the FY2023 Budget Ordinance that is in the packet which reflects the updates on the slide just presented by our Town Manager.

Commissioner Partee seconded motion.

Commissioner Boone said I've been up here and gone through a few budgets and I'm going to break this up a little bit. If you recall, we had a budget workshop and the Fire Department couldn't be at that budget workshop and they gave their presentation a couple of weeks earlier. Chief Dotoli in his budget had a \$1 increase for the firefighters and that \$1 increase was generated in the original Town Manager's budget. And then we get together at a budget meeting of the commissioners and the other directors and then all of a sudden it's a money grab. We go from a 7 percent increase, now we were at as high as 11 and you look at this budget right now and there's nothing additional for the fire department, nothing, except what you requested. Every other department requested the same thing that you said, but they are getting additional dollars. It's not fair. We all talk about first responders, the people who take care of us, we are definitely not taking care of them. I'm not going to support this budget and it's the first time that I can ever remember that a town has gone over the Town Manager's suggested budget. There's a 67 percent increase in the non-profits and I am on a non-profit. I was on a non-profit before I was a commissioner. If we want to be good stewards of the money, we just can't pass this budget of over \$100 million.

Commissioner Kovacs said Commissioner Boone, you said that you can't support it because we're so far in it and because we raised salaries, but you requested a \$2.50 an hour raise which equates to almost double the maximum percent for the other employees. I'm confused about is the problem for all of it as a whole, or for the 9 percent.

Commissioner Boone said you've got to remember what a Town Manager does in his budget. He makes a suggestion and usually there's some wiggle room usually down, not that much above. When I went \$2 above what the Chief suggested, I'm saying the Chief's not even here to represent the people that work for him and all we are doing is increasing the other town employees and not the fire department. I started at \$2 and I heard that it went down to 75 cents and now it's completely out, it's completely gone. The next time you look at a firefighter in Huntersville, say I'm sorry we've got money for everybody else but not you.

Commissioner Munger said unfortunately some members of this Board failed to negotiate in good faith and by that I mean I had an agreement.....you and I, Commissioner Boone, stepped out there in the hallway when the budget workshop happened and you said \$1.50 for the fire department. I agreed to it. We had 9 percent. We agreed to it. And then three weeks ago with that agreement in place, you said I cannot support this budget. I'm not done speaking. It blows me away. At least Commissioner Kidwell I'll give you credit, you said no from the beginning. I respect that. You didn't change your opinion. You never did. You said no, we disagree respectfully. When someone says I'm going to make a deal with you and I'm going to agree to this and we are going to get a little bit on both sides.....and to be clear the \$1.50 extra is \$438,000. That was the additional \$1.50. And I was fine with that because our firefighters do deserve the respect for the job they do. What will absolutely drive me insane is when someone says I agree to it and turn around and change their mind and just stabs them in the back. That doesn't fly with me. So, to make it sound like we are blissfully unaware of how much we are spending and just throwing it around and not throwing it at the right people, you negotiate in good faith and you will get what you want. But when you negotiate in bad faith, this is what happens.

Commissioner Boone said I'm going to respond to that. I'm just going to tell you that I've done this budgeting process a lot more than you have done. And don't you sit down there and bang on this dais and try to scold me because you are sitting here and spending money that we don't have and all you are looking at is a year from now is a tax increase.

Commissioner Phillips said I'm voting for this budget. First one I've ever voted for. I'm taking ownership of the things that I have pushed for for years including splash pad, killing this David Kenney thing partially and raises for the Town Board which will make this process easier for all people to be elected. I've never voted for a budget before, but the thing is you've got to give and take, and I feel very blessed and happy that things I have asked for and cared about over the years are finally being acknowledged and I think this is going to be a good thing for our town.

Mayor Bales called for the vote.

Motion carried 4 to 2 Kidwell and Boone opposed.

Budget Ordinance attached hereto as Exhibit No. 9.

David Kenney Farm Road Traffic Calming. Stephen Trott, Director of Engineering, reviewed the request for traffic calming on David Kenney Farm Road. *Refer to PowerPoint attached hereto as Exhibit No. 10.*

Commissioner Phillips made a motion to approve five speed humps on David Kenney Farm Road because they've been a long time coming.

Commissioner Kovacs seconded motion.

Commissioner Munger said I struggled with this one simply because, to the Mayor's point, we deferred action on the David Kenney Farm Road Extension until 2025 and we don't know exactly what impact that extension will have. One could easily argue that it will exasperate the issue, it will become a cut through, it certainly has the potential for increasing speeds, and increasing traffic volume. I hear what Commissioner Phillips said. We have addressed other areas where it's been somewhat of a dead-end, it's just when it's local traffic all the people who live here should know better. I don't know if I can support this one.

Mayor Bales said I would also say that Northpoint we did not put speed humps in.

Commissioner Phillips said not yet.

Mayor Bales said they requested not to move forward, is that not right.

Mr. Trott said they requested to be removed from the process.

Commissioner Phillips said but we were still entertaining it on their behalf even though it's a dead-end road and you think of places like Cedarfield and not with some of our older communities that have speed humps and the thing is yes, people shouldn't speed. I deal with it every day, but the thing is they do and you have to take into account how delivery is part of our lives now – Uber, Amazon, all the big ones, so while the people who live there may know better, your delivery people may not and what's five speed humps if that can save somebody's life and save their kids and make them feel safer in their own community because this is an older community that everything's grown up around and I feel like this is a good first step if we ever do extend onto the David Kenney and 73, then at least we have the calming devices ahead of the chaos. I want to be preemptive instead of waiting until bad things happen.

Commissioner Munger said kind of to that end, I do understand what you are saying. My suggestion wouldn't be that we say no and we're never going to do this. It would simply be to defer action for two years which would still put it in front of the actual extension and address it.

Commissioner Kidwell said Commissioner Phillips you brought up the cost of a human life. According to FEMA, the estimated value of a statistical life in the United States is \$7.5 million. I just want to throw that number out there for you.

Commissioner Phillips said that's more expensive than putting in speed humps, so there you go.

Commissioner Kovacs said I just wanted to say obviously I'm in favor of this because I seconded this and at the last meeting I kind of pestered you about this after we had a resident speak. The speed study was done in 2018 it said. I would make a strong assumption that it has not gotten better if we had residents coming to speak to us at Town Board meetings and I don't want to hold them accountable for having to wait until we do projects or NCDOT does them, so I think it's imperative to make it safe for them and obviously I am in favor of this.

Commissioner Partee said I was on the Planning Board when this came before us and I'm surprised it has taken this long to institute these speed humps and the community was for it at the time I was sitting on the Planning Board, so I'm for this also.

Mayor Bales called for the vote.

Motion carried 5 to 1, with Commissioner Munger opposed.

Social District Ordinance. Emily Sloop, Town Attorney, reviewed Birkdale Social District Maintenance and Operations Plan and proposed Social District Ordinance.

Commissioner Phillips made a motion to adopt an ordinance to amend the Town of Huntersville Code of Ordinances by revising Sections 113.01 and 130.02 and adding Chapter 911.

Commissioner Partee seconded motion.

Mayor Bales called for the vote to adopt ordinance to amend the Code of Ordinances.

Motion carried unanimously.

Social District Ordinance and Birkdale Social District Maintenance and Operations Plan attached hereto as Exhibit No. 11.

Planning Board Appointments. Three seats filled by Jeff Sny, Greg Baber and Trina Loomis are expiring on June 30, 2022. The current members have expressed a desire to be considered for reappointment.

Commissioner Boone made a motion that we delay appointments to the Planning Board to June 21 due to the fact that we did not have all the applicants in the agenda packet and I would also like to suggest that we put the names back on the applications.

Motion died due to the lack for a second.

Commissioner Boone said I guess I will amend my own motion to take the names off the applications and we'll try to figure out who incumbents are and everything else.

Mayor Bales said the motion is to delay until June 21, 2022.

Commissioner Boone yes.

Commissioner Kovacs seconded motion.

Mayor Bales called for the vote to defer appointments to June 21, 2022.

Motion carried unanimously.

Board of Adjustment Appointments. Three seats filled by Michelle Bennett as a regular seated member, Kevin Bray and John Carbonell as alternate members, have terms expiring June 30, 2022. Michelle Bennett and John Carbonell have confirmed they would like to be considered for reappointment.

Commissioner Munger said I don't know who would be able to answer this, but is it typical if you are renominating someone for a seat that they would be renominated for the seat that they currently hold.

Emily Sloop, Town Attorney, said I would actually suggest that you do the regular seated member separately from the alternates just so it's clear that you are appointing a regular member and then appointing the two alternates. And then yes to the question as to the seat that they fill.

Mayor Bales called for nominations for Town Seat 3.

Commissioner Munger nominated Michelle Bennett.

Commissioner Partee nominated Michelle Bennett.

Commissioner Phillips nominated Michelle Bennett.

Commissioner Kidwell nominated Michelle Bennett.

Commissioner Kovacs nominated Michelle Bennett.

Commissioner Boone said I'm going to go along with everybody, but this is what I'm trying to show you, it's not fair to all concerned. The people who are up, we don't even have what their resume looks like. We have their name and their seats, but the people who are volunteering and who want to work on the Board of Adjustment, all they have is Applicant #1 and Applicant #2 and in my point of view that is not fair. I'll go with Bennett.

Commissioner Boone made a motion to appoint Michelle Bennett to Town Seat 3.

Commissioner Munger seconded motion.

Motion carried unanimously

Mayor Bales called for nominations for Alternate Member Town Seat 2.

Commissioner Munger nominated Applicant #1.

Commissioner Partee nominated Applicant #2.

Commissioner Phillips nominated Applicant #1.

Commissioner Kidwell nominated Applicant #1.

Commissioner Kovacs nominated Applicant #1.

Commissioner Boone nominated John Carbonell.

Commissioner Phillips made a motion to appoint Applicant #1 to Alternate Member Town Seat 2.

Commissioner Munger seconded motion.

Motion carried 5 to 1, with Commissioner Boone opposed.

Applicant #1 is Christopher Price.

Mayor Bales called for nominations for Alternate Member ETJ or Town.

Commissioner Munger nominated John Carbonell.

Commissioner Partee nominated John Carbonell.

Commissioner Phillips nominated John Carbonell.

Commissioner Kidwell nominated John Carbonell.
Commissioner Kovacs nominated John Carbonell.
Commissioner Boone nominated John Carbonell.

Commissioner Boone made a motion to appoint John Carbonell to Alternate Member ETJ or Town seat.

Commissioner Munger seconded motion.

Motion carried unanimously.

Downtown Plan Steering Committee Appointment. On May 11, 2022, Don Gest resigned from the Downtown Plan Steering Committee due to professional and personal obligations that hindered his attendance. Staff recommends that a replacement member be appointed to the Downtown Plan Steering Committee.

Commissioner Kovacs made a motion to move one of our ex officio members to a voting position and not replace the ex officio position due to the fact that we are so far into this process. We were recently provided the attendance record for all members that are on the board so I think that would be helpful for us to know who to appoint. I want to take a person that was ex officio and put them into a voting position based off of the attendance that we just had, so I would like to appoint.....

Mayor Bales said point of clarification, is this something we can do according to the bylaws.

Emily Sloop, Town Attorney, said the bylaws would need to be updated to reflect the increase in voting members and decrease in non-voting members.

Commissioner Munger said are we bypassing the normal process of each person giving a name and then instead trying to do a change to the bylaws and shifting it. I just wanted some clarification on that.

Ms. Sloop said my understanding is that you simply want to move a member who is currently non-voting to voting and you do not want to appoint someone to the non-voting membership, so it wouldn't be an appointment, it would just be amending those bylaws to change the voting membership and decreasing the non-voting membership.

Commissioner Munger said but that would be based on a belief that all members are in agreement with that.

Commissioner Partee said wouldn't that be an unreadiness in this particular instance because we all weren't consulted.

Ms. Sloop said that's why you can vote yes or no.

Mayor Bales said does everyone feel comfortable with this shifting of an individual from ex officio to voting.

Commissioner Partee said I just want to ask the Board why was I not consulted on this particular issue or plan to move somebody.

Mayor Bales said you are hearing it for the first time like me.

Commissioner Partee said do you have a name in mind.

Commissioner Kovacs said I just looked at the attendance, people that had perfect attendance. It's not anything that's against you, we got the attendance due to the fact that we had people that were absent frequently and so when I looked at the attendance, we saw people that had perfect attendance and I just chose the person that could actually be appointed to a board.

Commissioner Partee said I'm just asking that if you did choose somebody you should reach out and just give a name, that's all I'm requesting.

Mayor Bales said I do understand what he is saying, I think coming in with one perceived way we were going to work through this process, to change it which isn't a huge deal, just to communicated. Communication is important.

Commissioner Kidwell said if we are going to update things, who is the representative for the Huntersville Chamber of Commerce.

Commissioner Kovacs said John McClelland.

Mayor Bales called for a 2-minute recess to allow Commissioner Kovacs to draft her motion.

Upon reconvening, Commissioner Kovacs made a motion to amend the Downtown Steering Committee Bylaws, removing Barbara Gerhardt from Section 4 and adding her to Section 3. As a result, the voting members remain at 15 and non-voting members will now be 7. Also, the name Don Gest will be removed from Section 3 and then in Section 4, the name Jill Swain to represent the Huntersville Chamber of Commerce will be changed to reflect John McClelland.

Commissioner Boone seconded motion.

Commissioner Munger said I'd like to make a substitute motion to keep the bylaws as they currently are, officially designate John McClelland as the Huntersville Chamber Representative, and I nominate Lindsay Krone to replace Don Gest.

Motion died due to lack of a second.

Mayor Bales called for the vote on the original motion.

Motion carried unanimously. Commissioner Partee abstained, which was recorded as an affirmative vote.

Huntersville Ordinances Advisory Board Bylaws. Emily Sloop, Town Attorney, reviewed items in the Bylaws that staff would like clarification.

Commissioner Munger made a motion to amend Section 2-1 of the Huntersville Ordinances Advisory Board Bylaws by removing the ex officio Town Board member from the voting membership of the Huntersville Ordinances Advisory Board and adding the ex officio Town Board member to the non-voting membership of the Huntersville Ordinances Advisory Board. The number of voting and non-voting

members should be updated to reflect a total of nine voting members, eight of which are at-large members and four non-voting members.

Commissioner Partee seconded motion.

Mayor Bales called for the vote.

Motion carried unanimously.

Amended Bylaws attached hereto as Exhibit No. 12.

MAYOR AND COMMISSIONER REPORTS/CLOSING COMMENTS

Mayor Bales

- Chris McGill, Plant Manager at Southwire, recently passed away.
- On June 14, some Board members will go to Raleigh to speak with legislators to advocate for the Town's legislative agenda.

Commissioner Munger

- Next Municipal Education Advisory Committee (MEAC) meeting is tomorrow.
- Next meeting of the Public Arts Commission is June 8.
- Consider supporting local non-profits.

Commissioner Partee

- Announced Juneteenth month celebrations.
- Urged North Carolina House of Representatives, senators and elected officials to pass gun safety laws.
- Huntersville Police Department has free gun safety locks.
- Bring awareness to Cool Kids Clubhouse.

Commissioner Phillips

- Charlotte-Mecklenburg Animal Care and Control is getting close to being at capacity. Consider fostering, providing staycations or daycations.

Commissioner Kidwell

- Provided update on Charlotte Regional Transportation Planning Organization meeting.

Commissioner Kovacs

- Provided update from the Huntersville Chamber of Commerce.
- Provided update from the Lake Norman Chamber of Commerce.

Commissioner Kidwell announced that Parks & Recreation will be hosting LalaCaboosa.

Mayor Bales announced a groundbreaking ceremony for the Aspire Trade High School will be held on Thursday.

Commissioner Munger said on May 14 an 18-year-old gunman opened fire in a grocery store in Buffalo, NY targeting members of the African American Community. He killed 10 and injured 3 others. On May 24, an 18-year-old gunman opened fire in an elementary school in Uvalde Texas. He killed 19 children

between the ages of 9 and 11. He also killed two teachers. Additionally, he injured 18 other people. In the last 30 days there have been 69 mass shootings – 94 people have been killed, 332 have been injured. I ask our legislators, when are you actually going to do something. By something, I mean raise the age limit to buy a gun to 21 years of age. Allow the creation of red flag laws. Require universal background checks prior to purchasing a firearm. Ban bump stocks. Reinstate the assault weapons ban. Do something because your thoughts and prayers have done nothing for us.

Commissioner Boone requested Major Graham email the Board the number of school resource officers that are in area elementary schools.

Mayor Bales reminded everyone of the Farmer's Market on Saturday.

There being no further business, the meeting was adjourned.

Approved this the ____ day of _____, 2022.

DRAFT

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Bobby Williams, Assistant Town Manager

Date: August 15, 2022

Subject: Mecklenburg Multi-Jurisdictional Hazard Mitigation Plan Progress Report

EXPLAIN REQUEST:

Request shares update for informational purposes on 2022 mitigation actions by the Town for its part of the Mecklenburg County Multi-Jurisdictional Hazard Mitigation Plan. The progress report is also available online and a hard copy is available at the offices of the Planning Department.

ACTION RECOMMENDED:

Receive report as information.

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. HMP_ProgressReport_Huntersville_2022-TOH FINAL



2022 Progress Report Implementation of the Mecklenburg County Multi-Jurisdictional Hazard Mitigation Plan – Town of Huntersville

1 Introduction

To maintain the Community Rating System (CRS) status within the National Flood Insurance Program, the **Town of Huntersville** is required to provide an annual progress report on the implementation of each of the mitigation actions the town proposed in the Mecklenburg County Multi-Jurisdictional Hazard Mitigation Plan (HMP). The objective of this evaluation is to ensure that there is a continual and responsive planning process that will keep the HMP plan dynamic and responsive to the needs and capabilities of all the jurisdictions.

The HMP was developed in response to requirements of the Disaster Mitigation Act of 2000. The initial version was completed in 2005 and since then, there have been updates every five years. The current version of plan was adopted by the Town Council on October 19, 2020 and approved by FEMA as of January 4, 2021. The current HMP is available from the Charlotte-Mecklenburg Emergency Management website at: <https://charlottenc.gov/EmergencyManagement/Plans/Pages/default.aspx>.

2 Implementation

The hazard mitigation planning process involves the setting of goals and objectives, the review of community vulnerabilities and capabilities and the development of a series of mitigation actions that when implemented will make the **Town of Huntersville** more resilient during natural hazards. The goals and objectives of the 2020 plan includes:

- Identify and implement hazard mitigation projects designed to reduce the impact of future hazard events on existing critical facilities and infrastructure as well as public and private property.
- Conduct education and outreach activities intended to better inform people about hazards and encourage personal responsibility for preparedness and mitigation
- Improve emergency preparedness and response capabilities
- Enact planning and policy measures to reduce the impacts of identified hazards and make future development more resilient to hazards

The implementation status of individual mitigation actions outlined in chapter seven (7) of the plan is summarized in a tabular format in Section 5 (Review of Mitigation Actions) of this report.

3 Recommendations

Implementation and maintenance of the plan is critical to the overall success of hazard mitigation planning. It is recommended that the CRS Coordinator work closely with Charlotte-Mecklenburg Emergency Management (CMEMO) Planner and the members of the Town of Huntersville's HMPC in all plan monitoring and update procedures to meet CRS requirements:

4 Dissemination

This Progress Report was submitted to the Huntersville Board of Commissioners for informational purposes at the August 15, 2022 Town Board Meeting. The report has been made available to the public via the town's website at: www.huntersville.org. Additionally, copies are available at the Huntersville Planning Department located at 105 Gilead Road, 3rd Floor, Huntersville, NC 28078. For more information, please call (704) 875-7000.

5 Review of Mitigation Actions

Action#	Mitigation Action	2022 Implementation Status Update
Huntersville- 1	Seek grant funding to retrofit critical facilities and Town- owned facilities for improved resilience to all hazards with the use of the latest building materials and technology. This could include, but is not limited to: wind retrofits, low water consumption fixtures, leak detectors, backup generators, ignition-resistant materials, 320 or 361 compliant safe rooms, lightning protection, hail resistant roofing, and anchoring fixed building equipment.	The Town sought grant funding through the Building Resilience in Communities (BRIC) program but was unsuccessful in being included in the final state application to FEMA. The Town will continue to seek funding to equip new and/or existing Town- owned facilities with materials and technology that will improve resilience to hazards.
Huntersville- 2	Implement storm water mitigation projects, including the grading of ditches and replacing failing/potentially failing storm water structures	The Town of Huntersville processes property owner concerns. The Town evaluates, ranks, and mitigates all qualifying stormwater matters within Town of Huntersville corporate limits. In summer of 2022, the Town plans to put out an RFQ for a stormwater management plan for older sections of Town that will identify areas of need and potential mitigation projects Additionally, the Town and/or NC DOT are constructing a variety of transportation projects throughout town, which will improve connectivity (beneficial if there are significant events) and each have substantial storm water components in their design, which assist with mitigation of flooding concerns.
Huntersville 3	Conduct an annual tabletop exercise addressing potential hazards faced by Town. This exercise would bring together representatives from all Town departments that would work together creating and implementing a plan to effectively deal with the hazard.	COVID-19 and staffing change have delayed this action. Discussions are ongoing with a goal of completing by the end of Calendar Year 2022.
Huntersville 4	Coordinate with Char-Meck EM to relay critical information on the Towns Social Media Sites regarding potential hazards, localized emergencies, preparedness, and property protection options.	Town regularly shares information from Char-Meck Stormwater, CMEMO and other emergency partners, utilities, etc. as needs arise during potential and real hazards. CMEMO is our EOC and have extended invitation to activate any time needed by the Town.
Huntersville 5	Provide and maintain NIMS training for town employees and government officials likely to be involved with hazard mitigation or emergency response.	COVID-19 and staffing changes have delayed this action. Discussions have begun about getting them scheduled for FY22.

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Pattie McGinnis, Finance Director

Date: August 15, 2022

Subject: Tax Collector's Settlement for Fiscal Year 2022

EXPLAIN REQUEST:

Approve Tax Collector's Settlement for Fiscal Year 2022 (Tax Year 2021) and adopt Order of Collection for Fiscal Year 2023 (Tax Year 2022).

ACTION RECOMMENDED:

Approve Settlement and adopt Order of Collection.

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Mecklenburg County Tax Collectors Settlement for Fiscal Year 2022



MECKLENBURG COUNTY

Office of the Tax Collector

July 14, 2022

Anthony Roberts, Huntersville Town Manager
PO Box 664
Huntersville, NC 28070

Re: Tax Collector's Settlement for Fiscal Year 2022 (Tax Year 2021)
Order of Collection for Tax Year 2022

Dear Mr. Roberts:

Please find the enclosed FY 2022 Tax Collector's Settlement. We will work diligently to collect unpaid FY 2022 and other prior year taxes as we move forward with the FY 2023 billing cycle (Tax Year 2022).

According to NCGS 105-373(3), the Tax Collector's Settlement must be entered into the official record of the governing board. Please have this document entered into the record to comply with statute.

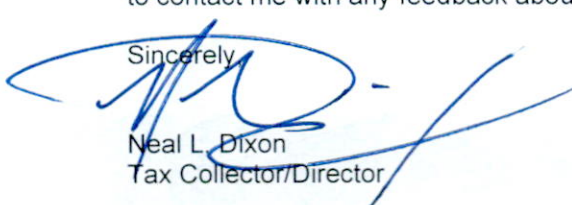
I have also included the Order of Collection for Tax Year 2022 (FY 2023). The order must also be approved by your board after the settlement is received into the record. Please return the signed copy of the Order of Collection to me once executed. A scanned copy can be sent to shalon.page@mecklenburgcountync.gov. A hard copy can be mailed to the following address:

Mecklenburg County Office of the Tax Collector
Attn.: Shalon Page
P.O. Box 31457
Charlotte NC 28231-1457

Your attention to both documents is greatly appreciated.

It was my pleasure to serve you, your board, and your residents again this year. Please do not hesitate to contact me with any feedback about our service during this past year.

Sincerely,


Neal L. Dixon
Tax Collector/Director

Enclosures

CC: Pattie McGinnis, Town of Huntersville Finance Director
Shalon Page, Executive Assistant



MECKLENBURG COUNTY

Office of the Tax Collector

To: Anthony Roberts, Huntersville Town Manager
From: Neal L. Dixon, Director/Tax Collector
Date: July 13, 2022
Subject: Tax Collector's Settlement for Fiscal Year 2022

Pursuant to the provisions of N.C.G.S. 105-373, this memorandum is the Tax Collector's report of settlement to the Huntersville Town Commission for Fiscal Year 2022 (tax year 2021).

The total FY 2022 Real Estate, Personal Property, and Registered Motor Vehicle Tax charged to the Tax Collector for collection was \$25,241,948.58.

<u>Net Levy</u>	<u>Collected</u>	<u>Uncollected</u>	<u>Pct. Collected</u>
\$25,241,948.58	\$25,171,720.22	\$97,364.84	99.72%

At the end of FY 2022 there were zero tax bills under formal appeal with the Board of Equalization and Review or the Property Tax Commission. The Tax Collector was barred by the U.S. Bankruptcy Court from collecting 9 real estate, personal property, and registered motor vehicle tax bills totaling \$3,609.55. When this total is removed from the net levy calculation, the collection percentage increases to 99.74%.

Reference is hereby made to reports in the Office of the Tax Collector that list the persons owning real property and personal property whose taxes for the preceding fiscal year remain unpaid and the principal amount owed by each person. These reports are available for inspection and review upon request. The Tax Collector has made diligent efforts to collect the taxes due from the persons listed by utilizing the remedies available to him for collection.

PEOPLE • PRIDE • PROGRESS • PARTNERSHIPS

3205 Freedom Drive, Suite 3000 (28208) • P.O. Box 31457 • Charlotte, North Carolina 28231 • 980-314-4488

Tax Collector's Settlement for Fiscal Year 2022

Page 2

Prior Year Collections

During FY 2022, the Tax Collector pursued collection of delinquent prior year taxes.

Real Estate and Personal Property Tax:

<u>Tax Year</u>	<u>Net Levy</u>	<u>Collected in FY 2022</u>	<u>Uncollected</u>	<u>Pct. Collected</u>
2011	\$16,027,712.50	\$1,194.49	\$10,184.69	99.94%
2012	\$16,343,051.69	\$1,076.08	\$11,515.23	99.93%
2013	\$16,512,062.48	\$3,481.03	\$15,612.50	99.91%
2014	\$18,739,486.65	\$3,338.88	\$12,737.90	99.93%
2015	\$19,368,277.38	\$4,162.26	\$14,271.61	99.93%
2016	\$19,886,767.41	\$5,904.26	\$16,009.72	99.92%
2017	\$20,473,675.07	\$6,461.62	\$27,922.98	99.86%
2018	\$21,390,961.47	\$6,095.67	\$21,130.24	99.90%
2019	\$22,977,306.72	\$33,754.13	\$32,938.66	99.86%
2020	\$23,789,408.82	\$96,734.86	\$49,913.19	99.79%

Registered Motor Vehicle Tax:

<u>Tax Year</u>	<u>Net Levy</u>	<u>Collected in FY 2022</u>	<u>Uncollected</u>	<u>Pct. Collected</u>
2018	\$0.00	\$0.00	\$0.00	0.00%
2019	\$0.00	\$0.00	\$0.00	0.00%
2020	\$0.00	\$0.00	\$0.00	0.00%

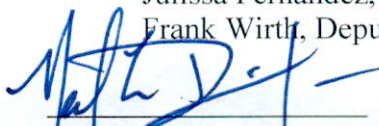
Please contact me at Neal.Dixon@MecklenburgCountyNC.gov or 980-314-4488 if you have any questions or comments regarding this settlement report.

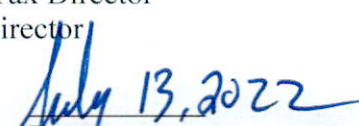
North Carolina General Statute 105-373(3) requires that this settlement be submitted to the governing board. The settlement shall be entered into the minutes of the governing body. Please ensure that this settlement is entered into the minutes of the governing body as required by statute.

cc: Jackie Huffman, Huntersville Deputy Town Manager

Julissa Fernández, Deputy Tax Director

Frank Wirth, Deputy Tax Director


Tax Collector


Date

Sworn to and subscribed before me this 13th day of July, 2022


Notary Public



My commission expires: June 4, 2023
Date

ORDER OF COLLECTION

STATE OF NORTH CAROLINA

TOWN OF HUNTERSVILLE

TO THE TAX COLLECTOR OF THE COUNTY OF MECKLENBURG COUNTY

GENERAL STATUTE 105-321(b)

You are hereby authorized, empowered, and commanded to collect the taxes set forth in the tax records, filed in the Office of the Tax Assessor and in the tax receipts herewith delivered to you, in the amounts and from the taxpayers likewise therein set forth. Such taxes are hereby declared to be a first lien upon all real property of the respective taxpayers in the Town of Huntersville, and this order shall be a full and sufficient authority to direct, require and enable you to levy on and sell any real or personal property of such taxpayers, for and on account thereof, in accordance with law.

Witness my hand and official seal, this ____ day of _____, 2022.

Mayor, Town of Huntersville (SEAL)

Attest:

Clerk to the Board

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Emily Sloop, Town Attorney

Date: August 15, 2022

Subject: Amend the Town's Social District Ordinance

EXPLAIN REQUEST:

HB 211 amended the statutory references and implementation requirements for social districts. The ordinance amendments are required to align with the legislative changes.

ACTION RECOMMENDED:

Approval to align with state statute.

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Social District Ordinance redline 7-7-22
2. Birkdale Social District Maintenance and Operations Plan 7-7-22
3. Social District Ordinance update 8-2-22

CHAPTER 911.- SOCIAL DISTRICTS

Sec. 911.01 - Purpose and Intent

- (a) Pursuant to the provisions of Sections 160A-205.4 and 18B-~~300.1904.1~~ of the North Carolina General Statutes, one or more social districts may be designated within the Town.
- (b) The physical boundaries of each social district shall be clearly defined with dual-sided signs posted in conspicuous locations along the perimeter of the social district ("Boundary Signs") indicating:
 - (1) which area is included in the social district;
 - (2) the days and hours during which alcoholic beverages may be consumed in the social district (the "hours of operation");
 - (3) the telephone number for the ALE Division and the local law enforcement agency with jurisdiction over the area comprising the social district; and
 - (4) that an alcoholic beverage purchased for consumption in a social district shall:
 - (i) only be consumed in the social district; and
 - (ii) be disposed of before the person in possession of the alcoholic beverage exits the social district unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

The number and location of Boundary Signs required to be posted pursuant to this subsection shall be determined by the Town, in its sole discretion, for each designated social district. The Town reserves the right to approve the format and design of the Boundary Signs to be posted in designated social districts. The Town, in its sole discretion, shall also designate the hours of operation for each social district in accordance with N.C.G.S. § 18B-1004.

- (c) Before designating any social district, the Town shall establish a management and maintenance plan for the social district (the "Plan"). The operation of the Social District must be in compliance with the terms and conditions of the Plan at all times. The Plan, including a detailed map of the designated social district's boundaries (the "Social District Map"), shall be posted on the Town's website. The social district shall be maintained in a manner that protects the health and safety of the general public. The Town may establish guidelines in the Plan to allow for suspension of regular days and hours of alcohol consumption in all or part of a social district during events requiring other permits for special events.
- (d) The Town must submit the Social District Map and hours of operation of each designated social district to the North Carolina Alcoholic Beverage Control ("ABC") Commission before consumption of alcoholic beverages is allowed in the designated social district. If the Town amends the geographic footprint of a social district, then the

Ordinance No. _____

Town shall submit a revised map to the ABC Commission.

- (e) The Town hereby creates and designates the Birkdale Village Social District as shown on the Birkdale Village Social District Map. The signage required by Subsection B of this section shall be posted along the perimeter of the designated social district clearly delineating the boundaries of the social district prior to commencing operation of the social district. The Birkdale Village Social District shall begin operation within 30 days of the Town submitting the Social District Map to the ABC Commission as required by Subsection D of this Section. The Social District Map and Plan for the Birkdale Village Social District are available in the Office of the Town Clerk and posted on the Town's website. The Birkdale Village Social District shall be created, designated, and managed in accordance with the requirements of Section 160A-205.4 and Chapter 18B of the North Carolina General Statutes.

Sec. 911.02 – Definitions

- (a) "Customer" means a person who purchases an alcoholic beverage from an ABC Permittee in the designated social district.
- ~~(a)~~(b) "Social district" means and refers to a defined outdoor area in which a customer may consume alcoholic beverages sold by a permittee. This term does not include the permittee's licensed premises, or an extended area allowed under N.C.G.S. § 18B-904(h).
- ~~(b)~~(c) "ABC Permittee" means and refers to a person holding any of the following ABC permits issued by the North Carolina Alcoholic Beverage Control Commission established under N.C.G.S. § 18B-200:
- (1) An on-premises malt beverage permit issued pursuant to N.C.G.S. § 18B-1001(1).
 - (2) An on-premises unfortified wine permit issued pursuant to N.C.G.S. § 18B-1001(3).
 - (3) An on-premises fortified wine permit issued pursuant to N.C.G.S. § 18B-1001(5).
 - (4) A mixed beverages permit issued pursuant to N.C.G.S. § 18B-1001(10).
 - ~~(5)~~ A distillery permit issued pursuant to N.C.G.S. § 18B-1100(5).
 - ~~(5)~~(6) A wine shop permit issued pursuant to N.C.G.S. 18B-1001(16).
- ~~(c)~~ "Person" means and refers to an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.
- (d) "Premises" means and refers to a fixed permanent establishment, including all areas inside or outside the permitted establishment, where the permittee has control through a lease, deed, or other legal process.

Sec. 911.03 – Hours of Operation of Social Districts

Ordinance No. _____

- (a) The hours and operation of each social district shall be between the hours of 11:00 AM and 10:00 PM, Monday through Sunday, unless specifically stated otherwise in the social district's Plan. At all other times outside of the designated hours of operation for the social district, the provisions and terms contained in this Chapter are not in effect and all provisions of State and local laws concerning the possession and consumption of alcohol shall be in full force and effect.

Sec. 911.04 - Requirements for Sale of Alcoholic Beverages in Social Districts

An ABC Permittee located in or contiguous to the designated social district may sell alcoholic beverages for consumption within the designated social district it is located in or contiguous to in accordance with the following requirements:

- (a) The ABC Permittee shall only sell and serve alcoholic beverages on its licensed premises.
- (b) The ABC Permittee shall only sell open containers of alcoholic beverages for consumption in the designated social district and off the premises of the ABC Permittee in a container that meets all of the following requirements:
 - (1) The container clearly identifies the permittee from which the alcoholic beverage was purchased.
 - (2) The container clearly displays a logo or some other mark that is unique to the designated social district.
 - (3) The container is composed of a recyclable material that is not glass.
 - (4) The container displays, in no less than 12-point font, the statement, "Drink Responsibly - Be 21."
 - (5) The container shall not hold more than 16 fluid ounces.

~~(c) Participating ABC Permittees shall not allow a person to enter or reenter its licensed premises with an alcoholic beverage not sold by the permittee.~~

Sec. 911.05 - Requirements for Possession and Consumption of Alcoholic Beverages in Social Districts

The possession and consumption of an alcoholic beverage in the designated social district is subject to all of the following requirements:

- (a) Only alcoholic beverages purchased from a permittee located in or contiguous to the designated social district may be possessed and consumed.

Ordinance No. _____

- (b) Alcoholic beverages shall only be in containers meeting the requirements set forth in Section 911.04.
- (c) Alcoholic beverages shall only be possessed and consumed inside the social district boundaries and during the social district's hours of operation.
- (d) Nothing in this ordinance shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S § 18B-1010.

(e) A person shall dispose of any alcoholic beverage in the person's possession prior to exiting the designated Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

(f) A customer shall not possess at one time open containers of alcoholic beverages in the social district in excess of the number of alcoholic beverages that may be sold and delivered by a retail permittee as set forth in N.C.G.S. 18B-1010.

Commented [JG1]: (f)(4)

(g) An ABC Permittee may, but is not required to, allow customers to possess and consume on the business's premises alcoholic beverages purchased from another ABC permittee in the social district.

Commented [JG2]: (f)(6)

(h) A person, including a customer who is in possession of an open container of an alcoholic beverage authorized under this section, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law.

Commented [JG3]: 18B-300.1(g)

Sec. 911.06 - Interaction between contiguous social districts and common area entertainment permittees

If the boundary of a social district directly borders a designated consumption area established by the owner or property owners' association of a multi-tenant establishment that holds a common area entertainment permit, the owner or property owners' association of the multi-tenant establishment and the Town may enter into a memorandum of understanding signed by both parties that allows open containers approved for possession and consumption in the designated consumption area subject to the common area entertainment permit to be possessed and consumed in the social district, and open containers approved for possession and consumption in the social district to be possessed and consumed in the designated consumption area during days and hours when both the social district and the designated consumption area are active.

All requirements of N.C.G.S. 18B-300.1 and N.C.G.S. 18B-1001.5 shall apply when a

Ordinance No. _____

customer takes an alcoholic beverage from a social district to a designated consumption area subject to a common area entertainment permit that is contiguous to or within the social district or from a designated consumption area to a social district that is contiguous to or overlapping with the designated consumption area. A customer may not take a container comprised of glass from a designated consumption area subject to a common area entertainment permit to a contiguous social district or the area of an overlapping social district that is outside the designated consumption area. The holder of the common area entertainment permit shall submit to the Commission a copy of the memorandum of understanding signed by both parties. Either party may terminate a memorandum of understanding by notifying the other party and the Commission in writing of the termination.

Commented [JG4]: 18B-300.2

Ordinance No. _____

**BIRKDALE VILLAGE SOCIAL DISTRICT
MAINTENANCE AND OPERATIONS PLAN**

MAINTENANCE AND OPERATIONS PLAN

I. Introduction

Pursuant to the provisions of Sections 160A-205.4 and 18B-~~300904~~.1 of the North Carolina General Statutes, local governments may establish “social districts” within their jurisdictions. Social districts are defined outdoor, common areas in which a person may consume alcoholic beverages sold by permitted establishments (e.g., bars, breweries, restaurants) in designated containers.

DDRTC Birkdale Village, LLC (the “Owner”) requested that the Town of Huntersville (the “Town”) establish a social district encompassing the Birkdale Village shopping center. The Town passed an ordinance on [REDACTED] establishing the social district, designated as the “Birkdale Village Social District” (the “Social District”).

In this maintenance and operations plan (the “Plan”), the management and maintenance of the designated Social District is outlined. The Social District shall be maintained in a manner that protects the health and safety of the general public.

The Plan, along with a detailed rendering of the boundaries of the Social District (the “Social District Map”) as approved by the Town, will be posted on the Town’s website. The Town shall submit the Social District Map to the North Carolina Alcoholic Beverage Control (“ABC”) Commission prior to consumption of alcoholic beverages in the Social District.

II. Definitions

- (a) “ABC Permittee” means and refers to a person holding any of the following permits issued by the North Carolina ABC Commission established under N.C.G.S. § 18B-200:
 - (1) An on-premises malt beverage permit issued pursuant to N.C.G.S. 18B- 1001(1).
 - (2) An on-premises unfortified wine permit issued pursuant to N.C.G.S. 18B- 1001(3).
 - (3) An on-premises fortified wine permit issued pursuant to N.C.G.S. 18B- 1001(5).
 - (4) A mixed beverages permit issued pursuant to N.C.G.S. 18B-1001(10).
 - (5) A distillery permit issued pursuant to N.C.G.S. 18B-1100(5).
- (b) “Customer” means a person who purchases an alcoholic beverage from an ABC Permittee in the designated social district. ~~Person” means and refers to an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.~~
- ~~(e)~~ — “Premises” means and refers to a fixed permanent establishment, including all areas inside or outside the permitted establishment, where the permittee has control through a lease, deed, or other legal process.
- ~~(d)~~ —

~~(e)(c)~~ —

III. Participation

A. Participation Agreements

ABC Permittees wishing to participate in the Social District shall be required to execute an annual participation agreement with the Owner and the Town agreeing to abide by the rules, regulations, and requirements promulgated by this Plan, the ABC Commission, and all applicable federal, state, and local laws (“Participation Agreement”). It shall be the responsibility of the Owner to coordinate the ABC Permittee’s signature for the Participation Agreement. Once the ABC Permittee and Owner have signed the Participation Agreement, the Owner will forward the Participation Agreement to the Town for the Town’s execution. The Participation Agreement, as drafted by and as may be amended from time to time by the Town, is attached hereto and incorporated herein as “Exhibit A.”

Prior to the execution of any Participation Agreement, the Owner shall verify that the requesting participant has a valid ABC permit. Only lawfully permitted ABC Permittees may participate in the Social District. It shall be the duty of all participating ABC Permittees to inform the Owner of any changes in the status of their ABC Permit within three (3) business days of the change. Participating ABC Permittees shall also be required to post a notice as provided by the Owner, and approved by the Town, at the entrance of their Premises indicating that the ABC Permittee is participating in the Social District.

The Owner shall maintain copies of all executed Participation Agreements for a period of no less than two (2) years from the execution date, or as otherwise required by law. The Town Clerk shall retain the original copies of all executed Participation Agreements in accordance with the Town’s retention schedule. Permittees are prohibited from participating in the Social District until such time as their Participation Agreement has been fully executed. A Permittee’s violation of the terms and conditions of the Participation Agreement may result in termination of the Permittee’s participation in the Social District by the Town or Owner.

B. Waiver of Participation

Businesses located within the boundaries of the Social District who do not wish to participate in the Social District, or who are otherwise not lawfully permitted to participate in the Social District, shall sign a waiver of participation (“Waiver”). It shall be the responsibility of the Owner to coordinate the waiving business’s signature for the Waiver. Once the waiving business and Owner have signed the Waiver, the Owner will forward the Waiver to the Town for the Town’s execution. The Waiver, as drafted by and as may be amended by the Town from time to time, is attached hereto and incorporated herein as “Exhibit B.” The execution of such Waivers shall not affect the boundaries of the Social District. Unless otherwise required by law, the Owner shall maintain copies of all executed Waivers through the duration of the Social District’s operation or two years from the date that such Waivers may be replaced by a Participation Agreement. The Town Clerk shall retain the original copies of all executed Waivers in accordance with the Town’s retention schedule. A business’s unlawful participation in the Social District may subject the business to criminal penalties.

IV. District Boundaries

The Social District Map is attached hereto as “Exhibit C.” The boundaries of the Social District shall be clearly defined with dual-sided signs posted in conspicuous locations along the perimeter of the social district (“Boundary Signs”) indicating:

- (a) areas included in the Social District;
- (b) the days and hours during which alcoholic beverages may be consumed in the Social District (the “hours of operation”);
- (c) the telephone number for the ALE Division and the local law enforcement agency with jurisdiction over the area comprising the Social District; and
- (d) that an alcoholic beverage purchased for consumption in a Social District shall:
 - (1) only be consumed in the Social District; and
 - (2) be disposed of before the person in possession of the alcoholic beverage exits the Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

The Town has determined the number and location of Boundary Signs required to be posted along the perimeter of the Social District as depicted on Exhibit C. The Owner, at its sole expense, shall be responsible for designing, producing, installing, and maintaining the required number of Boundary Signs in the designated locations.

The design of the Boundary Signs must be pre-approved by the Town and the Town reserves the right to reject the design at its sole discretion. The Owner shall ensure that the Boundary Signs are maintained in good condition and repair at all times. All signs and notices shall comply with the requirements of the Town’s Zoning Ordinance.

To the greatest extent possible, and as further described in Section VIII. below, the Owner shall prevent persons with alcoholic beverages from entering parking areas or areas outside of the Social District boundaries depicted on Exhibit C.

V. Hours of Operations

The Social District will operate Monday through Sunday between the hours of 11:00 a.m. to 10:00 p.m. (the “hours of operation”). Outside of the defined hours of operation, participating ABC Permittees are prohibited from selling alcoholic beverages to be consumed in the defined outdoor, common areas of the Social District. Notwithstanding the foregoing, ABC Permittees may sell and allow the consumption of alcoholic beverages outside of the defined hours of operation pursuant to the specific terms and conditions of their ABC permit and applicable federal, state, and local laws.

VI. Beverage Containers and Rules of Use

During the Social District’s hours of operation, a participating ABC Permittee may sell alcoholic beverages for consumption within the designated Social District boundaries in accordance with the

following requirements:

- (a) The ABC Permittee shall only sell and serve alcoholic beverages on its licensed premises.
- (b) The ABC Permittee shall only sell open containers of alcoholic beverages for consumption in the Social District and off the premises of the ABC Permittee in a container, as designed and provided by the Owner, that meets all of the following requirements:
 - (1) The container clearly identifies the ABC Permittee from which the alcoholic beverage was purchased.
 - (2) The container clearly displays a logo or some other mark that is unique to the Social District.
 - (3) The container shall be comprised of recyclable material other than glass.
 - (4) The container displays, in no less than 12-point font, the statement, "Drink Responsibly - Be 21."
 - (5) The container shall not hold more than 16 fluid ounces.
- ~~(c) The ABC Permittee shall not allow a person to enter or reenter its licensed premises with an alcoholic beverage not sold by the ABC Permittee.~~

VII. Requirements for Possession and Consumption

The possession and consumption of an alcoholic beverage in the Social District is subject to all of the following requirements:

- (a) Only alcoholic beverages purchased from a permittee located in or contiguous to the Social District may be possessed and consumed in the Social District.
- (b) Alcoholic beverages shall only be in containers meeting the requirements set forth in Section VI. above.
- (c) Alcoholic beverages shall only be possessed and consumed during the Social District's hours of operation.
- (d) Nothing in this Plan shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S § 18B-1010.
- ~~(e) A person shall dispose of any alcoholic beverage in the person's possession prior to exiting the Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.~~
- ~~(f) A customer shall not possess at one time open containers of alcoholic beverages in the social district in excess of the number of alcoholic beverages that may be sold and~~

delivered by a retail permittee as set forth in N.C.G.S. 18B-1010.

(g) An ABC Permittee may, but is not required to, allow customers to possess and consume on the business's premises alcoholic beverages purchased from another ABC permittee in the social district.

(h) A person, including a customer who is in possession of an open container of an alcoholic beverage authorized under this section, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law.

VIII. Security and Enforcement

To the greatest extent possible, the Owner shall ensure compliance with the requirements of this Plan, including, but not limited to:

- (a) ensuring compliance with the terms of this Plan and executed Participation Agreements by participating ABC Permittees;
- (b) ensuring patron compliance and safety; and
- (c) reporting any violations of this Plan to the proper agency.

The Owner shall hire and provide a minimum of two (2) private security guards¹ for patrol, protection, and enforcement of this Plan during the Social District's hours of operation. The Huntersville Police Department shall also respond to calls for assistance as part of its general policing duties.

The Owner shall have access to all footage from any security cameras in the Social District and shall provide camera footage to law enforcement agencies upon request, unless otherwise prohibited by law.

Should an ABC Permittee's participation in the Social District be terminated by the Town or the Owner pursuant to Section III. of this Plan, the Owner shall be responsible for ensuring that the ABC Permittee no longer participates in the Social District as of the effective date of the termination.

IX. Sanitation

Owner shall provide trash and recycling receptacles throughout the Social District to encourage patrons to properly dispose of their used containers and unconsumed alcohol.

X. Special Events

If an event is hosted in the Social District that allows the sale of alcoholic beverages, the rules and requirements of this Plan, including the Social District boundaries as depicted on Exhibit C, shall apply unless otherwise agreed upon in writing by the Town. ABC Permittees will be required to

¹ Private security guards shall not be construed to mean off-duty law enforcement officers. The Town reserves the right to adjust the number of required private security guards at any time.

serve in the designated containers for the Social District as required in Section VI. above. Patrons can move about the Social District with alcohol purchased at the event, but will not be allowed to consume or possess alcohol not purchased at the event. All other necessary permits as required by law must be obtained.

XI. Insurance

The Owner shall obtain the following insurance for its management and operation of the Social District:

Bodily Injury:	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Professional Liability:	\$1,000,000 per occurrence/ \$2,000,000 aggregate
Property Damage:	\$1,000,000 per occurrence/ \$2,000,000 aggregate

Or,

Bodily Injury and Property Damage, combined single limit (CSL): \$1,000,000 per occurrence / \$2,000,000 aggregate.

XII. Financing, Marketing, and Promotion

All costs of establishing and managing the Social District will be funded by the Owner at its sole expense including the design, installation, and maintenance of required signage and notices and the design and production of containers to be used in the Social District. The containers shall satisfy all requirements of N.C.G.S. § 18B-904.1(d). Marketing and promotion of the Social District will also be provided at the sole cost of the Owner.

XIII. Indemnification

To the greatest extent allowed by North Carolina law, the Owner and participating ABC Permittees shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims") resulting from the operation of the Social District, unless the Claim is a result of the negligence of the Town, or the Town's officers, employees, or agents. In the event that performance of the Owner or participating ABC Permittees under the Plan shall be defective in any respect whatsoever, the Owner shall indemnify and save harmless the Town, its officers, employees, agents, and assigns from all Claims, but only to the extent allowed by law.

Nothing contained in this Plan shall waive the constitutional limitation on the Town indemnifying obligations of other parties.

XIV. Governmental Immunity

Nothing contained in this Plan shall constitute a waiver of the Town's governmental immunity or of the Town's limitation on liability or damages created by law.

XV. Applicable Laws and Courts

This Plan shall be governed in all respects by the laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of the Plan, shall be governed in all respects by the laws of the State of North Carolina and venue shall be proper only in a court of competent jurisdiction located in Mecklenburg County, North Carolina. The Owner represents and warrants that it shall comply with all other applicable federal, state, and local laws, regulations, and orders.

XVI. Breach

The Social District shall at all times be operated in compliance with this Plan and all applicable federal, state, and local laws, rules, and regulations. If a participating ABC Permittee is found to have violated any section of this Plan, the Owner shall notify the Town and the appropriate enforcing agency. Violations may subject the Owner and/or permittee(s) to civil penalties, injunctions, and/or criminal charges.

XVII. Amendment

This Plan may only be amended by the Town. The Town reserves the right to amend the terms of this Plan at any time in its sole discretion.

XVIII. Assignment

Owner may not assign, pledge, or in any manner encumber Owner's rights under this Plan or delegate the performance of any of its obligations hereunder, without Town's prior, express written consent.

XIX. Relationship of the Parties

Owner is not an employee of the Town. This Plan shall not be construed as establishing a joint venture, partnership, or any principal-agent relationship for any purpose between the Owner and the Town. Employees of the Owner shall remain subject to the exclusive control and supervision of the Owner, which is solely responsible for their compensation.

XX. Strict Compliance

The Town may at any time insist upon strict compliance with these terms and conditions of this Plan notwithstanding any previous course of dealing or course of performance between the Town and the Owner to the contrary.

XXI. Termination of Social District

The Town may, by ordinance, terminate, amend, or restrict the Social District at any time.

[Signature Page Follows]

In witness thereof, the parties, by their authorized agents, affix their signatures and seals at Huntersville, North Carolina, this _____ day of _____, 2022.

Owner

Town of Huntersville

Name:

Name of Owner (type or print)

Town Manager

By:

(Signature)

Attest: _____
Town Clerk

Title:

Attest:

(Secretary, if a corporation)

AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE
CODE OF ORDINANCES

Section 1. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 911.01 of the Town of Huntersville Code of Ordinances, Purpose, and Intent, is hereby amended as follows:

Sec. 911.01 - Purpose and Intent

- (a) Pursuant to the provisions of Sections 160A-205.4 and ~~18B-904.1~~ 18B-300.1 of the North Carolina General Statutes, one or more social districts may be designated within the Town.
- (b) The physical boundaries of each social district shall be clearly defined with signs posted in conspicuous locations along the perimeter of the social district ("Boundary Signs") indicating:
 - (1) which area is included in the social district;
 - (2) the days and hours during which alcoholic beverages may be consumed in the social district (the "hours of operation");
 - (3) the telephone number for the ALE Division and the local law enforcement agency with jurisdiction over the area comprising the social district; and
 - (4) that an alcoholic beverage purchased for consumption in a social district shall:
 - (i) only be consumed in the social district; and
 - (ii) be disposed of before the person in possession of the alcoholic beverage exits the social district unless the person is reentering the licensed premises where the alcoholic beverage was purchased.

The number and location of Boundary Signs required to be posted pursuant to this subsection shall be determined by the Town, in its sole discretion, for each designated social district. The Town reserves the right to approve the format and design of the Boundary Signs to be posted in designated social districts. The Town, in its sole discretion, shall also designate the hours of operation for each social district in accordance with N.C.G.S. § 18B-1004.

- (c) Before designating any social district, the Town shall establish a management and maintenance plan for the social district (the "Plan"). The operation of the Social District must be in compliance with the terms and conditions of the Plan at all times. The Plan, including a detailed map of the designated social district's boundaries (the "Social District Map"), shall be posted on the Town's website. The social district shall be maintained in a manner that protects the health and safety of the general public. The Town may establish guidelines in the Plan to allow for suspension of regular days and

hours of alcohol consumption in all or part of a social district during events requiring other permits for special events.

- (d) The Town must submit the Social District Map and hours of operation of each designated social district to the North Carolina Alcoholic Beverage Control (“ABC”) Commission before consumption of alcoholic beverages is allowed in the designated social district. If the Town amends the geographic footprint of a social district, then the Town shall submit a revised map to the ABC Commission.
- (e) The Town hereby creates and designates the Birkdale Village Social District as shown on the Birkdale Village Social District Map. The signage required by Subsection B of this section shall be posted along the perimeter of the designated social district clearly delineating the boundaries of the social district prior to commencing operation of the social district. The Birkdale Village Social District shall begin operation within 30 days of the Town submitting the Social District Map to the ABC Commission as required by Subsection D of this Section. The Social District Map and Plan for the Birkdale Village Social District are available in the Office of the Town Clerk and posted on the Town’s website. The Birkdale Village Social District shall be created, designated, and managed in accordance with the requirements of Section 160A-205.4 and Chapter 18B of the North Carolina General Statutes.

Section 2. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 911.02 of the Town of Huntersville Code of Ordinances, Definitions, is hereby amended as follows:

Sec. 911.02 – Definitions

- (a) “Customer” means a person who purchases an alcoholic beverage from an ABC Permittee in the designated social district.
- (b) “Social district” means and refers to a defined outdoor area in which a ~~citizen~~ customer may consume alcoholic beverages sold by an ABC Permittee. This term does not include the permittee's licensed premises, or an extended area allowed under N.C.G.S. § 18B-904(h).
- (c) “ABC Permittee” means and refers to a person holding any of the following ABC permits issued by the North Carolina Alcoholic Beverage Control Commission established under N.C.G.S. § 18B-200:
 - (1) An on-premises malt beverage permit issued pursuant to N.C.G.S. § 18B-1001(1).
 - (2) An on-premises unfortified wine permit issued pursuant to N.C.G.S. § 18B-1001(3).
 - (3) An on-premises fortified wine permit issued pursuant to N.C.G.S. § 18B-1001(5).
 - (4) A mixed beverages permit issued pursuant to N.C.G.S. § 18B-1001(10).
 - (5) A distillery permit issued pursuant to N.C.G.S. § 18B-1100(5).
 - (6) A wine shop permit issued pursuant to N.C.G.S. 18B-1001(16).

- (d) ~~"Person" means and refers to an individual, firm, partnership, association, corporation, limited liability company, other organization or group, or other combination of individuals acting as a unit.~~
- (ed) "Premises" means and refers to a fixed permanent establishment, including all areas inside or outside the permitted establishment, where the permittee has control through a lease, deed, or other legal process.

Section 3. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 911.04 of the Town of Huntersville Code of Ordinances, Requirements for Sale of Alcoholic Beverages is hereby amended as follows:

Sec. 911.04 - Requirements for Sale of Alcoholic Beverages in Social Districts

An ABC Permittee located in or contiguous to the designated social district may sell alcoholic beverages for consumption within the designated social district it is located in or contiguous to in accordance with the following requirements:

- (a) The ABC Permittee shall only sell and serve alcoholic beverages on its licensed premises.
- (b) The ABC Permittee shall only sell open containers of alcoholic beverages for consumption in the designated social district and off the premises of the ABC Permittee in a container that meets all of the following requirements:
 - (1) The container clearly identifies the ABC Permittee from which the alcoholic beverage was purchased.
 - (2) The container clearly displays a logo or some other mark that is unique to the designated social district.
 - (3) The container is composed of a recyclable material that is not glass.
 - (4) The container displays, in no less than 12-point font, the statement, "Drink Responsibly - Be 21."
 - (5) The container shall not hold more than 16 fluid ounces.
- (c) ~~Participating ABC Permittees shall not allow a person to enter or reenter its licensed premises with an alcoholic beverage not sold by the permittee.~~

Section 4. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 911.05 of the Town of Huntersville Code of Ordinances, Requirements for Possession and Consumption of Alcoholic Beverages, is hereby amended as follows:

Sec. 911.05 - Requirements for Possession and Consumption of Alcoholic Beverages in Social Districts

The possession and consumption of an alcoholic beverage in the designated social district is subject to all of the following requirements:

- (a) Only alcoholic beverages purchased from an ABC Permittee located in or contiguous to the designated social district may be possessed and consumed.
- (b) Alcoholic beverages shall only be in containers meeting the requirements set forth in Section 911.04.
- (c) Alcoholic beverages shall only be possessed and consumed inside the social district boundaries and during the social district's hours of operation.
- (d) Nothing in this ordinance shall be construed as authorizing the sale and delivery of alcoholic beverage drinks in excess of the limitation set forth in N.C.G.S § 18B-1010.
- (e) A person shall dispose of any alcoholic beverage in the person's possession prior to exiting the designated Social District unless the person is reentering the licensed premises where the alcoholic beverage was purchased.
- (f) A customer shall not possess at one time open containers of alcoholic beverages in the social district in excess of the number of alcoholic beverages that may be sold and delivered by a retail permittee as set forth in N.C.G.S. 18B-1010.
- (g) An ABC Permittee may, but is not required to, allow customers to possess and consume on the business's premises alcoholic beverages purchased from another ABC permittee in the social district.
- (h) A person, including a customer who is in possession of an open container of an alcoholic beverage authorized under this section, may possess alcoholic beverages in closed containers in a social district to the extent allowed by law.

Section 5. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 911.06 of the Town of Huntersville Code of Ordinances, Interaction between contiguous social districts and common area entertainment permittees, is hereby added as follows:

Sec. 911.06 - Interaction between contiguous social districts and common area entertainment permittees

If the boundary of a social district directly borders a designated consumption area established by the owner or property owners' association of a multi-tenant establishment that holds a common area entertainment permit, the owner or property owners' association of the multi-tenant establishment and the Town may enter into a memorandum of understanding signed by both parties that allows open containers approved for possession and consumption in the designated consumption area subject to the common area entertainment permit to be possessed and consumed in the social district, and open containers approved for possession and consumption in the social district to be possessed and consumed in the designated consumption area during days and hours when both the social district and the designated consumption area are active.

All requirements of N.C.G.S. 18B-300.1 and N.C.G.S. 18B-1001.5 shall apply when a customer takes an alcoholic beverage from a social district to a designated consumption area subject to a common area entertainment permit that is contiguous to or within the social district or from a designated consumption area to a social district that is contiguous to or overlapping with the designated consumption area. A customer may not take a container comprised of glass from a designated consumption area subject to a common area entertainment permit to a contiguous social district or the area of an overlapping social district that is outside the designated consumption area. The holder of the common area entertainment permit shall submit to the Commission a copy of the memorandum of understanding signed by both parties. Either party may terminate a memorandum of understanding by notifying the other party and the Commission in writing of the termination.

Section 6. Severability

If any section, phrase, sentence, or portion of this ordinance is held void, invalid, unconstitutional, or unenforceable for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof.

Section 7. Effective Date.

This ordinance shall become effective upon the date of adoption.

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Emily Sloop, Town Attorney

Date: August 15, 2022

Subject: Joint Proclamation to End State of Emergency

EXPLAIN REQUEST:

The Governor declared that the State of Emergency on behalf of North Carolina will terminate on August 15, 2022. Mecklenburg County and the six towns of Huntersville, Cornelius, Davidson, Matthews, Pineville, and Mint Hill that entered a Joint Proclamation of State of Emergency on March 13, 2020 now wish to terminate the locally declared state of emergency in conjunction with the termination of the statewide State of Emergency.

ACTION RECOMMENDED:

Approve

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Joint Proclamation Terminating State of Emergency 08.03.2022 Edited

**FOURTH REVISED AND AMENDED JOINT PROCLAMATION OF THE CHAIRMAN
AND MECKLENBURG COUNTY BOARD OF COMMISSIONERS AND MAYOR OF
THE CITY OF CHARLOTTE IN CONSULTATION WITH THE MECKLENBURG
COUNTY PUBLIC HEALTH DIRECTOR AND IN CONJUNCTION WITH THE
DIRECTOR OF THE OFFICE OF THE CHARLOTTE MECKLENBURG
EMERGENCY MANAGEMENT DEPARTMENT**

WHEREAS, The North Carolina General Assembly has adopted Article 1A of Chapter 166A of the General Statutes, entitled “North Carolina Emergency Management Act”, which sets forth the authority and responsibility of the Governor, State agencies, and local governments in prevention of, preparation for, response to, and recovery from natural or man-made emergencies; and

WHEREAS, G.S. §166A-19.22 and G.S. §166A-19.31, which are part of the North Carolina Emergency Management Act, authorize counties and municipalities to declare states of emergency and authorizes counties and municipalities to impose prohibitions and restrictions under conditions and following procedures contained in G.S. §166A-19.22 and G.S. §166A-19.31; and

WHEREAS, the Governor of North Carolina has declared the State of Emergency on behalf of the state of North Carolina will terminate on August 15, 2022; and

WHEREAS, Mecklenburg County in conjunction with the City of Charlotte and six Towns within the County signed a Joint Proclamation of State of Emergency on March 13, 2020; and

WHEREAS, Mecklenburg County in conjunction with the City of Charlotte and the Town of Davidson and the Town of Matthews within the County have acted together to impose restrictions and guidelines to act in the best interest of the residents of the County, City, and Towns; and

NOW, THEREFORE, pursuant to the authority vested in the Chair of the Board of County Commissioners of Mecklenburg County, the Mayor of the City of Charlotte, and the Mayors of the towns of Huntersville, Cornelius, Davidson, Matthews, Pineville, and Mint Hill, under Section 19.22 of Chapter 166A of the North Carolina General Statutes, the State of Emergency in the City of Charlotte and Mecklenburg County will terminate on August 15, 2022, in conjunction with the State of North Carolina’s termination of the statewide State of Emergency.

This Third Revised and Amended Joint Proclamation is adopted this 15th day of August 2022 effective immediately.

Melinda Bales, Town of Huntersville Mayor

Approved as to Form

County Attorney

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Kevin Fox, Director of Public Works

Date: August 15, 2022

Subject: Cambridge Grove Stream Restoration Interlocal Agreement Addendum

EXPLAIN REQUEST:

The Town entered into an Interlocal agreement with Mecklenburg Soil and Water Conservation District for the survey and design services associated with the Cambridge Grove Stream Restoration Project. Those services are complete, and the project will now move into the construction phase. In order for the Town to reimburse the District for construction related expenses of the project, the original Agreement must be amended.

ACTION RECOMMENDED:

It is recommended the Board adopt the resolution to approve the Addendum to the Interlocal Agreement.

FINANCIAL IMPLICATIONS:

As provided for in the Storm Water Budget

ATTACHMENTS:

1. 2022-08-16 Cambridge Grove - District - Town of Huntersville Interlocal agreement ADDENDUM Draft (clean) 7-14-22
2. ILA-SignedbyAR
3. R-2022-28 Resolution authorizing Addendum to Interlocal Agreement

STATE OF NORTH CAROLINA
MECKLENBURG SOIL AND WATER CONSERVATION DISTRICT
TOWN OF HUNTERSVILLE

ADDENDUM TO
INTERLOCAL AGREEMENT FOR
FUNDING OF THE CAMBRIDGE GROVE
STREAM RESTORATION PROJECT

This Addendum to Interlocal Agreement for Funding of the Cambridge Grove Stream Restoration Project (this "Addendum") is entered into and agreed upon as of August 16, 2022, (the "Effective Date"), between the MECKLENBURG SOIL AND WATER CONSERVATION DISTRICT (the "District"), a governmental subdivision of the state of North Carolina, and a public body, corporate and politic, organized according to the Soil and Water Conservation District Law (the "Law"), operating within the powers set forth in the Law; and the TOWN OF HUNTERSVILLE (the "Town"), a municipal corporation organized under the laws of the State of North Carolina. (The District and the Town are sometimes referred to herein as the "Parties" and each, individually, a "Party").

The Parties entered into an Interlocal Agreement for Funding of the Cambridge Grove Stream Restoration Project dated September 21, 2020 (the "Agreement"). The Agreement contemplated an addendum being added by the Parties to address construction management and other matters. Capitalized terms used but not defined in this Addendum have the same meanings as in the Agreement. In consideration of the premises and fulfilling the requirements set forth in this Addendum, the Parties add to the Agreement as follows:

1. The Parties have determined that the District (either itself or through one or more contractors) will (a) execute and manage the design contract for the Project; and (b) manage construction of the Project. A detailed list of the District's responsibilities are set forth below:

- With the Town's consultation, assistance, and support, solicit bids from contractors
- Select and hire contractors
- Supervise contractors
- Interface with landowners and residents
- Enter into contracts with landowners and residents securing the necessary rights to undertake the Project
- Obtain necessary permits for the Project
- Administering and documenting the funding for the Project

2. The preliminary cost estimate for the Project is six hundred thousand dollars (\$627,920). The Town desires for the District to proceed with preparing applications to fund the Project, which shall include without limitation requesting grants from the Urban Cost Share Program and NCDEQ Division of Water Resources, Water Resources Development Grant Program.

3. The following provision is hereby added to the Agreement: To the greatest extent allowed by North Carolina law, the Town agrees that it shall defend, indemnify, and hold harmless the District, and, if applicable, its respective directors, officers, employees, members, shareholders, attorneys, representatives, and agents, and each of the successors and assigns of any of the foregoing from and against any costs or expenses (including, without limitation, reasonable attorneys' fees), judgments, fines, losses, liabilities, actions, claims, damages and assessments of any nature imposed on, sustained, incurred, or suffered by or asserted against the District that arise out of or result from (i) any breach at any time of this Agreement by the Town; or (ii) any damage to the Property or harm to any individual caused by anyone other than the District.

4. Section 10 of the Agreement is deleted in its entirety and replaced by the following new Section 10:

Payment Responsibilities of the Town.

A. The Town agrees to pay to the District the amounts as described in **Exhibit B** (and other lettered exhibits added to this Agreement as authorized by Section 6) for the design and construction of the Project in accordance with this Section 10.

B. The Town shall pay the District a start-up advance payment of \$137,500 not later than ten (10) days after the District gives notice to the Town in accordance with Section 12 that the construction contract has been awarded.

C. The Town shall pay the District three (3) quarterly advance payments in the amount of \$137,500, with the first such payment being due ninety (90) days after notice is given to the Town in accordance with Section 12 that the construction contract has been awarded.

D. The District will provide the Town with an invoice or invoices for fees and costs associated with the design and construction of the Project, complete with actual cost documentation supporting each invoice or invoices. Billing will be based upon the actual construction contract prices and actual quantities used.

E. The District will first apply any remaining balance of the advance payments described in Sections 10(B) and 10(C) to each invoice, and the remaining balance due from the Town to the District (if any) shall be shown in each invoice. Invoices and related documentation may be e-mailed to the Town Project Manager or sent by US Mail to the Town in accordance with Section 12. The Town's payment of balances due on each invoice (if any) to the District shall be made within thirty (30) days of the invoice date for each invoice submitted.

5. The "Construction and Construction Administration" and "Anticipated Schedule" sections of Exhibit B are replaced with the following new sections:

Construction and Construction Administration

- Town agrees to fund 100% of the construction of the Project less any grant funds awarded and/or cost share funds allocated by the District.
- District and Town agree that construction administration by the Engineer, or a third party, is a cost of construction and that the Town shall fund 100% of said cost associated with the Project.
- The Town will be invoiced for the Project at the following billing rates:
 - Conservation District Manager \$ 80.00 per hour

Anticipated Schedule

The following table presents the anticipated schedule including estimated funding needs.

Project Phase	Start Date (encumbrance date)	Estimated Town funding Not to Exceed
Design		
Design Engineer Cost	Complete	N/A
District Project Management/Grant Application Cost	Complete	N/A
Construction		
Design Engineer Cost	TBD	\$52,920
District Project Management/Grant Administration Cost	TBD	\$20,000

Miscellaneous Project Expenses (e.g. permitting, legal fees, transaction fees)		\$5,000
Project Construction Cost	TBD	\$550,000

6. Section 14 of the Agreement is deleted in its entirety and replaced by the following new Section 14:

Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the Parties or their designees will first be attempted to be resolved by mediation conducted in Charlotte, North Carolina by a single mediator selected mutually by the Parties (provided that, if the Parties cannot agree on the selection of a mediator, such mediator will be selected by the District).

7. In the event of a conflict between the terms of this Addendum and the Agreement, the terms of this Addendum shall control. Any provisions in the Agreement that are not superseded by this Addendum remain in full force and effect.

ACCEPTED AND AGREED TO BY THE PARTIES AS OF THE EFFECTIVE DATE:

TOWN OF HUNTERSVILLE

MECKLENBURG SOIL AND
WATER CONSERVATION DISTRICT

Anthony Roberts, Town Manager

Leslie N. Vanden Herik, Conservation District Manager

STATE OF NORTH CAROLINA
MECKLENBURG SOIL AND WATER CONSERVATION DISTRICT
TOWN OF HUNTERSVILLE

INTERLOCAL AGREEMENT FOR
FUNDING OF THE CAMBRIDGE GROVE
STREAM RESTORATION PROJECT

This Interlocal Agreement for Funding of the Cambridge Grove Stream Restoration Project (this "Agreement") is entered into and agreed upon as of September 21, 2020 (the "Effective Date"), between the MECKLENBURG SOIL AND WATER CONSERVATION DISTRICT (the "District"), a governmental subdivision of the state of North Carolina, and a public body, corporate and politic, organized according to the Soil and Water Conservation District Law (the "Law"), operating within the powers set forth in the Law; and the TOWN OF HUNTERSVILLE (the "Town"), a municipal corporation organized under the laws of the State of North Carolina. (The District and the Town are sometimes referred to herein as the "Parties" and each, individually, a "Party").

The Parties seek to make certain improvements to the water resources (including stabilization of sewer laterals) in the McDowell Creek watershed, between Cambridge Grove Drive and Glassfield Drive in Huntersville, North Carolina as shown in Exhibit A (the "Property"), which may include the restoration of streams and Best Management Practices ("BMPs") (collectively, the "Project").

It is in the Parties' mutual best interest to make Project improvements collaboratively by developing design plans and completing construction for the Project by working together. The Parties desire to enter into this Agreement that sets out their respective rights and responsibilities regarding the funding and development of the Project.

Therefore, in consideration of the premises and fulfilling this Agreement, the District and the Town agree as follows:

1. Project Description. The Project may include a combination of stream restoration, stream stabilization, stream enhancement, habitat structure placement, buffer enhancements, and implementation of structural BMPs to address stabilization of the stream and associated sewer laterals. The District will execute and manage the design contract for the Project. Upon receipt of construction estimates from the Engineer, the District and the Town will determine responsibility for management of construction of the Project. Possible scenarios for construction management include the District managing the Project, the Town managing the Project, each Party managing a portion of the Project, or discontinuation of all or parts of the Project. Once a determination has been made on construction management, an addendum will be added to this Agreement to document the agreed upon management scenario. The District Board and the Town Manager are authorized to negotiate and execute such an addendum and add it to this Agreement.

2. Exhibit List. The following Exhibits are attached to this Agreement and incorporated into and made hereof by reference:

Exhibit A: Map of the Property.

Exhibit B: Estimated Phase I Project Funding.

Each reference to the Agreement shall include all Exhibits, including additional exhibits added after execution of the Agreement to specify construction and any construction phases as provided in Section 6.

3. Consultant Selection. The District has selected The John R. McAdams Company (the "Engineer"), a consulting engineering firm with expertise in water resource design and construction contract services with projects similar in size and scope to the Project, to provide engineering services for the Project. The District will enter into a written contract with the Engineer for the provisions of those services described in Paragraph 4 below upon terms acceptable to the Town. The District's written contract with the Engineer

shall include a provision granting the Town the right to keep and use the plans that are generated during Phase 1 of the Project.

4. Design. The District shall be responsible to obtain from the Engineer (a) an existing conditions analysis, (b) a topographic and location survey, and (c) a design and preliminary cost estimation of the Project. The design plans will consist of improvements to the stream system. Upon receipt of the design plans from the Engineer, the District will submit to the Town a copy of the Project Conceptual Design Plans and Preliminary Cost Estimate. The Town shall provide written comments to the District after design submittal in sufficient time to allow for application to the NCDEQ Division of Water Resources, Water Resources Development Grant Program (the "Grant") referenced in Section 8. Once the Engineer has determined what preliminary estimate construction costs will be for the Project, the Town will indicate to the District in writing if the Town wants the District to proceed with application to the grant program. The Town will have final approval authority for the preliminary and final (to be described in future exhibit(s) and added to the contract) plans and specifications for the Project. The District shall also be responsible for contract administration for the design contract and the agreed funding for the Project as specified in Exhibit B. The District, with assistance from the Engineer, will document all costs for the Project.

5. Permits. The District shall ensure that the Engineer obtains all federal, State and local permits necessary to construct the Project. The District will submit to the Town copies of all permit authorizations related to the Project upon request.

6. Construction Contract. As required by law, and any grant requirements, the District shall solicit and obtain (or shall have the Engineer or Town solicit and obtain, as may be agreed to on a case by case basis) bids for the construction of the Project, and if necessary, for individual phases of the Project, including all labor, materials and services necessary to execute the work associated with the approved design plans and construction documents and award the contract or contracts for such Project to a qualified contractor (each, a "Contractor") under applicable law. Before awarding any contract that includes any portion of the Project, the District must notify the Town of all bidders for the Project and their bid amounts. The Town shall have thirty (30) days after notification of the bids to either authorize the District in writing to award the contract for the one of more portions of the Project for which bids were received, or to refuse to authorize the District to award the contract for the bids. Any Town approval in writing to award the contract for the Project bid must specify the dollar amount of the contract and contain an executed pre-audit certificate from the Town's Director of Finance for that work. Such approval shall be documented in an exhibit as described in Section 6. Responsibility for contract administration for the construction contract or contracts will be determined jointly by the District and the Town after construction cost estimates, construction phasing, grant funding and the agreed funding for the Project as specified in Exhibit B are established. The District, with assistance from the Engineer, will document costs of the Project.

7. Construction Phases. Construction of the Project may be split into phases based upon availability of funds or other practical constraints. Upon completion of the full design and cost estimates for the Project, the District and the Town will jointly decide on whether to construct the Project under one construction contract or whether to do the Project in phases. That decision will be described in an Exhibit C to be added to this Agreement signed by the District and the Town Project Manager, and for the Town, the Town Director of Finance. If the initial decision is to construct the Project in phases, any additional Project phases later to be constructed will be described in an Exhibit D and added to this Agreement. Additional phases can be added by adding additional exhibits labeled appropriately over the term of this Agreement.

8. Grants. The District and the Town have jointly decided to apply for grant funding from the NCDEQ Division of Water Resources, Water Resources Development Grant Program to offset portions of the cost of design and construction of the Project. The District, with input from the Town and the Engineer, will prepare and submit grant application(s). The District will also serve as the Grant Applicant and Primary Contact for the grant, the Town will serve as a Project Supporter.

9. Warranty Period Maintenance. Upon completion of the Project, the District agrees to oversee the one-year warranty maintenance to be provided by the Contractor or Contractors.

10. Payment Responsibilities of the Town. The Town agrees to pay to the District the amounts as described in **Exhibit B** (and other lettered exhibits added to this Agreement as authorized by Section 6) for the design and construction of the Project upon the following conditions being met: receipt by the Town of an invoice or invoices from the District of fees and costs associated with the design and construction of the Project, complete with actual cost documentation supporting the invoice or invoices. The Town's payment to the District shall be made within thirty (30) days of the above conditions being met for each invoice submitted.

11. Funding Administration. The District shall be responsible for contract administration for the design contract, the construction contract or contracts (unless otherwise decided by the parties per Paragraph 6 above), any grant contracts and the funding agreement with the Town as specified in **Exhibit B**. The District, with assistance from the Engineer, will document all costs associated with the Project.

12. Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) personal delivery to the Party to be notified; (ii) when sent, if sent by electronic mail or facsimile during the recipient's normal business hours, and if not sent during normal business hours, then on the recipient's next business day; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next-day delivery, with written verification of receipt. All communications shall be sent to the respective Parties properly addressed as follows:

If to the District: Mecklenburg Soil and Water Conservation District
 2145 Suttle Avenue
 Charlotte NC, 28208-5237
 Attention: Leslie N. Vanden Herik

If to the Town: Town of Huntersville
 P.O. Box 664
 Huntersville, NC 28070
 Attention: Kevin Fox

Either Party may change its notice address by giving written notice of the change to the other Party in the manner specified above ten (10) days before the effective date of such change.

13. Applicable Law. This Agreement shall be enforced, interpreted and construed by and under the laws of the State of North Carolina.

14. Dispute Resolution. The Parties agree that any disputes which cannot be resolved by the Parties or their designees will first be attempted to be resolved by mediation conducted in Charlotte, North Carolina by a single mediator selected mutually by the Parties (provided that, if the Parties cannot agree on the selection of a mediator, such mediator will be selected by the District). If the dispute is not resolved by mediation, then the Parties shall resolve the dispute by binding arbitration conducted by a single arbitrator under the then-applicable Commercial Arbitration Rules (the "Rules") of the American Arbitration Association. The arbitrator shall be selected mutually by the Parties (provided that, if the Parties cannot agree on the selection of an arbitrator, such arbitrator will be selected by the Town). The Rules will apply except as specified in this paragraph. All arbitration proceedings will be held in Charlotte, North Carolina before a single arbitrator. Judgment upon the award rendered in any such arbitration proceeding may be entered into any court having competent jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order of enforcement.

15. Term of Agreement. The term of this Agreement shall commence on the Effective Date and shall expire at the conclusion of the one-year construction warranty period unless sooner terminated or extended in accordance with the provisions of this Agreement.

16. Amendments. This Agreement may be amended by written agreement authorized by the governing bodies of each Party and signed by authorized representatives of both Parties.

17. Third Party Beneficiaries. This benefit is solely for the benefit of the Parties. No provision of this Agreement shall confer upon any other person any remedy, claim, liability, reimbursement, cause of action or right.

18. Termination. The Parties may terminate this Agreement at any time by mutual consent under such terms as agreed to in writing by the District Board of Supervisors and the Town Board of Commissioners.

19. Project Managers. The following individuals shall serve as project managers for the Project who are authorized to add exhibits describing the construction to be performed, the contracted price for the construction, and phases as necessary as outlined in Section 6. The District and Town Manager may change their Project Managers from time to time following the Notice provisions in Section 12 above.

District Project Manager: Leslie N. Vanden Herik, Conservation District Manager
Mecklenburg Soil and Water Conservation District
2145 Suttle Avenue
Charlotte, NC 28208-5237

Town Project Manager: Kevin Fox
Director of Public Works
Town of Huntersville, NC
P.O. Box 664
Huntersville, NC 28070

20. Easements for the Project. As the District is authorized under North Carolina General Statute to utilize public funds on private land without requirement of an easement, no easements shall be obtained. Should any such rights not be sufficient for such purposes, the Town agrees as needed to obtain all easements and rights-of-way necessary for any surveying, design, construction and maintenance of the Project, and will record such easements and rights-of-way and inform Mecklenburg County.

ACCEPTED AND AGREED TO BY THE PARTIES AS OF THE EFFECTIVE DATE:

TOWN OF HUNTERSVILLE

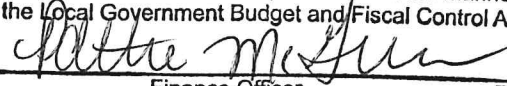
MECKLENBURG SOIL AND
WATER CONSERVATION DISTRICT



Anthony Roberts, Town Manager

Leslie N. Vanden Herik, Conservation District Manager

"This Instrument has been preaudited in the manner required by
the Local Government Budget and Fiscal Control Act."



Finance Officer Date

Exhibit A Project Map

Cambridge Grove Stream Project - Location Map



Exhibit B

PROJECT FUNDING FOR PHASE ONE OF THE PROJECT

The preliminary estimated cost for design and construction of the Project is to be determined by the Engineer during phase I of the Project.

Feasibility Planning and Design

- Town agrees to fund 100% of the planning and design, of the Project, i.e., the system improvements, for which cost estimate will be provided during phase I.
- Town also agrees to fund 100% of the cost of preparation and submission of the grant described in section 8 of the agreement
- The District will invoice the Town for 100% of the staff resources expended on the Project for the Project design and grant preparation and submission.
- The Town will be invoiced for 100% of the staff hours expended on the Project, not to exceed three thousand two hundred dollars (\$3200) at the following billing rates:
 - Conservation District Manager \$ 80.00 per hour
- The Town will also be invoiced for 100% of the costs billed by the Engineer at the rates described in the proposal not to exceed twenty-nine thousand dollars (\$29,000)
- Upon completion of the Project Design, billable rate may be reviewed and modified as needed.

Construction and Construction Administration

- Town agrees to fund 100% of the construction of the Project less any grant funds awarded and/or cost share funds allocated by the District.
- District and Town agree that construction administration by the Engineer, or a third party, is a cost of construction and that the Town shall fund 100% of said cost associated with the Project.
- Upon completion of construction estimates by the Engineer, the District and the Town will mutually determine the path forward on construction. Several project management scenarios will be considered:
 - The District will manage construction of the Project
 - The Town will manage construction of the Project
 - The District will manage certain construction phases and the Town will manage other phases.
- If the District manages construction of the Project the Town will be invoiced for the Project at the following billing rates:
 - Conservation District Manager \$ 80.00 per hour

Anticipated Schedule

The following table presents the anticipated schedule including estimated funding needs.

Project Phase	Start Date (encumbrance date)	Estimated Town funding Not to Exceed
Design		
Design Engineer Cost	TBD	\$29,000
District Project Management/Grant Application Cost	TBD	\$3,200
Construction	TBD	\$ TBD

Note: Addendum will be added to for Phase II of Project "Construction" upon notification of Grant award. Construction management agreement to be determined mutually by District and Town after receipt of construction estimates from Engineer.

Miscellaneous

- The District will be the applicant and contract administrator for any grants, which includes the preparation of Project reports and expense reimbursements
- All miscellaneous costs associated with the Project (*e.g.*, educational, signs, administrative, etc.) will be paid by the Town.



RESOLUTION OF THE TOWN OF HUNTERSVILLE TO APPROVE THE ADDENDUM TO THE INTERLOCAL AGREEMENT WITH MECKLENBURG SOIL AND WATER CONSERVATION DISTRICT FOR FUNDING THE CAMBRIDGE GROVE STREAM RESTORATION PROJECT

WHEREAS, the Town of Huntersville and the Mecklenburg Soil and Water Conservation District entered into an Interlocal Agreement dated September 21, 2020 for the Cambridge Grove Stream Restoration Project (the "Project"); and

WHEREAS, Mecklenburg Soil and Water Conservation District intends to let the designed project for construction and will administer and process payments for the completed work; and

WHEREAS, the Addendum to the Agreement, attached hereto as Exhibit A, is necessary for the Town of Huntersville to reimburse Mecklenburg Soil and Water Conservation District for the expenditures related to the Town of Huntersville's portion of the completed work;

NOW THEREFORE, BE IT RESOLVED that the Addendum to the Agreement, attached hereto as Exhibit A, is approved. The Board hereby authorizes the Town Manager, acting on advice of counsel, to take any actions necessary to effect the provisions of this Resolution, including signing the Agreement attached with such modification as may be required.

Adopted this 15th day of August, 2022.

ATTEST:

Janet Pierson, Town Clerk

Melinda Bales, Mayor

APPROVED AS TO FORM:

Emily Sloop, Town Attorney

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Emily Sloop, Town Attorney

Date: August 15, 2022

Subject: Public Hearing on Town's Soil Erosion and Sedimentation Control Ordinance

EXPLAIN REQUEST:

Conduct public hearing on suggested edits to the Town's Soil Erosion and Sedimentation Control Ordinance to reorganize and rename sections of the Ordinance, include qualifying language, and better align with legislative changes from HB 489.

ACTION RECOMMENDED:

Conduct Public Hearing

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Ordinance to amend SESC 7-8-22
2. HB 489
3. Soil and Erosion Control Ordinance 09-24-21 clean
4. Soil and Erosion Control Ordinance 09-24-21 redline
5. Overlay of Soil and Erosion Control Ordinance redlines (includes September 2021 and Current) 7-7-22 EAS

AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Section 1. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 6, General Requirements, is hereby amended as follows:

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.

For residential development projects involving land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single Erosion and Sedimentation Control Plan for the entire development, so long as the developer and the builder are the same financially responsible person. Alternatively, the person conducting the land-disturbing activity may submit for review and approval the information required by Subsection (c) below for each individual lot pursuant to N.C.G.S. § 113A-60(b2)(2).

- c. ~~Exceptions~~ Individual Lot Erosion Control Plan (Residential Development) -
 - i. When a residential development project contains an approved Erosion and Sedimentation Control Plan for an entire development as described in Subsection (b) above, ~~a Separate Erosion Control Plans~~ shall not be required ~~by the Town~~ for development of individual residential lots within that development ~~that which~~ disturbs less than one acre. Where the developer and builder of the common plan of residential development are not the same financially responsible person, plans shall be submitted for each single-family, residential lot and the plans shall require only the following information: if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.

- (5) Tax parcel number of lot being developed.
- (6) Total acreage of lot being developed.
- (7) Total acreage disturbed.
- (8) Anticipated start and completion date.
- (9) Person financially responsible.
- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

d. Exceptions -

~~ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.~~

~~iii i.~~ No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

~~iv ii.~~ No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

e. e. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & and 11 of this Ordinance.

d. f. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.

e. g. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 2. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that subsection g of Section 8, Self-Monitoring and Self-Inspections, is hereby amended as follows:

- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per 24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, except as may be required by federal law, rule, or regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

Section 3. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that subsection a of Section 10, Plan Requirements, is hereby amended as follows:

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6(b) of this Ordinance, except as provided by Subsection 6(c), shall be submitted with an approved site plan and shall meet the following requirements:

Section 4. Effective Date.

This ordinance shall become effective upon the date of adoption.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SESSION LAW 2021-121
HOUSE BILL 489**

**AN ACT TO PROVIDE VARIOUS BUILDING CODE AND DEVELOPMENT
REGULATORY REFORMS.**

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 87-10 reads as rewritten:

"§ 87-10. Application for license; examination; certificate; renewal.

(a) Anyone seeking to be licensed as a general contractor in this State shall submit an application. Before being entitled to an examination, an applicant shall:

- (1) Be at least 18 years of age.
- (2) Possess good moral character as determined by the Board.
- (3) Provide evidence of financial responsibility as determined by the Board.
- (4) Submit the appropriate application fee.
- (5) Consent to a criminal background check if required by the Board.

(a1) The Board shall require an applicant to pay the Board or a provider contracted by the Board an examination fee not to exceed one hundred dollars (\$100.00). In addition, addition to the costs of any criminal background check, the Board shall also require an applicant to pay the Board a fee not to exceed one hundred twenty-five dollars (\$125.00) if the application is for an unlimited license, one hundred dollars (\$100.00) if the application is for an intermediate license, or seventy-five dollars (\$75.00) if the application is for a limited license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to one million dollars (\$1,000,000), excluding the cost of land and any ancillary costs to improve the land; the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to five hundred thousand dollars (\$500,000), excluding the cost of land and any ancillary costs to improve the land. The license certificate shall be classified in accordance with this section.

(a2) In determining an applicant's qualifications for licensure, the Board may utilize a criminal background check. If the Board uses a criminal background check, the provisions of G.S. 93B-8.1 shall apply. The Board shall keep all information obtained from criminal background checks privileged in accordance with applicable State law and federal guidelines, and the information shall be confidential and not a public record under Chapter 132 of the General Statutes.

(a3) Records, papers, and other documentation containing personal information collected or compiled by the Board in connection with an application for examination, licensure, certification, or renewal or reinstatement, or the subsequent update of information shall not be considered public records within the meaning of Chapter 132 of the General Statutes.

...."

SECTION 1.(b) G.S. 87-10.2 reads as rewritten:

"§ 87-10.2. Continuing education.

...



(b) Of the eight hours of annual continuing education required by this section, two hours shall be a mandatory course approved by the Board and the remaining six hours shall be elective courses approved by the Board. Each qualifier or qualifying party shall complete the mandatory course each year. Each qualifier or qualifying party may accumulate and carry forward up to four hours of elective course credit to the next calendar year. The Board shall evaluate and approve:

- (1) The content of continuing education courses.
- (2) Accreditation of continuing education sponsors and programs.
- (3) Computation of credit.
- (4) General compliance procedures.
- (5) Providers and instructors of continuing education courses.

(c) All ~~prospective~~ Board-approved providers of the mandatory course shall register Board-approved instructors affiliated with the provider to attend a training program established, approved, and administered by the Board to ensure the quality and consistency of mandatory course information. All prospective providers of elective courses shall submit course materials and instructor qualifications for Board evaluation, approval, and accreditation.

(d) Continuing education credit hours may only be given for courses that are taught live by an instructor approved by the Board. To receive credit, a qualifier or qualifying party shall attend and view the live teaching of the course and shall certify this requirement in the manner required by the Board. Only the period of live instruction shall apply to the satisfaction of the continuing education requirement established by this section. Continuing education providers shall certify the attendance of course attendees and shall transmit the qualifier or qualifying party's certification to the Board. For the purposes of this subsection, "live instruction" includes credit hours presented by video or by Internet transmission of a live or previously recorded and approved presentation by an approved instructor or instructors provided the presentation is either proctored by the approved ~~sponsor-provider~~ or contains safeguards as approved by the Board that allow the approved ~~sponsor-provider~~ to certify that the qualifier or qualifying party has viewed the presentation. The Board shall implement procedures to ensure that qualifiers and qualifying parties may satisfy all of the continuing education requirements of this section through approved Internet-based e-learning courses offered by approved providers by Internet transmission.

(e) False certification of attendance shall be grounds for the suspension or revocation of the course provider's privilege to provide courses in this State. The Board may take disciplinary action against any ~~licensee on account of a licensee, qualifier, or qualifying party~~ for false certification of attendance by that licensee's qualifier or qualifying party at any continuing education course.

(f) The Board shall maintain and distribute to licensees and qualifiers, as appropriate, records of the required educational coursework successfully completed by each qualifier or qualifying party, including the subject matter and the number of hours of each course.

...

(h) Any licensee who chooses not to complete the annual continuing education as required by this section may annually request that the Board place the licensee's license in an inactive status and the license shall become ~~invalid~~ invalid for that license year. However, in order for the license to be maintained as inactive, the licensee shall pay the same annual renewal fee paid by active licensees. Should the licensee desire to return to active status, the qualifier or qualifying party of the licensee shall satisfactorily complete the following continuing education requirements prior to seeking reinstatement:

- (1) If the licensee seeks reinstatement during the first two years after the license becomes inactive, the qualifier or qualifying party shall complete eight hours of continuing education, including the mandatory course offered during the year of reinstatement.
- (2) If the licensee seeks reinstatement more than two years after the license becomes inactive, the qualifier or qualifying party shall complete 16 hours of

continuing education, including the mandatory course offered during the year of reinstatement.

(i) The Board shall establish nonrefundable fees for the purpose of administering the continuing education program. The Board may charge the ~~sponsor-provider~~ of a proposed course a nonrefundable fee not to exceed twenty-five dollars (\$25.00) per credit hour for the initial review of the course and a nonrefundable fee of twelve dollars and fifty cents (\$12.50) per credit hour for the annual renewal of a course previously approved. The Board shall require an approved course provider to pay a fee, not to exceed five dollars (\$5.00) per credit hour per qualifier or qualifying party, for each qualifier or qualifying party completing an approved continuing education course conducted by that provider.

...."

SECTION 1.(c) G.S. 87-13.1 reads as rewritten:

"§ 87-13.1. Board may seek injunctive ~~relief~~; attorney's fee.

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. ~~The~~ When the Board prevails in actions brought under this section, the court may shall award the Board its reasonable attorney's fee not to exceed five thousand dollars (\$5,000) plus the costs associated with obtaining the relief and the investigation and prosecution of the violation."

SECTION 1.(d) The State Licensing Board for General Contractors shall adopt temporary rules to implement G.S. 87-10, as amended by Section 1(a) of this act, and G.S. 87-10.2, as amended by Section 1(b) of this act. Notwithstanding G.S. 150B-21.1(d), the temporary rules required by this act shall remain in effect until the effective date of the permanent rules adopted to replace these temporary rules. The Board is exempt from the fiscal note requirement of G.S. 150B-21.4 in adopting rules to implement this section.

SECTION 1.(e) Section 1(a) of this act becomes effective January 1, 2022, and applies to applications for licensure submitted on or after that date. Section 1(b) of this act becomes effective January 1, 2022, and applies to continuing education hours required on or after that date. Section 1(c) of this act becomes effective when the act becomes law and applies to actions brought by the Board on or after that date. Except as otherwise provided, this section is effective when it becomes law.

SECTION 2. G.S. 143-138 reads as rewritten:

"§ 143-138. North Carolina State Building Code.

...

(d1) Cost-Benefit Analysis. – When the Building Code Council revises or amends the North Carolina State Building Code as provided in subsection (d) of this section and considers an economic analysis or cost-benefit analysis of the proposed revision or amendment, the Council shall not limit its review to an economic analysis or cost-benefit analysis submitted by the proponent of the proposed revision or amendment but shall either conduct its own economic analysis or cost-benefit analysis or consider an economic analysis or cost-benefit analysis submitted other than by the proponent of the proposed revision or amendment. This section shall not apply to a proposal for revision or amendment made upon motion of the Council or submitted by a State agency or political subdivision of the State.

(e) Effect upon Local Codes. – Except as otherwise provided in this section, the North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for

this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in ~~G.S. 160A-360~~ G.S. 160D-202 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by ~~G.S. 160A-436~~, G.S. 160D-1128, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, ~~shall~~ may be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in ~~G.S. 160A-434~~ G.S. 160D-1127.

A local government may not adopt any ordinance in conflict with the exemption provided by subsection (c1) of this section. No local ordinance or regulation shall be construed to limit the exemption provided by subsection (c1) of this section.

...."

SECTION 3.(a) G.S. 160A-306 reads as rewritten:

"§ 160A-306. Building setback lines.

...

(b) Any setback line shall be ~~designed~~ designed:

- (1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between ~~buildings, and~~ buildings.
- (2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.
- (3) To provide that, notwithstanding subsection (a) of this section, measurements for sight distances at street intersections, including sight triangles, must begin within the roadway or edge of pavement of a proposed or existing street.

...."

SECTION 3.(b) G.S. 160D-922 reads as rewritten:

"§ 160D-922. Erosion and sedimentation control.

Any local government may enact and enforce erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply with all

applicable provisions of that Article and, to the extent not inconsistent with that Article, with this Chapter. Fees charged by a local government under its erosion and sedimentation control program shall not exceed that authorized in G.S. 113A-60(a)."

SECTION 4.(a) G.S. 160D-1104(d) reads as rewritten:

"(d) Except as provided in G.S. 160D-1115 and G.S. 160D-1207, a local government may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a local government and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the local government to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Residential Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code. When a subsequent inspection is conducted to verify completion or correction of instances of Code noncompliance, any additional violations of the Code noted by the inspector on items already approved by the inspections department may delay the issuance of a temporary certificate of occupancy, but the inspections department shall not charge a fee for reinspection of those items."

SECTION 4.(b) This section is effective when it becomes law and applies to inspections conducted on or after that date.

SECTION 5.(a) G.S. 113A-54.1 is amended by adding a new subsection to read:

"(f) For land-disturbing activities on a single-family residential lot involving new construction with land disturbance of less than one acre where the builder or developer is the owner of the lot being developed and the person financially responsible for the land-disturbing activity, the financial responsibility for land-disturbing activity on that lot transfers to the new owner upon the builder's or developer's conveyance of the lot to the new owner, recording of the deed in the office of the register of deeds, and notification to the office or local program that approved the erosion control plan."

SECTION 5.(b) G.S. 113A-54.2(d) reads as rewritten:

"(d) ~~This section may not limit the existing G.S. 113A-60 governs the~~ authority of local programs approved pursuant to this Article to assess fees for the ~~approval-review~~ of erosion and sedimentation control plans."

SECTION 5.(c) G.S. 113A-60 reads as rewritten:

"§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, ~~and to this end local governments are authorized to jurisdiction and may~~ adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. The fee shall be calculated on the basis of either the number of acres disturbed or in the case of a single-family lot in a residential development or common plan of development that is less than one acre set at no more than one hundred dollars (\$100.00) per lot developed. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. ~~An~~ Except as otherwise provided in this Article, an ordinance adopted by a local government shall at least meet and may exceed the minimum requirements of this Article and the rules adopted pursuant to this Article.

(a1) Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

...

(b1) When a development project contains an approved erosion control plan for the entire development, a separate erosion control plan shall not be required by the local government for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the local government may require no more than the following information:

- (1) Name, address, telephone number, and email of owner of lot being developed.
- (2) Street address of lot being developed.
- (3) Subdivision name.
- (4) Lot number.
- (5) Tax parcel number of lot being developed.
- (6) Total acreage of lot being developed.
- (7) Total acreage disturbed.
- (8) Anticipated start and completion date.
- (9) Person financially responsible.
- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

(b2) Except as may be required by federal law, rule, or regulation, a local erosion control program under this Article shall provide for all of the following:

- (1) That no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
- (2) For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (b1) of this section the erosion control measures for each individual lot.

(b3) No development regulation under Chapter 160D of the General Statutes or any erosion and sedimentation control plan under a local program shall require any of the following:

- (1) A silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- (2) A wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

...."

SECTION 5.(d) G.S. 113A-61.1 is amended by adding a new subsection to read:

"(d) The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this Article provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation."

SECTION 5.(e) Section 5(c) of this act becomes effective October 1, 2021, and applies to erosion control plans submitted for review and approval on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.(a) Definitions. – As used in this section, "Council" means the North Carolina Building Code Council, and "Code" means the current North Carolina Building Code collection, and amendments to the Code, as adopted by the Council.

SECTION 6.(b) Code Amendment. – Until the effective date of the Code amendment that the Council is required to adopt pursuant to this section, the Council and Code enforcement officials enforcing the Code shall follow the provisions of subsection (c) of this section as it relates to Section D107 of the 2018 North Carolina Fire Code and other provisions that relate to fire apparatus access roads for one- or two-family dwelling residential developments.

SECTION 6.(c) Implementation. – Notwithstanding any provision of the Code or law to the contrary, the Council and Code enforcement officials shall not require an automatic sprinkler system in one- or two-family dwellings where there are fewer than 100 dwelling units on a single public or private fire apparatus access road with access from one direction.

SECTION 6.(d) Additional Rulemaking Authority. – The Council shall adopt a rule to amend Section D107 of the 2018 North Carolina Fire Code consistent with subsection (c) of this section. Notwithstanding G.S. 143-136(c), the Residential Code Committee within the Council shall consider the amendment required by this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Council pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 6.(e) Effective Date. – This section is effective when it becomes law.

SECTION 6.(f) Sunset. – This section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 7.(a) Definitions. – As used in this section, "Council" means the North Carolina Building Code Council, and "Code" means the current North Carolina Building Code collection, and amendments to the Code, as adopted by the Council.

SECTION 7.(b) Code Amendment. – Until the effective date of the Code amendments that the Council is required to adopt pursuant to this section, the Council and Code enforcement officials enforcing the Code shall follow the provisions of subsection (c) of this section as it relates to water service pipe material and standard conformance under Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code, and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code.

SECTION 7.(c) Implementation. – Notwithstanding any provision of the Code or law to the contrary, for the purposes of the water service pipe material and standard conformance requirements under Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code, and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code, the American Water Works Association (AWWA) C900 standard is an acceptable standard for polyvinyl chloride (PVC) plastic pipe.

SECTION 7.(d) Additional Rulemaking Authority. – The Council shall adopt a rule to amend Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Council

pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 7.(e) Effective Date. – This section is effective when it becomes law.

SECTION 7.(f) Sunset. – This section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 8.(a) Section 4 of S.L. 2020-61 reads as rewritten:

"SECTION 4.(a) Definitions. – For purposes of this section and its implementation, the following definitions apply:

- (1) "Permitting by Regulation for Building Sewer Systems Rule " means 15A NCAC 02T .0303 (Permitting by Regulation).
- (2) "Accessory building" means in one- and two-family dwellings not more than three stories above grade plane in height with a separate means of egress, a building, the use of which is incidental to that of the main building and which is detached and located on the same lot. An accessory building is a building that is roofed over and more than fifty percent (50%) of its exterior walls are enclosed. Examples of accessory buildings are garages, storage buildings, workshops, boat houses, treehouses, and dwelling units, etc. For purposes of this section, "main building" shall only include one- and two-family dwellings.
- (3) "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys the discharge by gravity or under pressure to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.
- (4) "Lot" means a portion or parcel of land considered as a unit.
- (5) "Building drain" means that part of the lowest piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside and that extends to 10 feet (3048 mm) beyond the exterior walls of the building and conveys the drainage to the building sewer.
- (6) "Building Code" means the 2018 North Carolina Building Code as adopted by the Council.

"SECTION 4.(b) Permitting by Regulation for Building Sewer Systems Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Permitting by Regulation for Building Sewer Systems Rule as provided in subsection (c) of this section.

"SECTION 4.(c) Implementation. – Notwithstanding the requirements of General Permit No. WQG100000 and the limitation on applicability of 15A NCAC 02T .0303(a)(1), (a)(2), and (a)(3) to a building sewer that serves a single building, if a building sewer that serves a main building is deemed permitted pursuant to 15A NCAC 02T .0113, then a building sewer that serves an accessory building on the same lot that is connected to the building sewer or building drain for the main building, and a sewer shared between a main building and an accessory building, shall also be deemed permitted if the building sewer that serves the accessory building, and the sewer shared between the main building and the accessory building, meet the criteria in 15A NCAC 02T .0113 and all criteria required for that system in 15A NCAC 02T .0303, and no additional permit shall be ~~required~~ required to satisfy 15A NCAC 02T. In all cases, the building sewer piping and the building drain piping that connect the accessory building to the main building shall comply with applicable provisions of the Building Code. This section shall only apply to sewers that serve one main building and one accessory building on the same lot.

"SECTION 4.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Permitting by Regulation for Building Sewer Systems Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

"SECTION 4.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section shall apply to common sewer lines and building drains in existence on, or constructed on or after, ~~the effective date of this act, June 24, 2020,~~ which are shared by accessory dwelling units or accessory residential buildings and a primary residence. This section expires when permanent rules adopted as required by subsection (d) of this section become effective."

SECTION 8.(b) This section is effective when it becomes law.

SECTION 9.(a) G.S. 136-102.6 reads as rewritten:

"§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

...

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation. The Board of Transportation must approve the addition of subdivision street improvements designated as public to the State highway system for maintenance pursuant to this subsection within 90 days after the Department of Transportation receives a petition for road addition and the Department determines those subdivision streets meet the minimum standards of the Board of Transportation.

...."

SECTION 9.(b) This section becomes effective January 1, 2022, and applies to petitions for road addition for subdivision street improvements submitted to the Department of Transportation on or after that date.

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 23rd day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Howard Penny, Jr.
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:46 a.m. this 30th day of August, 2021

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. Reserved
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation control plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of Engineering and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.
- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 2. Dairy animals and dairy products.
 3. Poultry and poultry products.
 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 5. Bees and apiary products.
 6. Fur producing animals.
 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).

- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.
- c. Exceptions -
 - i. When a development project contains an approved erosion control plan for an entire development, a separate erosion control plan shall not be required by the Town for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.
 - (5) Tax parcel number of lot being developed.

- (6) Total acreage of lot being developed.
 - (7) Total acreage disturbed.
 - (8) Anticipated start and completion date.
 - (9) Person financially responsible.
 - (10) Signature of person financially responsible.
 - (11) Existing platted survey of the lot.
 - (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.
- ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.
 - iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
 - iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- d. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & 11 of this Ordinance.
 - e. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
 - f. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

- d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the “Policies and Procedures” statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.
 - 1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.
- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.
- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per 24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
 - 1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
 - 2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three

years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.

3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8.g(1-5) above, Self-Inspections shall comply with the following:
 - (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are

modified after initial installation;

- (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
 - (a) installation of perimeter erosion and sediment control measures;

- (b) clearing and grubbing of existing ground cover;
- (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
- (d) completion of storm drainage facilities;
- (e) completion of construction or development; and
- (f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.
- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection

- (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
- (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a

developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

- f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.

1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an

essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6.b of this Ordinance shall meet the following requirements:
1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.
 2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
 3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized, written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
 4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
 5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
 6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
 7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.

8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to prevent Sedimentation.
 9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process – Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer’s decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or

revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;
 2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.
- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:
1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

- 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
- 4) A person who has sold the property on which the permitted activity is occurring or will occur.
- b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
- c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
- d. There will be no substantial change in the permitted activity.
3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).

- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:
 1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 2. is for the purpose of fighting fires,
 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.

- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.

- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
 - 7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.
- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 - 1. There is a violation of this Ordinance with respect to the Tract.
 - 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.

3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.
- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney

to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.

- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.
- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

- a. Disapproval or Modification of Proposed Plan
 1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
 3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
 4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

b. Issuance of a Notice of Civil Penalty Assessment

1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.

c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.

1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial

and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.

(a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.

(b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.

7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.

8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.

9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, amended November 4, 2019, and amended October 18, 2021

Approved as to form:

Town Attorney

Town Clerk

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. ~~Reserved Code Enforcement Department~~—means the Mecklenburg County Land Use and Environmental Services Agency, Code Enforcement Department, formerly known as Building Standards.
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the _____ Tract for the changing of the natural cover or topography of the Tract, or any part _____ thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources _____ of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation control plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the -surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of ~~Engineeing~~Engineering and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2. Dairy animals and dairy products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - 5. Bees and apiary products.
 - 6. Fur producing animals.
 - 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.
- c. Exceptions -
 - i. When a development project contains an approved erosion control plan for an entire development, a separate erosion control plan shall not be required by the Town for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.
 - (5) Tax parcel number of lot being developed.
 - (6) Total acreage of lot being developed.
 - (7) Total acreage disturbed.
 - (8) Anticipated start and completion date.
 - (9) Person financially responsible.

- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.
- ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.
- iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- d. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & 11 of this Ordinance.
- ed. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
- fe. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.

- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the “Policies and Procedures” statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.
 - 1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.

- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.
- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per ~~24-hour~~24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, n-o periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
 - 1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
 - 2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the

person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.

3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8.g(1-5) above, Self-Inspections shall comply with the following:
 - (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
 - (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing,

dating and signing an inspection report;

- (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
- (a) installation of perimeter erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
 - (d) completion of storm drainage facilities;
 - (e) completion of construction or development; and

- (f) quarterly until the establishment of permanent ground cover sufficient to— restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.
- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection
 - (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
 - (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

(2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high

velocity paved sections:

- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.

- 1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
- 2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6.b of this Ordinance shall meet the following requirements:
- 1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including

all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.

2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized, written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.
8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to

prevent Sedimentation.

9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process — Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer’s decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously

approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:

1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4) A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is ~~the sole claimant of the right to~~ engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).

- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:
 - 1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 - 2. is for the purpose of fighting fires,
 - 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 - 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.
- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.

- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.
- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.

7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.
- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 1. There is a violation of this Ordinance with respect to the Tract.
 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
 4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
 5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation.

Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.

- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.
- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, -contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.
- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which ~~an~~ Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.

- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- h.i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

- a. Disapproval or Modification of Proposed Plan
 1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
 3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
 4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

- b. Issuance of a Notice of Civil Penalty Assessment
1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.
- c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.
1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
 4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
 5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of

all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.

- (a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.

- (b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.

7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, ~~and~~ amended November 4, 2019, and amended October 18, 2021.

Approved as to form:

Town Attorney

Town Clerk

Ordinance No. O-2019-06
Amended 11-04-2019

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

Ordinance No. O-2019-06
Amended 11-04-2019

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. ~~Reserved Code Enforcement Department – means the Mecklenburg County Land Use and Environmental Services Agency, Code Enforcement Department, formerly known as Building Standards.~~
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation Control Plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Commented [ES1]: A short cite definition has been created here and so we really need to use throughout vs. spelling out some places and not others. Should use “Plan” throughout given the definition.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the -surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of ~~Engineering~~ and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

Ordinance No. O-2019-06
Amended 11-04-2019

- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2. Dairy animals and dairy products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - 5. Bees and apiary products.
 - 6. Fur producing animals.
 - 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

Ordinance No. O-2019-06
Amended 11-04-2019

- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site:
 - 1. uncovers one acre or more or

- 2. _____ in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.

~~ii. For residential development projects involving a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single Erosion and Sedimentation Control Plan for for all of the disturbed lots the entire development, so long as the developer and the builder are the same financially responsible person. Alternatively, the person conducting the land-disturbing activity or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot the information required by Subsection (c) below for each individual lot pursuant to N.C.G.S. § 113A-60(b2)(2).~~

- c. Individual Lot Erosion Control Plan (Residential Development) Exceptions --
 - ~~i. When a residential development project contains an approved Erosion and Sedimentation Control Plan for the entire development as described in Subsection (b) above, a separate Erosion and Sedimentation Control Plans shall not be required by the for development of each individual residential lots within that development, which that disturbs less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for~~

~~a single-family lot in a common plan of development under this subsection. Where the developer and builder of the common plan of residential development are not the same financially responsible person different, - plans shall be submitted for each single-family, residential lot and the plans shall require only the following information:~~

- ~~(1) ——— (1) Name, address, telephone number, and email of owner of lot being developed.~~
- ~~(2) ——— (2) Street address of lot being developed.~~
- ~~(3) ——— (3) Subdivision name.~~
- ~~(4) ——— (4) Lot number.~~
- ~~(5) ——— (5) Tax parcel number of lot being developed.~~
- ~~(6) ——— (6) Total acreage of lot being developed.~~
- ~~(7) ——— (7) Total acreage disturbed.~~
- ~~(8) ——— (8) Anticipated start and completion date.~~
- ~~(9) ——— (9) Person financially responsible.~~
- ~~(10) ——— (10) Signature of person financially responsible.~~
- ~~(11) ——— (11) Existing platted survey of the lot.~~
- ~~(12) ——— (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.~~

~~ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.~~

~~iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~

~~iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~

d. Exceptions -

- ~~i. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~
- ~~ii. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-~~

disturbing activity within the boundaries of the tract during construction upon and development of the tract.

- ed. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 ~~and~~ 11 of this Ordinance.
- fed. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
- gfe. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the "Policies and Procedures" statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.

Ordinance No. O-2019-06
Amended 11-04-2019

1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.
- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.

Ordinance No. O-2019-06
Amended 11-04-2019

g. **Self-Monitoring and Self-Inspections.** – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per ~~24-hour~~24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, except as may be required by federal law, rule, or regulation, non-o periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.
3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8(g)(1)-(5) above, Self-Inspections shall comply with the following:

Ordinance No. O-2019-06
Amended 11-04-2019

- (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
 - (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and

Ordinance No. O-2019-06
Amended 11-04-2019

sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
 - (a) installation of perimeter erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
 - (d) completion of storm drainage facilities;
 - (e) completion of construction or development; and
 - (f) quarterly until the establishment of permanent ground cover sufficient to— restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource

Ordinance No. O-2019-06
Amended 11-04-2019

Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.

- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection
 - (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
 - (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	<u>F.P.S.</u>	<u>M.P.S.</u>
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9

Ordinance No. O-2019-06
Amended 11-04-2019

Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
- (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

- f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.

Ordinance No. O-2019-06
Amended 11-04-2019

1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6(-b) of this Ordinance, except as provided by Subsection 6(c), shall be submitted with an approved site plan and shall meet the following requirements:
 1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.
 2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
 3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized,

Ordinance No. O-2019-06
Amended 11-04-2019

written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
 5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
 6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
 7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.
 8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to prevent Sedimentation.
 9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process — Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

Ordinance No. O-2019-06
Amended 11-04-2019

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer's decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;
 2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in

accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:
1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4) A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
 3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).
- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:

Ordinance No. O-2019-06
Amended 11-04-2019

1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 2. is for the purpose of fighting fires,
 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.
- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the

Ordinance No. O-2019-06
Amended 11-04-2019

violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.
- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
 - 7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.

Ordinance No. O-2019-06
Amended 11-04-2019

- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 - 1. There is a violation of this Ordinance with respect to the Tract.
 - 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 - 3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
 - 4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
 - 5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance;

Ordinance No. O-2019-06
Amended 11-04-2019

whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.

- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.
- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.
- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- h.i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

Ordinance No. O-2019-06
Amended 11-04-2019

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

a. Disapproval or Modification of Proposed Plan

1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

- b. Issuance of a Notice of Civil Penalty Assessment
1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.
- c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.
1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
 4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
 5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of

Ordinance No. O-2019-06
Amended 11-04-2019

all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.
 - (a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.
 - (b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.
7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, ~~and amended November 4, 2019, and amended _____, 2021.~~

Commented [ES2]: Update as necessary

Approved as to form:

Town Attorney

Town Clerk

Ordinance No. O-2019-06
Amended 11-04-2019

TABLE OF CONTENTS	PAGE
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Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

Commented [E53]: Likely needs to be updated

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Emily Sloop, Town Attorney

Date: August 15, 2022

Subject: Soil Erosion and Sedimentation Control Ordinance

EXPLAIN REQUEST:

Last September, the Town's Soil Erosion Sedimentation Control Ordinance was updated to reflect required legislative changes resulting from HB 489. See starting at Page 5, Section 5(a) for the relevant text of the bill:

<https://www.ncleg.gov/Sessions/2021/Bills/House/PDF/H489v7.pdf>.

Staff has identified some areas of the ordinance that need to be further clarified to better assist staff with applying the new legislation from a practical standpoint, further specify the narrow application of the changes, and better align the text of the ordinance with 489. These edits have also been reviewed and approved by the Engineering and Public Works Department.

These edits are not required to go to the Planning Board or HOAB as they are to Town Code of Ordinances vs. Zoning and Subdivision Ordinances. However, because the Soil Erosion and Sedimentation Control Ordinance is considered a development regulation, the edits will require a public hearing.

ACTION RECOMMENDED:

Approval

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Ordinance to amend SESC 7-8-22
2. HB 489
3. Soil and Erosion Control Ordinance 09-24-21 clean
4. Soil and Erosion Control Ordinance 09-24-21 redline

5. Overlay of Soil and Erosion Control Ordinance redlines (includes September 2021 and Current) 7-7-22 EAS

AN ORDINANCE TO AMEND THE TOWN OF HUNTERSVILLE

SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE

Section 1. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that Section 6, General Requirements, is hereby amended as follows:

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.

For residential development projects involving land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single Erosion and Sedimentation Control Plan for the entire development, so long as the developer and the builder are the same financially responsible person. Alternatively, the person conducting the land-disturbing activity may submit for review and approval the information required by Subsection (c) below for each individual lot pursuant to N.C.G.S. § 113A-60(b2)(2).

- c. ~~Exceptions~~ Individual Lot Erosion Control Plan (Residential Development) -
 - i. When a residential development project contains an approved Erosion and Sedimentation Control Plan for an entire development as described in Subsection (b) above, ~~a Separate Erosion Control Plans~~ shall not be required ~~by the Town~~ for development of individual residential lots within that development ~~that which~~ disturbs less than one acre. Where the developer and builder of the common plan of residential development are not the same financially responsible person, plans shall be submitted for each single-family, residential lot and the plans shall require only the following information: if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.

- (5) Tax parcel number of lot being developed.
- (6) Total acreage of lot being developed.
- (7) Total acreage disturbed.
- (8) Anticipated start and completion date.
- (9) Person financially responsible.
- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

d. Exceptions -

~~ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.~~

~~iii i.~~ No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

~~iv ii.~~ No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

e. e. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & and 11 of this Ordinance.

f. f. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.

g. g. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 2. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that subsection g of Section 8, Self-Monitoring and Self-Inspections, is hereby amended as follows:

- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per 24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, except as may be required by federal law, rule, or regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

Section 3. BE IT ORDAINED by the Board of Commissioners of the Town of Huntersville, North Carolina, that subsection a of Section 10, Plan Requirements, is hereby amended as follows:

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6(b) of this Ordinance, except as provided by Subsection 6(c), shall be submitted with an approved site plan and shall meet the following requirements:

Section 4. Effective Date.

This ordinance shall become effective upon the date of adoption.

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SESSION LAW 2021-121
HOUSE BILL 489

AN ACT TO PROVIDE VARIOUS BUILDING CODE AND DEVELOPMENT
REGULATORY REFORMS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 87-10 reads as rewritten:

"§ 87-10. Application for license; examination; certificate; renewal.

(a) Anyone seeking to be licensed as a general contractor in this State shall submit an application. Before being entitled to an examination, an applicant shall:

- (1) Be at least 18 years of age.
- (2) Possess good moral character as determined by the Board.
- (3) Provide evidence of financial responsibility as determined by the Board.
- (4) Submit the appropriate application fee.
- (5) Consent to a criminal background check if required by the Board.

(a1) The Board shall require an applicant to pay the Board or a provider contracted by the Board an examination fee not to exceed one hundred dollars (\$100.00). In addition, addition to the costs of any criminal background check, the Board shall also require an applicant to pay the Board a fee not to exceed one hundred twenty-five dollars (\$125.00) if the application is for an unlimited license, one hundred dollars (\$100.00) if the application is for an intermediate license, or seventy-five dollars (\$75.00) if the application is for a limited license. The fees accompanying any application or examination shall be nonrefundable. The holder of an unlimited license shall be entitled to act as general contractor without restriction as to value of any single project; the holder of an intermediate license shall be entitled to act as general contractor for any single project with a value of up to one million dollars (\$1,000,000), excluding the cost of land and any ancillary costs to improve the land; the holder of a limited license shall be entitled to act as general contractor for any single project with a value of up to five hundred thousand dollars (\$500,000), excluding the cost of land and any ancillary costs to improve the land. The license certificate shall be classified in accordance with this section.

(a2) In determining an applicant's qualifications for licensure, the Board may utilize a criminal background check. If the Board uses a criminal background check, the provisions of G.S. 93B-8.1 shall apply. The Board shall keep all information obtained from criminal background checks privileged in accordance with applicable State law and federal guidelines, and the information shall be confidential and not a public record under Chapter 132 of the General Statutes.

(a3) Records, papers, and other documentation containing personal information collected or compiled by the Board in connection with an application for examination, licensure, certification, or renewal or reinstatement, or the subsequent update of information shall not be considered public records within the meaning of Chapter 132 of the General Statutes.

...."

SECTION 1.(b) G.S. 87-10.2 reads as rewritten:

"§ 87-10.2. Continuing education.

...



(b) Of the eight hours of annual continuing education required by this section, two hours shall be a mandatory course approved by the Board and the remaining six hours shall be elective courses approved by the Board. Each qualifier or qualifying party shall complete the mandatory course each year. Each qualifier or qualifying party may accumulate and carry forward up to four hours of elective course credit to the next calendar year. The Board shall evaluate and approve:

- (1) The content of continuing education courses.
- (2) Accreditation of continuing education sponsors and programs.
- (3) Computation of credit.
- (4) General compliance procedures.
- (5) Providers and instructors of continuing education courses.

(c) All ~~prospective~~ Board-approved providers of the mandatory course shall register Board-approved instructors affiliated with the provider to attend a training program established, approved, and administered by the Board to ensure the quality and consistency of mandatory course information. All prospective providers of elective courses shall submit course materials and instructor qualifications for Board evaluation, approval, and accreditation.

(d) Continuing education credit hours may only be given for courses that are taught live by an instructor approved by the Board. To receive credit, a qualifier or qualifying party shall attend and view the live teaching of the course and shall certify this requirement in the manner required by the Board. Only the period of live instruction shall apply to the satisfaction of the continuing education requirement established by this section. Continuing education providers shall certify the attendance of course attendees and shall transmit the qualifier or qualifying party's certification to the Board. For the purposes of this subsection, "live instruction" includes credit hours presented by video or by Internet transmission of a live or previously recorded and approved presentation by an approved instructor or instructors provided the presentation is either proctored by the approved ~~sponsor-provider~~ or contains safeguards as approved by the Board that allow the approved ~~sponsor-provider~~ to certify that the qualifier or qualifying party has viewed the presentation. The Board shall implement procedures to ensure that qualifiers and qualifying parties may satisfy all of the continuing education requirements of this section through approved Internet-based e-learning courses offered by approved providers by Internet transmission.

(e) False certification of attendance shall be grounds for the suspension or revocation of the course provider's privilege to provide courses in this State. The Board may take disciplinary action against any ~~licensee on account of a licensee, qualifier, or qualifying party~~ for false certification of attendance by that licensee's qualifier or qualifying party at any continuing education course.

(f) The Board shall maintain and distribute to licensees and qualifiers, as appropriate, records of the required educational coursework successfully completed by each qualifier or qualifying party, including the subject matter and the number of hours of each course.

...

(h) Any licensee who chooses not to complete the annual continuing education as required by this section may annually request that the Board place the licensee's license in an inactive status and the license shall become ~~invalid~~ invalid for that license year. However, in order for the license to be maintained as inactive, the licensee shall pay the same annual renewal fee paid by active licensees. Should the licensee desire to return to active status, the qualifier or qualifying party of the licensee shall satisfactorily complete the following continuing education requirements prior to seeking reinstatement:

- (1) If the licensee seeks reinstatement during the first two years after the license becomes inactive, the qualifier or qualifying party shall complete eight hours of continuing education, including the mandatory course offered during the year of reinstatement.
- (2) If the licensee seeks reinstatement more than two years after the license becomes inactive, the qualifier or qualifying party shall complete 16 hours of

continuing education, including the mandatory course offered during the year of reinstatement.

(i) The Board shall establish nonrefundable fees for the purpose of administering the continuing education program. The Board may charge the ~~sponsor-provider~~ of a proposed course a nonrefundable fee not to exceed twenty-five dollars (\$25.00) per credit hour for the initial review of the course and a nonrefundable fee of twelve dollars and fifty cents (\$12.50) per credit hour for the annual renewal of a course previously approved. The Board shall require an approved course provider to pay a fee, not to exceed five dollars (\$5.00) per credit hour per qualifier or qualifying party, for each qualifier or qualifying party completing an approved continuing education course conducted by that provider.

...."

SECTION 1.(c) G.S. 87-13.1 reads as rewritten:

"§ 87-13.1. Board may seek injunctive ~~relief~~; attorney's fee.

Whenever the Board determines that any person, firm or corporation has violated or is violating any of the provisions of this Article or rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reason of the violation. ~~The~~ When the Board prevails in actions brought under this section, the court may shall award the Board its reasonable attorney's fee not to exceed five thousand dollars (\$5,000) plus the costs associated with obtaining the relief and the investigation and prosecution of the violation."

SECTION 1.(d) The State Licensing Board for General Contractors shall adopt temporary rules to implement G.S. 87-10, as amended by Section 1(a) of this act, and G.S. 87-10.2, as amended by Section 1(b) of this act. Notwithstanding G.S. 150B-21.1(d), the temporary rules required by this act shall remain in effect until the effective date of the permanent rules adopted to replace these temporary rules. The Board is exempt from the fiscal note requirement of G.S. 150B-21.4 in adopting rules to implement this section.

SECTION 1.(e) Section 1(a) of this act becomes effective January 1, 2022, and applies to applications for licensure submitted on or after that date. Section 1(b) of this act becomes effective January 1, 2022, and applies to continuing education hours required on or after that date. Section 1(c) of this act becomes effective when the act becomes law and applies to actions brought by the Board on or after that date. Except as otherwise provided, this section is effective when it becomes law.

SECTION 2. G.S. 143-138 reads as rewritten:

"§ 143-138. North Carolina State Building Code.

...

(d1) Cost-Benefit Analysis. – When the Building Code Council revises or amends the North Carolina State Building Code as provided in subsection (d) of this section and considers an economic analysis or cost-benefit analysis of the proposed revision or amendment, the Council shall not limit its review to an economic analysis or cost-benefit analysis submitted by the proponent of the proposed revision or amendment but shall either conduct its own economic analysis or cost-benefit analysis or consider an economic analysis or cost-benefit analysis submitted other than by the proponent of the proposed revision or amendment. This section shall not apply to a proposal for revision or amendment made upon motion of the Council or submitted by a State agency or political subdivision of the State.

(e) Effect upon Local Codes. – Except as otherwise provided in this section, the North Carolina State Building Code shall apply throughout the State, from the time of its adoption. Approved rules shall become effective in accordance with G.S. 150B-21.3. However, any political subdivision of the State may adopt a fire prevention code and floodplain management regulations within its jurisdiction. The territorial jurisdiction of any municipality or county for

this purpose, unless otherwise specified by the General Assembly, shall be as follows: Municipal jurisdiction shall include all areas within the corporate limits of the municipality and extraterritorial jurisdiction areas established as provided in ~~G.S. 160A-360~~ G.S. 160D-202 or a local act; county jurisdiction shall include all other areas of the county. No such code or regulations, other than floodplain management regulations and those permitted by ~~G.S. 160A-436~~, G.S. 160D-1128, shall be effective until they have been officially approved by the Building Code Council as providing adequate minimum standards to preserve and protect health and safety, in accordance with the provisions of subsection (c) above. Local floodplain regulations may regulate all types and uses of buildings or structures located in flood hazard areas identified by local, State, and federal agencies, and include provisions governing substantial improvements, substantial damage, cumulative substantial improvements, lowest floor elevation, protection of mechanical and electrical systems, foundation construction, anchorage, acceptable flood resistant materials, and other measures the political subdivision deems necessary considering the characteristics of its flood hazards and vulnerability. In the absence of approval by the Building Code Council, or in the event that approval is withdrawn, local fire prevention codes and regulations shall have no force and effect. Provided any local regulations approved by the local governing body which are found by the Council to be more stringent than the adopted statewide fire prevention code and which are found to regulate only activities and conditions in buildings, structures, and premises that pose dangers of fire, explosion or related hazards, and are not matters in conflict with the State Building Code, ~~shall~~ may be approved. Local governments may enforce the fire prevention code of the State Building Code using civil remedies authorized under G.S. 143-139, 153A-123, and 160A-175. If the Commissioner of Insurance or other State official with responsibility for enforcement of the Code institutes a civil action pursuant to G.S. 143-139, 153A-123, or 160A-175 based upon the same violation. Appeals from the assessment or imposition of such civil remedies shall be as provided in ~~G.S. 160A-434~~, G.S. 160D-1127.

A local government may not adopt any ordinance in conflict with the exemption provided by subsection (c1) of this section. No local ordinance or regulation shall be construed to limit the exemption provided by subsection (c1) of this section.

...."

SECTION 3.(a) G.S. 160A-306 reads as rewritten:

"§ 160A-306. Building setback lines.

...

(b) Any setback line shall be ~~designed~~ designed:

- (1) To promote the public safety by providing adequate sight distances for persons using the street and its sidewalks, lessening congestion in the street and sidewalks, facilitating the safe movement of vehicular and pedestrian traffic on the street and sidewalks and providing adequate fire lanes between ~~buildings, and~~ buildings.
- (2) To protect the public health by keeping dwellings and other structures an adequate distance from the dust, noise, and fumes created by traffic on the street and by insuring an adequate supply of light and air.
- (3) To provide that, notwithstanding subsection (a) of this section, measurements for sight distances at street intersections, including sight triangles, must begin within the roadway or edge of pavement of a proposed or existing street.

...."

SECTION 3.(b) G.S. 160D-922 reads as rewritten:

"§ 160D-922. Erosion and sedimentation control.

Any local government may enact and enforce erosion and sedimentation control regulations as authorized by Article 4 of Chapter 113A of the General Statutes and shall comply with all

applicable provisions of that Article and, to the extent not inconsistent with that Article, with this Chapter. Fees charged by a local government under its erosion and sedimentation control program shall not exceed that authorized in G.S. 113A-60(a)."

SECTION 4.(a) G.S. 160D-1104(d) reads as rewritten:

"(d) Except as provided in G.S. 160D-1115 and G.S. 160D-1207, a local government may not adopt or enforce a local ordinance or resolution or any other policy that requires regular, routine inspections of buildings or structures constructed in compliance with the North Carolina Residential Code for One- and Two-Family Dwellings in addition to the specific inspections required by the North Carolina Building Code without first obtaining approval from the North Carolina Building Code Council. The North Carolina Building Code Council shall review all applications for additional inspections requested by a local government and shall, in a reasonable manner, approve or disapprove the additional inspections. This subsection does not limit the authority of the local government to require inspections upon unforeseen or unique circumstances that require immediate action. In performing the specific inspections required by the North Carolina Residential Building Code, the inspector shall conduct all inspections requested by the permit holder for each scheduled inspection visit. For each requested inspection, the inspector shall inform the permit holder of instances in which the work inspected is incomplete or otherwise fails to meet the requirements of the North Carolina Residential Code for One- and Two-Family Dwellings or the North Carolina Building Code. When a subsequent inspection is conducted to verify completion or correction of instances of Code noncompliance, any additional violations of the Code noted by the inspector on items already approved by the inspections department may delay the issuance of a temporary certificate of occupancy, but the inspections department shall not charge a fee for reinspection of those items."

SECTION 4.(b) This section is effective when it becomes law and applies to inspections conducted on or after that date.

SECTION 5.(a) G.S. 113A-54.1 is amended by adding a new subsection to read:

"(f) For land-disturbing activities on a single-family residential lot involving new construction with land disturbance of less than one acre where the builder or developer is the owner of the lot being developed and the person financially responsible for the land-disturbing activity, the financial responsibility for land-disturbing activity on that lot transfers to the new owner upon the builder's or developer's conveyance of the lot to the new owner, recording of the deed in the office of the register of deeds, and notification to the office or local program that approved the erosion control plan."

SECTION 5.(b) G.S. 113A-54.2(d) reads as rewritten:

"(d) ~~This section may not limit the existing G.S. 113A-60 governs the~~ authority of local programs approved pursuant to this Article to assess fees for the ~~approval-review~~ of erosion and sedimentation control plans."

SECTION 5.(c) G.S. 113A-60 reads as rewritten:

"§ 113A-60. Local erosion and sedimentation control programs.

(a) A local government may submit to the Commission for its approval an erosion and sedimentation control program for its jurisdiction, ~~and to this end local governments are authorized to jurisdiction and may~~ adopt ordinances and regulations necessary to establish and enforce erosion and sedimentation control programs. An ordinance adopted by a local government may establish a fee for the review of an erosion and sedimentation control plan and related activities. The fee shall be calculated on the basis of either the number of acres disturbed or in the case of a single-family lot in a residential development or common plan of development that is less than one acre set at no more than one hundred dollars (\$100.00) per lot developed. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. ~~An Except as otherwise provided in this Article, an ordinance adopted by a local government shall at least meet and may exceed the~~ minimum requirements of this Article and the rules adopted pursuant to this Article.

(a1) Two or more units of local government are authorized to establish a joint program and to enter into any agreements that are necessary for the proper administration and enforcement of the program. The resolutions establishing any joint program must be duly recorded in the minutes of the governing body of each unit of local government participating in the program, and a certified copy of each resolution must be filed with the Commission.

...

(b1) When a development project contains an approved erosion control plan for the entire development, a separate erosion control plan shall not be required by the local government for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the local government may require no more than the following information:

- (1) Name, address, telephone number, and email of owner of lot being developed.
- (2) Street address of lot being developed.
- (3) Subdivision name.
- (4) Lot number.
- (5) Tax parcel number of lot being developed.
- (6) Total acreage of lot being developed.
- (7) Total acreage disturbed.
- (8) Anticipated start and completion date.
- (9) Person financially responsible.
- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.

(b2) Except as may be required by federal law, rule, or regulation, a local erosion control program under this Article shall provide for all of the following:

- (1) That no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
- (2) For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (b1) of this section the erosion control measures for each individual lot.

(b3) No development regulation under Chapter 160D of the General Statutes or any erosion and sedimentation control plan under a local program shall require any of the following:

- (1) A silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- (2) A wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.

...."

SECTION 5.(d) G.S. 113A-61.1 is amended by adding a new subsection to read:

"(d) The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this Article provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation."

SECTION 5.(e) Section 5(c) of this act becomes effective October 1, 2021, and applies to erosion control plans submitted for review and approval on or after that date. The remainder of this section is effective when it becomes law.

SECTION 6.(a) Definitions. – As used in this section, "Council" means the North Carolina Building Code Council, and "Code" means the current North Carolina Building Code collection, and amendments to the Code, as adopted by the Council.

SECTION 6.(b) Code Amendment. – Until the effective date of the Code amendment that the Council is required to adopt pursuant to this section, the Council and Code enforcement officials enforcing the Code shall follow the provisions of subsection (c) of this section as it relates to Section D107 of the 2018 North Carolina Fire Code and other provisions that relate to fire apparatus access roads for one- or two-family dwelling residential developments.

SECTION 6.(c) Implementation. – Notwithstanding any provision of the Code or law to the contrary, the Council and Code enforcement officials shall not require an automatic sprinkler system in one- or two-family dwellings where there are fewer than 100 dwelling units on a single public or private fire apparatus access road with access from one direction.

SECTION 6.(d) Additional Rulemaking Authority. – The Council shall adopt a rule to amend Section D107 of the 2018 North Carolina Fire Code consistent with subsection (c) of this section. Notwithstanding G.S. 143-136(c), the Residential Code Committee within the Council shall consider the amendment required by this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Council pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 6.(e) Effective Date. – This section is effective when it becomes law.

SECTION 6.(f) Sunset. – This section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 7.(a) Definitions. – As used in this section, "Council" means the North Carolina Building Code Council, and "Code" means the current North Carolina Building Code collection, and amendments to the Code, as adopted by the Council.

SECTION 7.(b) Code Amendment. – Until the effective date of the Code amendments that the Council is required to adopt pursuant to this section, the Council and Code enforcement officials enforcing the Code shall follow the provisions of subsection (c) of this section as it relates to water service pipe material and standard conformance under Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code, and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code.

SECTION 7.(c) Implementation. – Notwithstanding any provision of the Code or law to the contrary, for the purposes of the water service pipe material and standard conformance requirements under Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code, and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code, the American Water Works Association (AWWA) C900 standard is an acceptable standard for polyvinyl chloride (PVC) plastic pipe.

SECTION 7.(d) Additional Rulemaking Authority. – The Council shall adopt a rule to amend Section P2906.4 and Table P2906.4 of the 2018 North Carolina Residential Code and Section 605.3 and Table 605.3 of the 2018 North Carolina Plumbing Code consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Council

pursuant to this subsection shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

SECTION 7.(e) Effective Date. – This section is effective when it becomes law.

SECTION 7.(f) Sunset. – This section expires on the date that rules adopted pursuant to subsection (d) of this section become effective.

SECTION 8.(a) Section 4 of S.L. 2020-61 reads as rewritten:

"SECTION 4.(a) Definitions. – For purposes of this section and its implementation, the following definitions apply:

- (1) "Permitting by Regulation for Building Sewer Systems Rule " means 15A NCAC 02T .0303 (Permitting by Regulation).
- (2) "Accessory building" means in one- and two-family dwellings not more than three stories above grade plane in height with a separate means of egress, a building, the use of which is incidental to that of the main building and which is detached and located on the same lot. An accessory building is a building that is roofed over and more than fifty percent (50%) of its exterior walls are enclosed. Examples of accessory buildings are garages, storage buildings, workshops, boat houses, treehouses, and dwelling units, etc. For purposes of this section, "main building" shall only include one- and two-family dwellings.
- (3) "Building sewer" means that part of the drainage system that extends from the end of the building drain and conveys the discharge by gravity or under pressure to a public sewer, private sewer, individual sewage disposal system, or other point of disposal.
- (4) "Lot" means a portion or parcel of land considered as a unit.
- (5) "Building drain" means that part of the lowest piping of a drainage system that receives the discharge from soil, waste, and other drainage pipes inside and that extends to 10 feet (3048 mm) beyond the exterior walls of the building and conveys the drainage to the building sewer.
- (6) "Building Code" means the 2018 North Carolina Building Code as adopted by the Council.

"SECTION 4.(b) Permitting by Regulation for Building Sewer Systems Rule. – Until the effective date of the revised permanent rule that the Environmental Management Commission is required to adopt pursuant to subsection (d) of this section, the Commission shall implement the Permitting by Regulation for Building Sewer Systems Rule as provided in subsection (c) of this section.

"SECTION 4.(c) Implementation. – Notwithstanding the requirements of General Permit No. WQG100000 and the limitation on applicability of 15A NCAC 02T .0303(a)(1), (a)(2), and (a)(3) to a building sewer that serves a single building, if a building sewer that serves a main building is deemed permitted pursuant to 15A NCAC 02T .0113, then a building sewer that serves an accessory building on the same lot that is connected to the building sewer or building drain for the main building, and a sewer shared between a main building and an accessory building, shall also be deemed permitted if the building sewer that serves the accessory building, and the sewer shared between the main building and the accessory building, meet the criteria in 15A NCAC 02T .0113 and all criteria required for that system in 15A NCAC 02T .0303, and no additional permit shall be ~~required~~ required to satisfy 15A NCAC 02T. In all cases, the building sewer piping and the building drain piping that connect the accessory building to the main building shall comply with applicable provisions of the Building Code. This section shall only apply to sewers that serve one main building and one accessory building on the same lot.

"SECTION 4.(d) Additional Rule-Making Authority. – The Commission shall adopt a rule to amend the Permitting by Regulation for Building Sewer Systems Rule consistent with subsection (c) of this section. Notwithstanding G.S. 150B-19(4), the rule adopted by the Commission pursuant to this section shall be substantively identical to the provisions of subsection (c) of this section. Rules adopted pursuant to this section are not subject to Part 3 of Article 2A of Chapter 150B of the General Statutes. Rules adopted pursuant to this section shall become effective as provided in G.S. 150B-21.3(b1), as though 10 or more written objections had been received as provided in G.S. 150B-21.3(b2).

"SECTION 4.(e) Applicability and Sunset. – This section and rules adopted pursuant to this section shall apply to common sewer lines and building drains in existence on, or constructed on or after, ~~the effective date of this act, June 24, 2020,~~ which are shared by accessory dwelling units or accessory residential buildings and a primary residence. This section expires when permanent rules adopted as required by subsection (d) of this section become effective."

SECTION 8.(b) This section is effective when it becomes law.

SECTION 9.(a) G.S. 136-102.6 reads as rewritten:

"§ 136-102.6. Compliance of subdivision streets with minimum standards of the Board of Transportation required of developers.

...

(d) The right-of-way and construction plans for such public streets in residential subdivisions, including plans for street drainage, shall be submitted to the Division of Highways for review and approval, prior to the recording of the subdivision plat in the office of the register of deeds. The plat or map required by this section shall not be recorded by the register of deeds without a certification pursuant to G.S. 47-30.2 and, if determined to be necessary by the Review Officer, a certificate of approval by the Division of Highways of the plans for the public street as being in accordance with the minimum standards of the Board of Transportation for acceptance of the subdivision street on the State highway system for maintenance. The Review Officer shall not certify a map or plat subject to this section unless the new streets or changes in existing streets are designated either public or private. The certificate of approval shall not be deemed an acceptance of the dedication of the streets on the subdivision plat or map. Final acceptance by the Division of Highways of the public streets and placing them on the State highway system for maintenance shall be conclusive proof that the streets have been constructed according to the minimum standards of the Board of Transportation. The Board of Transportation must approve the addition of subdivision street improvements designated as public to the State highway system for maintenance pursuant to this subsection within 90 days after the Department of Transportation receives a petition for road addition and the Department determines those subdivision streets meet the minimum standards of the Board of Transportation.

...."

SECTION 9.(b) This section becomes effective January 1, 2022, and applies to petitions for road addition for subdivision street improvements submitted to the Department of Transportation on or after that date.

SECTION 10. Except as otherwise provided, this act is effective when it becomes law.
In the General Assembly read three times and ratified this the 23rd day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Howard Penny, Jr.
Presiding Officer of the House of Representatives

s/ Roy Cooper
Governor

Approved 11:46 a.m. this 30th day of August, 2021

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. Reserved
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation control plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of Engineering and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.
- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 2. Dairy animals and dairy products.
 3. Poultry and poultry products.
 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 5. Bees and apiary products.
 6. Fur producing animals.
 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).

- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.
- c. Exceptions -
 - i. When a development project contains an approved erosion control plan for an entire development, a separate erosion control plan shall not be required by the Town for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.
 - (5) Tax parcel number of lot being developed.

- (6) Total acreage of lot being developed.
 - (7) Total acreage disturbed.
 - (8) Anticipated start and completion date.
 - (9) Person financially responsible.
 - (10) Signature of person financially responsible.
 - (11) Existing platted survey of the lot.
 - (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.
- ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.
 - iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
 - iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- d. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & 11 of this Ordinance.
 - e. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
 - f. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

- d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the “Policies and Procedures” statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.
 - 1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.
- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.
- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per 24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
 - 1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
 - 2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three

years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.

3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8.g(1-5) above, Self-Inspections shall comply with the following:
 - (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are

modified after initial installation;

- (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
- (a) installation of perimeter erosion and sediment control measures;

- (b) clearing and grubbing of existing ground cover;
- (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
- (d) completion of storm drainage facilities;
- (e) completion of construction or development; and
- (f) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.
- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection

- (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
- (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a

developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
 - (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
 - (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.
- f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.
1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
 2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an

essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6.b of this Ordinance shall meet the following requirements:
1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.
 2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
 3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized, written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
 4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
 5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
 6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
 7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.

8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to prevent Sedimentation.
 9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process – Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer’s decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or

revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;
 2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.
- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:
1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.

- 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
- 4) A person who has sold the property on which the permitted activity is occurring or will occur.
- b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
- c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
- d. There will be no substantial change in the permitted activity.
- 3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- 4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).

- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:
 - 1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 - 2. is for the purpose of fighting fires,
 - 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 - 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.

- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.

- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
 - 7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.
- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 - 1. There is a violation of this Ordinance with respect to the Tract.
 - 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.

3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.
- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney

to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.

- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.
- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

- a. Disapproval or Modification of Proposed Plan
 1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
 3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
 4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

b. Issuance of a Notice of Civil Penalty Assessment

1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.

c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.

1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial

and material evidence to be received therein. A full record shall be kept of all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.

(a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.

(b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.

7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.

8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.

9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, amended November 4, 2019, and amended October 18, 2021

Approved as to form:

Town Attorney

Town Clerk

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. ~~Reserved Code Enforcement Department~~—means the Mecklenburg County Land Use and Environmental Services Agency, Code Enforcement Department, formerly known as Building Standards.
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the _____ Tract for the changing of the natural cover or topography of the Tract, or any part _____ thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources _____ of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation control plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of ~~Engineering~~Engineering and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2. Dairy animals and dairy products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - 5. Bees and apiary products.
 - 6. Fur producing animals.
 - 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site.
 - 1. uncovers one acre or more or
 - 2. in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.
- c. Exceptions -
 - i. When a development project contains an approved erosion control plan for an entire development, a separate erosion control plan shall not be required by the Town for development of individual residential lots within that development that disturb less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for a single-family lot in a common plan of development under this subsection where the developer and builder are different, the plan shall require the following information:
 - (1) Name, address, telephone number, and email of owner of lot being developed.
 - (2) Street address of lot being developed.
 - (3) Subdivision name.
 - (4) Lot number.
 - (5) Tax parcel number of lot being developed.
 - (6) Total acreage of lot being developed.
 - (7) Total acreage disturbed.
 - (8) Anticipated start and completion date.
 - (9) Person financially responsible.

- (10) Signature of person financially responsible.
- (11) Existing platted survey of the lot.
- (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.
- ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.
- iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.
- d. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 & 11 of this Ordinance.
- ed. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
- fe. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. Control Surface Water - Surface water runoff originating upgrade of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.

- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the “Policies and Procedures” statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.
 - 1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department’s Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.

- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.
- g. Self-Monitoring and Self-Inspections. – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per ~~24-hour~~24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, n-o periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.
 - 1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
 - 2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the

person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.

3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8.g(1-5) above, Self-Inspections shall comply with the following:
 - (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
 - (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing,

dating and signing an inspection report;

- (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
- (a) installation of perimeter erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
 - (d) completion of storm drainage facilities;
 - (e) completion of construction or development; and

- (f) quarterly until the establishment of permanent ground cover sufficient to— restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.
- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection
 - (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
 - (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or

- (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the “prior to development” velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high

velocity paved sections:

- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
 - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
 - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.

- 1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
- 2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6.b of this Ordinance shall meet the following requirements:
- 1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including

all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.

2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized, written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.
8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to

prevent Sedimentation.

9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
 10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.
- b. Plan Review Process — Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer’s decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously

approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;

2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:

1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4) A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is ~~the sole claimant of the right to~~ engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.

Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).

- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:
 - 1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 - 2. is for the purpose of fighting fires,
 - 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 - 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.
- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.

- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.
- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.

7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.
- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 1. There is a violation of this Ordinance with respect to the Tract.
 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
 4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
 5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation.

Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.

- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.
- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, -contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.
- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which ~~an~~ Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.

- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- h.i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

- a. Disapproval or Modification of Proposed Plan
 1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
 3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
 4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

- b. Issuance of a Notice of Civil Penalty Assessment
1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.
- c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.
1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
 4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
 5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of

all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.

- (a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.

- (b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.

7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, ~~and~~ amended November 4, 2019, and amended October 18, 2021.

Approved as to form:

Town Attorney

Town Clerk

Ordinance No. O-2019-06
Amended 11-04-2019

<u>TABLE OF CONTENTS</u>	<u>PAGE</u>
Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

TOWN OF HUNTERSVILLE
SOIL EROSION AND SEDIMENTATION CONTROL ORDINANCE.

NOW, THEREFORE, BE IT ORDAINED by the Town of Huntersville Board of Commissioners that:

Section 1. Title

This Ordinance may be cited as the "Town of Huntersville Soil Erosion and Sedimentation Control Ordinance."

Section 2. Preamble

The Sedimentation of streams, lakes, wetlands, and other waters of this State constitute a major pollution problem. Sedimentation occurs from the Erosion or depositing of soil and other materials into the waters. Control of Erosion and Sedimentation is deemed vital to the public interest and necessary to public health and welfare, and expenditures of funds for Erosion and Sedimentation control programs shall be deemed for public purpose. It is the purpose of this Ordinance to provide for creation, administration, and enforcement of the program through procedures and for the adoption of mandatory standards that will permit development of this Town to continue with the least detrimental effects from pollution by Sedimentation. In recognition of desirability of early coordination of Sedimentation control planning, it is the intention of the Town's Board of Commissioners that pre-construction conferences be held among the affected parties.

Section 3. Definitions

As used in this Ordinance, unless the context clearly indicates otherwise, the following definitions apply.

- a. Accelerated Erosion - means any increase over the rate of Natural Erosion as a result of land-disturbing activity.
- b. Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- c. Adequate Erosion Control Measures, Structures, or Devices - means ones that control the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- d. Affiliate - means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.
- e. Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- f. Borrow - means fill material that is required for on-site construction and is obtained from other locations.

Ordinance No. O-2019-06
Amended 11-04-2019

- g. Buffer Zone – means the strip of land adjacent to a Lake or Watercourse.
- h. ~~Reserved Code Enforcement Department – means the Mecklenburg County Land Use and Environmental Services Agency, Code Enforcement Department, formerly known as Building Standards.~~
- i. Reserved
- j. Commission - means the North Carolina Sedimentation Control Commission.
- k. Committee - means The Town of Huntersville Storm Water Advisory Committee as established by the resolution of the Huntersville Board of Commissioners, together with any amendments thereto.
- l. Completion of Construction or Development - means that no further land-disturbing activity is required on a Tract except that which is necessary for establishing a permanent Ground Cover. Completion of Construction or Development may occur for a Tract, a Phase, or an entire Project as determined by the Town Engineer.
- m. Contractor Conducting the Land-disturbing Activity – means any person who participates in the land-disturbing activity, including, but not limited to, the general contractor and sub-contractors with the responsibility for supervising the work on the Tract for the changing of the natural cover or topography of the Tract, or any part thereof.
- n. Days – means calendar days unless otherwise specified.
- o. Department - means the North Carolina Department of Environmental Quality.
- p. Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- q. Discharge Point - means that point at which runoff leaves a Tract of land.
- r. Energy Dissipater - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high Velocity flow.
- s. Erosion - means the wearing away of land surface by the action of wind, water, gravity, or any combination thereof.
- t. Forest Practice Guidelines – means the written directions related to water quality prepared by the Department’s Division of Forest Resources and the United States Forest Service, including but not limited to the “Forestry Best Management Practices Manual” prepared by the Department.
- u. Ground Cover - means any vegetative growth or other material that renders the soil surface stable against Accelerated Erosion.

- v. Lake or Watercourse - means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which Sediment may be moved or carried in suspension, and which could be damaged by accumulation of Sediment.
- w. Land-disturbing Activity - means any use of the land by any Person in residential, governmental, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to Sedimentation.
- x. Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns and cities, acting through a joint program pursuant to the provisions of the Act.
- y. Natural Erosion - means the wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- z. Parent - means an Affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- aa. Reserved.
- bb. Permit – means the “Permit to Conduct Land-disturbing Activities” (grading permit) issued by the Town Engineer after a Plan is approved.
- cc. Person(s) - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- dd. Person Conducting Land-disturbing Activity – means any person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ee. Person Responsible for the Violation - as used in this Ordinance means:
 - 1. The developer or other Person who has or holds himself out as having financial or operational control over the land-disturbing activity;
 - 2. The landowner or Person in possession or control of the land who has directly or indirectly allowed the land-disturbing activity or has benefited from it or has failed to comply with any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- ff. Phase – means a specific geographic portion of a Project as indicated on an approved Plan.
- gg. Phase of Grading - means one of two types of grading, rough or fine.
- hh. Plan(s) - means an Erosion and Sedimentation Control Plan for a Project, including all Phases and all Tracts.
- ii. Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Commented [ES1]: A short cite definition has been created here and so we really need to use throughout vs. spelling out some places and not others. Should use “Plan” throughout given the definition.

- jj. Sedimentation - means the process by which Sediment resulting from Accelerated Erosion has been or is being transported off the site of the land-disturbing activity or into a Wetland, Lake or Watercourse.
- kk. Siltation – means sediment resulting from Accelerated Erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- ll. Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances that serve to collect and convey storm water through and from a given drainage area.
- mm. Storm Water Runoff - means the -surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- nn. Subsidiary - means an Affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- oo. Ten-Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.
- pp. Town Department of Engineering and Public Works – as used in this Ordinance, “Town Department of Engineering and Public Works” refers to both the Town Department of ~~Engineering~~ and the Town Department of Public Works.
- qq. Town Engineer – as used in this Ordinance, “Town Engineer” refers to both the Town Engineer and the Director of Public Works, both of whom shall have full authority and responsibility under this Ordinance where the term “Town Engineer” is used.
- rr. Tract - means contiguous lands and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership. A Plan may have more than one Phase, and each Phase may have more than one Tract.
- ss. Twenty-five Year Storm - means a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.
- tt. Uncovered - means the removal of Ground Cover from, on, or above the soil surface.
- uu. Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the Ground Cover or topography of a Tract.
- vv. Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the design storm. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- ww. Waste - means surplus materials resulting from on-site construction and disposed of at other locations.

Ordinance No. O-2019-06
Amended 11-04-2019

- xx. Watershed - means any water supply watershed protection area regulated with various controls within the jurisdictional boundaries of the Town of Huntersville.
- yy. Wetland(s) – means land having the vegetative, soil and hydrologic characteristics to be regulated by Section 401 and 404 of the Federal Clean Water Act as defined by the United States Army Corp of Engineers.
- zz. Working Days - means days exclusive of Saturday, and Sunday and Town government holidays during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4. Scope and Exclusions

This Ordinance shall regulate land-disturbing activity within the territorial jurisdiction of the Town of Huntersville and to the extraterritorial jurisdiction of the Town of Huntersville.

This Ordinance shall not apply to the following land-disturbing activities. Only those portions of a Tract that are in actual use for the land-disturbing activities listed below shall be exempt from this Ordinance:

- a. Activities including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - 1. Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts.
 - 2. Dairy animals and dairy products.
 - 3. Poultry and poultry products.
 - 4. Livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
 - 5. Bees and apiary products.
 - 6. Fur producing animals.
 - 7. Mulch, ornamental plants, and other horticultural products. For purposes of this section, “mulch” means substances composed primarily of plant remains or mixtures of such substances.
- b. Activities Undertaken on forest land for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with such Forest Practice Guidelines, then the provisions of this Ordinance shall apply.
- c. Activities for which a Permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- d. For the duration of an emergency, activities essential to protect human life, including activities specified in an executive order issued under G.S. 166A-19.30(a)(5).
- e. Land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).

Ordinance No. O-2019-06
Amended 11-04-2019

- f. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- g. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2.

Section 5. Forest Practice Guidelines

- a. The Town of Huntersville Board of Commissioners adopts by reference the Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services.
- b. If land-disturbing activity undertaken on forest land for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Ordinance shall apply to such activity and any related land-disturbing activity on the Tract.

Section 6. General Requirements

- a. Erosion and Sedimentation Control Measures - All land-disturbing activities, including those that disturb less than an acre, shall provide Adequate Erosion Control Measures, Structures, or Devices in accordance with this Ordinance that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the Tract during construction upon and development of the Tract.
- b. Plan Required - No Person shall initiate, direct, allow or conduct any land-disturbing activity on a Tract that meets any of the following criteria without having a copy of an approved Erosion and Sedimentation Control Plan on the job site:
 - 1. uncovers one acre or more or

- 2. _____ in Borrow and Waste areas covered by Section 9.f, with a disturbed area greater than one acre.

~~ii. For residential development projects involving a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single Erosion and Sedimentation Control Plan for for all of the disturbed lots the entire development, so long as the developer and the builder are the same financially responsible person. Alternatively, the person conducting the land-disturbing activity or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot the information required by Subsection (c) below for each individual lot pursuant to N.C.G.S. § 113A-60(b2)(2).~~

- c. Individual Lot Erosion Control Plan (Residential Development) Exceptions --
 - ~~i. When a residential development project contains an approved Erosion and Sedimentation Control Plan for the entire development as described in Subsection (b) above, a separate Erosion and Sedimentation Control Plans shall not be required by the for development of each individual residential lots within that development, which that disturbs less than one acre if the developer and the builder are the same financially responsible person. For review of an erosion control plan for~~

~~a single-family lot in a common plan of development under this subsection. Where the developer and builder of the common plan of residential development are not the same financially responsible person different, - plans shall be submitted for each single-family, residential lot and the plans shall require only the following information:~~

- ~~(1) ——— (1) Name, address, telephone number, and email of owner of lot being developed.~~
- ~~(2) ——— (2) Street address of lot being developed.~~
- ~~(3) ——— (3) Subdivision name.~~
- ~~(4) ——— (4) Lot number.~~
- ~~(5) ——— (5) Tax parcel number of lot being developed.~~
- ~~(6) ——— (6) Total acreage of lot being developed.~~
- ~~(7) ——— (7) Total acreage disturbed.~~
- ~~(8) ——— (8) Anticipated start and completion date.~~
- ~~(9) ——— (9) Person financially responsible.~~
- ~~(10) ——— (10) Signature of person financially responsible.~~
- ~~(11) ——— (11) Existing platted survey of the lot.~~
- ~~(12) ——— (12) A sketch plan showing erosion control measures for the lot being developed, but the sketch shall not be required to be under the seal of a licensed engineer, landscape architect, or registered land surveyor unless there is a design feature requiring such under federal or State law or regulation.~~

~~ii. For a land-disturbing activity on more than one residential lot where the total land disturbed exceeds one acre, the person conducting the land-disturbing activity may submit for approval a single erosion control plan for all of the disturbed lots or may submit for review and approval under subsection (c.i) of this section the erosion control measures for each individual lot.~~

~~iii. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~

~~iv. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~

d. Exceptions -

- ~~i. No Plan shall require a silt fence or other erosion control measure to be placed in a location where, due to the contour and topography of the development site, that erosion control measure would not substantially and materially retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of the tract.~~
- ~~ii. No plan shall require a wire-backed reinforced silt fence where, due to the contour and topography of the development site, that fence would not substantially and materially retain the sediment generated by the land-~~

disturbing activity within the boundaries of the tract during construction upon and development of the tract.

- ed. Compliance - Persons who submit a Plan to the Town Engineer shall comply with the provisions of Sections 10 ~~and~~ 11 of this Ordinance.
- fed. Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity and associated Sedimentation.
- gfe. More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state or local laws, ordinances, or rules, the more restrictive provision shall apply.

Section 7. Basic Control Objectives

A Plan may be disapproved pursuant to Section 10 of this Ordinance if the Plan fails to include Adequate Erosion Control Measures, Structures, or Devices to address the following control objectives:

- a. Identify Critical Areas - On-site areas that are subject to severe Erosion, and off-site areas that are especially vulnerable to damage from Erosion and/or Sedimentation are to be identified and receive special attention.
- b. Limit Time of Exposure - All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.
- c. Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- d. Control Surface Water - Surface water runoff originating upland of exposed areas should be controlled to reduce Erosion and Sediment loss during the period of exposure.
- e. Control Sedimentation - All land-disturbing activity is to be planned and conducted so as to prevent Sedimentation damage.
- f. Manage Storm Water Runoff - When the increase in the Velocity of Storm Water Runoff resulting from a land-disturbing activity is sufficient to cause Accelerated Erosion of the receiving watercourse, Plans are to include measures to control the Velocity at the Discharge Point so as to minimize Accelerated Erosion of the site and to decrease Sedimentation to any Lake or Watercourse.

Section 8. Mandatory Standards for Land-disturbing Activity

No land-disturbing activity subject to the control of this Ordinance shall be undertaken except in accordance with the following mandatory standards:

- a. Lake, Watercourse and Wetland Protection - Additional erosion control measures structures, or devices as specified in the "Policies and Procedures" statement issued by the Town Engineer shall be required to provide a higher level of protection to Lakes, Watercourses, and Wetlands from Sedimentation.

1. Buffer zone – No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a Lake or Watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) of the buffer zone nearest the land-disturbing activity.
 - i. Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a Lake or Watercourse.
 - ii. Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- b. Graded Slopes and Fills - The angle for graded slopes and fills shall be no greater than the angle that that can be retained by vegetative cover or other Adequate Erosion Control Measures, Structures, or Devices. Permanent or temporary stabilization sufficient to restrain erosion is to be provided within 7 or 14 calendar days after completion of any Phase of Grading.
- c. Fill Material. Unless a permit from the Department's Division of Waste Management to operate a landfill is on file for the official site, acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.
- d. Ground Cover - The Person conducting the land-disturbing activity shall plant or otherwise provide a permanent Ground Cover sufficient to restrain Erosion after Completion of Construction or Development. Provisions for a permanent Ground Cover sufficient to restrain Erosion must be accomplished within 21 calendar days following Completion of Construction or Development. For an area of a site that is inactive for a period of 14 days from the last land-disturbing activity, temporary or permanent ground cover would be required.
- e. Prior Plan Approval - No Person shall initiate any land-disturbing activity on a Tract if one acre or more is to be disturbed unless, thirty (30) or more days prior to initiating the activity, a Plan for that activity has been submitted and approved in accordance with Section 10(b). The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The Town shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the Tract.
- f. Pre-construction Conference - If one acre or more is to be, Uncovered, the Person(s) conducting the land-disturbing activity or an agent of that party shall contact the Town Engineer at least 48 hours before commencement of the land-disturbing activity. The purpose is to arrange an on-site meeting with the Town Engineer or duly authorized representative to review and discuss the approved Plan and the proposed land-disturbing activity.

Ordinance No. O-2019-06
Amended 11-04-2019

g. **Self-Monitoring and Self-Inspections.** – The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall inspect all Erosion and Sedimentation control measures as soon as possible, no less than once a week and within 24 hours after any storm event of greater than 1.0 inches of rain per ~~24-hour~~ 24-hour period or more frequently if required by State or Federal Law, hereinafter “Self-Monitoring.” The Landowner, the financially responsible party, or the landowner’s or financially responsible party’s agent shall also perform an inspection of the area covered by the Plan after each phase of the Plan has been completed and after establishment of temporary ground cover in accordance with N.C.G.S. § 113A-57(2), hereinafter “Self-Inspections.” The person performing the Self-Monitoring and Self-Inspections shall have certification approved by the Town Engineer. However, except as may be required by federal law, rule, or regulation, non-o periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

1. A record of the Self-Monitoring and Self-Inspections shall be maintained and made available at the site of the land-disturbing activity. These records shall set out any significant deviation from the approved Plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. These records shall be maintained at the site until permanent ground cover has been established as required by the approved Plan. The Self-Inspections required by this subsection shall be in addition to inspections required by N.C.G.S. § 113A-61.1 and Section 12 of this Ordinance.
2. If one acre or more is to be disturbed, a record of inspections shall be kept by the Person conducting the land-disturbing activity or an agent until three years after construction is completed and approved by the Town Engineer. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project as being disturbed or to be disturbed will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. The record shall include the date and time of inspection, weather conditions, any repairs or maintenance needed, and the signature and certification number of the person who performed the inspection. Additional record keeping may be required by State or Federal Law and as stated on the approved plans.
3. Corrective action on the repairs and maintenance indicated on the record are to begin within 24 hours after a rain event or within 24 hours of the last inspection if a rain event did not prompt the inspection, unless additional time is allowed by the Town Engineer. The date of the completion of such repairs noted. The records of inspection shall be retained and made available to the Town Engineer upon request.
4. Persons that have had a Notice of Violation or repeated warning about off-site sedimentation or non-maintenance of Adequate Erosion Control Measures, Structures, or Devices may be required to provide the Town Engineer with a self-inspection record for the particular Tract.
5. Any Person who falsifies, tampers with, or knowingly renders inaccurate records can be penalized under Section 13 of this Ordinance.
6. In addition to the requirements contained in Subsections 8(g)(1)-(5) above, Self-Inspections shall comply with the following:

Ordinance No. O-2019-06
Amended 11-04-2019

- (i) The person who performs the inspection shall make a record of the site inspection by documenting the following items:
 - (a) All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (i)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
 - (b) the completion of any Phase of Grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (c) the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in paragraph (e) of this sub-part) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
 - (d) that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
 - (e) any significant deviations from the approved erosion and

Ordinance No. O-2019-06
Amended 11-04-2019

sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

- (ii) The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (iii) The inspection shall be performed during or after completion of each of the following activities:
 - (a) installation of perimeter erosion and sediment control measures;
 - (b) clearing and grubbing of existing ground cover;
 - (c) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
 - (d) completion of storm drainage facilities;
 - (e) completion of construction or development; and
 - (f) quarterly until the establishment of permanent ground cover sufficient to— restrain erosion or until the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of a Tract for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion

Section 9. Design and Performance Standards

- a. Design Storm - Adequate Erosion Control Measures, Structures, and Devices shall be planned, designed, constructed and maintained so as to provide protection from the calculated maximum peak rate of runoff from the Ten-year Storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resource

Ordinance No. O-2019-06
Amended 11-04-2019

Conservation Services (formerly Soil Conservation Service's) "National Engineering Field Manual for Conservation Practices," or other acceptable calculation procedures including but not limited to the Town of Huntersville's Storm Water Design Manual.

- b. Innovative Measures - Erosion and Sedimentation measures applied alone or in combination to satisfy the intent of this section are acceptable if they are sufficient to prevent adverse secondary consequences. Innovative techniques and ideas will be considered and may be used following approval by the Town Engineer if it can be demonstrated that such techniques and ideas are likely to produce successful results.
- c. Responsibility for Maintenance - During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent Erosion and Sedimentation control measures as required by the approved Plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act. After development, the landowner or Person in possession or control of the land shall install and maintain all necessary permanent Erosion and Sediment control measures.
- d. Additional Measures - Whenever the Town Engineer, determines that accelerated Erosion and Sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the Person conducting the land-disturbing activity shall take additional protective action.
- e. Storm Water Outlet Protection
 - (a) Intent. Stream banks and channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity.
 - (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
 - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
 - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	<u>F.P.S.</u>	<u>M.P.S.</u>
Fine sand (noncolloidal)	2.5	.8
Sandy loam (noncolloidal)	2.5	.8
Silt loam (noncolloidal)	3.0	.9

Ordinance No. O-2019-06
Amended 11-04-2019

Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

- (c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Town recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
- (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
- (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

- (d) Exceptions - This rule shall not apply where it can be demonstrated to the Town that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

- f. Borrow and Waste Areas - When the Person conducting the land-disturbing activity is also the Person conducting the Borrow or Waste disposal activity, the following areas are considered as part of the land-disturbing activity.

Ordinance No. O-2019-06
Amended 11-04-2019

1. Areas from which Borrow is obtained that are not regulated by the provisions of the Mining Act of 1971 and its subsequent amendments, or
2. Waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management.

When the Person conducting the land-disturbing activity is the Person conducting the Borrow or Waste disposal activity, the activity shall not be considered a separate land-disturbing activity.

The responsible Person conducting the Borrow or Waste Areas shall provide Adequate Erosion Control Measures, Structures, or Devices and comply with all provisions of this Ordinance.

- g. Access and Haul Roads - Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.
- h. Operations in Lakes or Watercourses - land-disturbing activity in connection with construction in, on, over, or under a Lake or Watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the Lake or Watercourse. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.

Section 10. Erosion and Sedimentation Control Plans

- a. Plan Requirements – All Plans required for Land- disturbing Activities as identified in Section 6(-b) of this Ordinance, **except as provided by Subsection 6(c)**, shall **be submitted with an approved site plan and shall** meet the following requirements:
 1. Plans shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of all Tracts for the Project, including all Phases, and the measures planned to comply with the requirements of this Ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the Town Engineer on request.
 2. Plans must contain an authorized statement of financial responsibility and ownership signed by the Person financially responsible for the land-disturbing activity or that Person's attorney in fact, and all such signatures shall be notarized. The statement shall include the mailing and street addresses of the principal place of business of the Person financially responsible and of the owner of the land or their registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving service of process and notice of compliance or non-compliance with the Plan, the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance.
 3. If the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's notarized,

Ordinance No. O-2019-06
Amended 11-04-2019

written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

4. The land-disturbing activity described in the Plan shall comply with all Federal, State, and Local water quality laws, rules and regulations, including, but not limited to, the Federal Clean Water Act. The Town Engineer may require supporting documentation.
5. The land-disturbing activity described in the Plan shall not result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters.
6. The land-disturbing activity described in the Plan shall not result in a violation of any local Ordinance, law, rule, or regulation, including but not limited to zoning, tree protection, stream, lake and watershed buffers, and flood plain regulations.
7. Two (2) hard copies of the Plan shall be filed with the Town Engineer in addition to an electronic copy filed as directed by the Town. A copy of the approved Plan shall be maintained on the job site.
8. Effort should be made not to uncover more than 20 acres at any one time. If more than 20 acres are to be uncovered at any one time, the Plan shall contain the following:
 - (a.) The method of limiting time of exposure and amount of exposed area to achieve the objectives of this Ordinance.
 - (b.) A cut/fill analysis that shows where soil will be moved from one area of the Tract to another as ground elevation is changed.
 - (c.) Construction sequence and construction phasing to justify the time and amount of exposure.
 - (d.) Techniques to be used to prevent Sedimentation associated with larger disturbed areas.
 - (e.) Additional erosion control measures, structures, and devices to prevent Sedimentation.
9. All Plans must be sealed by a professional engineer, licensed to do business in the State of North Carolina.
10. No person may initiate a land-disturbing activity before notifying the Town in writing of the date that land-disturbing activity will begin.

- b. Plan Review Process — Once a Plan has been submitted with the applicable review fee, the review process will be initiated. The Town Engineer will review each Plan submitted and within 30 Days of receipt thereof will notify the Person submitting the Plan (hereinafter “the applicant”) that it has been approved, approved with modifications, or disapproved. The Engineer’s time for review shall not begin until a complete Plan has been submitted. Plan requirements shall be as required by the Town Department of Engineering and Public Works. Should the Plan be filed and not reviewed within the specified time frame, the land-disturbing activity may commence subject to the provisions of Section 8.e, Section 10.a.4 and Section 10.a.5, and the Town Engineer will endeavor to review the plan on an expedited schedule.

Ordinance No. O-2019-06
Amended 11-04-2019

In the event the Plan or a transfer of a plan is disapproved pursuant to subsection (d) of this Section, the Town Engineer shall notify the applicant and the Director of such disapproval within 10 Days thereof. The Town Engineer shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved. The applicant shall have the right to appeal the Town Engineer's decision to the Stormwater Advisory Committee as provided in Section 16 of this Ordinance, or may appeal directly to the Commission.

Plans for which land-disturbing activity has not commenced within 3 years from the initial plan approval are void.

- c. Amendments to Plans - If the Town Engineer, either upon review of such Plan or upon inspection of the job site, determines that the Plan is inadequate to meet the requirements of this Ordinance or that a significant risk of Accelerated Erosion or off-site Sedimentation exists, then the Town Engineer shall require a revised Plan. Pending the preparation of the revised Plan, work on affected area shall cease or shall continue only under conditions outlined by the Town Engineer.

Amendments or revisions to a Plan must be made in written and/or graphic form and shall be submitted at any time under the same requirements for submission of original Plans. Until such time as the Town Engineer approves any amendments or revisions, the land-disturbing activity shall not proceed, except in accordance with the Plan as originally approved.

The Town Engineer must approve, approve with modifications, or deny a revised Plan within 15 Days of receipt, or it is deemed to be approved as submitted, unless such approval conflicts with other federal, state or local regulations.

- d. Grounds for Disapproval of Plans – Any Plan that is not in accordance with the requirements set forth in subsection (a) above shall be disapproved. In addition, a Plan may be disapproved upon a finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:
1. Is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation regarding a Plan previously approved by the Commission or the Town and has not complied with the provisions of the notice within the time specified in the notice;
 2. Has failed to pay a civil penalty assessed pursuant to the Act, or a local ordinance adopted pursuant to the Act, by the time the payment is due;
 3. Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to the Act; or
 4. Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to the Act.

For the purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- e. Violations - Any Person engaged in land-disturbing activity who fails to file a required Plan in accordance with this Ordinance shall be deemed in willful violation of this Ordinance. Any Person who conducts a land-disturbing activity except in

accordance with provisions of an approved Plan shall be deemed in violation of this Ordinance.

- f. Plan Transfer. The Town may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection. The Town may transfer a plan if all of the following conditions are met:
1. The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
 2. The Town finds all of the following:
 - a. The plan holder is one of the following:
 - 1) A natural person who is deceased.
 - 2) A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
 - 3) A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
 - 4) A person who has sold the property on which the permitted activity is occurring or will occur.
 - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
 - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
 - d. There will be no substantial change in the permitted activity.
 3. The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
 4. The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- Notwithstanding changes to law made after the original issuance of the plan, the Town may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the Town from requiring a revised plan pursuant to G.S. § 113A-54.1(b).
- g. Display of Plan Approval. A Plan approval issued under this Section shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved Plan shall be kept on file at the job site.

Section 11. Permits

- a. No Person shall undertake any land-disturbing activity subject to this Ordinance without first obtaining a Permit from the Town Engineer. The only exception to this requirement is a land-disturbing activity that:

Ordinance No. O-2019-06
Amended 11-04-2019

1. has been approved by the Town Engineer at a pre-construction conference for the purpose of installing erosion control measures indicated on the approved Plan,
 2. is for the purpose of fighting fires,
 3. is for the stock piling of raw or processed sand, stone, or gravel in existing material processing plants and existing storage yards, provided that Sediment control measures are utilized to protect against off-site damage, or
 4. does not exceed one (1) acre of disturbed area. In determining the size of the disturbed area, all Tracts shown on the Plan for the Project will be aggregated regardless of ownership, and regardless of whether such Tracts are contiguous or not, and regardless of whether such Tracts are in the same Phase. Although a Plan and a Permit may not be required for activity comprising less than one acre, such activity is subject to all other requirements of this Ordinance.
- b. No Person shall undertake any land-disturbing activity for more than one acre without acquiring an NCG01 Permit (in addition to the Permit required by Section 11(a) above) by completing and submitting an electronic Notice of Intent (NOI) form requesting a Certificate of Coverage (COC) under the NCG010000 Construction Stormwater General Permit. The Letter of Approval from the Engineer shall contain a notice of the NCG01 Permit requirement and the acreage approved for disturbance.

Section 12. Inspections and Investigations

- a. The Town Engineer is authorized and required to inspect the sites of land-disturbing activity to ensure compliance with the Act, this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance and to determine whether the activity is being conducted in accordance with the Ordinance, the Act, and the approved Plan and whether the measures required in the Plan are effective in controlling Erosion and Sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the notification of each Plan approval or issuance of the Permit.
- b. No Person shall willfully resist, delay, or obstruct the Town Engineer while the Town Engineer is inspecting or attempting to inspect a land-disturbing activity under this Ordinance.
- c. If, through inspection, it is determined that a Person engaged in land-disturbing activity has failed to comply with the Act, this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, or has failed to comply with an approved Plan, the Town Engineer shall immediately serve upon the landowner, the landowner's agent, or other Person in possession or control of the land a written notice of violation. The notice may be served by any means authorized under G.S. 1A-1, Rule 4. Notwithstanding the foregoing, if the person engaged in the land-disturbing activity has not received a previous notice of violation under this Section, the Town shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program in the Department, referral to a cooperative extension program, or by the provision of written materials such as Departmental guidance documents. If the Town is unable to deliver the notice of violation within 15 days following discovery of the

Ordinance No. O-2019-06
Amended 11-04-2019

violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

A notice of violation shall identify the nature of the violation and set forth the measures necessary to achieve compliance with the Ordinance. The notice shall specify a date by which the Person must comply with this Ordinance, and advise that the Person may be subject to a civil penalty and that failure to correct the violation within the time specified will subject that Person to the civil and criminal penalties for a continued violation as provided in G.S. 113A-64 and Section 13 of this Ordinance, or any other authorized enforcement action.

- d. In determining the measures required and the time for achieving compliance, the Town Engineer shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits.
- e. The Town Engineer shall use local rainfall data approved by the Town Engineer to determine whether the design storm identified in Section 9.a has been exceeded.
- f. Penalties may be assessed for any of the following:
 - 1. Failure to submit a Plan.
 - 2. Performing land-disturbing activities without an approved Plan and pre-construction conference, or Permit.
 - 3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
 - 4. A repeated violation for which a notice was previously given on the same Tract or to the Person Responsible for the Violation.
 - 5. Willful violation of this Ordinance.
 - 6. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in Sedimentation in a Wetland, Lake or Watercourse, or other designated protected areas.
 - 7. Failure to install or maintain Adequate Erosion Control Measures, Structures, or Devices per the approved Plan and additional measures per Section 9.d such that it results in off-site Sedimentation.
- g. The Town Engineer shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this Ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity. Reasonable time shall be deemed to include daylight hours, Monday through Saturday, and otherwise shall include all emergencies. No Person shall refuse entry or access to the Town Engineer who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Town Engineer while in the process of carrying out official duties.

- h. The Town Engineer shall also have the power to require written statements, or the filing of reports under oath as a part of investigating land-disturbing activity.
- i. With regard to the development of any Tract that is subject to this Ordinance, a Certificate of Occupancy shall not be issued where any of the following conditions exist:
 - 1. There is a violation of this Ordinance with respect to the Tract.
 - 2. If there remains due and payable to Town of Huntersville civil penalties that have been levied against the Person conducting the land-disturbing activity for violation(s) of this Ordinance. If a penalty is under appeal, the Town Engineer may require the amount of the fine, and any other amount that the Person would be required to pay under this Ordinance if the Person loses the appeal, be placed in a refundable account or surety prior to issuing the Certificate of Occupancy.
 - 3. The requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the only building then under construction on the Tract.
 - 4. On the Tract which includes multiple buildings on a single parcel, the requirements of the Plan have not been completed and the building for which a Certificate of Occupancy is requested is the last building then under construction on the Tract.
 - 5. On a Tract which includes multiple parcels created pursuant to the applicable subdivision regulations, the requirements of the Plan have not been completed with respect to the parcel for which the Certificate of Occupancy is requested.

Section 13. Penalties

- a. Any Person who violates any of the provisions of this Ordinance, or rules or orders adopted or issued pursuant to this Ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs. No penalty shall be assessed until the Person alleged to be in violation has been notified of the violation. Refusal to accept the notice or failure to notify the Town Engineer of a change of address shall not relieve the violator's obligation to comply with the Ordinance or to pay such a penalty.
- b. The maximum civil penalty for each violation of this Ordinance is \$5,000.00. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this Ordinance for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this Section for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).
- c. In determining the amount of the civil penalty, the Town Engineer shall consider the following factors: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance;

Ordinance No. O-2019-06
Amended 11-04-2019

whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with this Ordinance, the Act, or any other erosion and sedimentation control ordinance, rule, order or law.

- d. The Town Engineer shall determine the amount of the civil penalty and shall notify the Person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment, contest the assessment within 30 days as specified in Section 16, or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing by the Stormwater Advisory Committee and a stipulation as to the facts on which the assessment was based. If a violator does not pay a civil penalty assessed by the Town Engineer within 60 Days after it is due, the Town Engineer shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in Mecklenburg County Superior Court.
- e. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and for which no request for remission is made within the required timeframe is due when the violator is served with a notice of assessment. An assessment that is contested or for which a request for remission is made within the required timeframe is due at the conclusion of the administrative and judicial review of the assessment or final remission decision.
- f. Any Person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this ordinance, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required, except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor and may be subject to a fine not to exceed Five Thousand Dollars (\$5,000). This is in addition to any civil penalties that may be charged.
- g. A violation of the Town Soil Erosion and Sedimentation Control Ordinance that is not knowing or not willful shall not constitute a misdemeanor or infraction punishable under North Carolina General Statute 14-4, but instead shall be subject to the civil penalties provided in this Ordinance.
- h. The clear proceeds of civil penalties collected by the Town of Huntersville under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. § 115C-457.2. Penalties collected by the Town of Huntersville may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the Town for the prior fiscal year.
- h.i. The damage or destruction of a silt fence occurring during land-disturbing activities or construction on a development project shall not be assessed a civil penalty under this section provided that the silt fence is repaired or replaced within the compliance period noted in the inspection report or Notice of Violation.

Section 14. Injunctive Relief

Ordinance No. O-2019-06
Amended 11-04-2019

- a. Whenever the Town Engineer has reasonable cause to believe that any Person is violating or threatening to violate this Ordinance, any rule, regulation or order adopted by the Town of Huntersville, or any term, condition, or provision of an approved Plan, the Town Engineer may, either before or after the institution of any other action or proceeding authorized by this Ordinance, authorize the Town Attorney to institute a civil action in the name of the Town of Huntersville, for injunctive relief to restrain the violation or threatened violation. The action shall be brought pursuant to G.S. 113A-65(b) in Mecklenburg County Superior Court
- b. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter such orders or judgements as are necessary to abate the violation or to ensure that restoration is performed or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

Section 15. Restoration of Areas Affected by Failure to Comply

The Town Engineer may require a Person who engaged in any land-disturbing activity and failed to retain Sediment generated by the activity to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by Sedimentation. This authority is in addition to any other civil penalty or injunctive relief authorized under this Ordinance.

Section 16. Appeals

a. Disapproval or Modification of Proposed Plan

1. The disapproval or modification of any proposed Plan by the Town Engineer shall entitle the Person submitting the Plan ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 15 Days after receipt of written notice of the disapproval or modification. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Chapter and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
2. In the event a Plan is disapproved pursuant to Section 10.d of this Ordinance, the applicant may appeal the Town's disapproval of the Plan directly to the Commission.
3. Within 5 Days of receiving the demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the demand for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted by the Committee in accordance with the provisions of Section 16.c of this Ordinance.
4. If the Committee upholds the disapproval or modification of a proposed Plan following the public hearing, the Petitioner shall have 30 Days from the receipt of the decision to appeal the decision to the North Carolina Sedimentation Control Commission pursuant to Title 15A, Chapter 4B Section .0118(b) of the North Carolina Administrative Code and G.S. 113A-61(c).

- b. Issuance of a Notice of Civil Penalty Assessment
1. The issuance of a notice of assessment of a civil penalty by the Town Engineer shall entitle the Person responsible for the violation of the Ordinance ("Petitioner") to a public hearing before the Storm Water Advisory Committee ("Committee") if such Person submits written demand for a hearing to the Clerk of the Committee ("Clerk") within 30 Days of the receipt of the notice of assessment of a civil penalty. The demand for a hearing filed with the Clerk shall be accompanied by a filing fee as established by the Storm Water Advisory Committee. The Committee may order the refund of all or any part of the filing fee if it rules in favor of the Petitioner. Failure to timely file such demand and fee shall constitute a waiver of any rights to appeal under this Ordinance and the Storm Water Advisory Committee shall have no jurisdiction to hear the appeal.
 2. Within 5 Days of receiving the Petitioner's demand for a hearing, the Clerk shall notify the Chairman of the Committee ("Chairman") of the request for hearing. As soon as possible after the receipt of said notice, the Chairman shall set a time and place for the hearing and notify the Petitioner by mail of the date, time and place of the hearing. The time specified for the hearing shall be either at the next regularly scheduled meeting of the Committee from the submission of the notice, or as soon thereafter as practical, or at a special meeting. The hearing shall be conducted pursuant to the provisions of Section 16.c of this Ordinance.
 3. Any party aggrieved by the decision of the Committee with regard to the issuance of assessment of civil penalties shall have thirty (30) days from the receipt of the decision of the Committee to file a petition for review in Superior Court with the Clerk of Mecklenburg County Superior Court.
- c. Hearing Procedure. The following provisions shall be applicable to any hearing conducted by the Committee pursuant to Section 16.a or 16.b above.
1. At the hearing, Petitioner and the Town Engineer shall have the right to be present and be heard, to be represented by counsel, and to present evidence through witnesses and competent testimony relevant to the issue(s) before the Committee.
 2. Rules of evidence shall not apply to a hearing conducted pursuant to this Ordinance and the Committee may give probative effect to competent, substantial and material evidence.
 3. At least seven (7) days before the hearing, the parties shall exchange a list of witnesses intended to be present at the hearing and a copy of any documentary evidence intended to be presented. The parties shall submit a copy of this information to the Clerk. Additional witnesses or documentary evidence may not be presented except upon consent of both parties or upon a majority vote of the Committee.
 4. Witnesses shall testify under oath or affirmation to be administered by the Court Reporter or another duly authorized official.
 5. The procedure at the hearing shall be such as to permit and secure a full, fair and orderly hearing and to permit all relevant, competent, substantial and material evidence to be received therein. A full record shall be kept of

Ordinance No. O-2019-06
Amended 11-04-2019

all evidence taken or offered at such hearing. Both the representative for the Town and for the Petitioner shall have the right to cross-examine witnesses.

6. At the conclusion of the hearing, the Committee shall render its decision on the evidence submitted at such hearing and not otherwise.
 - (a) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) with regard to either disapproving or modifying a proposed Plan, or assessing a civil penalty are true and substantiated, the Committee shall uphold the action on the part of the Town Engineer.
 - (b) If, after considering the evidence presented at the hearing, the Committee concludes by a preponderance of the evidence that the grounds for the Town Engineer's actions (including the amount assessed as a civil penalty) are not true and substantiated, the Committee shall, as it sees fit either reverse or modify any order, requirement, decision or determination of the Town Engineer. The Committee Bylaws will determine the number of concurring votes needed to reverse or modify any order, requirement, decision or determination of the Town Engineer.

Any decision of the Committee which modifies the amount of the civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which assessment factors were not properly considered by the Town Engineer in determining the amount of the civil penalty assessed against the Petitioner.
7. The Committee shall keep minutes of its proceedings, showing the vote of each member upon each question and the absence or failure of any member to vote. The decision of the Committee shall be based on findings of fact and conclusions of law to support its decision.
8. The Committee shall send a copy of its findings and decision to the Applicant/Petitioner and the Town Engineer. If either party contemplates an appeal to a court of law, the party may request and obtain, at that party's own cost, a transcript of the proceedings.
9. The decision of the Committee shall constitute a final decision.

Section 17. Existing Permits and Land-disturbing Activity.

All permits and approved plans existing on the effective date of this Ordinance which were duly issued and/or approved by Mecklenburg County pursuant an interlocal agreement between Mecklenburg County and the Town of Huntersville, which provided for the enforcement by Mecklenburg County of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance within the territorial jurisdiction of the Town of Huntersville, including the extraterritorial jurisdiction of the Town, shall be recognized by the Town as valid permits and approved plans, and land-disturbing activity shall be allowed to continue in accordance with such permits and approved plans. Land-disturbing activity performed prior to the effective date of this Ordinance in violation of the Mecklenburg County Soil Erosion and Sedimentation Control Ordinance shall not be vested, and shall be subject to the terms of this Ordinance (the Town of Huntersville Soil Erosion and Sedimentation Control Ordinance).

Section 18. Severability

If any section or a section of this Ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

Section 19. Effective Date

This Ordinance shall be effective November 4, 2019

Section 20. Revisions

Town of Huntersville shall incorporate revisions required by the Commission within 8 months following receipt of the required revisions.

Adopted the 18th day of March, 2019, amended June 17, 2019, amended July 15, 2019, ~~and amended November 4, 2019, and amended _____, 2021.~~

Commented [ES2]: Update as necessary

Approved as to form:

Town Attorney

Town Clerk

Ordinance No. O-2019-06
Amended 11-04-2019

TABLE OF CONTENTS	PAGE
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Section 1 Title	1
Section 2 Preamble	1
Section 3 Definitions	1
Section 4 Scope and Exclusions	5
Section 5 Forest Practice Guidelines	6
Section 6 General Requirements	6
Section 7 Basic Control Objectives	6
Section 8 Mandatory Standards for Land-disturbing Activity	7
Section 9 Design and Performance Standards	11
Section 10 Erosion and Sedimentation Control Plans	14
Section 11 Permits	17
Section 12 Inspections and Investigations	18
Section 13 Penalties	20
Section 14 Injunctive Relief	21
Section 15 Restoration of Areas Affected by Failure to Comply	22
Section 16 Appeals	22
Section 17 Existing Permits and Land-disturbing Activity	25
Section 18 Severability	25
Section 19 Effective Dates	25
Section 20 Revisions	25

Commented [E53]: Likely needs to be updated

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: David Peete, Principal Planner

Date: August 15, 2022

Subject: QUASI-JUDICIAL - Bryton Townhomes

EXPLAIN REQUEST:

QUASI-JUDICIAL. Conduct evidentiary hearing and consider decision on Bryton Townhomes - Parcel 2 Subdivision Sketch Plan, a request by Northbridge, LLC to subdivide 3.114-acres located at the northeast intersection of Statesville Road (NC 115) and Bryton Riddge Parkway (Parcel # 019-11-137) for a 25-unit townhome development.

ACTION RECOMMENDED:

Conduct evidentiary hearing and consider decision on Bryton Townhomes - Parcel 2 Subdivision Sketch Plan.

FINANCIAL IMPLICATIONS:

N/A

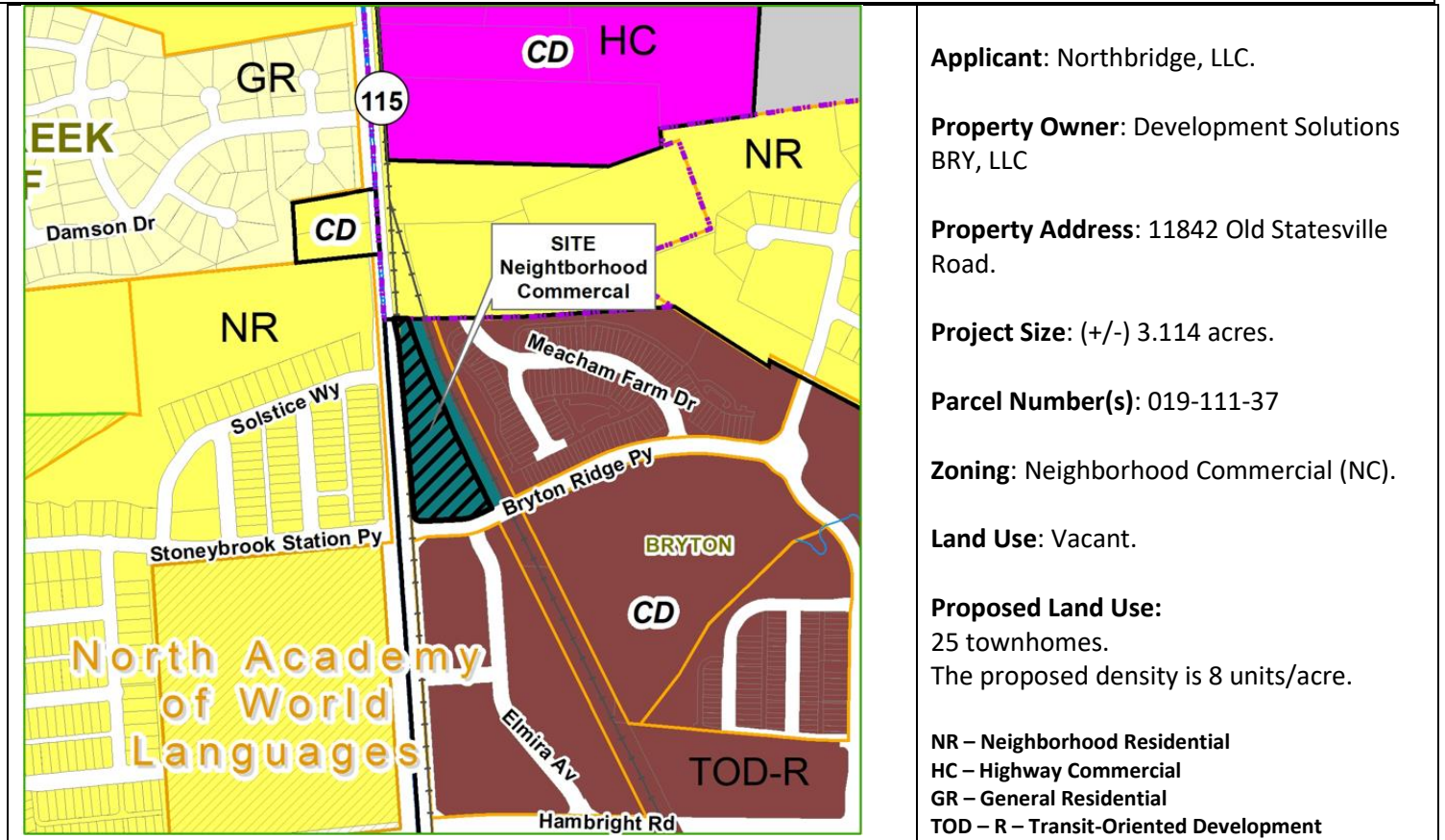
ATTACHMENTS:

1. Bryton - Parcel 2 Townhomes Staff Report-TB August 15 2022
2. Attachment A - Sketch Plan Application - Bryton - Parcel 2 Townhomes
3. Attachment B - Bryton - Parcel 2 Townhomes Sketch_Plan
4. Attachment C - Bryton - Parcel 2 Townhomes Neighborhood Mtg Report (5-23-22)
5. Attachment D - CMS Report - Bryton - Parcel 2 Townhomes

Bryton -Parcel 2 Townhome Subdivision Sketch Plan

QUASI-JUDICIAL HEARING

PART 1: PROJECT SUMMARY



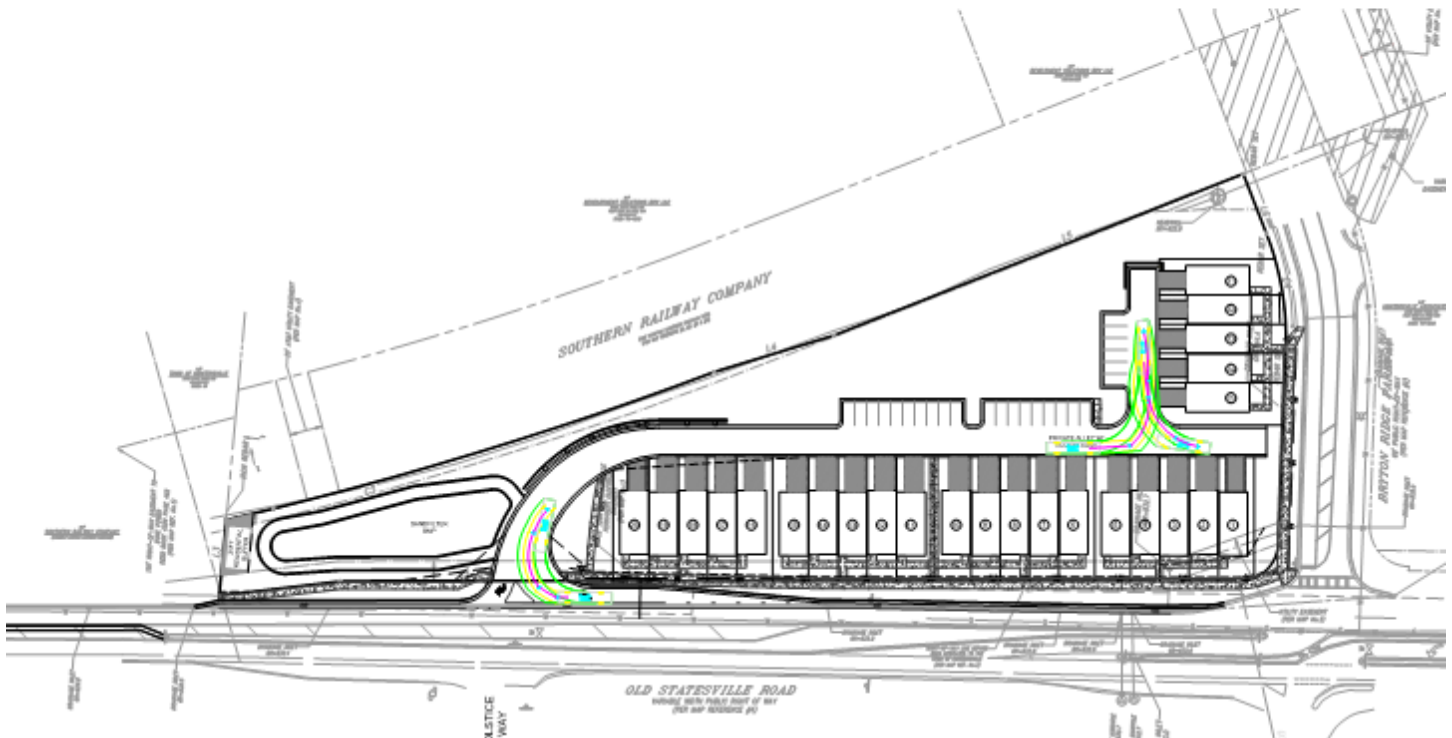
PART 2: SITE PLAN DESCRIPTION AND ISSUES

1. Purpose: To subdivide 3.114-acres of land located along the east side of Old Statesville Road, immediately north of Bryton Ridge Parkway (shown as “site” above) into 25 townhome lots.
2. Adjoining Zoning and Land Uses:
 - North: Neighborhood Residential (NR) – vacant and Norfolk-Southern Railroad right-of-way.
 - South: Transit-Oriented Development (TOD-R) – Apartments (The Luxe of Huntersville).
 - East: Transit-Oriented Development (TOD-R) – Norfolk-Southern Railroad right-of-way & Townhomes (True Homes).
 - West: Neighborhood Residential (NR) – NC 115 right-of-way & small-lot, single-family homes (Stoneybrook Station).
3. One (1) neighborhood meeting was held on May 23, 2022. The meeting summary is provided in Attachment C.
4. The proposed 25 townhomes are permitted in Neighborhood Center, as 100% attached units are permitted within ¼ mile of a designated rail transit station in this zoning district.
5. The current site’s tree canopy coverage is 85%, of which, 5% will be saved (zero tree-save required by Ord.). There are no specimen trees located on the site, and there are no known heritage trees on the site.
6. A water-quality concept plan is required and has not yet been approved.
7. A willingness to serve letter from Charlotte Water, dated April 4, 2022, has been provided.
8. Required Urban Open Space is to be provided by one (1) Square, located at the entrance of the development.

9. A buffer will be provided on the north side of the subdivision. No buffers are required along the east, south and west, as they abut public streets and/or railroad right-of-way. Along the Old Statesville Road (NC-115) frontage, a landscape easement for a second row of street trees, per Zoning Ordinance requirement, must be provided.

BRYTON TOWNHOMES - PARCEL 2

HUNTERSVILLE, MECKLENBURG COUNTY, NORTH CAROLINA - EPM PROJECT # 435249
SKETCH PLAN



PART 3: TRANSPORTATION ISSUES/TRAFFIC IMPACT ANALYSIS (TIA)

A TIA was required for the original Bryton development in 2005 and all required improvements have been provided. The only items left are the outstanding transportation review comments, which are to be addressed prior to approval (if applicable).

PART 4: PLANNING STAFF ANALYSIS

Section 6.200 of the Subdivision Ordinance outlines the “general requirements and policies to be used in the design, review, and approval” of subdivisions in the Town of Huntersville. The following staff findings are provided for the Board’s consideration of the Bryton – Parcel 2 Townhomes Subdivision Sketch Plan.

1. Consistency with adopted public plans and policies.



Mixed-Use Centers

Mixed-Use Centers contain vertical mixed-use along key frontages. New development includes wide sidewalks, buildings are close to the street with high levels of transparency, and parking is located in the rear. A mix of housing is allowed, including urban options throughout (apartments, townhomes, cottage homes, etc.). Downtown has specific requirements for streetscape and development intensity, including a maximum first floor footprint.

The following sections of the 2040 Huntersville Community Plan support this subdivision:

- The proposed Bryton – Parcel 2 Townhome Subdivision lies completely within a “Mixed-Use Center” Future Land Use Character Area of the 2040 Community Plan (see red dot above). The overall density of the proposed Bryton – Parcel 2 Townhomes is 8.0-units per acre, which is appropriate in a Mixed-Use Center area. This project, along with the existing developments to the east and south are part of the Bryton Transit-Oriented Development.
- **EOS 8.3: Continue to require locational standards for open space in new developments. Urban Open Space should be located within walking distance of homes in new subdivisions that are not located in rural areas. Open space should be located in undivided preserves, where possible, and should be accessible to the largest number of lots with the development.** Comment: The development provides one (1) urban open space Square, which is located in close proximity to all 25 townhome units.
- **EOS 10: Improve bicycle and pedestrian facilities throughout Town.** Comment: The developer is providing a four-foot bike lane along Old Statesville Road and eight (8) feet-wide sidewalks along both frontages, which will support pedestrians & bikers in the vicinity. No public greenway is planned through this property.

- **LU 2.1: Higher intensity residential uses will be focused generally within two miles of the I-77/ NC-115 corridor and future activity centers in the eastern and western areas of Huntersville's zoning jurisdiction.** Comment: The proposed development is located within Bryton, which is part of a Mixed-Use Center located at the intersection of NC 115 and Hambright Road. This location is entirely within the I-77/NC 115 corridor as it abuts NC 115 (Old Statesville Road).
- **LU 5.3: Support infill housing options near services, shopping, employment, and transit stations. Encourage infill development opportunities to increase housing options with proximity to nearby services, shopping, employment opportunities, and transit stations.** Comment: The proposed development is located approximately 0.25 miles northwest from a planned transit station and 0.50 miles north from commercial uses. In addition, the North Academy of World Languages (CMS), Blythe Elementary School (CMS) and North Meck. High School are located just to the south of this development.
- **LU 7.1: Require all new development to adhere to the following design principles: All buildings shall front a public street or open space.** Comment: All residential units associated with the proposed subdivision are to front a public street.
- **LU 8.3: Encourage transit-supportive development. Maintain incentives for future TOD locations, including allowing 100% attached homes near transit stations.** Comment: This development would be located 0.25-miles from the designated transit station within Bryton and is proposed to be 100% attached.
- **LU 9.1: In higher intensity areas including Mixed Use Centers, Activity Centers, the Town Core, and Moderate Density areas neighborhoods should adhere to the following design principles:**
 - **All homes must front a public street or open space.**
 - **Front porches and recessed garages are encouraged.**
 - **On-street parking is required in new developments that have lot widths below 60'. Alley-loading is also encouraged in these cases.** Comment: The proposed subdivision meets these design principles-as all residential units front on public streets. Garages will be located in the rear yard and there are 25 additional parking spaces along the alley for all units to use.
- **LU 10.1: Align housing options with resident needs and promote attainable housing options. Accommodate a mix of housing by type, tenure, and location to serve a growing and increasingly diverse population. Housing offerings should align with workforce opportunities, including management, professional positions, and service positions.** Comment: This development would provide townhomes on small lots, which will provide another housing option for the southern portion of Town.
- **T 5.1: Design street improvements with consideration for the surrounding context and various users.** Comment: The sidewalk along the two public streets will be eight (8) feet wide, per the requirements of Bryton, to facilitate higher density pedestrian usage. In addition, a bike lane is being added to NC 115, north of Bryton Ridge Parkway.

2. Conformity.

The proposed development has an overall density of 8.0 dwelling units /acre (DUA). The Bryton development, primarily zoned Transit-Oriented Development (TOD-R), encourages higher-density development. The Bryton Conditional District rezoning requires an average density of 15 units per acre within the TOD portion of the development. This subdivision is

within the Bryton CD rezoning and is adjacent to the TOD-zoned portion, therefore the proposed density of eight (8) units per acre is appropriate.

3. Access between Adjoining Properties.

As this parcel is bordered by NC 115, Bryton Ridge Parkway and the Norfolk-Southern Railroad right-of-way – and due to the unique shape of the property, the north is not an option, therefore it is not possible to connect to adjacent parcels.

4. Relation to topography.

The lots and alley layout have been designed to respect the general topography of the site.

5. Mature trees and natural vegetation.

The proposed project is not required to save any tree canopy; however, the proposed plan saves 5%. There are zero specimen trees or heritage trees located on site.

6. Access to parks, schools, etc.

The proposed development immediately adjacent to one school (North Academy of World Languages – K-8) and is located approximately ¼ mile north of Blythe Elementary School and North Meck. High School.

7. Discourage through traffic.

The only access into the subdivision is a private alley that does not connect to any adjacent parcels, as there is no practical option to do so.

8. Relationship to railroad rights-of-way.

The eastern edge of this subdivision is the Norfolk-Southern Railroad right-of-way. The site plan does not place any residential units immediately along the right-of-way, and the uses closest to the right-of-way are storm water and additional parking.

9. Half streets.

Not Applicable.

10. Parallel streets along thoroughfares.

Not Applicable.

11. Public School and Public Park Sites

The parcel associated with Bryton – Parcel 2 Townhomes Subdivision Sketch Plan has not been identified for a school or park.

12. Public Facilities

The parcel associated with the Bryton – Parcel 2 Townhomes Subdivision Sketch Plan has not been identified for a public facility.

13. Proposed street names

As no public streets are to be provided, no new street names will be required.

14. Easements.

Easements have been identified and the plans have been sent to the respective Engineering and Utility Departments for review.

15. Proposed water and sewerage system.

A willingness to serve letter has been provided by Charlotte Water for this development.

16. Restrictions on the subdivision of land subject to flooding.

No part of the site is in a designated flood zone.

17. Open Space

Urban open space will be provided via one (1) Square located along NC 115 at the alley entrance.

18. Impact of Development on Public Facilities

There is no indication the proposed subdivision will adversely impact public facilities. While this section of the Ordinance does not call for the specific consideration of impact to public schools (CMS), staff contacts Charlotte-Mecklenburg Schools (CMS) for an enrollment evaluation for all major subdivision requests. According to CMS, the development will generate 4 new students who will attend local schools. A section of CMS's report is provided below (see Attachment D - CMS Report.)

This development may add 4 students to the schools in this area.

The following data is as of 20th Day of the 2021-22 school year.

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
LEGETTE BLYTHE ELEMENTARY	49.50	50	855	864	99%	3	99%
JM ALEXANDER MIDDLE	50.8	54	856	910	94%	1	94%
NORTH MECKLENBURG HIGH	118.5	108	2095	1909	110%	0	110%

PART 5: STAFF RECOMMENDATION

COMPLETENESS OF APPLICATION:

Town Staff has reviewed the proposed Bryton – Parcel 2 Townhomes Subdivision Sketch Plan and finds the application complete.

COMPLIANCE WITH APPLICABLE REQUIRMENTS:

Bryton – Parcel 2 Townhomes Subdivision Sketch Plan complies with all applicable requirements and is supported by findings of fact outlined in Parts 2-4 of this report, with the following conditions:

- Provide landscape easement along NC 115 frontage for the second row of street trees.
- Work with Staff on the design of the Urban Open Space – Square during Preliminary Plan.
- Town Transportation comments must be addressed.
- Water-quality concept plan must be approved by Staff.
- All other plan comments are addressed.

APPROVAL:

The Bryton – Parcel 2 Townhomes Subdivision Sketch Plan could comply with all applicable requirements once the conditions listed above are addressed. Staff Recommends Approval of the proposed Subdivision Sketch Plan based on satisfaction of the above listed items.

PART 6: PLANNING BOARD RECOMMENDATION

The Planning Board reviewed the subdivision on Tuesday, July 26, 2022 and recommended approval by unanimous (9-0) vote, as follows: **Motion:** With respect to the Bryton Townhomes Parcel-2 Sketch Plan Review, the Planning Board finds the application to be complete. The application complies with all applicable requirements including EOS 8.3, EOS 10, LU 2.1, LU 5.3, LU 7.1, LU 8.3, LU 9.1, LU 10.1 and T 5.1 of the Huntersville 2040 Plan. Therefore, the Planning Board recommends approval of the sketch plan with the following conditions: 1. Work with Staff on the design of the Urban Open Space during Preliminary Plan; 2. Provide landscape easement along NC 115 frontage for the second row of street trees; 3. Town Transportation comments must be addressed; 4. Water-quality concept plan must be approved by Staff; 5. All other plan comments are addressed.

PART 7: TOWN BOARD FINAL ACTION

The Town Board is scheduled to conduct a quasi-judicial hearing on this request on Monday, August 15, 2022.

PART 8: ATTACHMENTS AND ENCLOSURES

- A – Subdivision Sketch Plan Application
- B – Bryton – Parcel 2 Townhomes Subdivision Sketch Plan
- C – Neighborhood Meeting Report
- D – CMS Report

PART 9: DECISION STATEMENTS

Please refer to Part 5 of this report for recommendation.

In considering whether to approve an application for a subdivision sketch plan, the Planning and Town Board must complete the following (a full version can be found in [Section 6.320.5](#) of the Subdivision Ordinance).

- Is the application complete (lacking any particular requirement)? *If no member of the Board moves that the application is incomplete, then this inaction is taken as an affirmative finding that the application is complete.*
- Does the application comply with all the applicable requirements? *A statement must be made that the application complies or does not comply that includes the support documentation of the particular motion.*
- Lastly, the Board must make a motion to approve or deny based on the previous statements.



General Application

INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. PLEASE CHECK ALL ITEMS CAREFULLY.

1. Application Type

Please indicate the type of application you are submitting. In addition to the application, the submission process for each application type can be found at <https://www.huntersville.org/528/Permits-Process>

- ☐ Change of Use
- ☐ Commercial Site Plan
- ☐ Conditional Rezoning
- ☐ General Rezoning
- ☐ Master Signage Program
- ☐ Special Use Permit
- ☐ Revision to
Original Project # _____
- ☐ Other _____

- SUBDIVISION CATEGORIES: Per the Huntersville Subdivision Ordinance
- ☒ Sketch Plan
 - ☐ Preliminary Plan
 - ☐ Final Plat (Includes Minor Subdivision)
 - ☐ Exempt Subdivision
 - ☐ Final Plat Revision
 - ☐ Farmhouse Cluster

2. Project Data

Date of Application 3/24/2022

Name of Project Bryton Townhomes - Parcel 2 Phase # (if subdivision) _____

Project Address 11842 OLD STATESVILLE RD HUNTERSVILLE NC 28078

Parcel Identification Number(s) (PIN) 01911137

Current Zoning District NC (CD) Proposed District (for rezoning only) _____

Property Size (acres) 3.114 Street Frontage (feet) 1121

Current Land Use Vacant

Proposed Land Use(s) Residential - Townhomes

Is the project within Huntersville's corporate limits?

Yes x No _____ If no, does the applicant intend to voluntarily annex? _____

3. Description of Request

Explain the nature of this request. If a separate sheet is necessary, please attach to this application.

The proposed project is for townhome units.

4. Site Plan Submittals

Consult the particular type of *Review Process* for the application type selected above. These can be found at <https://www.huntersville.org/528/Permits-Process>.

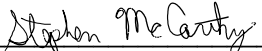
5. Outside Agency Information

Other agencies may have applications and fees associated with the land development process. The *Review Process* list includes plan documents needed for most town and county reviewing agencies. For major subdivisions, commercial site plans, and rezoning petitions please enclose a copy of the Charlotte-Mecklenburg Utility *Willingness to Serve* letter for the subject property.

6. Applicant

Printed Name Northbridge, LLC Phone 803-280-9206
☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☐ By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name: Stephen McCarthy

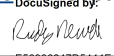
Title Managing Member Email scc@northbridgeplanning.com

Address of Applicant 2149 Middlebridge Court Fort Mill, South Carolina 29715

7. Property Owner (if different than applicant)

*Printed Name Development Solutions BRY, LLC Phone _____
☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

☒ By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name Rudy Newell

Title VP Email rudy.newell@castletlake.com

Address of Property Owner 90 South Seventh St, Ste 4600 Minneapolis, MN 55402

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this application MUST be accompanied by a notarized Limited Power of Attorney signed by the property owner (s), specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. **If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.**

8. Development/Design Firm Contact Information

Development Firm	Name of Contact	Phone	Email
Gateway Design Group, PLLC	Josh Butler	910-840-2661	josh@gatewaydesigngroup.com
Design Firm	Name of Contact	Phone	Email

Contact Information

Town of Huntersville	Phone:	704-875-7000
Planning Department	Fax:	704-992-5528
PO Box 664	Physical Address:	105 Gilead Road, Third Floor
Huntersville, NC 28070	Website:	https://www.huntersville.org/228/Planning-Department



GENERAL NOTES

HUNTERSVILLE REQUIRED NOTES:

- ALL DEVELOPMENT AND CONSTRUCTION SHALL COMPLY WITH ALL ZONING AND SUBDIVISION STANDARDS OF THE TOWN OF HUNTERSVILLE, MECKLENBURG COUNTY, AND NCDOT, AS APPLICABLE.
- THIS PROPERTY MAY BE SUBJECT TO ANY EASEMENTS AND/OR RIGHT-OF-WAY OF RECORD.
- ALL AREAS DESIGNATED AS COMMON AND/OR URBAN OPEN SPACE SHALL BE OWNED AND MAINTAINED BY THE HOMEOWNERS ASSOCIATION AND DEDICATED FOR PERPETUITY.
- ACCESS (INGRESS/EGRESS) LOCATION AND DESIGN SHOWN ON THIS SKETCH PLAN AREA SUBJECT TO ACHIEVING VERTICAL AND HORIZONTAL SIGHT DISTANCES, TURN LANE IMPROVEMENTS (INCLUDING RIGHT-OF-WAY) AND INTERSECTION WITH ADJACENT AND OPPOSING ACCESS POINTS. MODIFICATIONS TO PLAN MAY RESULT.
- LARGE MATURING TREES WILL BE PLANTED 40' O/C WITHIN THE REQUIRED PLANTING STRIP ALONG ALL STREETS WITH THE EXCEPTION OF RURAL PARKWAYS WHERE EXISTING TREES CAN SATISFY THE STREET TREE REQUIREMENT. SMALL MATURING TREES ARE TO BE USED WHERE OVERHEAD POWER LINES EXIST.
- PROVIDE NOTATIONS ON THE PROCESSES OF MAIL DELIVERY AND GARBAGE PICK-UP.
- NOTE ARTICLE 8.16.1 & 2 OF THE TOWN OF HUNTERSVILLE ZONING ORDINANCE ONLY IF THE SUBDIVISION IS RESIDENTIAL.
- DIRECT ACCESS FROM LOTS TO A THOROUGHFARE IS PROHIBITED.
- ALL ALLEYWAYS SHALL BE OPEN FOR GENERAL USAGE BY THE GENERAL PUBLIC BUT SHALL NOT BE ACCEPTED BY THE PUBLIC FOR MAINTENANCE. MAINTENANCE SHALL BE RESPONSIBILITY OF DEVELOPER/ASSOCIATIONS OF HOMEOWNERS.

REQUIRED NCDOT IMPROVEMENTS:

- RIGHT TURN POCKET LANE INTO DEVELOPMENT
- EXTEND CONCRETE MEDIAN/ISLAND

DEVELOPER INFORMATION:

DEVELOPMENT SOLUTIONS, INC.
10000 W. HUNTERSVILLE RD.
HUNTERSVILLE, NC 28024
(704) 261-1000

DESIGNER INFORMATION:

DESIGNER: JOSH B. GATHE
15126 C. MATTHEW
JOSH B. GATHE
(910) 841-1000
josh@gathe.com

HUNTERSVILLE REQUIRED NOTES:

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 - MODIFICATIONS TO PLAN MAY RESULT.
- LARGE MATURING TREES WILL BE PLANTED 40' O/C WITHIN THE REQUIRED PLANTING STRIP ALONG ALL STREET EXCEPT THE EXCEPTION OF RURAL PARKWAYS WHERE EXISTING TREES CAN SATISFY THE STREET TREE REQUIREMENT. SMALL MATURING TREES ARE TO BE USED WHERE OVERHEAD POWER LINES EXIST.
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REQUIRED NCDOT IMPROVEMENTS

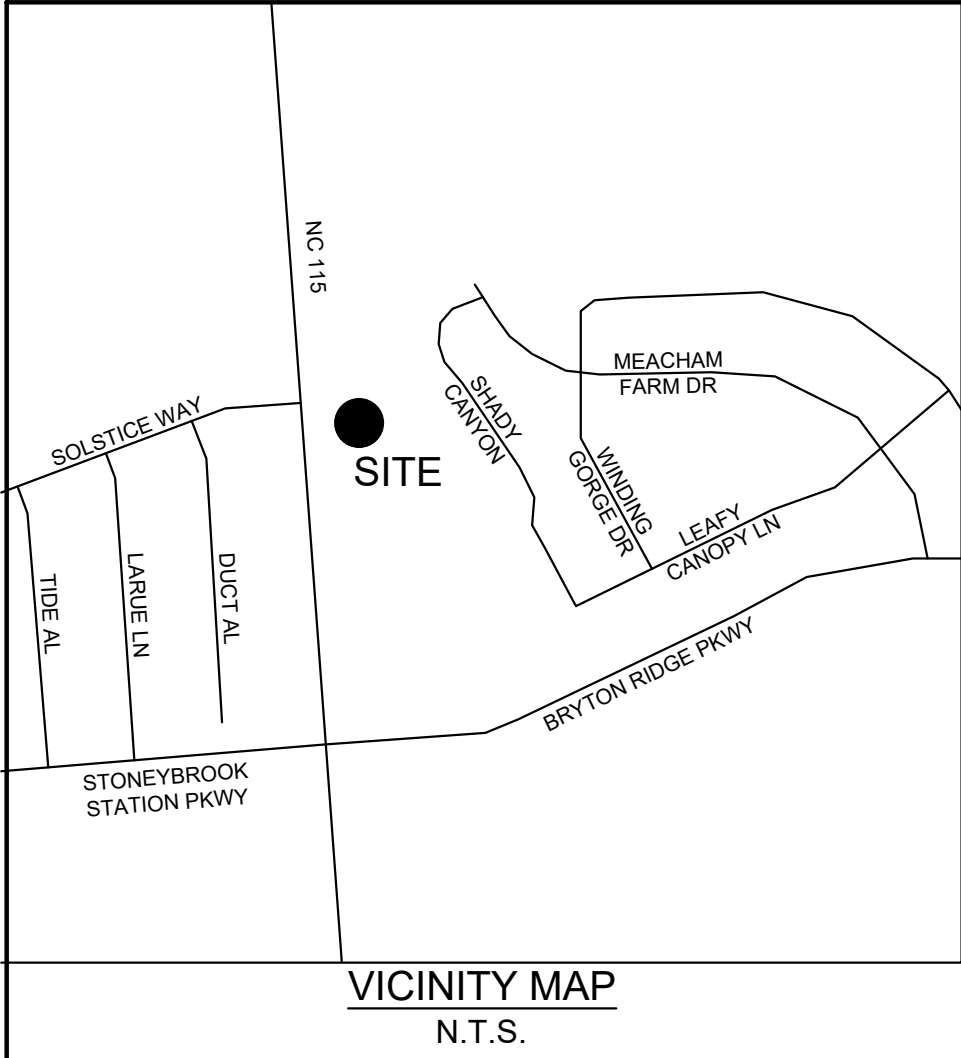
- RIGHT TURN POCKET LANE INTO DEVELOPMENT WITH 100' STORAGE
- EXTEND CONCRETE MEDIAN/ISLAND ON NC 115

DEVELOPER:
BRYTON TOWNHOMES, LLC
8030 ENGLAND STREET, SUITE B
CHARLOTTE, NC 28117
STEPHEN McCARTHY
(803) 280-9206

DESIGNER:
GATEWAY DESIGN GROUP, PLLC
15126 CASTLEBRIDGE LANE
MATTHEWS, NC 28104
JOSH BUTLER, P.E.
(910) 840-2661
josh@gatewaydesigngroup.com

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C:\Users\jashw\Gateway Design Group Dropbox\Projects\2022\013 - Bryton Townhomes\CADD\PlanSheets\C-1.0 - Existing Features Plan.dwg JBSHW

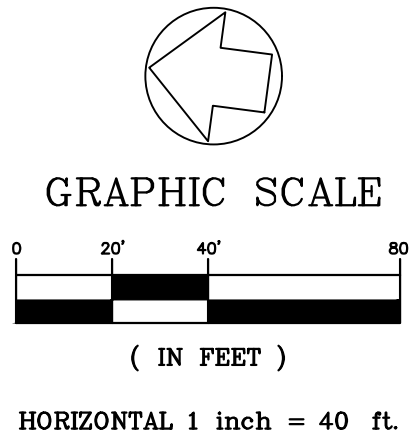


VICINITY MAP
N.T.S.



TREE PRESERVATION CHART	
Heritage Trees	
Number of Heritage trees on-site	0
Number of Heritage trees saved	0
Percentage of Heritage trees required to save	0%
Percentage of Heritage trees actually saved	0%
Specimen Trees	
Number of Specimen trees on-site	0
Number of Specimen trees saved	0
Percentage of Specimen trees required to save	0%
Percentage of Specimen trees actually saved	0%
Tree Canopy	
Percentage of site covered by Tree Canopy	85%
Percentage of tree canopy preservation required by district	0%
Percentage of tree canopy actually saved	5%

NO SPECIMEN TREES LOCATED
WITHIN PROPERTY BOUNDARY.



**GATEWAY DESIGN
GROUP, PLLC**

15126 CASTLEBRIDGE LANE MATTHEWS, NC 28104
910-840-2661
NC FIRM # P-2147

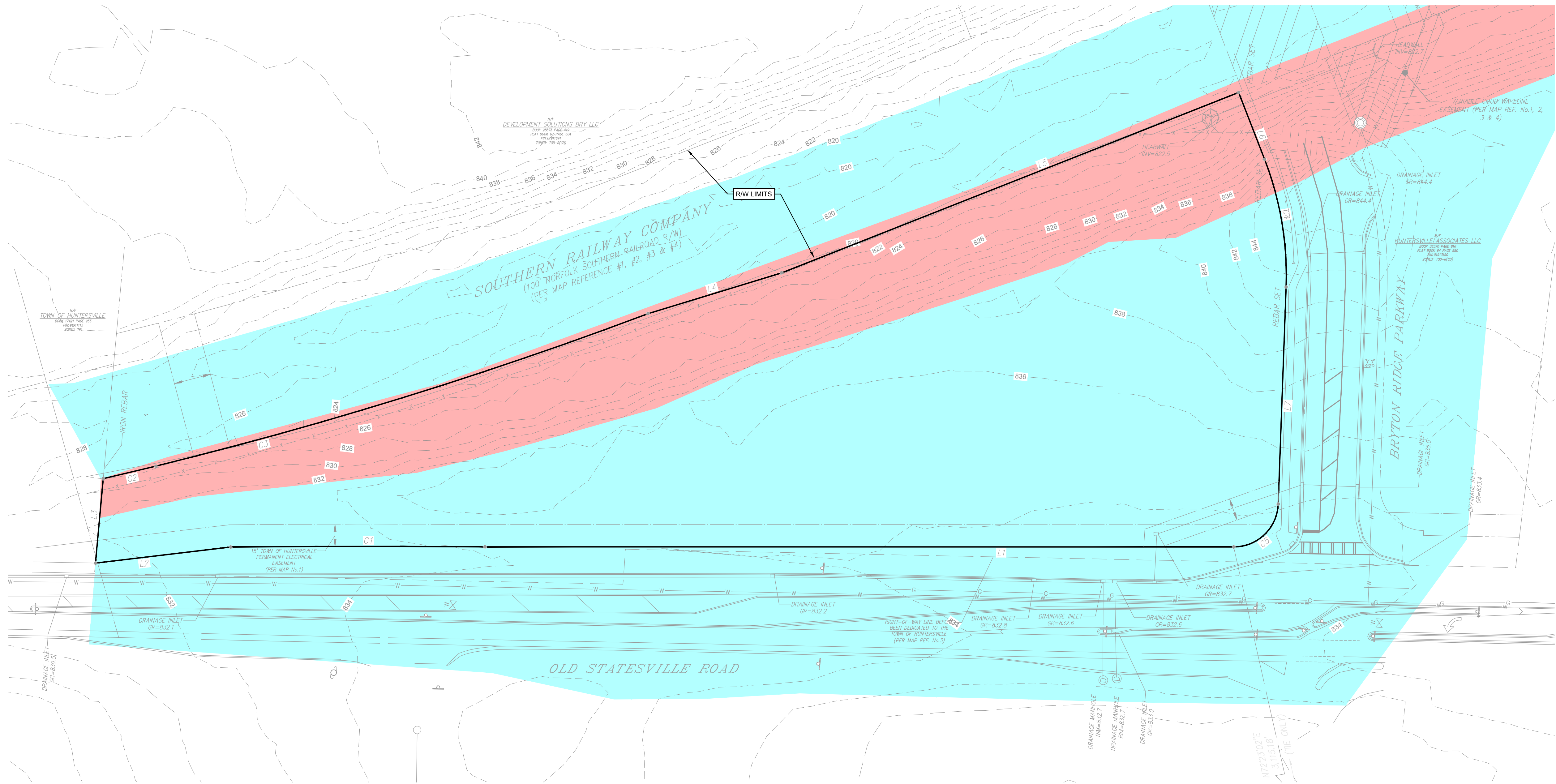
BRYTON TOWNHOMES PARCEL 2

PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

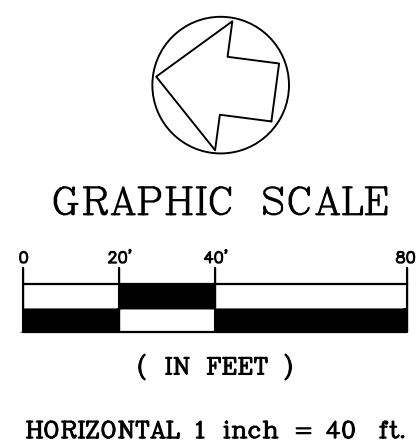
NO.	REVISION			
PROJECT # 2022-013		DATE: 6/28/2022		
DRAWN BY: JB		CHECKED BY: JB		
TITLE				
EXISTING FEATURES PLAN				
SHEET NO.				
C-1.0				

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VICINITY MAP
N.T.S.



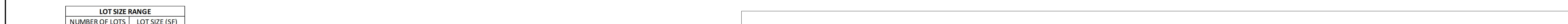
 = 0-10% SLOPES
 = 15-25% SLOPES



BRYTON TOWNHOMES PARCEL 2

PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

[illegible]



LOT WIDTH RANGE	
NUMBER OF LOTS	LOT WIDTH (FT)
15	22
10	27

IMPERVIOUS CALCULATIONS

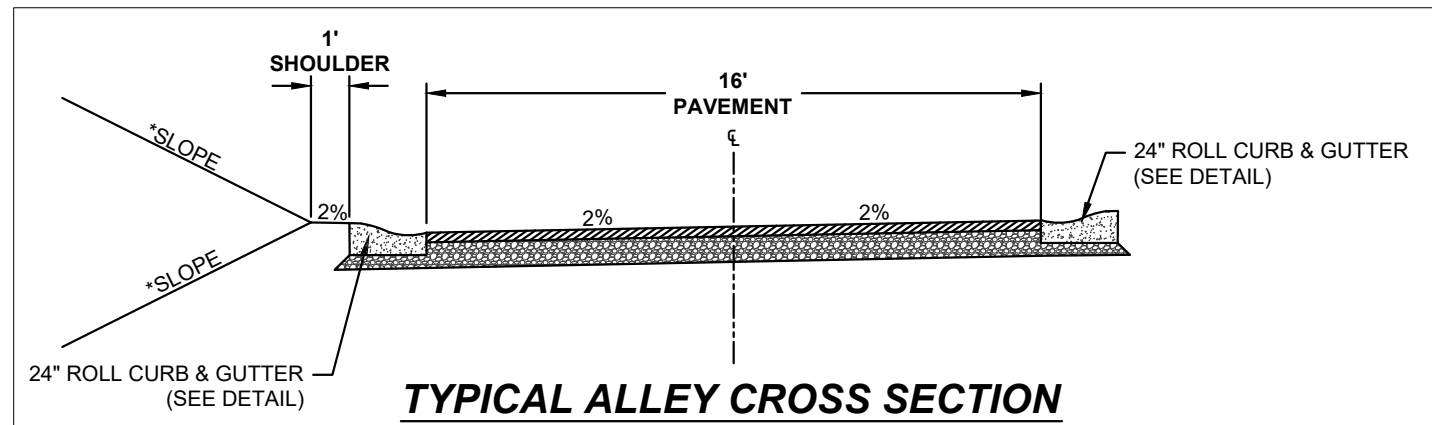
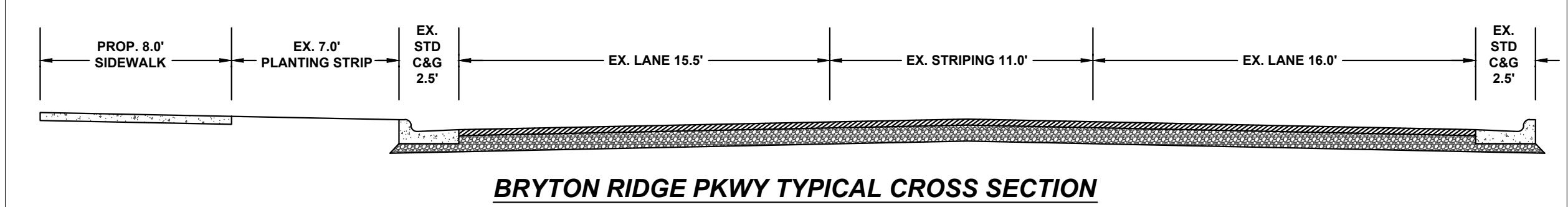
PAVEMENT = 22,760 SF
BUILDINGS = 26,400 SF
DRIVEWAYS = 8,380 SF
SIDEWALKS = 6,630 SF

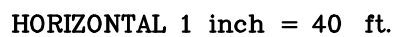
TOTAL = 64,170 SF = 1.47 AC

The diagram illustrates a typical lot layout with the following dimensions and setbacks:

- Lot Dimensions:** 48' wide by 22' deep.
- Front Setback:** 5' from the front property line.
- Side Setback:** 5' from the side property lines.
- Internal Dimensions:**
 - Four vertical strips, each 14' wide.
 - Four horizontal strips, each 15'-25' high.
- Shaded Areas:** Indicate specific zones within the lot, likely for landscaping or structural elements.

TYPICAL LOT DIAGRAM





Geological cross-section plot showing elevation (815 to 845) versus distance (0+00 to 1+50). The plot features a solid line profile, a dashed line profile, and a shaded area representing a 131 LF OF 8° DIP @ 0.60%.

Key data points and labels:

- EX MH-1
 - RM 835.23
 - INV IN 824.60 (MH-1)
- MH-1
 - STA 1+30.80
 - RM 835.63
 - INV OUT 826.36 (Structure - (12))
 - INV OUT 826.36 (EX. MH-1)

Shaded area label: 131 LF OF 8° DIP @ 0.60%


GRAPHIC SCALE

 (IN FEET)
HORIZONTAL 1 inch = 40 ft.



PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

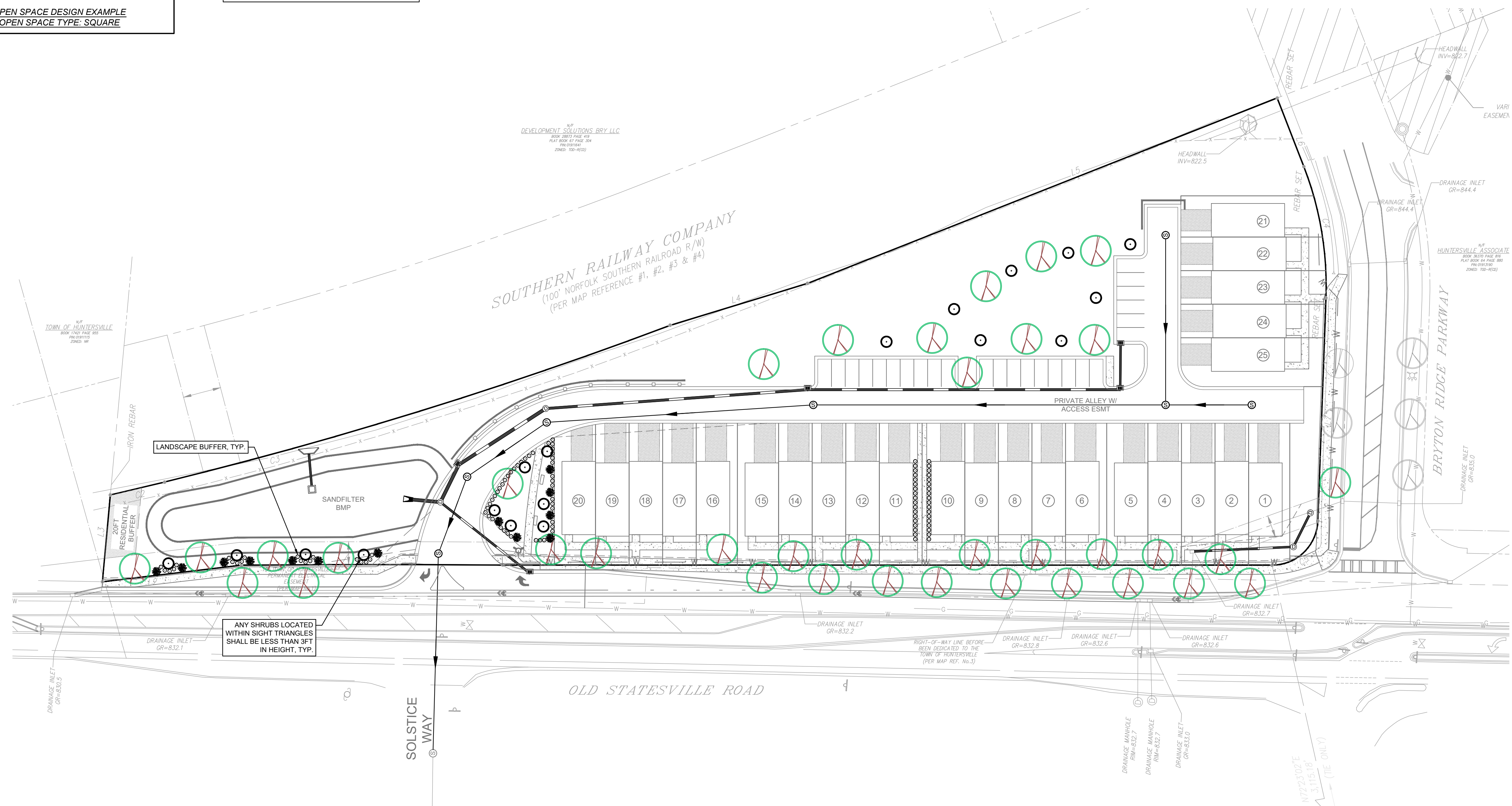
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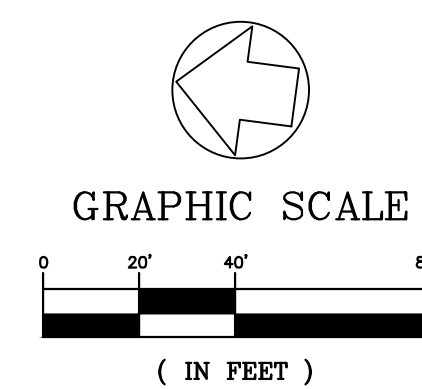
NOTE:
BUILDING ELEVATIONS SHALL BE PROVIDED
DURING CONSTRUCTION PLAN REVIEW.

LANDSCAPE PLAN GENERAL NOTES:

1. ALL METER BANKS, HVAC, AND RELATED MECHANICAL EQUIPMENT SHALL BE SCREENED FROM PUBLIC VIEW AND ADJOINING PROPERTY OWNERS.
2. ANY DISCREPANCIES FOUND IN THE FIELD SHALL BE CALLED TO THE ATTENTION OF THE OWNER OR ENGINEER PRIOR TO PROCEEDING WITH WORK.
3. PRIOR TO BEGINNING ANY DEMOLITION, GRADING OR CONSTRUCTION, THE GENERAL CONTRACTOR SHALL VERIFY THAT ALL REQUIRED PERMITS AND APPROVALS HAVE BEEN OBTAINED FROM ALL REGULATORY AUTHORITIES.
4. GENERAL CONTRACTOR SHALL MAINTAIN THE SITE IN A MANNER SO THAT WORKMEN AND PUBLIC SHALL BE PROTECTED FROM INJURY.
5. REFER TO ARCHITECTURAL PLANS FOR ACTUAL BUILDING DIMENSIONS.
6. ALL SIGNS, PAVEMENT MARKINGS, AND OTHER TRAFFIC CONTROL DEVICES SHALL CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.
7. CONTRACTOR SHALL FURNISH AND INSTALL ALL PAVEMENT MARKINGS AS SHOWN ON THE PLANS.
8. CONTRACTOR SHALL COMPLY WITH ALL PERTINENT PROVISIONS OF THE "MANUAL OF ACCIDENT PREVENTION IN CONSTRUCTION" ISSUED BY AGC OF AMERICA, INC. AND THE SAFETY AND HEALTH DEPARTMENT FOR CONSTRUCTION ISSUED BY THE U.S. DEPARTMENT OF LABOR.



Landscape Plantings						
Symbol	Type	Botanical Name	Common Name	Quantity	Caliper at planting	Height at planting
	Large Maturing	Magnolia Grandiflora	Southern Magnolia	12	3"	8'
	Large Maturing	Acer saccharum	Sugar Maple	12	3"	8'
	Large Maturing	Quercus Virginiana	Live Oak	12	3"	8'
	Small Maturing	Ilex vomitoria	Yaupon Holly	18	1.5"	6'
	Large Shrub	Magnolia stellata	Star Magnolia	13	-	3'
	Small Shrub	Ilex cornuta "Burfordii Nana"	Dwarf Burford Holly	98	-	1.5'



HORIZONTAL 1 inch = 40 ft.



**GATEWAY DESIGN
GROUP, PLLC**

15126 CASTLEBRIDGE LANE MATTHEWS, NC 28104



BRYTON TOWNHOMES PARCEL 2
PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

REVISION

THE

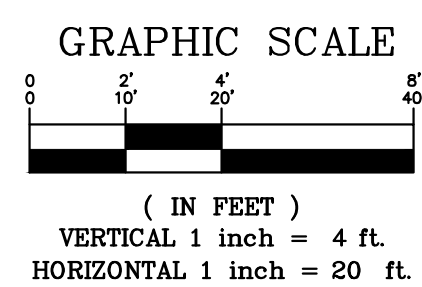
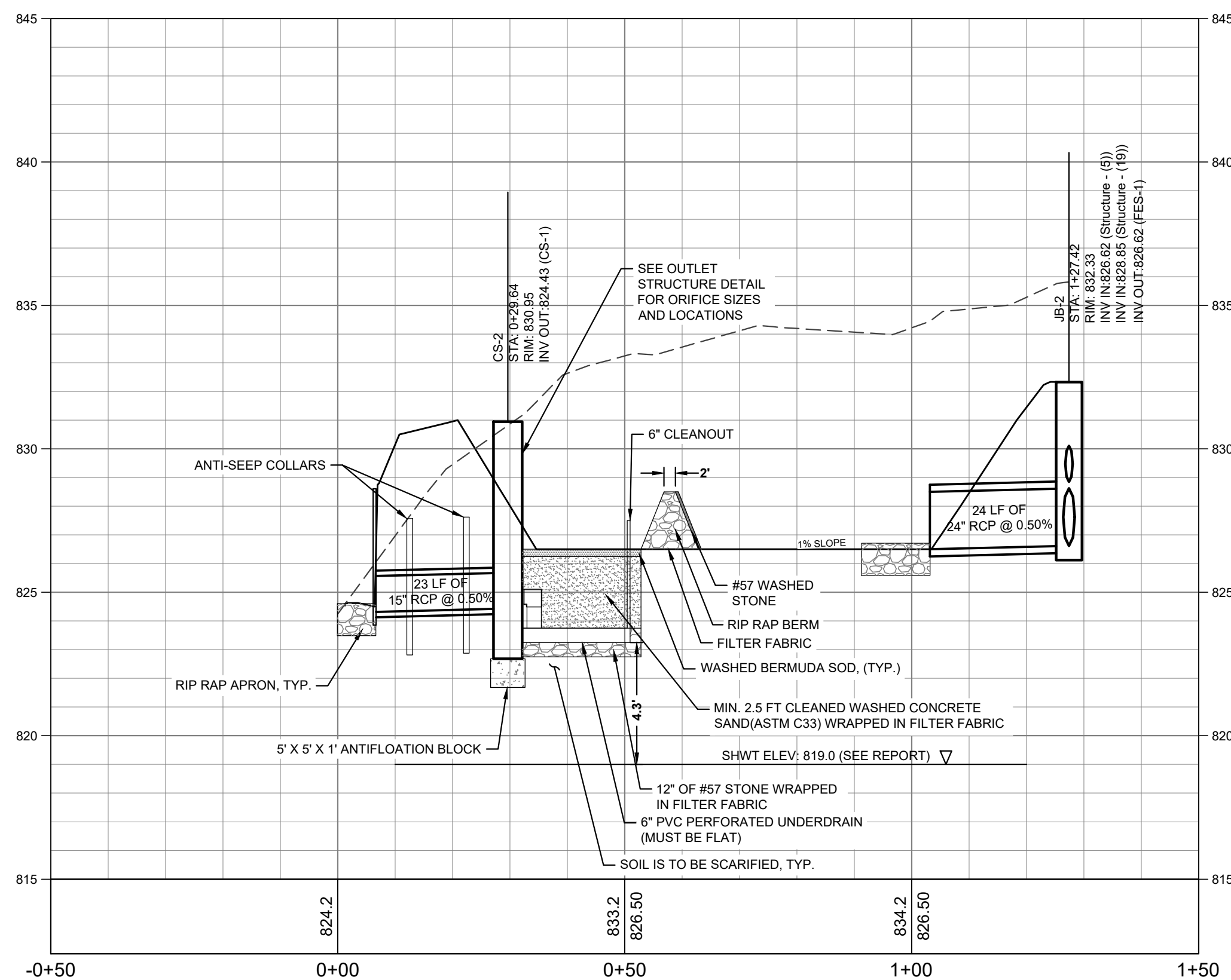
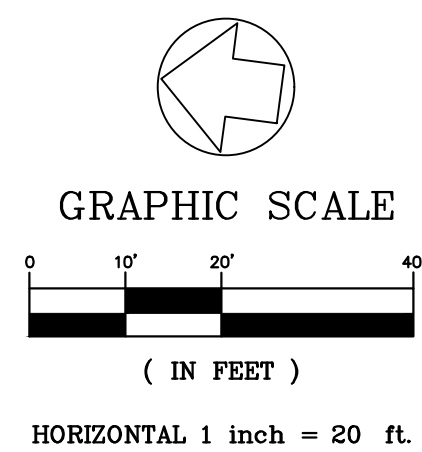
PROJECT #:	2022-013	DATE:	6/28/2022
DRAWN BY:	JB	CHECKED BY:	JB

LANDSCAPE PLAN

SHEET NO.

C-6.0

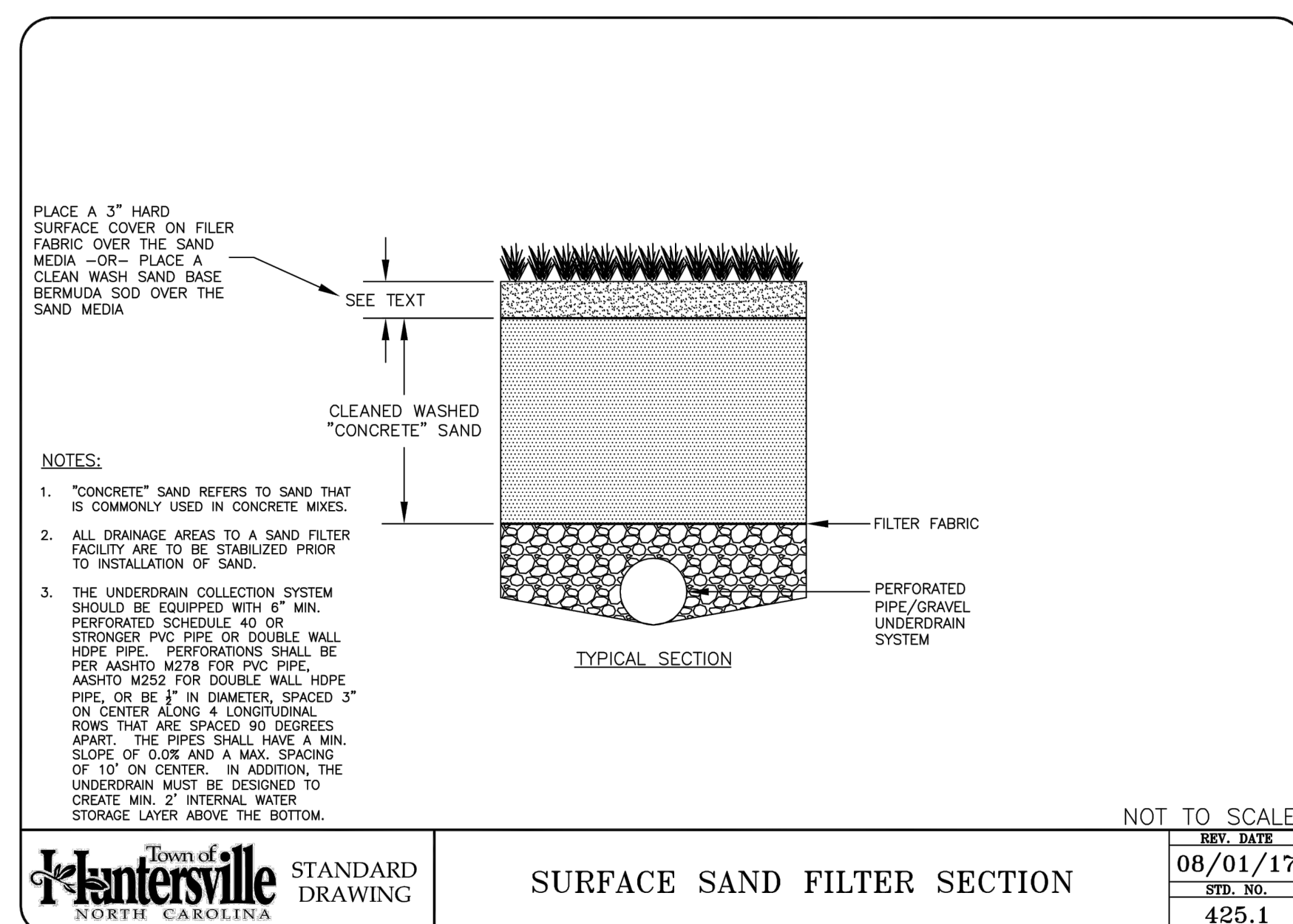
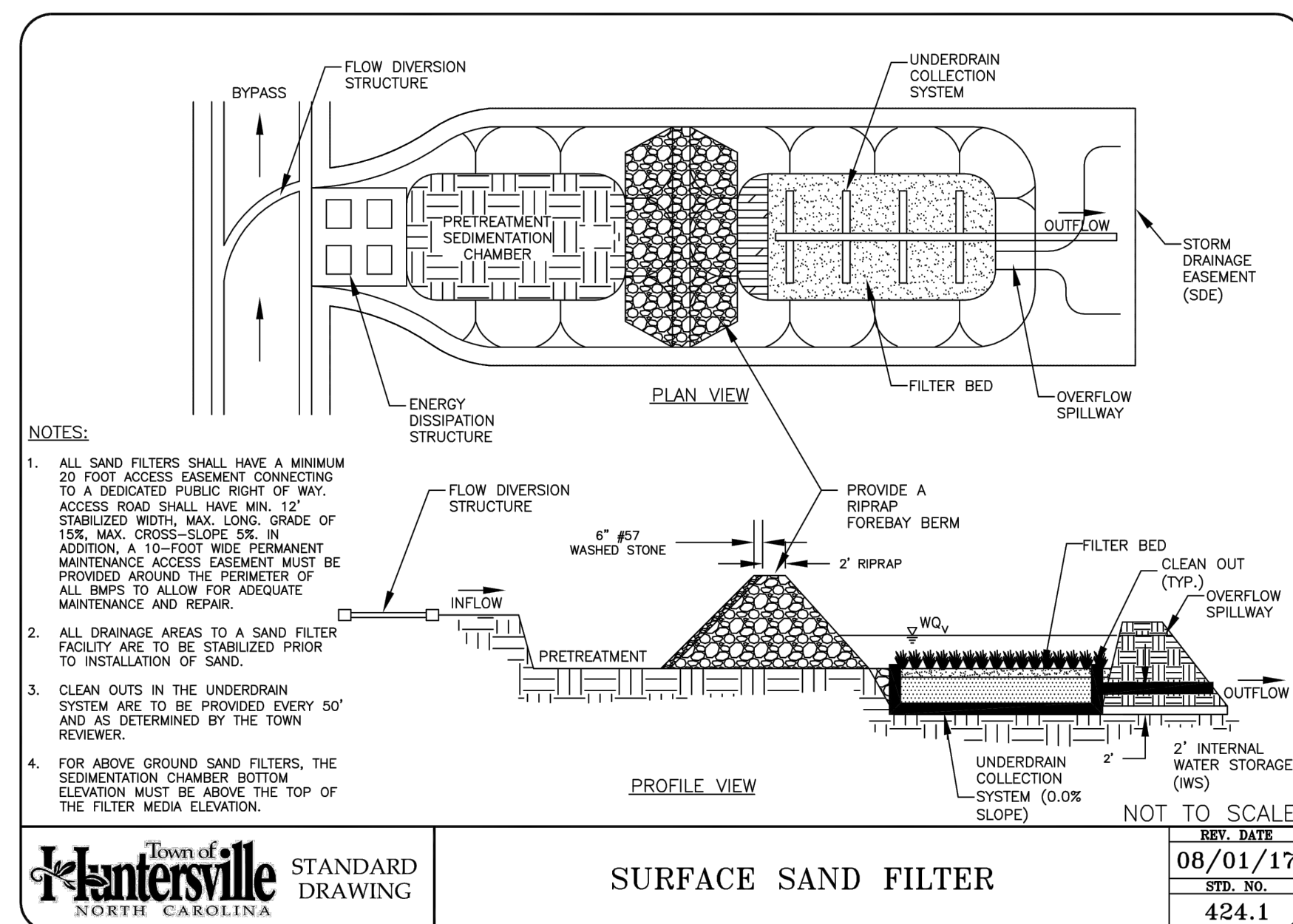
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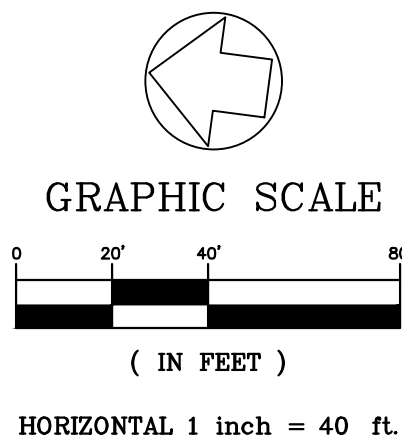
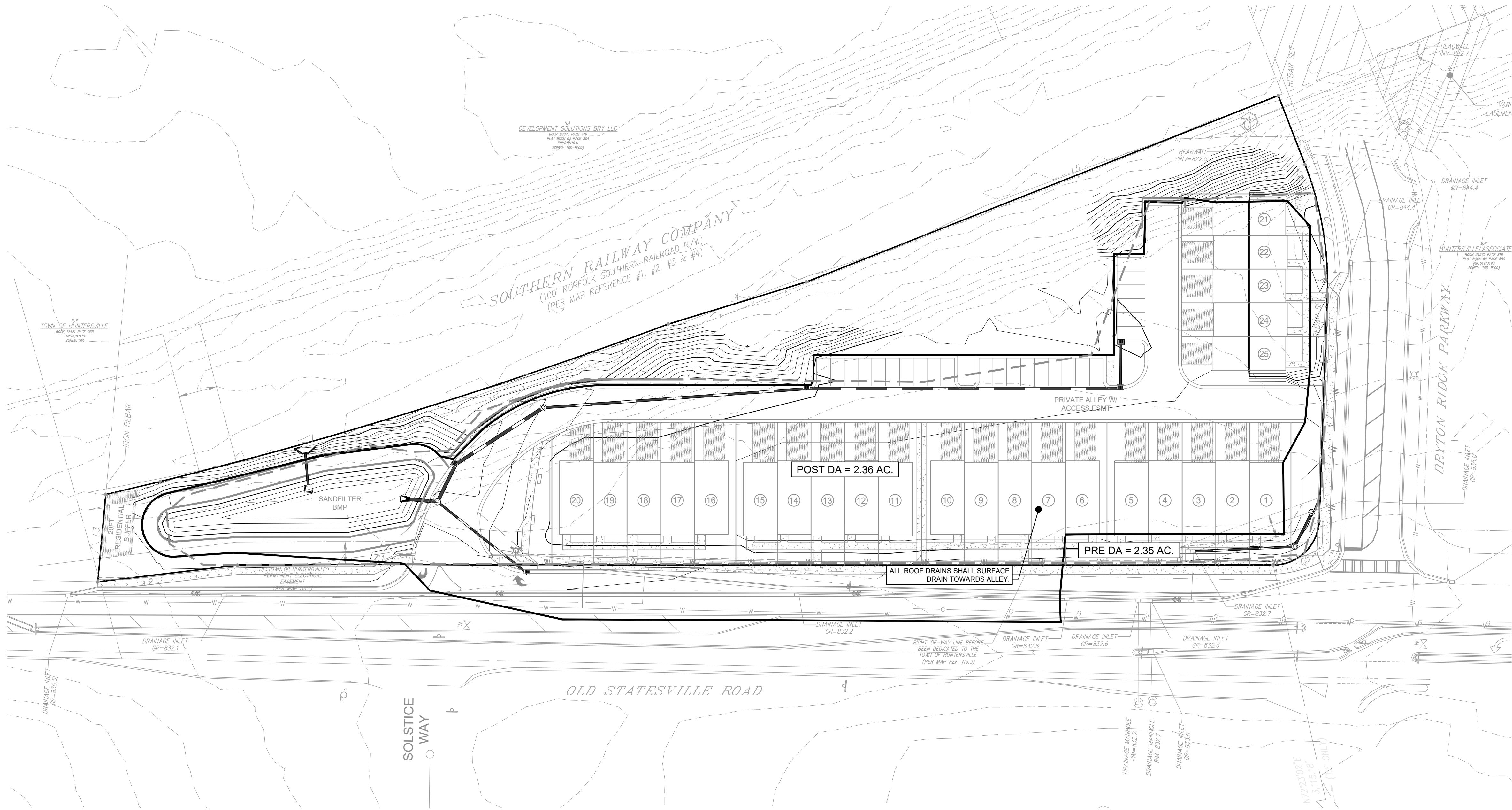
NOTE:
OUTLET STRUCTURE DETAILS
SHALL BE PROVIDED WITH
FINAL PLAN DESIGN.

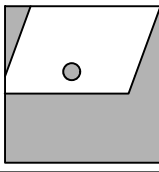
TECHNICAL SPECIFICATIONS:

1. SUBGRADE TO BE PROOF ROLLED PRIOR TO EARTH FILL PLACEMENT. ANY SOFT OR PUMPING AREAS ARE TO BE UNDERCUT AND REPLACED WITH COMPACTED EARTH FILL.
2. COMPACTED EARTH FILL TO HAVE DRY UNIT WEIGHT OF AT LEAST 90 PCF. ALL EARTH FILL TO BE COMPACTED TO MINIMUM OF 95% OF STD. PROCTOR MAXIMUM DRY DENSITY.
3. EXCAVATED SIDE SLOPES TO BE STABILIZED WITH GRASS COVER IN ACCORDANCE WITH SEEDING SPECIFICATIONS FROM EROSION & SEDIMENT CONTROL PLAN.
4. FINAL EMBANKMENT SLOPES TO BE TRACKED AND STABILIZED WITH GRASS COVER IN ACCORDANCE WITH SEEDING SPECIFICATIONS FROM EROSION & SEDIMENT CONTROL PLAN.
5. REINFORCED CONCRETE RISER STRUCTURE TO BE PREFABRICATED 4 FT. X 4 FT. INTERIOR DIMENSIONS.



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GATEWAY DESIGN
GROUP, PLLC



15126 CASTLEBRIDGE LANE MATTHEWS, NC 28104
910-840-2661
NC FIRM # P-2147

BRYTON TOWNHOMES PARCEL 2
PROJECT ADDRESS: 11842 Old Statesville Rd Huntersville, NC 28078

NO. | BY | DATE | REVISION

PROJECT # 2022-013 DATE: 6/28/2022
DRAWN BY: JB CHECKED BY: JB
TITLE
STORMWATER DRAINAGE AREAS
SHEET NO.
C-8.1

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[illegible]

Project Summary

TAX MAP NUMBER:	01911137	FRONT SETBACK:	15'	OPEN SPACE REQUIRED:	0%
SITE AREA:	3.114 AC.	SIDE SETBACK:	0'	OPEN SPACE PROVIDED:	35% (1.1AC)
CURRENT ZONING:	NC (CD)	REAR SETBACK:	0'		
PROPOSED USE:	SINGLE FAMILY ATTACHED TOWNHOMES			MAX IMPERVIOUS:	70%
PROPOSED UNITS:	25	PARKING REQUIRED:	1.5 SPACE PER UNIT	SITE IMPERVIOUS:	47%
DENSITY:	8 UNITS/AC	PARKING PROVIDED:	2 SPACES PER UNIT		



BRYTON TOWNHOMES
SKETCH PLAN

Scale: No Scale

NOTICE TO INTERESTED PARTIES OF NEIGHBORHOOD MEETING

Subject: Neighborhood Meeting —**Sketch Plan Review Process** for an approximate 3-acre site located at 11842 Old Statesville Road.

Date of Meeting: Monday, May 23rd, from 5:00pm to 5:30pm

Place of Meeting: Independence Hill Baptist Church,
10220 Independence Hill Road, Huntersville, NC

Northbridge, LLC has proposed the development of single-family attached dwelling units (townhomes) on a 3-acre parcel at 11842 Old Statesville Road (Parcels 01911137). In accordance with Town of Huntersville's Sketch Plan Review Process, the Applicant will hold a Neighborhood Meeting for the purpose of discussing this Sketch Plan with nearby property owners and organizations. Mecklenburg County GIS records indicate that you are either a representative of a registered neighborhood organization or an owner of property that adjoins, or is located approximate the site. Representatives of the Applicant look forward to sharing this Sketch Plan with you and to answering any questions you may have.

Accordingly, please accept this notice that Application will hold a Neighborhood Meeting regarding this Sketch Plan at the time and location noted above.

Respectfully,

Stephen McCarthy
Northbridge, LLC

PROJECT SITE LOCATION:



Mailed: May 11, 2022

Bryton Townhomes
5/23/2022

Neighborhood Meeting Q & A

Q: Will the buildings be facing NC115 or backing up to NC115

A: The front door or the units will be oriented towards the street (NC115 and Bryton Ridge Parkway), similar to the townhomes on the opposite side of the bridge, and those on the opposite side of NC115.

Q: Will the trees behind the property remain?

A: The Town Ordinance requires a minimum vegetative buffer remain undisturbed, which includes evergreen trees. Additionally, trees will be planted to supplement/increase the buffer along the railroad.

Q: Will NC115 be widened or will there be a traffic light added?

A: Access to the site will be right-in, right-out off of NC115. Current lane widths, medians and intersection movements will remain. A new deceleration lane and taper will be added to accommodate a right turn into the property from NC115.

Q: Who is going to be the builder?

A: Unable to share that information at this time but the builder is reputable. The architecture and style will be equal or better character, quality and style to the townhomes recently constructed along Bryton Ridge Parkway.

Q: What will be the price-point of the townhomes?

A: It is difficult to say but given how volatile housing prices are now but we would expect pricing to begin in the upper \$300's to low \$400's.

Q: When will construction take place?

A: Generally, plan approvals take 4-6 months, land development takes 6-8 months prior to commencing home building.

**Bryton Townhomes
Neighborhood Meeting
5/23/2022**

[illegible]

Bryton Townhomes
5/23/2022

Neighborhood Meeting Mailing List from Polaris

DEVELOPMENT SOLUTIONS BRY LLC
516 N WEST ST
RALEIGH NC 27603

HUNTERSVILLE ASSOCIATES LLC
22730 FAIRVIEW CENTER DR STE 200
C/O HERITAGE INCOME PROPETIES LLC
FAIRVIEW PARK OH 44126

FAATIMA S CAMPBELL
12401 BRYTON RIDGE PKWY
HUNTERSVILLE NC 28078

DEBRA BOORAM
12405 BRYTON RIDGE PKWY
HUNTERSVILLE NC 28078

KELLY LYNN CARTER
12409 BRYTON RIDGE PARKWAY
HUNTERSVILLE NC 28078

DONNA M GRIFFIN
12413 BRYTON RIDGE PKWY
HUNTERSVILLE NC 28078

STEFANOS STAMOULACATOS
12417 BRYTON RIDGE PKWY
HUNTERSVILLE NC 28078

KRYSTAL T GORDON
11372 WINDING GORGE DR
HUNTERSVILLE NC 28078

JASMINE ARNETTA ARTIS
11368 WINDING GORGE DR
HUNTERSVILLE NC 28078

ALEX JAMAAL WHITE
11368 WINDING GORGE DR
HUNTERSVILLE NC 28078

VENKATA THARUN KINTALI
11364 WINDING GORGE DR
HUNTERSVILLE NC 28078

JESSICA J CARTER
11360 WINDING GORGE DR
HUNTERSVILLE NC 28078

NATASSHA B COOPER
11356 WINDING GORGE
HUNTERSVILLE NC 28078

DAN CARTER SHELTON
864 NORTHRIDGE DR
BOONE NC 28607

JACKSON HORNER
3602 COLUMBINE CIRCLE
CHARLOTTE NC 28211

CRYSTAL THOMPSON
11344 WINDING GORGE DR
HUNTERSVILLE NC 28078

BRITTANY MORROW
11340 WINDING GORGE DR
HUNTERSVILLE NC 28078

JENNELLE MONIQUE DOBSON
11336 WINDING GORGE DR
HUNTERSVILLE NC 28078

DEANNA HILLSTORM
11332 WINDING GORGE DR
HUNTERSVILLE NC 28078

ANA GABRIELA SOLIS
11328 WINDING GORGE DR
HUNTERSVILLE NC 28078

OLGA I SANDLER
4910 SELA CT
MINT HILL NC 28227

SCOTT A YORK
11320 WINDING GORGE DR
HUNTERSVILLE NC 28078

PERRY WOODSON II THOMAS
14940 MEACHAM FARM DR
HUNTERSVILLE NC 28078

SAMMY HMEIDAN
14936 MEACHAM FARM DR
HUNTERSVILLE NC 28078

GEQUETA FERRELL
14932 MEACHAM FARM DR
HUNTERSVILLE NC 28078

JANIER ARMANDO MORA
14928 MEACHAM FARM DR
HUNTERSVILLE NC 28078

BRIANA S YOUNG
14922 MEACHAM FARM DR
HUNTERSVILLE NC 28078

BRENDA RENE LEE
7831 MAYORES LN UNIT 3027
CHARLOTTE NC 28262

ANDREA GRANADOS MARTINEZ
14914 MEACHAM FARM DR
HUNTERSVILLE NC 28078

CAMERON ROBERT STONE
5375 SUGARLOAF PKWY APT 5211
LAWRENCEVILLE GA 30043

EBRIMA JALLOW
11408 SOLSTICE WY
HUNTERSVILLE NC 28078

AJAY B GUTHI
11967 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

THI MAI LAN TRAN
11963 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

ISAAC III AIKEN
11959 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

INDIA L DAVIS
11955 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

WESLEY U CAULDER
11951 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

HUI JIANG
6442 RAFFIA RD
CHARLOTTE NC 28277

THOMAS MARTIN
11943 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

KENDRA A MARTIN-TOWLES
11939 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

TANGA MCKINSTRY
11935 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

MINAL B PARKER
11931 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

CARLTON THOMAS
11927 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

CHINIQUE S WALLACE
11923 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

SANTHOSH REDDY DEVARAPALLY
11919 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

CHIOMA BLESSING EJIUGU
11915 OLD STATEVILLE RD
HUNTERSVILLE NC 28078

MICHAEL E ROBINSON
11911 OLD STATESVILLE RD
HUNTERSVILLE NC 28078

LINFENG GONG
12404 LARUE LN
HUNTERSVILLE NC 28078

VENKATESAN PARKUNAN
12408 LARUE LN
HUNTERSVILLE NC 28078

ALEXANDER M VAUGHN
12412 LARUE LN
HUNTERSVILLE NC 28078

BRIAN MARTIN
12418 LARUE LN
HUNTERSVILLE NC 28078

VENKATA SHERI
12422 LARUE LN
HUNTERSVILLE NC 28078

ODELL III WITHERSPOON
12426 LARUE LN
HUNTERSVILLE NC 28078

KIANA NICOLE CEASAR
12430 LARUE LN
HUNTERSVILLE NC 28078

RAGHAVENDER KUKUNOOR
12434 LARUE LN
HUNTERSVILLE NC 28078

NADIA A BOMELA
12438 LARUE LN
HUNTERSVILLE NC 28078

HUI YU
6264 GOLDEN LILY WAY
SAN DIEGO CA 92130

AARON ROBERTSON
12446 LARUE LN
HUNTERSVILLE NC 28078

LASHAWNDIA BEATTY
12450 LARUE LN
HUNTERSVILLE NC 28078

HEMANTH KUMAR PENMETCHA
12454 LARUE LN
HUNTERSVILLE NC 28078

PATRICK LEAK
11412 SOLSTICE WAY
HUNTERSVILLE NC 28078

TOWN OF HUNTERSVILLE
PO BOX 664
HUNTERSVILLE NC 28070

STONEBROOK STATION
HOMEOWNERS ASSOCIATION INC
1515 MOCKINGBIRD LN
CHARLOTTE NC 28209

BRYTON CROSSING
HOMEOWNERS ASSOCIATION INC
PO BOX 37356
CHARLOTTE, NC 28237

BRYTON MASTER
OWNERS ASSOCIATION INC

PO BOX 37356
CHARLOTTE, NC 28237

BRYTON SQUARE
HOMEOWNERS ASSOCIATION INC
PO BOX 37356
CHARLOTTE, NC 28237

BRYTON TRACE HOMEOWNERS ASSOCIATION INC
PO BOX 37356
CHARLOTTE, NC 28237

PLUM CREEK PROPERTY OWNERS ASSOC INC
PO BOX 87
HUNTERSVILLE NC 28078

ARDMORE HUNTERSVILLE LLC
1400 W NORTHWOOD ST
GREENSBORO NC 27408



Planning Services

4421 Stuart Andrew Blvd.

Charlotte, NC 28217

Phone: 980-343-6246

Email: planning@cms.k12.nc.us

Town of Huntersville: 11842 Old Statesville Road Bryton Townhomes – Parcel 2

IMPACT OF THE PROPOSED DEVELOPMENT

Proposed Housing Units: 25 single family attached

CMS Planning Area: North

Average Student Yield per Unit: 0.1812

This development may add 4 students to the schools in this area.

The following data is as of 20th Day of the 2021-22 school year.

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
LEGETTE BLYTHE ELEMENTARY	49.50	50	855	864	99%	3	99%
JM ALEXANDER MIDDLE	50.8	54	856	910	94%	1	94%
NORTH MECKLENBURG HIGH	118.5	108	2095	1909	110%	0	110%

RECOMMENDATION

There is no significant impact on the schools listed above.

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: David Peete, Principal Planner

Date: August 15, 2022

Subject: QUASI-JUDICIAL - Maxwell Avenue Townhomes

EXPLAIN REQUEST:

QUASI-JUDICIAL. Conduct evidentiary hearing and consider decision on Maxwell Avenue Townhomes Subdivision Sketch Plan, a request by Northstate Development to subdivide 2.79-acres located at southeast intersection of Old Statesville Road (NC 115) and Maxwell Avenue, Parcel #s 019-031-05, 019-031-22, 019-031-04, 019-031-03, 019-031-02 & 019-031-23 for a 35-unit townhome development.

ACTION RECOMMENDED:

Conduct evidentiary hearing and consider decision on Maxwell Avenue Townhomes Subdivision Sketch Plan.

FINANCIAL IMPLICATIONS:

N/A

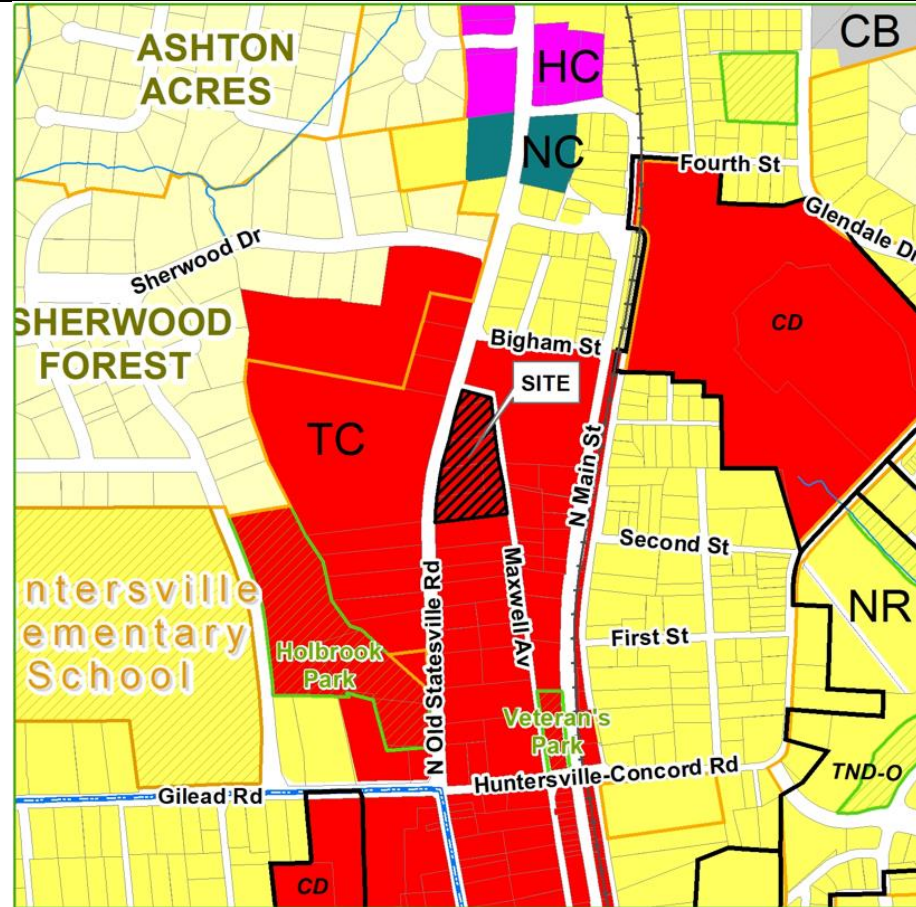
ATTACHMENTS:

1. Maxwell Avenue Townhomes Staff Report-TB Aug 15 2022
2. Attachment A - Maxwell Ave. Townhomes Sketch Plan Application
3. Attachment B - Maxwell Avenue Townhomes Sketch Plan (2nd Submittal - 07.01.22)
4. Attachment C - Neighborhood Mtg Report 7.25.22
5. Attachment D - CMS Report - Maxwell Ave Townhomes

Maxwell Avenue Townhome Subdivision Sketch Plan

QUASI-JUDICIAL HEARING

PART 1: PROJECT SUMMARY



Applicant: NorthState Development, LLC.

Property Owner: Various Owners (see Attachment A)

Property Address: 14802 Old Statesville Road.

Project Size: (+/-) 2.79 acres.

Parcel Number(s): 019-031-02 thru 05 & 019-031-22 – 23.

Zoning: Town Center (TC).

Land Use: Single Family Homes.

Proposed Land Use:
 35 townhomes.
 The proposed density is 12.54 units/acre.

TC – Town Center
 NR – Neighborhood Residential
 HC – Highway Commercial
 GR – General Residential
 NC – Neighborhood Center

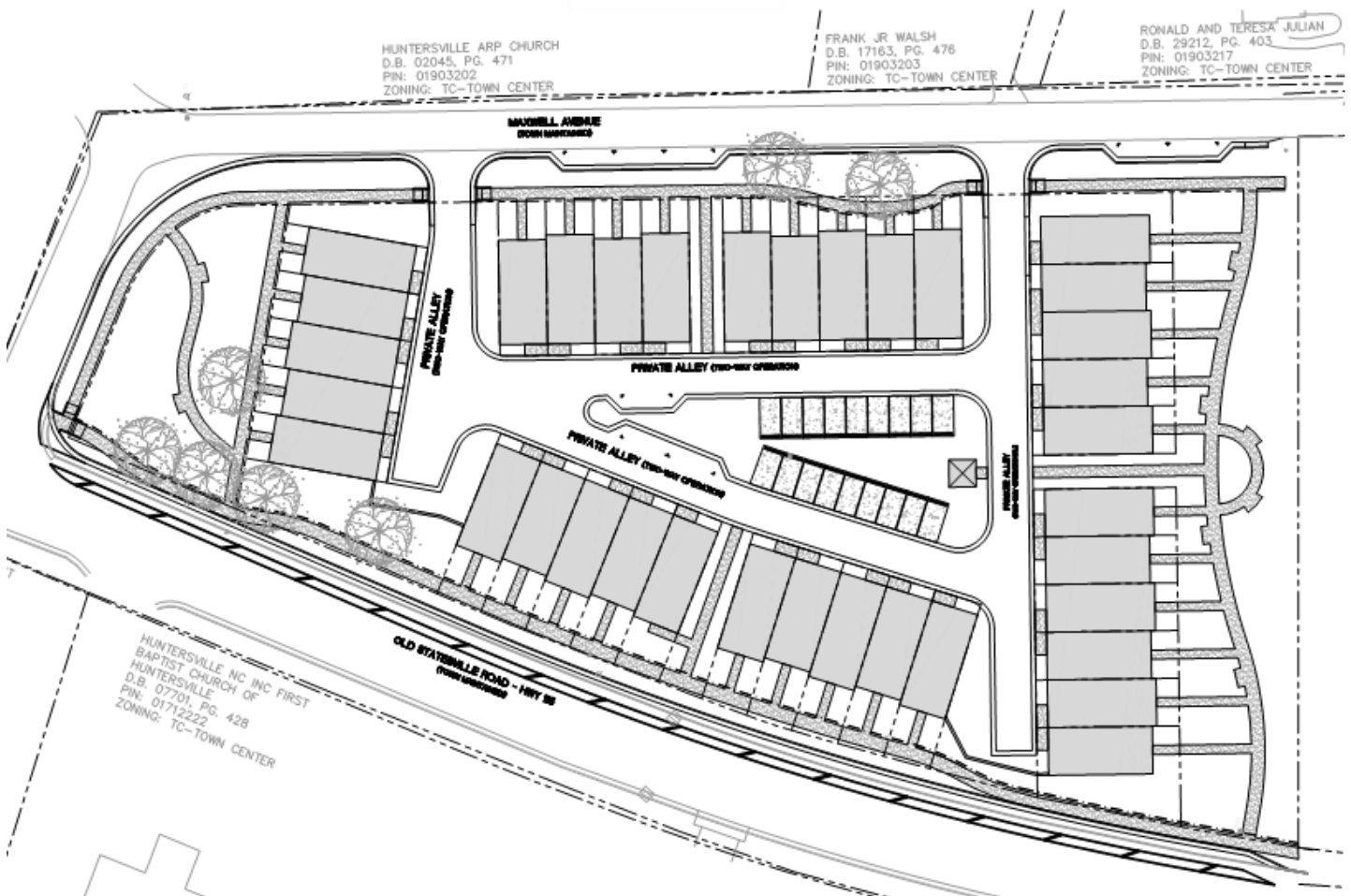
PART 2: SITE PLAN DESCRIPTION AND ISSUES

1. Purpose: To subdivide 2.79-acres of land located along the east side of Old Statesville Road, south of intersection with Maxwell Avenue. (shown as “site” above) into 35 townhome lots.
2. Adjoining Zoning and Land Uses:
 - North: Town Center (TC) – single-family homes.
 - South: Town Center (TC) – professional office located in single-family homes.
 - East: Town Center (TC) – church & cemetery (Huntersville Associate Reformed Presbyterian) & single-family homes.
 - West: Town Center (TC) – NC 115 right-of-way & church (First Baptist of Huntersville).
3. One (1) neighborhood meeting will be held on July 20, 2022. The meeting summary will be provided prior to the Planning Board meeting.
4. The proposed 35 townhomes are permitted in Neighborhood Center, as 100% attached units are permitted within ¼ mile of a designated rail transit station in this zoning district. NOTE: *The site is approximately .16 miles from a designated rail transit station. An application for this development was submitted on 3/31/22 PRIOR to a text amendment effective June 1, 2022, that no longer allows 100% attached houses within ¼ mile of a designated transit station.*

5. The current site's tree canopy coverage is 34%, of which, 17% will be saved (zero tree-save required by Ord.). There are 21 specimen trees located on the site, and seven (7) are proposed to be saved. There are no known heritage trees on the site.
6. A water-quality concept plan is required and has not yet been approved.
7. A willingness to serve letter from Charlotte Water, dated March 16, 2022, has been provided.
8. Two Urban Open Spaces are proposed along the north and south borders. However, both spaces are labeled as a "Parks" but neither qualifies. A "Square" or Pedestrian Pathway are more appropriate Urban Open Space type.
9. No buffers are required along the east, north and west, as they abut public streets and, per Article 7.5 of the Zoning Ordinance, buffer yards are not required in the Town Center zoning district.

MAXWELL AVENUE TOWNHOMES

SUBDIVISION SKETCH PLAN HUNTERVILLE, NC EPM # 435533



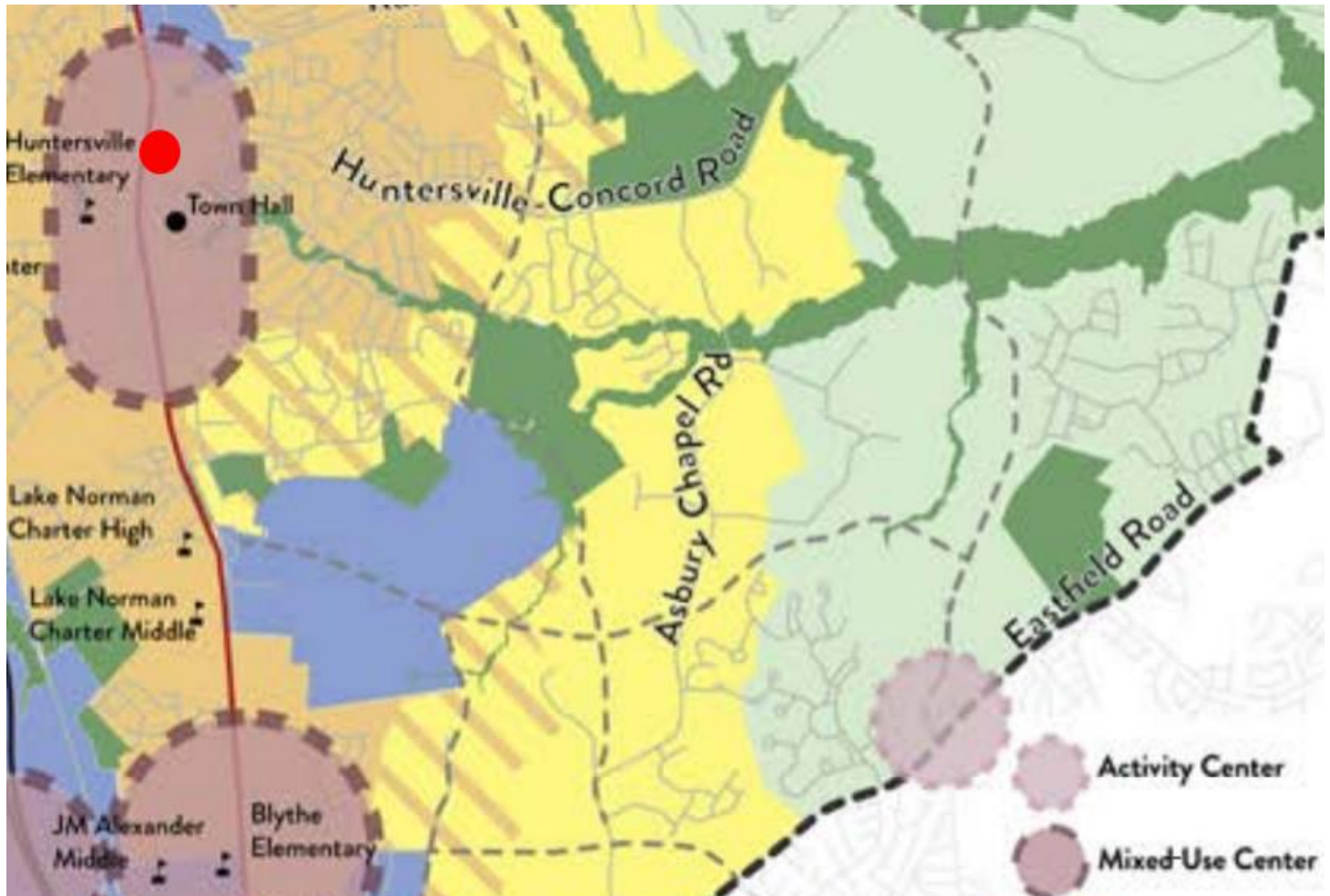
PART 3: TRANSPORTATION ISSUES/TRAFFIC IMPACT ANALYSIS (TIA)

A TIA was not required for this proposed subdivision Sketch Plan. There are no major transportation comments. All remaining transportation comments on the 2nd cycle Sketch Plan must be addressed.

PART 4: PLANNING STAFF ANALYSIS

Section 6.200 of the Subdivision Ordinance outlines the “general requirements and policies to be used in the design, review, and approval” of subdivisions in the Town of Huntersville. The following staff findings are provided for the Board’s consideration of the Maxwell Avenue Townhomes Subdivision Sketch Plan.

1. Consistency with adopted public plans and policies.



Mixed-Use Centers

Mixed-Use Centers contain vertical mixed-use along key frontages. New development includes wide sidewalks, buildings are close to the street with high levels of transparency, and parking is located in the rear. A mix of housing is allowed, including urban options throughout (apartments, townhomes, cottage homes, etc.). Downtown has specific requirements for streetscape and development intensity, including a maximum first floor footprint.

The following sections of the 2040 Huntersville Community Plan support this subdivision:

- The proposed Maxwell Avenue Townhome Subdivision lies completely within a “Mixed-Use Center” Future Land Use Character Area of the 2040 Community Plan (see red dot above). The overall density of the proposed Maxwell Avenue Townhomes is 12.54-units per acre, which is appropriate in a Mixed-Use Center, as well as in the Town Center (TC) zoning district. Article 3.2.6 – Town Center indicates this zone

“provides for revitalization, reuse and infill development in Huntersville’s traditional town center. A broad array of uses is expected... (including) higher density housing in a compact, pedestrian-oriented environment”.

- **EOS 8.3: Continue to require locational standards for open space in new developments. Urban Open Space should be located within walking distance of homes in new subdivisions that are not located in rural areas. Open space should be located in undivided preserves, where possible, and should be accessible to the largest number of lots with the development.** Comment: The development provides two (2) urban open spaces, one is located along the north of the 35 townhomes where Maxwell Avenue intersects with Old Statesville Road (NC115) and the other is located along the southern border.
- **EOS 10: Improve bicycle and pedestrian facilities throughout Town.** Comment: The developer is providing a four-foot bike lane and six (6) feet-wide sidewalks along Old Statesville Road (NC 115). A five (5) sidewalk is proposed along Maxwell Avenue. These improvements will support pedestrians & bikers in the vicinity. No public greenway is planned through this property.
- **LU 2.1: Higher intensity residential uses will be focused generally within two miles of the I-77/ NC-115 corridor and future activity centers in the eastern and western areas of Huntersville’s zoning jurisdiction.** Comment: The proposed development is located at the intersection of Old Statesville Road (NC 115) and Maxwell Avenue. This location is entirely within the I-77/NC 115 corridor as it abuts NC 115 (Old Statesville Road).
- **LU 5.3: Support infill housing options near services, shopping, employment, and transit stations. Encourage infill development opportunities to increase housing options with proximity to nearby services, shopping, employment opportunities, and transit stations.** Comment: The proposed development is located approximately 0.20 miles northwest from a planned transit station and less than a ¼ mile from churches, professional offices, civic and commercial uses. In addition, Blythe Elementary School (CMS) is located 0.35-miles to the southwest of this development.
- **LU 7.1: Require all new development to adhere to the following design principles: All buildings shall front a public street or open space.** Comment: Townhomes 1 - 24 front public streets and townhomes 25 – 35 will front an Urban Open Space along the southern border.
- **LU 8.3: Encourage transit-supportive development. Maintain incentives for future TOD locations, including allowing 100% attached homes near transit stations.** Comment: This development would be located 0.20-miles from the designated transit station downtown and is proposed to be 100% attached.
- **LU 9.1: In higher intensity areas including Mixed Use Centers, Activity Centers, the Town Core, and Moderate Density areas neighborhoods should adhere to the following design principles:**
 - All homes must front a public street or open space.
 - Front porches and recessed garages are encouraged.
 - On-street parking is required in new developments that have lot widths below 60’. Alley-loading is also encouraged in these cases.Comment: The proposed subdivision meets these design principles-as all residential units either front on public streets or Urban Open Space. Garages will be located in the rear yard, some on-street parking is provided along Maxwell Avenue and there are 18 additional parking spaces along the alley for all units to use.
- **LU 10.1: Align housing options with resident needs and promote attainable housing options.**

Accommodate a mix of housing by type, tenure, and location to serve a growing and increasingly diverse population. Housing offerings should align with workforce opportunities, including management, professional positions, and service positions. Comment: This development would provide townhomes on small lots, which will provide another housing option for the downtown area.

- **T 5.1: Design street improvements with consideration for the surrounding context and various users.** Comment: The frontage of NC 115 will have a four (4) feet bike lane and six (6) feet wide sidewalk and Maxwell Avenue will have five (5) feet wide sidewalks. These improvements will accommodate higher density pedestrian and bike usage.

2. Conformity.

The proposed development has an overall density of 12.54 dwelling units /acre (DUA). The Mixed-Use Center designation from the 2040 Community Plan and the Town Center zoning district both encourage higher-density development.

3. Access between Adjoining Properties.

This subdivision is bordered on three (3) sides by existing NCDOT or Town streets and the southern border is designated for a future street connection, therefore connections to adjacent properties are not appropriate.

4. Relation to topography.

The lots and alley layout have been designed to respect the general topography of the site.

5. Mature trees and natural vegetation.

The proposed project is not required to save any tree canopy; however, the proposed plan saves 17.2%. Seven of 21 specimen trees are to be saved and there are no trees located on site.

6. Access to parks, schools, etc.

The proposed development is less than a ¼ mile walk from the Downtown Greenway trailhead, Holbrook Park and Huntersville Elementary School.

7. Discourage through traffic.

The only access into the subdivision is a private alley that does not connect to any adjacent parcels, as there is no practical option to do so.

8. Relationship to railroad rights-of-way.

Not Applicable.

9. Half streets.

Not Applicable.

10. Parallel streets along thoroughfares.

Not Applicable.

11. Public School and Public Park Sites

The parcel associated with Maxwell Avenue Townhomes Subdivision Sketch Plan is not identified for a school or park.

12. Public Facilities

The parcel associated with the Maxwell Avenue Townhomes Subdivision Sketch Plan has not been identified for a public facility.

13. Proposed street names

As no public streets are to be provided, no new street names will be required.

14. Easements.

Easements have been identified and the plans have been sent to the respective Engineering and Utility Departments for review.

15. Proposed water and sewerage system.

A willingness to serve letter has been provided by Charlotte Water for this development.

16. Restrictions on the subdivision of land subject to flooding.

No part of the site is in a designated flood zone.

17. Open Space

Urban open space will be provided by two (2) open spaces located along the northern and southern borders.

18. Impact of Development on Public Facilities

There is no indication the proposed subdivision will adversely impact public facilities. While this section of the Ordinance does not call for the specific consideration of impact to public schools (CMS), staff contacts Charlotte-Mecklenburg Schools (CMS) for an enrollment evaluation for all major subdivision requests. According to CMS, the development may add 6 new students who will attend local schools. A section of CMS's report is provided below (see Attachment D - CMS Report.)

This development may add 6 students to the schools in this area.

The following data is as of 20th Day of the 2021-22 school year.

<u>Schools Affected</u>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
HUNTERSVILLE ELEMENTARY	44.50	37	747	621	120%	4	120%
BAILEY MIDDLE	73.65	57	1370	1060	129%	1	129%
WILLIAM A. HOUGH HIGH	117.8	100	2470	2097	118%	1	118%

PART 5: STAFF RECOMMENDATION

COMPLETENESS OF APPLICATION:

Town Staff has reviewed the proposed Maxwell Avenue Townhomes Subdivision Sketch Plan and finds the application complete.

COMPLIANCE WITH APPLICABLE REQUIREMENTS:

Maxwell Avenue Townhomes Subdivision Sketch Plan complies with all applicable requirements and is supported by findings of fact outlined in Parts 2-4 of this report, with the following conditions:

- Several additional specimen trees should be saved – work with Staff to revise plan.
- Small-maturing street trees are proposed due to overhead power lines – work with Staff to resolve.
- A compliant Urban Open Space type must be provided (suggest using “Square”).
- Numerous townhome sidewalk connections should be consolidated to create more open space and reduce unnecessary impervious coverage.
- Town Transportation comments must be addressed.
- Water-quality concept plan must be approved by Staff.
- All other plan comments are addressed.

APPROVAL:

The Maxwell Avenue Townhomes Subdivision Sketch Plan could comply with all applicable requirements once the conditions listed above are addressed. Staff Recommends Approval of the proposed Subdivision Sketch Plan based on satisfaction of the above listed items.

PART 6: PLANNING BOARD RECOMMENDATION

The Planning Board reviewed the subdivision on Tuesday, July 26, 2022 and recommended approval by unanimous (9-0) vote, as follows: **Motion:** In considering the application by Northstate Development for Maxwell Avenue Townhomes the Planning Board finds the application to be complete. The application complies with EOS 8.3, EOS 10, LU 2.1, LU 5.3, LU 7.1, LU 8.43, LU 9.1, LU 10.1, T 5.1. This recommendation is based on the following conditions being met, 1) the applicant continue to study opportunities to save additional trees; 2) applicant work with staff to resolve the small maturing trees proposed under the power lines; 3) a compliant urban open space type be provided; 4) numerous townhome sidewalk connections be consolidated to create more open space and reduce unnecessary impervious coverage; 5) town transportation comments be addressed; 6) water-quality concept plan approved by staff; 7) all other plan comments be addressed.

PART 7: TOWN BOARD FINAL ACTION

The Town Board is scheduled to conduct a quasi-judicial hearing on this request on Monday, August 15, 2022.

PART 8: ATTACHMENTS AND ENCLOSURES

- A – Subdivision Sketch Plan Application
- B – Bryton – Parcel 2 Townhomes Subdivision Sketch Plan
- C – Neighborhood Meeting Report
- D – CMS Report

PART 9: DECISION STATEMENTS

Please refer to Part 5 of this report for recommendation.

In considering whether to approve an application for a subdivision sketch plan, the Planning and Town Board must complete the following (a full version can be found in [Section 6.320.5](#) of the Subdivision Ordinance).

- Is the application complete (lacking any particular requirement)? *If no member of the Board moves that the application is incomplete, then this inaction is taken as an affirmative finding that the application is complete.*
- Does the application comply with all the applicable requirements? *A statement must be made that the application complies or does not comply that includes the support documentation of the particular motion.*
- Lastly, the Board must make a motion to approve or deny based on the previous statements.



General Application

INCOMPLETE SUBMISSIONS WILL NOT BE ACCEPTED. PLEASE CHECK ALL ITEMS CAREFULLY.

1. Application Type

Please indicate the type of application you are submitting. In addition to the application, the submission process for each application type can be found at <https://www.huntersville.org/528/Permits-Process>

- ☐ Change of Use
- ☐ Commercial Site Plan
- ☐ Conditional Rezoning
- ☐ General Rezoning
- ☐ Master Signage Program
- ☐ Special Use Permit
- ☐ Revision to

Original Project # _____

- ☐ Other _____

SUBDIVISION CATEGORIES: Per the Huntersville Subdivision Ordinance

- ☒ Sketch Plan
- ☐ Preliminary Plan
- ☐ Final Plat (Includes Minor Subdivision)
- ☐ Exempt Subdivision
- ☐ Final Plat Revision
- ☐ Farmhouse Cluster

2. Project Data

Date of Application 3/31/22

Name of Project Maxwell Avenue Townhomes Phase # (if subdivision) _____

Project Address 14802 N. Old Statesville Road

Parcel Identification Number(s) (PIN) 01903102, 01903103, 01903104, 01903105, 01903122, 01903123

Current Zoning District Town Center (TC) Proposed District (for rezoning only) _____

Property Size (acres) 2.79 acres Street Frontage (feet) 1,215 +/- L F

Current Land Use Single Family Residential

Proposed Land Use(s) Townhome Residential

Is the project within Huntersville's corporate limits?

Yes X No _____ If no, does the applicant intend to voluntarily annex? _____

3. Description of Request

Explain the nature of this request. If a separate sheet is necessary, please attach to this application.

By right subdivision sketch plan; 35 townhome units on Old Statesville Rd. and Maxwell Ave.

4. Site Plan Submittals

Consult the particular type of *Review Process* for the application type selected above. These can be found at <https://www.huntersville.org/528/Permits-Process>.

5. Outside Agency Information

Other agencies may have applications and fees associated with the land development process. The *Review Process* list includes plan documents needed for most town and county reviewing agencies. For major subdivisions, commercial site plans, and rezoning petitions please enclose a copy of the Charlotte-Mecklenburg Utility *Willingness to Serve* letter for the subject property.

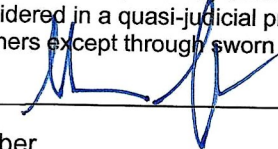
6. Applicant

Printed Name NorthState Development, LLC

Phone 704-997-8255

☐ Corporation ☒ Limited Liability Company ☐ Trust ☐ Partnership ☐ Other: _____

X By signature below, I hereby acknowledge, as/on behalf of (circle one) the applicant my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature  Printed Name: Shane Seagle

Title Member Email sseagle@northstatedevelopment.com

Address of Applicant 18825 W. Catawba Ave., Suite 250, Cornelius, NC 28031

7. Property Owner (if different than applicant)

*Printed Name See attached Property Owner signature pages Phone _____

☐ Corporation ☐ Limited Liability Company ☐ Trust ☐ Partnership ☒ Other: Individuals

X By signature below, I hereby acknowledge, as/on behalf of (circle one) the owner my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing. (Applicable for Special Use Permits and Subdivisions)

Signature See attached Property Owner signature pages Printed Name _____

Title _____ Email _____

Address of Property Owner _____

* Property owner hereby grants permission to the Town of Huntersville personnel to enter the subject property for any purpose required in processing this application.

Every owner of each parcel included in this application, or the owner (s) duly authorized agent, must sign this application. If signed by an agent on behalf of the Owner, this application MUST be accompanied by a notarized Limited Power of Attorney signed by the property owner (s), specifically authorizing the agent to act on the owner (s) behalf in signing this application. Failure of each owner, or their duly authorized agent, to sign, or failure to include the authority of the agent signed by the property owner, will result in an INVALID APPLICATION. If additional space is needed for signatures, attach the Town of Huntersville Signature Addendum Form.

8. Development/Design Firm Contact Information

Development Firm	Name of Contact	Phone	Email
<u>ColeJenest & Stone, Bolton & Menk, Inc.</u>	<u>Colin Jenest</u>	<u>704-376-1555 (3787)</u>	<u>colin.jenest@bolton-menk.com</u>
Design Firm	Name of Contact	Phone	Email

Contact Information

**Town of Huntersville
Planning Department**
PO Box 664
Huntersville, NC 28070

Phone: 704-875-7000
Fax: 704-992-5528
Physical Address: 105 Gilead Road, Third Floor
Website: <https://www.huntersville.org/228/Planning-Department>

JOINDER OF AND CONSENT TO APPLICATION

This JOINDER OF AND CONSENT TO APPLICATION (the "Joinder") is executed this 17th day of March, 2022, by JOHN H. LEE ("Owner") in connection with that one certain General Application for a Subdivision Sketch Plan ("Application"), for the Maxwell Avenue Townhomes, or to be filed, by NorthState Development, LLC ("Applicant") in connection with the properties identified as Parcel Numbers 019-03-123 and 019-03-102, in the Town of Huntersville, Mecklenburg County, North Carolina.

WHEREAS, the undersigned, as an Owner, desire to join in and consent to the provisions of the Application and to ratify the execution thereof by Applicant.

NOW, THEREFORE, for and in consideration of good and valuable consideration as set forth herein, the undersigned agree as follows:

1. **Joinder.** The Owner does, on behalf of themselves and their successors and assigns, hereby join in and consent to the Application.
2. **Ratification.** The Owner does hereby further, on behalf of themselves, their heirs, successors and assigns, ratify and confirm all prior actions of Applicant in connection with the Application.
3. **Modification.** Owner does hereby further agree, on behalf of itself, and its successors and assigns, to any modifications to the Application, as determined by the Applicant, during the review and approval process through the Town of Huntersville.
4. **Governing Law.** This Joinder is entered into under the laws of the State of North Carolina, and those laws shall govern the construction and enforcement hereof.
5. **Authority.** The person or persons executing this Joinder on behalf of the Owner are duly authorized to execute this Joinder, and no consent of any other person to execution of this Joinder is required.
6. **Quasi-Judicial Proceeding.** By signature below, I hereby acknowledge, as the owner, my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned Owner has executed this Joinder of and Consent to Application on the date set forth below.

OWNER:



JOHN H. LEE

Address: 14826 and 14822 N Old Statesville Rd., Huntersville, North Carolina 28078

Date: 3/17/2022

JOINDER OF AND CONSENT TO APPLICATION

This JOINDER OF AND CONSENT TO APPLICATION (the "Joinder") is executed this 17th day of March, 2022, by CATHY LEE ("Owner") in connection with that one certain General Application for a Subdivision Sketch Plan ("Application"), for the Maxwell Avenue Townhomes, or to be filed, by NorthState Development, LLC ("Applicant") in connection with the property identified as Parcel Number 019-03-103, in the Town of Huntersville, Mecklenburg County, North Carolina.

WHEREAS, the undersigned, as an Owner, desire to join in and consent to the provisions of the Application and to ratify the execution thereof by Applicant.

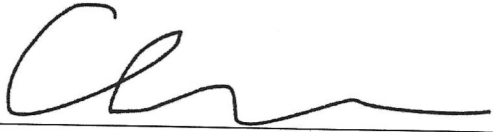
NOW, THEREFORE, for and in consideration of good and valuable consideration as set forth herein, the undersigned agree as follows:

1. **Joinder.** The Owner does, on behalf of themselves and their successors and assigns, hereby join in and consent to the Application.
2. **Ratification.** The Owner does hereby further, on behalf of themselves, their heirs, successors and assigns, ratify and confirm all prior actions of Applicant in connection with the Application.
3. **Modification.** Owner does hereby further agree, on behalf of itself, and its successors and assigns, to any modifications to the Application, as determined by the Applicant, during the review and approval process through the Town of Huntersville.
4. **Governing Law.** This Joinder is entered into under the laws of the State of North Carolina, and those laws shall govern the construction and enforcement hereof.
5. **Authority.** The person or persons executing this Joinder on behalf of the Owner are duly authorized to execute this Joinder, and no consent of any other person to execution of this Joinder is required.
6. **Quasi-Judicial Proceeding.** By signature below, I hereby acknowledge, as the owner, my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned Owner has executed this Joinder of and Consent to Application on the date set forth below.

OWNER:

A handwritten signature in black ink, appearing to be 'Cathy Lee', written over a horizontal line.

CATHY LEE

Address: 14816 N Old Statesville Rd., Huntersville, North Carolina 28078

Date: March 17, 2022

JOINDER OF AND CONSENT TO APPLICATION

This JOINDER OF AND CONSENT TO APPLICATION (the "Joinder") is executed this 27th day of March, 2022, by PATRICIA WALSH ("Owner") in connection with that one certain General Application for a Subdivision Sketch Plan ("Application"), for the Maxwell Avenue Townhomes, or to be filed, by NorthState Development, LLC ("Applicant") in connection with the properties identified as Parcel Numbers 019-03-122, 019-03-104 and 019-03-105, in the Town of Huntersville, Mecklenburg County, North Carolina.

WHEREAS, the undersigned, as an Owner, desire to join in and consent to the provisions of the Application and to ratify the execution thereof by Applicant.

NOW, THEREFORE, for and in consideration of good and valuable consideration as set forth herein, the undersigned agree as follows:

1. **Joinder.** The Owner does, on behalf of themselves and their successors and assigns, hereby join in and consent to the Application.
2. **Ratification.** The Owner does hereby further, on behalf of themselves, their heirs, successors and assigns, ratify and confirm all prior actions of Applicant in connection with the Application.
3. **Modification.** Owner does hereby further agree, on behalf of itself, and its successors and assigns, to any modifications to the Application, as determined by the Applicant, during the review and approval process through the Town of Huntersville.
4. **Governing Law.** This Joinder is entered into under the laws of the State of North Carolina, and those laws shall govern the construction and enforcement hereof.
5. **Authority.** The person or persons executing this Joinder on behalf of the Owner are duly authorized to execute this Joinder, and no consent of any other person to execution of this Joinder is required.
6. **Quasi-Judicial Proceeding.** By signature below, I hereby acknowledge, as the owner, my understanding this application will be considered in a quasi-judicial proceeding and that neither I, nor anyone on my behalf, may contact the Board of Commissioners except through sworn testimony at the public hearing.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned Owner has executed this Joinder of and Consent to Application on the date set forth below.

OWNER:

Patricia Walsh

PATRICIA WALSH

Address: 14804 and 14810 N Old Statesville Rd., Huntersville, North Carolina 28078

Date: 3/27/2022

MAXWELL AVENUE TOWNHOMES

SUBDIVISION SKETCH PLAN

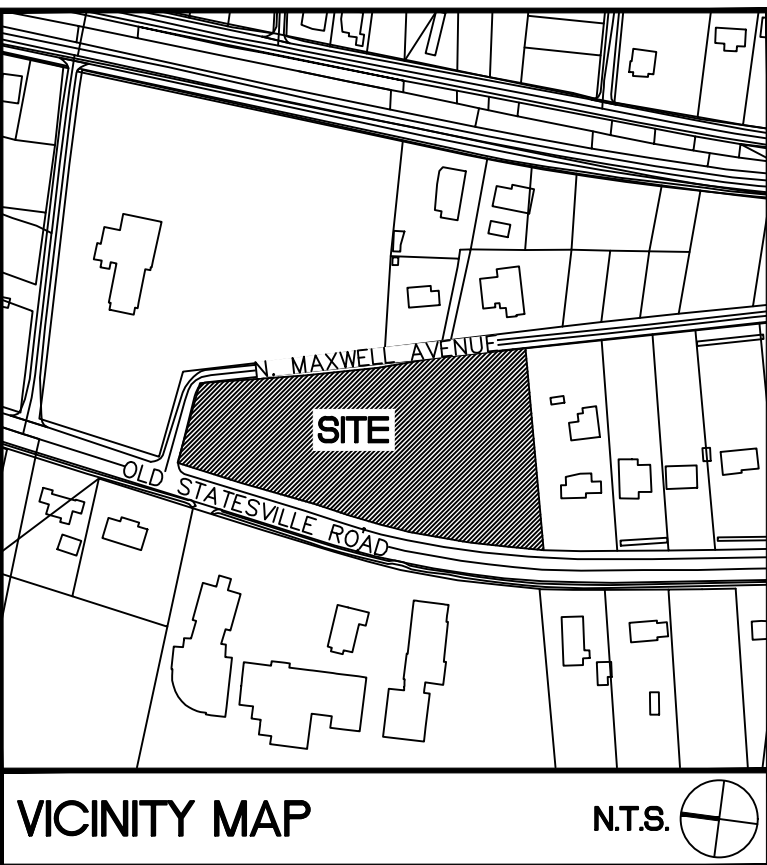
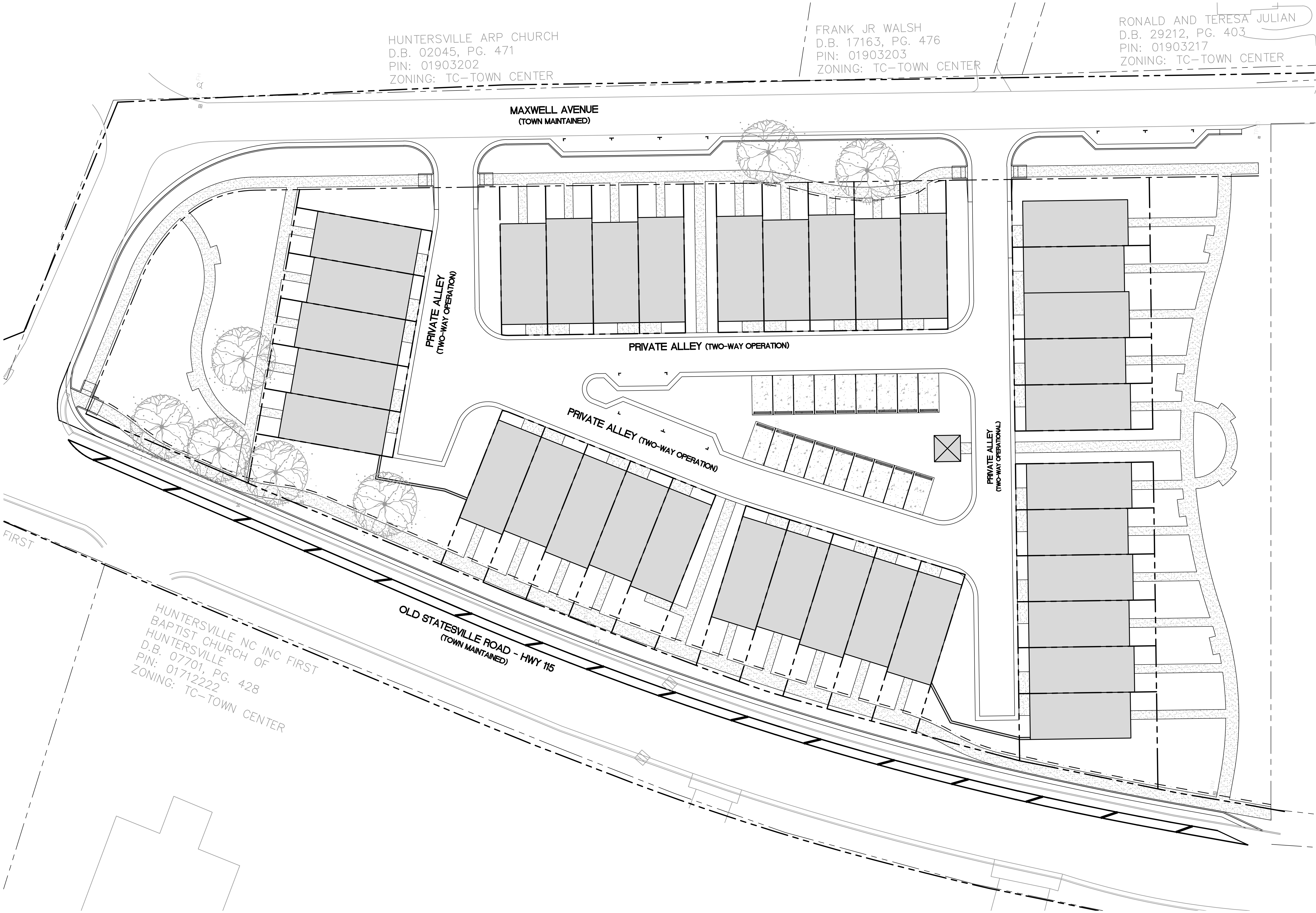
HUNTERSVILLE, NC

EPM # 435533

HUNTERSVILLE ARP CHURCH
D.B. 02045, PG. 471
PIN: 01903202
ZONING: TC-TOWN CENTER

FRANK JR WALSH
D.B. 17163, PG. 476
PIN: 01903203
ZONING: TC-TOWN CENTER

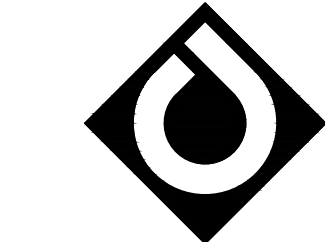
RONALD AND TERESA JULIAN
D.B. 29212, PG. 403
PIN: 01903217
ZONING: TC-TOWN CENTER



SURVEY DISCLAIMER
CURRENT PLAN SET IS BASED ON BOUNDARY SURVEY AND TREE SURVEY COMPLETED BY R.B. PHARR & ASSOCIATES, P.A., DATED 3/24/2022. TOPOGRAPHIC AND EXISTING SITE IMPROVEMENTS ARE BASED ON GEOGRAPHICAL INFORMATION SYSTEM (GIS) DATA PROVIDED BY MECKLENBURG COUNTY AT <https://polaris3g.mecklenburgcounty.nc.gov/>.

SHEET LIST

SP-000	COVER SHEET
SP-100	EXISTING CONDITIONS
SP-101	TREE PRESERVATION
SP-102	SLOPE + SOILS ANALYSIS
SP-200	SKETCH PLAN
SP-201	STREET SECTIONS
SP-300	PRELIMINARY GRADING PLAN
SP-400	ADJACENT PARCEL MAP
SP-500	EMERGENCY VEHICLE ACCESS
SP-600	LANDSCAPE PLAN



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200 South Tryon Street, Suite 1400
Charlotte, North Carolina 28202

p+ 704 376 1555 f+ 704 376 7851
[url+ www.colejeneststone.com](http://www.colejeneststone.com)

NORTH STATE DEVELOPMENT

18825 W CATAWBA AVE.
SUITE 250
CORNELIUS, NC 28031

MAXWELL AVE. TOWNHOMES

14826 N OLD STATESVILLE RD
HUNTERSVILLE, NC 28078

COVER SHEET

THIS PLAN IS SCHEMATIC IN NATURE AND LOCATIONS OF ROADS, LOTS AND OTHER AREAS AND IMPROVEMENTS ARE SUBJECT TO FINAL DETERMINATION ON PRELIMINARY AND FINAL PLAN.

Project No.

4810

Issued

04/01/22

Revised

07/01/22 TOWN COMMENTS

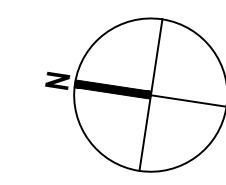
THE TOWN OF HUNTERSVILLE REQUIRES THAT ALL STREETS PROPOSED TO BE TAKEN OVER BY THE TOWN FOR MAINTENANCE BE REVIEWED, INSPECTED, AND CERTIFIED BY A LICENSED PROFESSIONAL ENGINEER REGISTERED IN THE STATE OF NORTH CAROLINA FOR ADEQUATE CONSTRUCTION. REVIEW OF STREET CONSTRUCTION BY THE CERTIFYING ENGINEER IS REQUIRED THROUGHOUT THE CONSTRUCTION PROCESS. REFER TO THE TOWN OF HUNTERSVILLE ENGINEERING STANDARDS AND PROCEDURES MANUAL FOR ADDITIONAL INFORMATION INCLUDING THE REQUIRED CERTIFICATION FORM.



- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ENSURING THAT ALL EXISTING UTILITIES ARE LOCATED PRIOR TO CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES, USING FLAG MEN, ETC., AS NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR LOCAL JURISDICTION, WHICHEVER IS MORE STRINGENT.
- SHORING SHALL BE IN ACCORDANCE WITH OSHA TRENCHING STANDARDS, 29 CFR, PART 1926, SUBPART P, OR AS AMENDED.



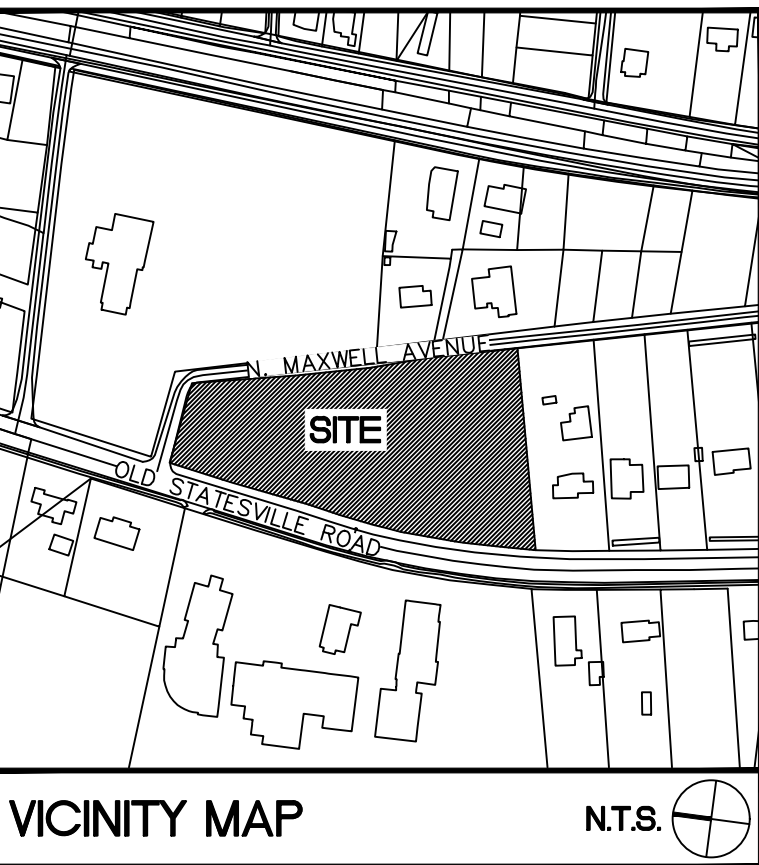
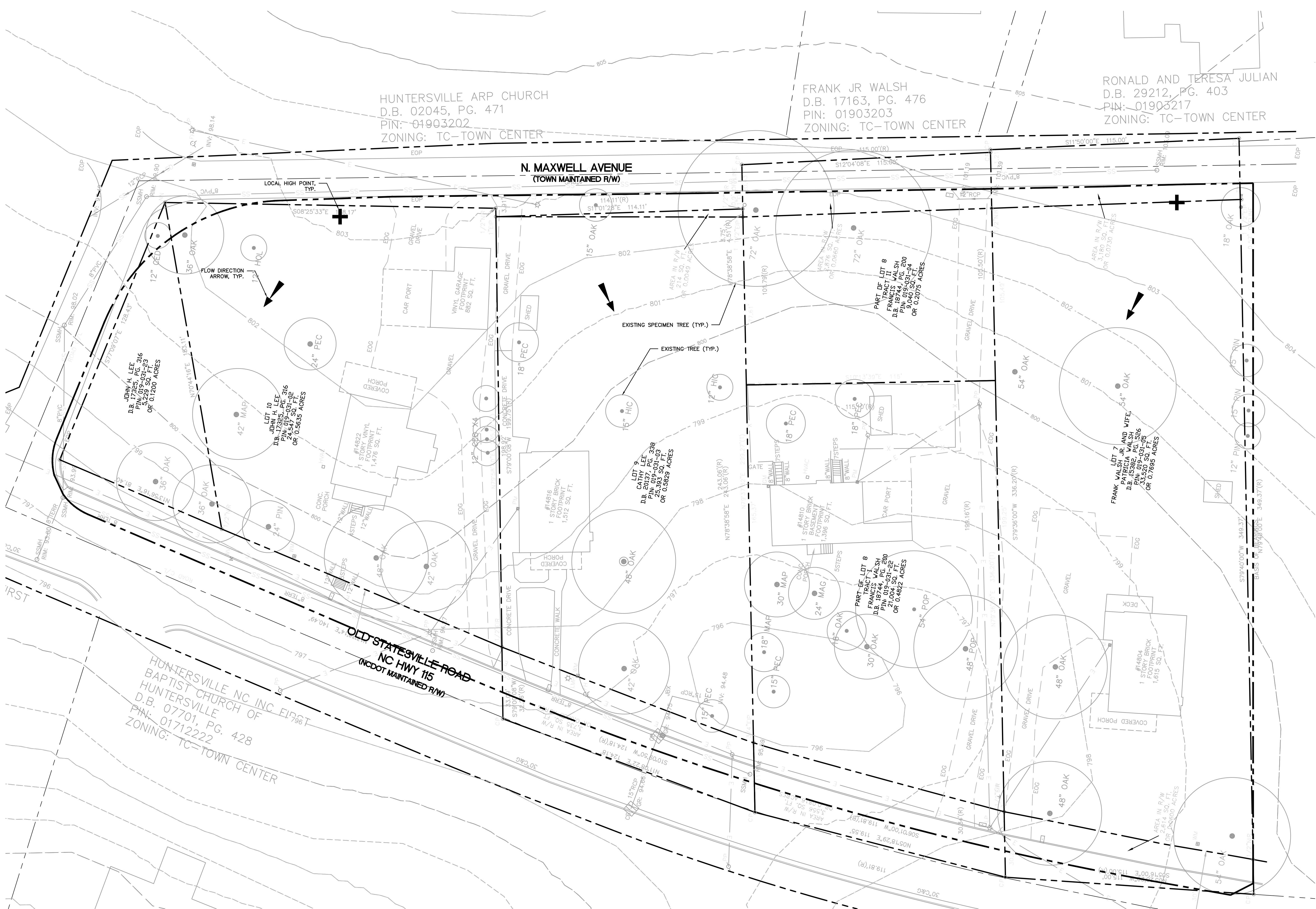
SCALE: 1"=20'
0 10' 20' 40'



SP-000

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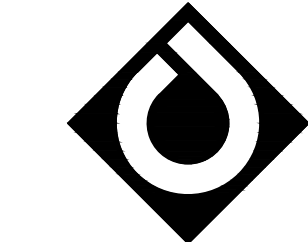


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- LEGEND**
- SYMBOL**
- LOCAL HIGH POINTS
 - FLOW DIRECTION
 - EXISTING TREE LINE
 - PROJECT BOUNDARY

DEVELOPMENT SUMMARY

PROJECT NAME:	MAXWELL AVENUE TOWNHOMES
PARCEL NUMBER:	01903105, 01903122, 01903104, 01903103, 01903102, 01903123
SITE ACREAGE:	± 2.73 ACRES
EXISTING USE:	SINGLE-FAMILY RESIDENTIAL
PROPOSED USE:	ATTACHED TOWNHOMES
EXISTING ZONING DISTRICT:	TC - TOWN CENTER
PROPOSED USE:	35 TOWNHOME UNITS



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Realizing the Possibilities

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+ Landscape Architecture
+ Civil Engineering
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CORNELIUS, NC 28031

MAXWELL AVE. TOWNHOMES

14826 N OLD STATESVILLE RD
HUNTERSVILLE, NC 28078

EXISTING CONDITIONS

THIS PLAN IS SCHEMATIC IN NATURE AND LOCATIONS OF ROADS, LOTS AND OTHER AREAS AND IMPROVEMENTS ARE SUBJECT TO FINAL DETERMINATION ON PRELIMINARY AND FINAL PLAN.

Project No.

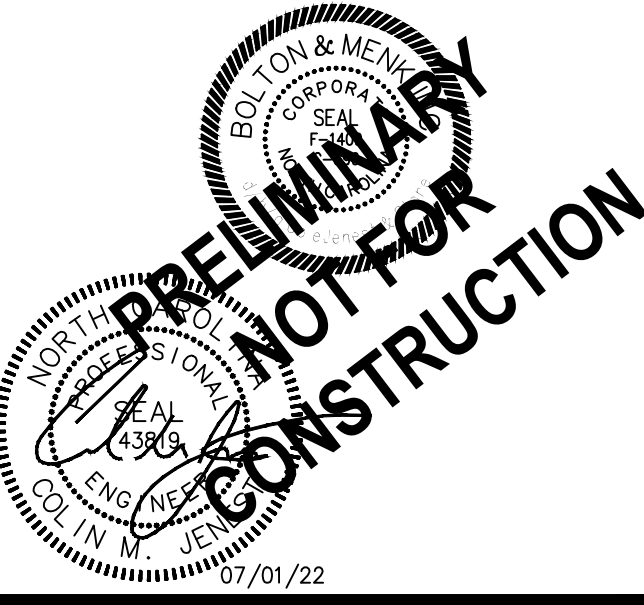
4810

Issued

04/01/22

Revised

07/01/22 TOWN COMMENTS



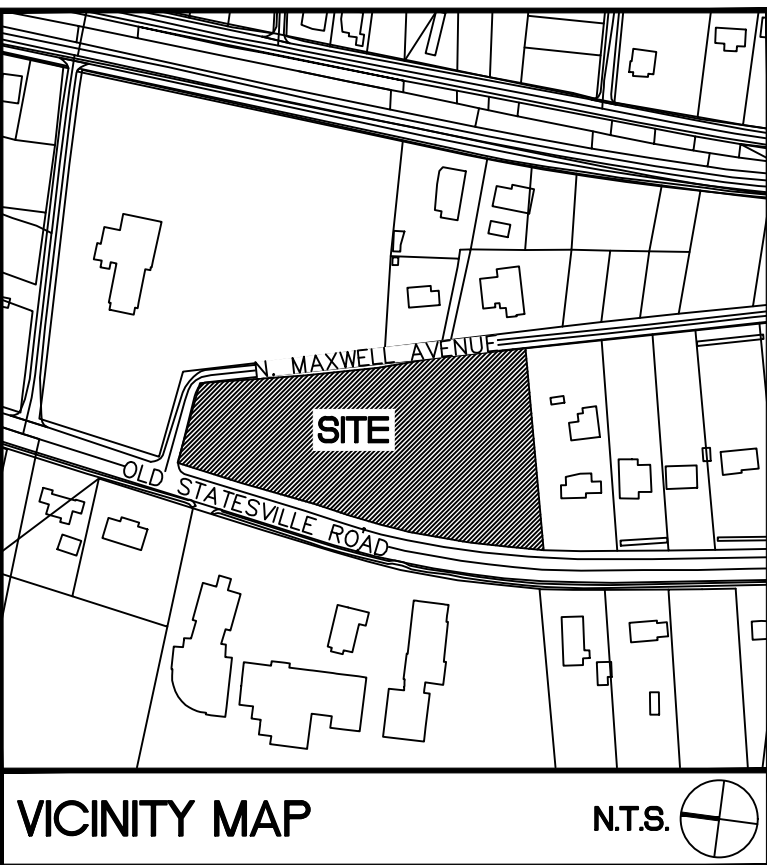
SP-100

- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ENSURING THAT ALL EXISTING UTILITIES ARE LOCATED PRIOR TO CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES, USING FLAG MEN, ETC., AS NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR LOCAL JURISDICTION, WHICHEVER IS MORE STRINGENT.
- SHORING SHALL BE IN ACCORDANCE WITH OSHA TRENCHING STANDARDS, 29 CFR, PART 1926, SUBPART P, OR AS AMENDED.

The drawings, the project manual and the design shown thereon are instruments of Bolton & Menk, Inc., d.b.a. ColeJenest & Stone. The reproduction or unauthorized use of the documents without consent of Bolton & Menk, Inc., is prohibited.

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TREE TABLE				TREE TABLE				TREE TABLE			
TREE NUMBER	DESCRIPTION	DESCRIPTION	INVENTORY	TREE NUMBER	DESCRIPTION	DESCRIPTION	INVENTORY	TREE NUMBER	DESCRIPTION	DESCRIPTION	INVENTORY
1	OAK 36"	SPECIMEN	REMOVE	16	OAK 15"	SIGNIFICANT	REMOVE	31	OAK 30"	SPECIMEN	REMOVE
2	CEDAR 12"	SIGNIFICANT	REMOVE	17	HICKORY 15"	SIGNIFICANT	REMOVE	32	POPLAR 54"	SPECIMEN	REMOVE
3	HOLLY 12"	SIGNIFICANT	REMOVE	18	OAK 48"	SPECIMEN	REMOVE	33	POPLAR 48"	SPECIMEN	REMOVE
4	PECAN 24"	SPECIMEN	REMOVE	19	OAK 42"	SPECIMEN	REMOVE	34	OAK 18"	SIGNIFICANT	REMOVE
5	MAPLE 42"	SPECIMEN	RETAIN	20	OAK 72"	SPECIMEN	RETAIN	35	OAK 54"	SPECIMEN	REMOVE
6	OAK 36"	SPECIMEN	RETAIN	21	HICKORY 12"	SIGNIFICANT	REMOVE	36	PINE 15"	SIGNIFICANT	REMOVE
7	OAK 36"	SPECIMEN	RETAIN	22	MAPLE 30"	SPECIMEN	REMOVE	37	PINE 15"	SIGNIFICANT	REMOVE
8	PINE 12"	SPECIMEN	RETAIN	23	MAPLE 18"	SIGNIFICANT	REMOVE	38	PINE 12"	SIGNIFICANT	REMOVE
9	OAK 48"	SPECIMEN	RETAIN	24	PECAN 15"	SIGNIFICANT	REMOVE	39	OAK 48"	SPECIMEN	REMOVE
10	OAK 42"	SPECIMEN	REMOVE	25	PECAN 15"	SIGNIFICANT	REMOVE	40	OAK 48"	SPECIMEN	REMOVE
11	CEDAR 12"	SIGNIFICANT	REMOVE	26	OAK 72"	SPECIMEN	RETAIN	41	OAK 54"	SPECIMEN	REMOVE
12	CEDAR 12"	SIGNIFICANT	REMOVE	27	PECAN 18"	SIGNIFICANT	REMOVE				
13	CEDAR 12"	SIGNIFICANT	REMOVE	28	PECAN 18"	SIGNIFICANT	REMOVE				
14	CEDAR 12"	SIGNIFICANT	REMOVE	29	MAGNOLIA 24"	SPECIMEN	REMOVE				
15	PECAN 18"	SIGNIFICANT	REMOVE	30	OAK 18"	SIGNIFICANT	REMOVE				



SURVEY DISCLAIMER
CURRENT PLAN SET IS BASED ON BOUNDARY SURVEY AND TREE SURVEY COMPLETED BY R.B. PHARR & ASSOCIATES, P.A., DATED 3/24/2022. TOPOGRAPHIC AND EXISTING SITE IMPROVEMENTS ARE BASED ON GEOGRAPHICAL INFORMATION SYSTEM (GIS) DATA PROVIDED BY MECKLENBURG COUNTY AT <https://polaris3g.mecklenburgcounty.nc.gov/>.

LEGEND	
SYMBOL	
	EXISTING TREE TO REMAIN
	EXISTING SPECIMEN TREE TO BE REMOVED
	EXISTING NON-SPECIMEN TREE TO BE REMOVED

DEVELOPMENT SUMMARY				
PROJECT NAME:	MAXWELL AVENUE TOWNHOMES			
PARCEL NUMBER:	01903105, 01903122, 01903104, 01903103, 01903102, 01903123			
SITE ACREAGE:	± 2.73 ACRES			
EXISTING USE:	SINGLE-FAMILY RESIDENTIAL			
PROPOSED USE:	ATTACHED TOWNHOMES			
EXISTING ZONING DISTRICT:	TC - TOWN CENTER			
PROPOSED USE:	35 TOWNHOME UNITS			

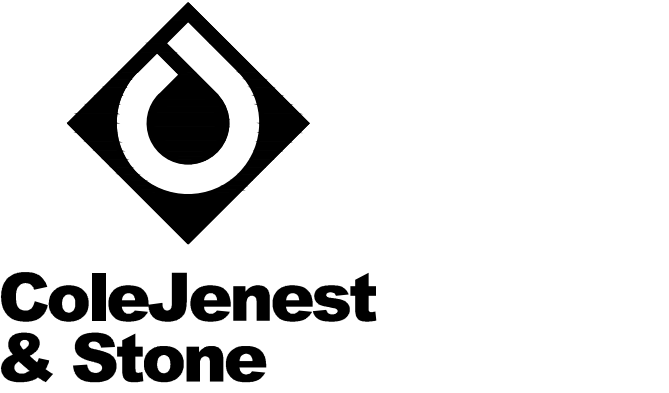
NOTE: NO HERITAGE TREES LOCATED ON SITE				
MAXWELL AVENUE TOWNHOMES				
TOTAL EXISTING SPECIMEN TREES	% SPECIMEN TREES REQ'D TO BE RETAINED	EXISTING SPECIMEN TREES TO BE RETAINED	% SPECIMEN TREES PRESERVED	TOTAL SPECIMEN TREES TO BE MITIGATED
21	30%	7	±33%	0

EXISTING (%) OF SITE COVERED BY TREE CANOPY (2.73 AC TOTAL SITE AREA)	REQUIRED TREE CANOPY TO BE RETAINED BY DISTRICT: TC	PROPOSED TREE CANOPY TO BE RETAINED (%) OF TOTAL SITE AREA
±34.4% (±0.94 AC)	0% (±0.00AC)	±17.2% (±0.47 AC)

*NOTE: SPECIMEN TREES ARE DEFINED PER THE TOWN OF HUNTERSVILLE ORDINANCE:
- SMALL MATURING TREES WITH A CALIPER OF 12" OR GREATER.
- LARGE MATURING TREES WITH A CALIPER OF 24" OR GREATER.
NOTE: FINAL TREE CANOPY RETENTION AREAS AND ASSOCIATED PERCENTAGES ARE DEPENDENT UPON FINAL ENGINEERING AND SHALL NOT LIMIT SITE DEVELOPMENT DURING PERMITTING. ALL TREES TO BE RETAINED ARE SPECIMEN TREES. TOTAL AREA OF TREE CANOPY CANOPY TO BE RETAINED CALCULATED BASED ON 150% OF MEASURED CANOPIES.

TREE PROTECTION NOTES:
APPLICABILITY:
A TREE AND ROOT PRESERVATION PLAN DELINEATING AREAS OF TREE SAVE SHALL BE INCORPORATED AS PART OF THE LANDSCAPING, GRADING, AND EROSION CONTROL PLANS. THE FOLLOWING MEASURES SHALL BE FOLLOWED TO PROTECT EXISTING TREES ON A DEVELOPING SITE PRIOR TO DEMOLITION, CLEARING, CONSTRUCTION, GRADING, AND INSTALLATION OF EROSION CONTROL MEASURES; TREE PROTECTIVE BARRIERS MUST BE INSTALLED AROUND ALL TREE SAVE AREAS BY THE DEVELOPER AND APPROVED BY THE TOWN.
- THE TREE PROTECTION FENCE SHALL BE LOCATED ALONG THE PERIMETER OF THE TREE SAVE AREA (RIP LINE PLUS 5 FEET). TREE PROTECTION FENCING FOR A FOREST CANOPY STANDS AREA IS TO BE LOCATED ALONG THE PERIMETER OF THE TREE SAVE AREA AROUND THE FOREST EDGE. TREE PROTECTION FENCING SHALL CONSIST OF ORANGE SAFETY FENCING OR A COMBINATION OF ORANGE SAFETY FENCING WITH SILT FENCING AT A MINIMUM OF 4 FEET IN HEIGHT ON METAL OR WOOD POSTS.
- ALL TREE PROTECTION AREAS MUST BE DESIGNATED AS SUCH WITH "TREE SAVE AREA SIGNS" POSTED IN ADDITION TO THE REQUIRED PROTECTIVE FENCING. SIGNS REQUESTING SUBCONTRACTOR COOPERATION AND COMPLIANCE WITH TREE PROTECTION STANDARDS ARE RECOMMENDED FOR SITE ENTRANCES.
- NO SOIL DISTURBANCE OR COMPACTION, STOCK PILING OF SOIL OR OTHER CONSTRUCTION MATERIAL, VEHICULAR TRAFFIC, OR STORAGE OF EQUIPMENT AND MATERIALS ARE ALLOWED WITHIN THE TREE SAVE AREA.
- NO ROPES, SIGNS, WIRES, UNPROTECTED ELECTRICAL INSTALLATION OR OTHER DEVICE OR MATERIAL, SHALL BE SECURED OR FASTENED AROUND OR THROUGH A TREE OR SHRUB.
- ALL PROTECTIVE MEASURES SHALL BE MAINTAINED THROUGHOUT THE LAND DISTURBING AND CONSTRUCTION PROCESS, AND SHALL NOT BE REMOVED UNTIL FINAL LANDSCAPING IS INSTALLED.

- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ENSURING THAT ALL EXISTING UTILITIES ARE LOCATED PRIOR TO CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES, USING FLAG MEN, ETC., AS NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR LOCAL JURISDICTION, WHICHEVER IS MORE STRINGENT.
- SHORING SHALL BE IN ACCORDANCE WITH OSHA TRENCHING STANDARDS, 29 CFR, PART 1926, SUBPART P, OR AS AMENDED.



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NORTH STATE DEVELOPMENT
18825 W CATAWBA AVE.
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MAXWELL AVE. TOWNHOMES

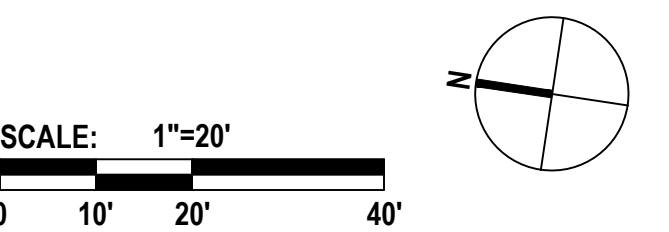
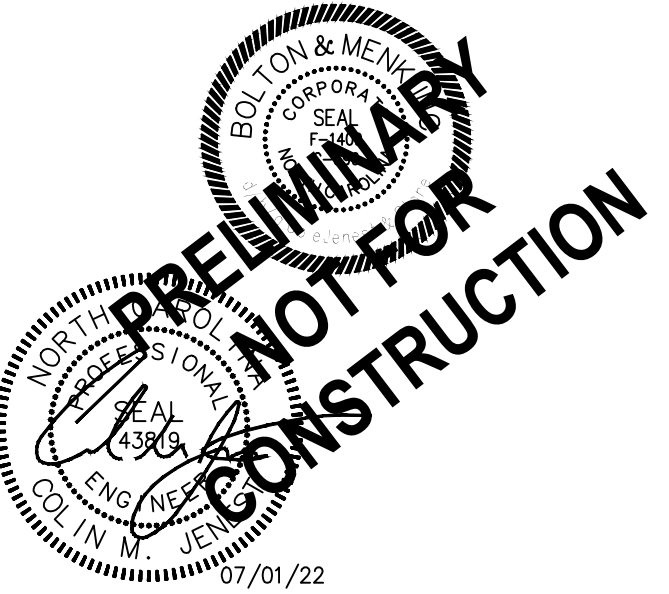
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TREE PRESERVATION

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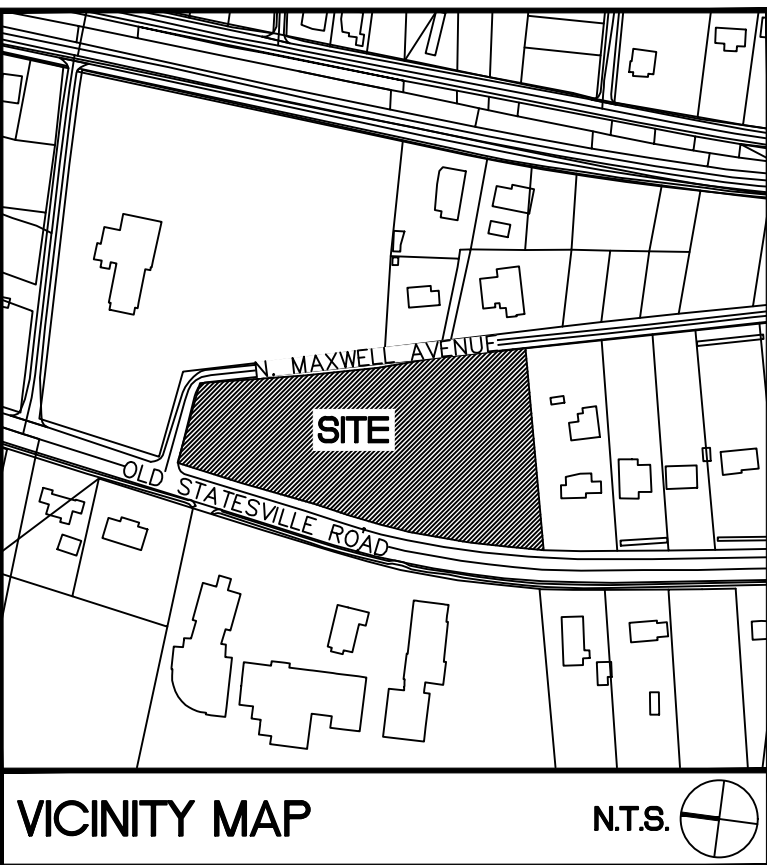
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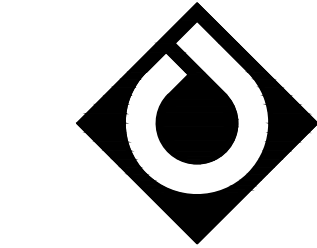
- LEGEND**
- SYMBOL**
- SLOPES LESS THAN 5% - 2.56 AC
 - SLOPES BETWEEN 5% - 10% - .22 AC
 - HYDROLOGIC SOILS 'GROUP B'

DEVELOPMENT SUMMARY

PROJECT NAME:	MAXWELL AVENUE TOWNHOMES
PARCEL NUMBER:	01903105, 01903122, 01903104, 01903103, 01903102, 01903123
SITE ACREAGE:	± 2.79 ACRES
EXISTING USE:	SINGLE-FAMILY RESIDENTIAL
PROPOSED USE:	ATTACHED TOWNHOMES
EXISTING ZONING DISTRICT:	TC - TOWN CENTER
PROPOSED USE:	35 TOWNHOME UNITS



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MAXWELL AVE. TOWNHOMES

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SLOPE & SOIL ANALYSIS

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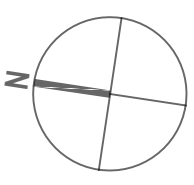
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07/01/22 TOWN COMMENTS



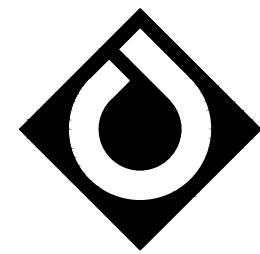
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SP-102

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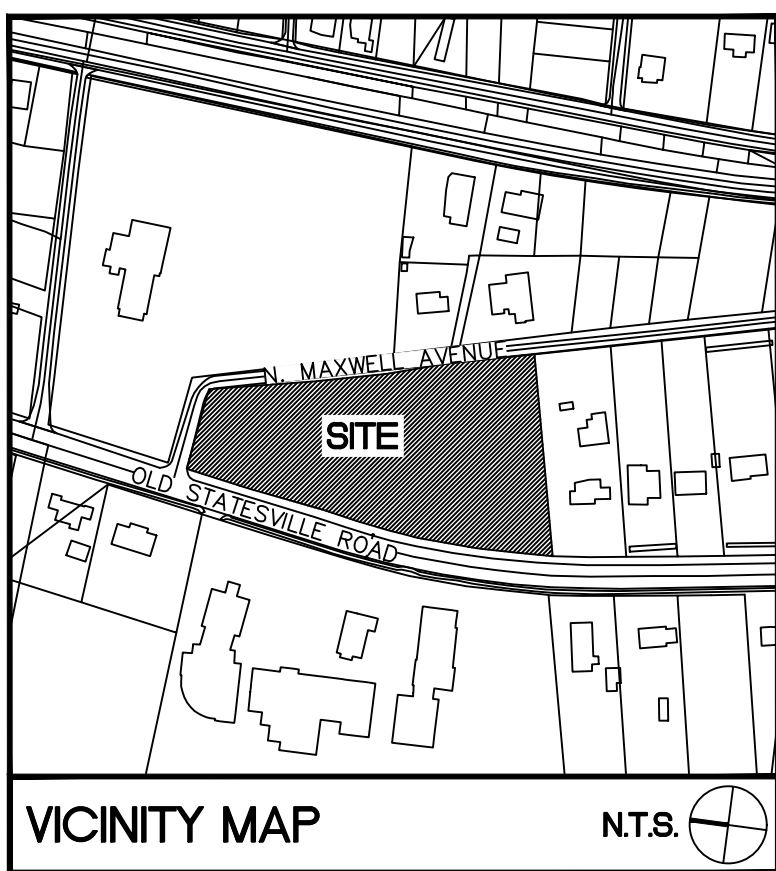
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LEGEND

SYMBOL	
	PARCEL LINE / PROJECT BOUNDARY
	SCHEMATIC BUILDING FOOTPRINTS
	SCHEMATIC SIDEWALK LOCATION

DEVELOPMENT SUMMARY

PROJECT NAME:	MAXWELL AVENUE TOWNHOMES
PARCEL NUMBER(S):	01903105, 01903122, 01903104, 01903103, 01903102, 01903123
SITE ACREAGE:	± 2.79 ACRES
EXISTING USE:	SINGLE-FAMILY RESIDENTIAL
PROPOSED USE:	ATTACHED TOWNHOMES
EXISTING ZONING DISTRICT:	TC - TOWN CENTER
PROPOSED USE:	35 TOWNHOME UNITS

**NORTH STATE
DEVELOPMENT**

18825 W CATAWBA AVE.
SUITE 250
CORNELIUS, NC 28031

**MAXWELL AVE.
TOWNHOMES**

14826 N OLD STATESVILLE RD
HUNTERVILLE, NC 28078

**SKETCH PLAN
(SITE PLAN)**

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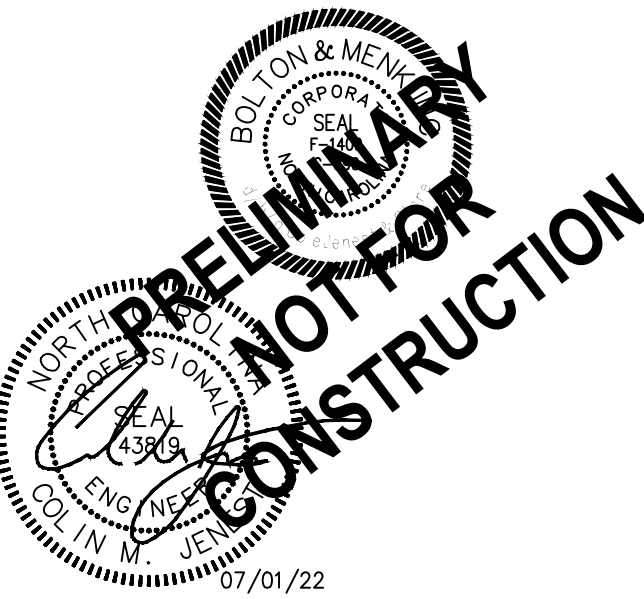
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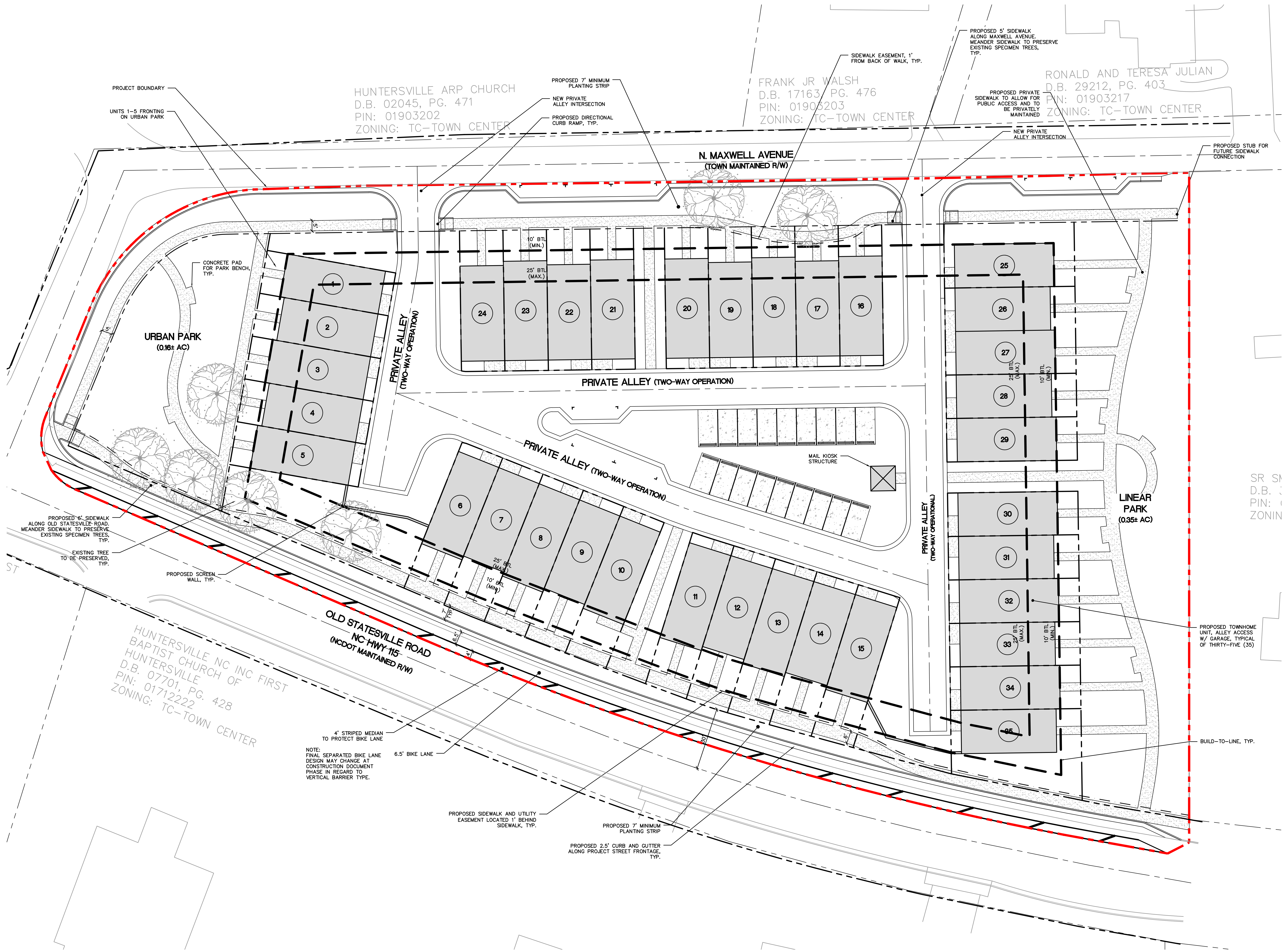


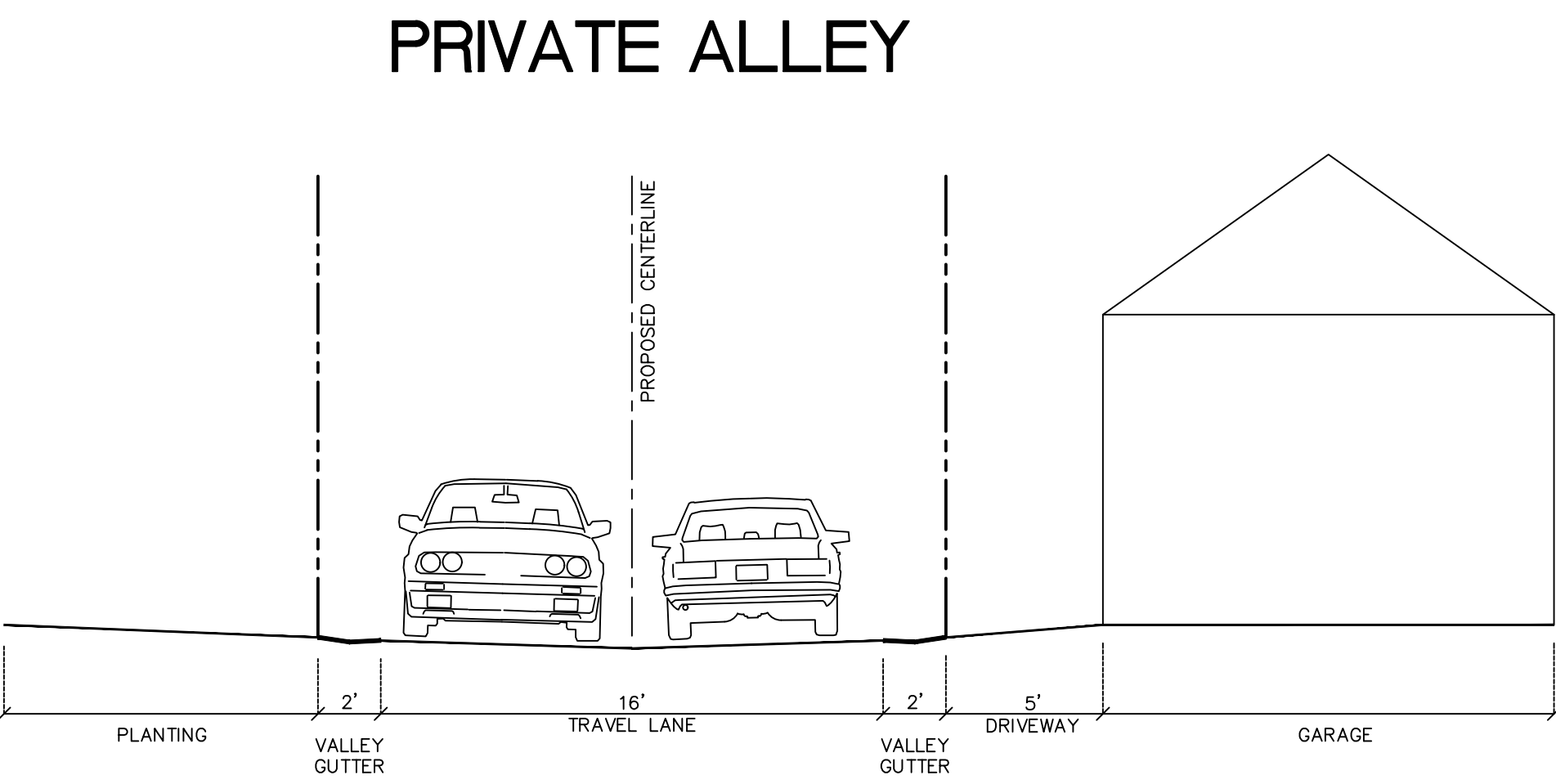
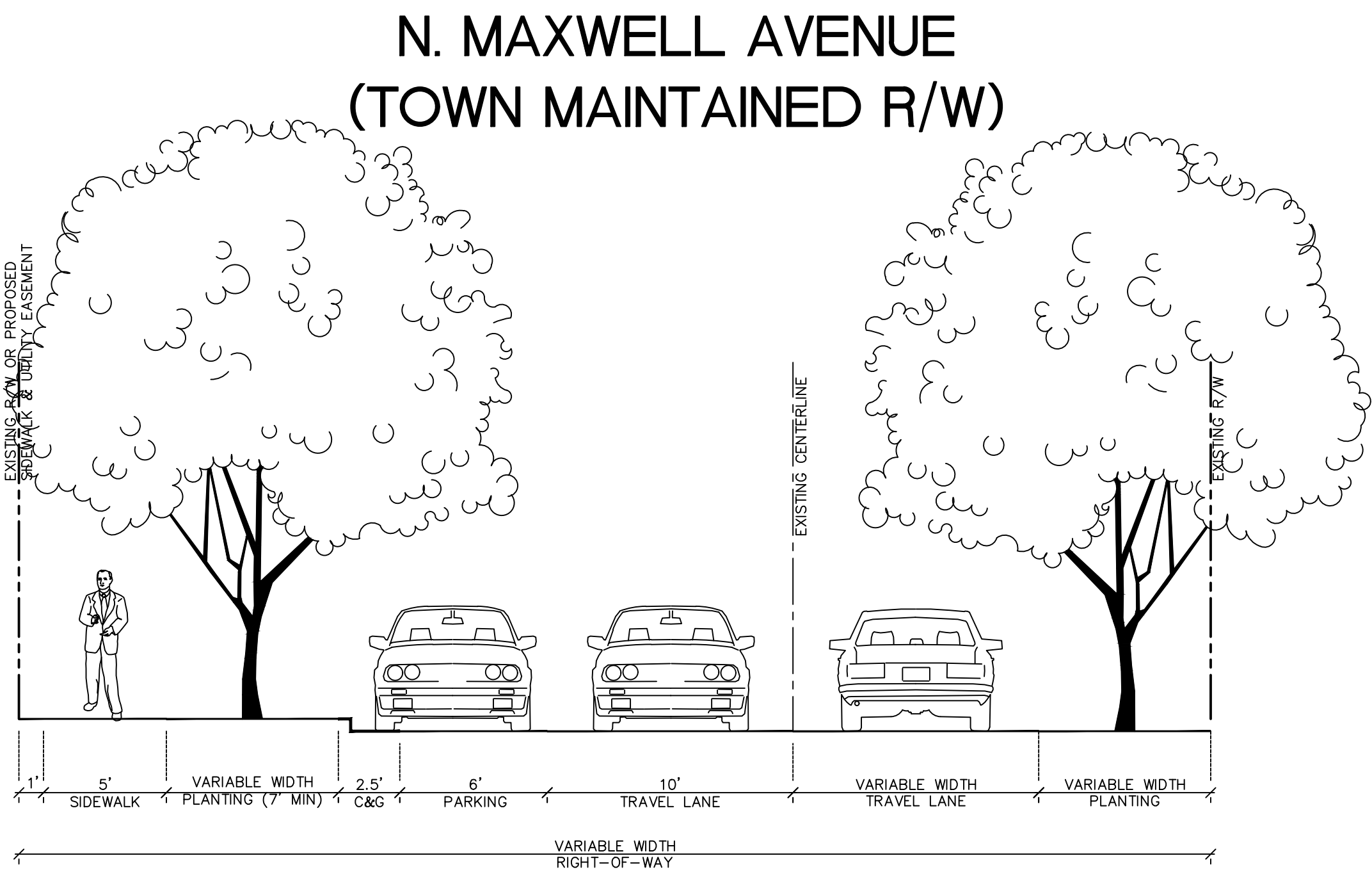
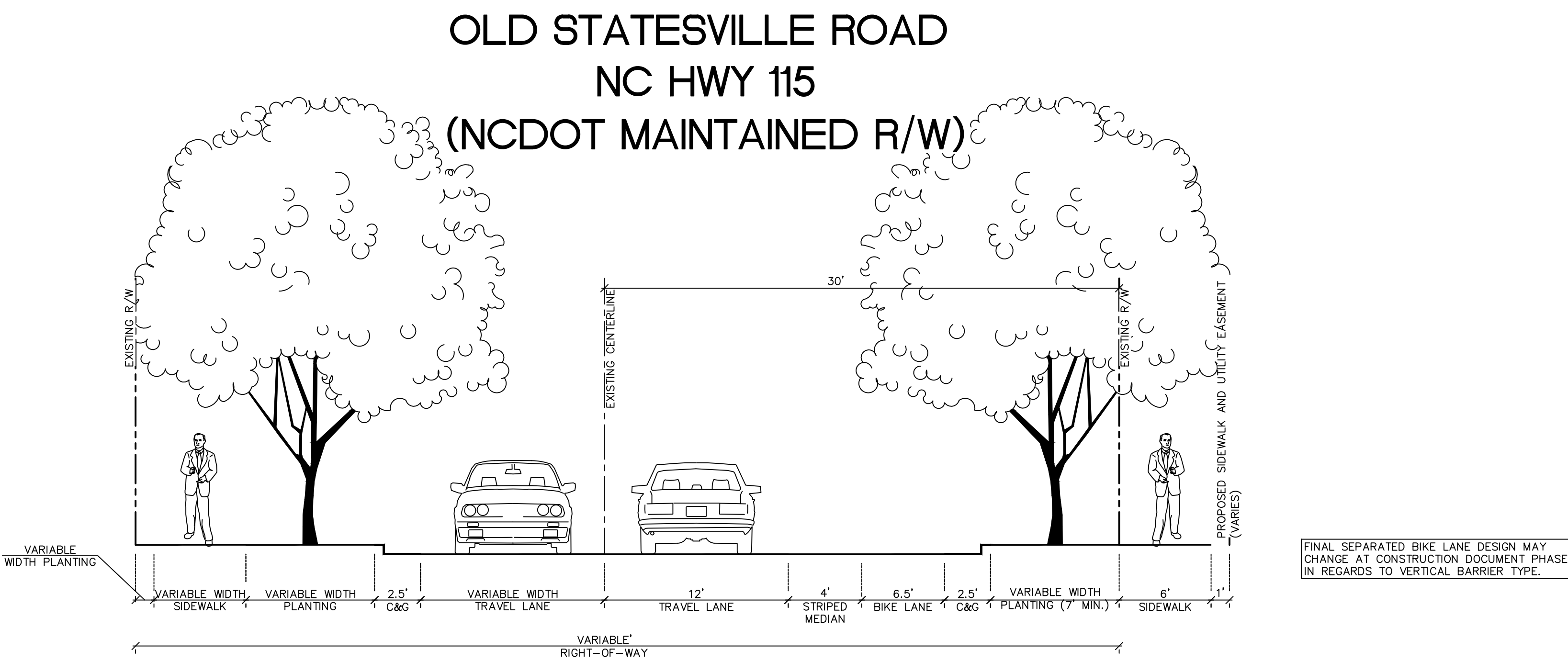
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0 10' 20' 40'

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VICINITY MAP NTS

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STREET SECTIONS

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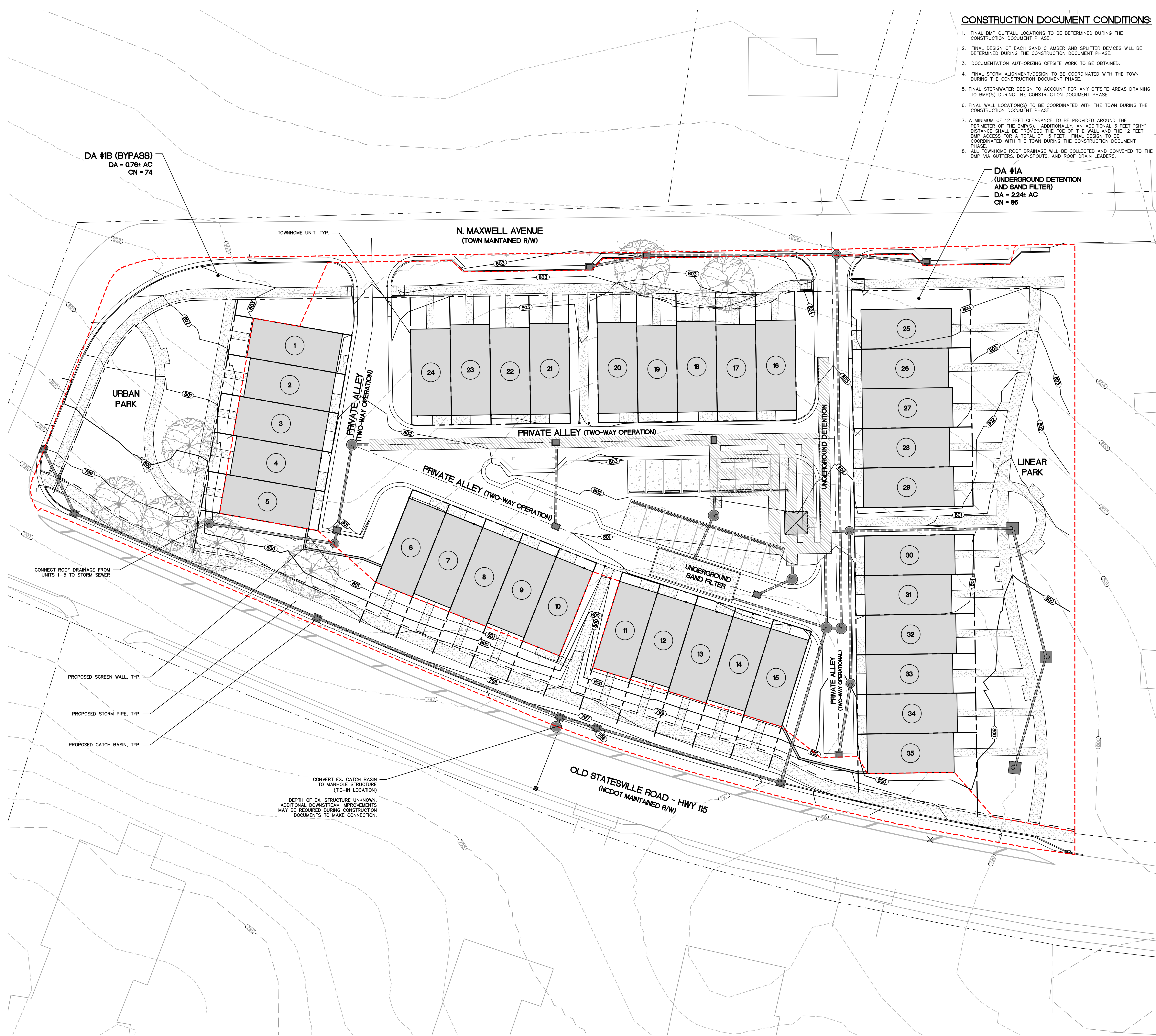
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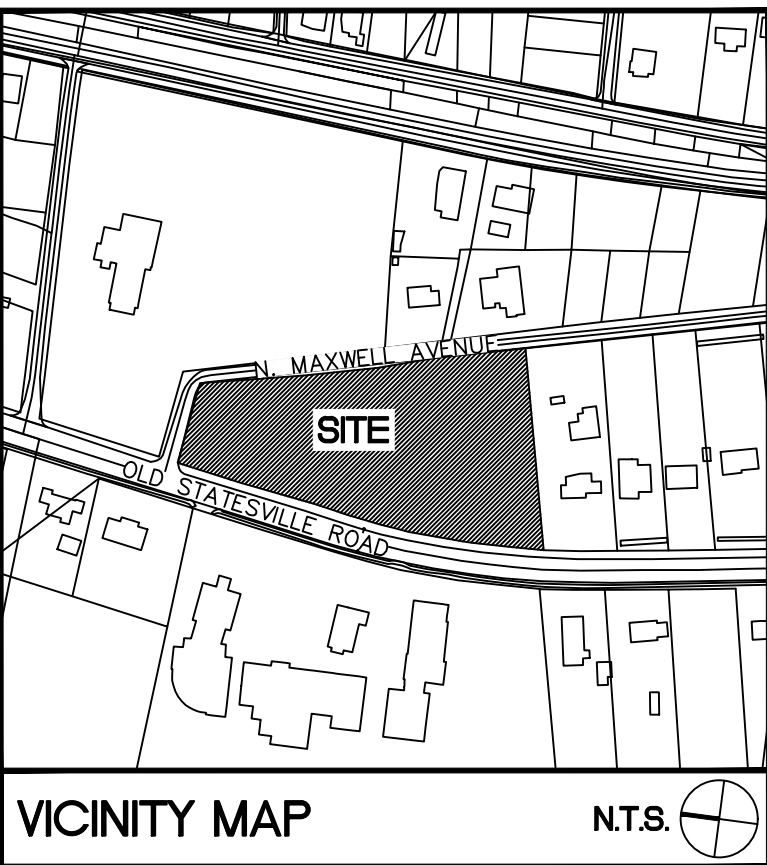
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CONSTRUCTION DOCUMENT CONDITIONS:

1. FINAL BMP OUTFALL LOCATIONS TO BE DETERMINED DURING THE CONSTRUCTION DOCUMENT PHASE.
2. FINAL DESIGN OF EACH SAND CHAMBER AND SPLITTER DEVICES WILL BE DETERMINED DURING THE CONSTRUCTION DOCUMENT PHASE.
3. DOCUMENTATION AUTHORIZING OFFSITE WORK TO BE OBTAINED.
4. FINAL STORM ALIGNMENT/DESIGN TO BE COORDINATED WITH THE TOWN DURING THE CONSTRUCTION DOCUMENT PHASE.
5. FINAL STORMWATER DESIGN TO ACCOUNT FOR ANY OFFSITE AREAS DRAINING TO BMP(S) DURING THE CONSTRUCTION DOCUMENT PHASE.
6. FINAL WALL LOCATION(S) TO BE COORDINATED WITH THE TOWN DURING THE CONSTRUCTION DOCUMENT PHASE.
7. A MINIMUM OF 12 FEET CLEARANCE TO BE PROVIDED AROUND THE PERIMETER OF THE BMP(S). ADDITIONALLY, AN ADDITIONAL 3 FEET "SHY" DISTANCE SHALL BE PROVIDED THE TOE OF THE WALL AND THE 12 FEET BMP ACCESS FOR A TOTAL OF 15 FEET. FINAL DESIGN TO BE COORDINATED WITH THE TOWN DURING THE CONSTRUCTION DOCUMENT PHASE.
8. ALL TOWNHOME ROOF DRAINAGE WILL BE COLLECTED AND CONVEYED TO THE BMP VIA GUTTERS, DOWNSPOUTS, AND ROOF DRAIN LEADERS.

DA #1A
(UNDERGROUND DETENTION
AND SAND FILTER)
DA = 2.24± AC
CN = 86



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LEGEND

- SYMBOL
- EXISTING CONTOUR (GS)
 - PROPOSED CONTOUR
 - PROPOSED UNDERGROUND DETENTION SYSTEM
 - PROPOSED UNDERGROUND SAND FILTER
 - BMP DRAINAGE AREA

STORMWATER MANAGEMENT NOTES:

1. ON-SITE STORMWATER MANAGEMENT WILL BE DESIGNED TO MEET THE REQUIREMENTS AS SET FORTH IN THE POST CONSTRUCTION CONTROLS ORDINANCE AND TOWN OF HUNTERSVILLE WATER QUALITY DESIGN MANUAL.
2. THE FINAL STORM ROUTING WILL BE BASED UPON THE FINAL LOCATION OF ON-SITE FEATURES.
3. A FLOW SPLITTER, OR SIMILAR TECHNIQUE, MAY BE USED TO DIVERT FLOW TO THE INDIVIDUAL SAND FILTERS FOR THE REQUIRED STORM EVENTS AND, BYPASS LARGER STORMS (25-YR AND ABOVE) OR OTHER METHODS AS DEEMED NECESSARY BY THE ENGINEER.
4. NO INDIVIDUAL SAND FILTER SHALL RECEIVE NO MORE THAN THE MAXIMUM OF 10 ACRES OF DRAINAGE AREA.
5. BMP(S) WERE SIZED TO CONTAIN THE WATER QUALITY VOLUME, PROVIDE VOLUME CONTROL FOR THE 1-YEAR/24-HOUR STORM EVENT AND DETAIN THE 2 & 10 YEAR/24-HOUR STORM EVENTS BETWEEN THE PREDEVELOPMENT AND POST DEVELOPMENT CONDITIONS. THE BASIN IS DESIGNED TO BYPASS THE LARGER STORM EVENTS VIA EMERGENCY WEIRS LOCATED IN THE OUTLET CONTROL STRUCTURE(S) AND/OR POND BEHIND(S).
6. THE PROPOSED CONCEPTUAL BMP'S SHALL INCLUDE THE TREATMENT OF ALL INTERNAL ROADWAYS TO THE SITE AS SHOWN ON THE CONCEPT PLAN.
7. APPROVAL OF THIS CONCEPT PLAN DOES NOT IMPLY OR GUARANTEE APPROVAL OF THE FINAL CONSTRUCTION PLAN. FINAL CONSTRUCTION PLAN WILL BE REVIEWED FOR COMPLIANCE PER ALL TOWN, COUNTY, AND STATE REGULATIONS IN EFFECT AT TIME OF SUBMITTAL.
8. THE DEVELOPER RETAINS THE RIGHT TO UTILIZE EITHER ABOVE OR BELOW GROUND BMP'S SO LONG AS THE INTENT OF THE ORDINANCES AS STATED IN NOTE 1 ARE MET.
9. WHERE DISTURBANCE TO THE S.W.I.M AND/OR PCSO BUFFER IS SHOWN, A LETTER FROM WATER QUALITY IS REQUIRED STATING THAT THE DISTURBANCE SHOWN IS ALLOWABLE OR WHETHER A MITIGATION PLAN HAS BEEN APPROVED.

IMPERVIOUS AREA CALCULATIONS:

TOTAL DRAINAGE AREA:
PRE-DEVELOPMENT #1:
PERVIOUS: 2.351± AC
IMPERVIOUS: 0.647± AC
TOTAL: 2.998± AC
POST-DEVELOPMENT #1A:
PERVIOUS: 0.722± AC
IMPERVIOUS: 1.514± AC
TOTAL: 2.236± AC
POST-DEVELOPMENT #1B (BYPASS):
PERVIOUS: 0.456± AC
IMPERVIOUS: 0.306± AC
TOTAL: 0.762± AC

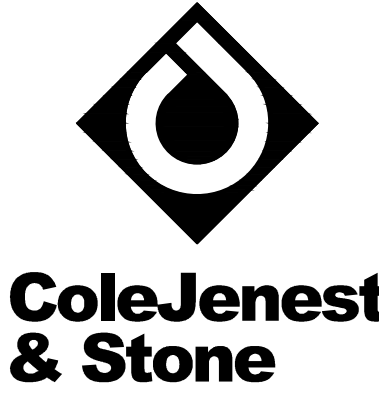
TOTAL BMP DRAINAGE ACREAGE WITHIN PARCELS: 2.236± ACRES
TOTAL SITE EXISTING IMPERVIOUS: 0.647± ACRES OR 22%

ASSUMED TOTAL SITE PROPOSED IMPERVIOUS: 1.514± ACRES OR 68%
FINAL SITE IMPERVIOUS AND DRAINAGE ARE TO BE DETERMINED DURING THE CONSTRUCTION DOCUMENT PHASE.

REFER TO ADDITIONAL CALCULATIONS FOR SIZING OF BMP. CALCULATIONS ARE FOR REFERENCE ONLY AND SUBJECT TO CHANGE BASED ON CONSTRUCTION DOCUMENTS.

BUILT-UPON-AREA (BUA) NOTE:

1. ALL RUNOFF FROM IMPERVIOUS SURFACES WILL BE CAPTURED AND DIRECTED TO A STORMWATER CONTROL DEVICE TO THE GREATEST EXTENT PRACTICAL.



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**MAXWELL AVE.
TOWNHOMES**

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**CONCEPT
GRADING &
DRAINAGE PLAN**

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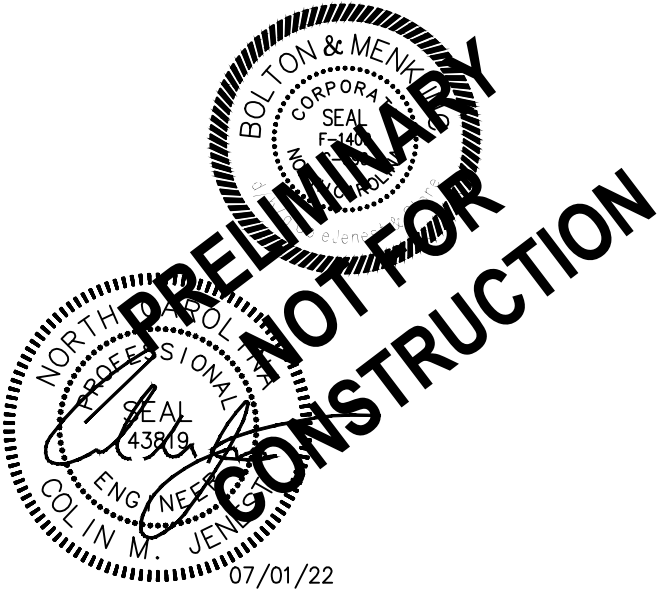
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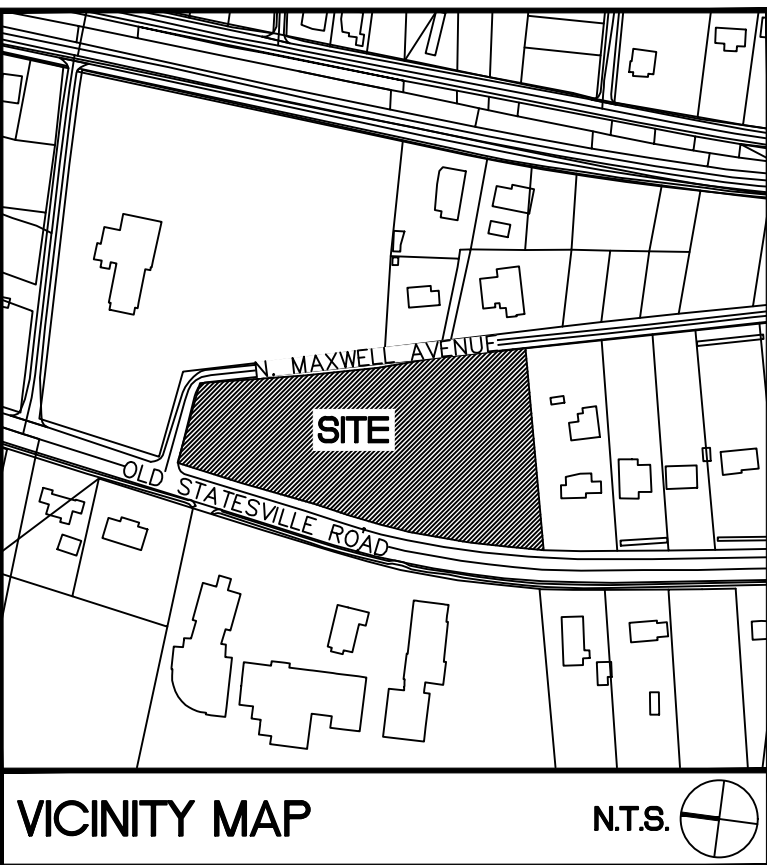
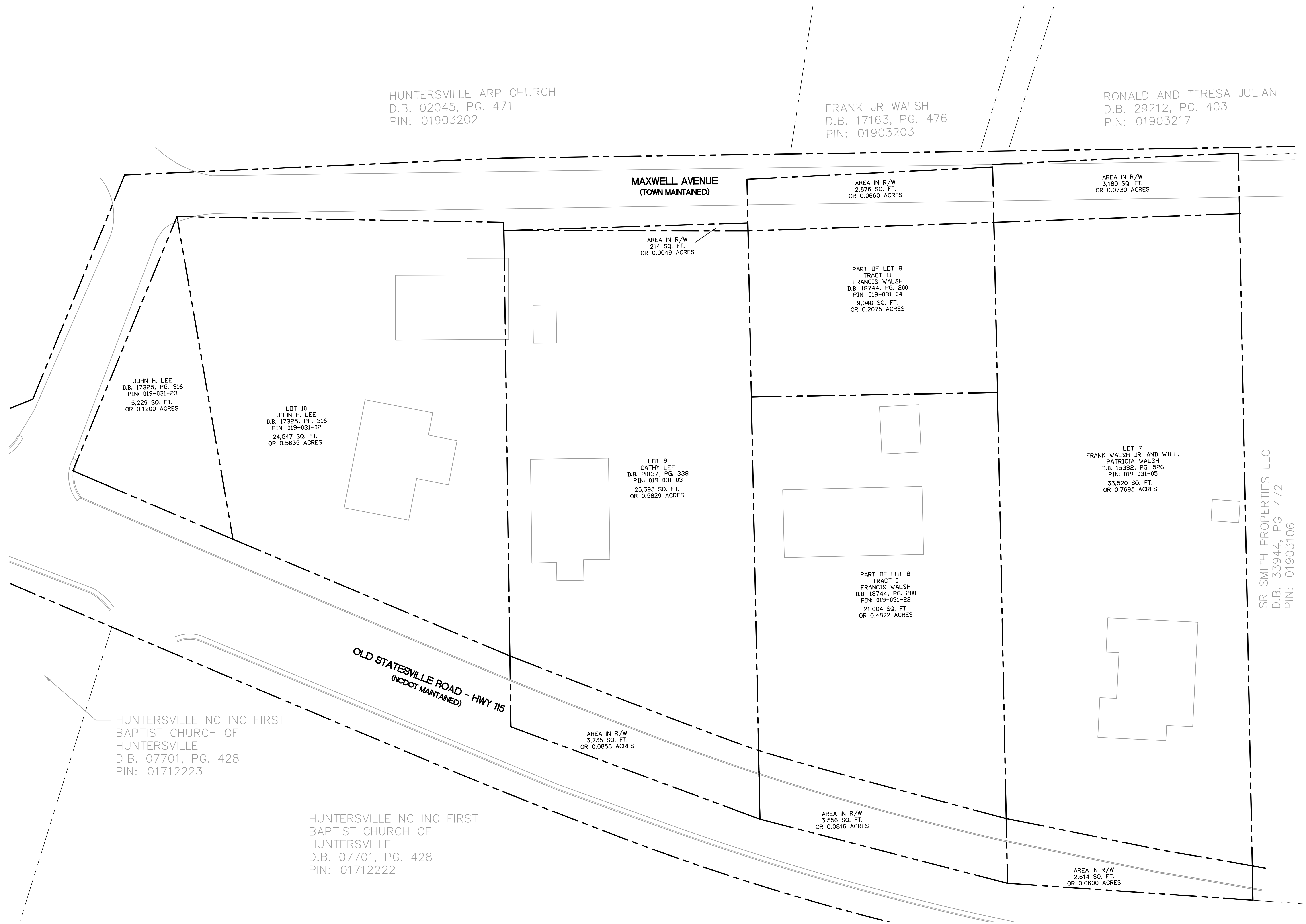
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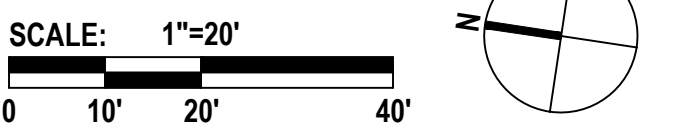
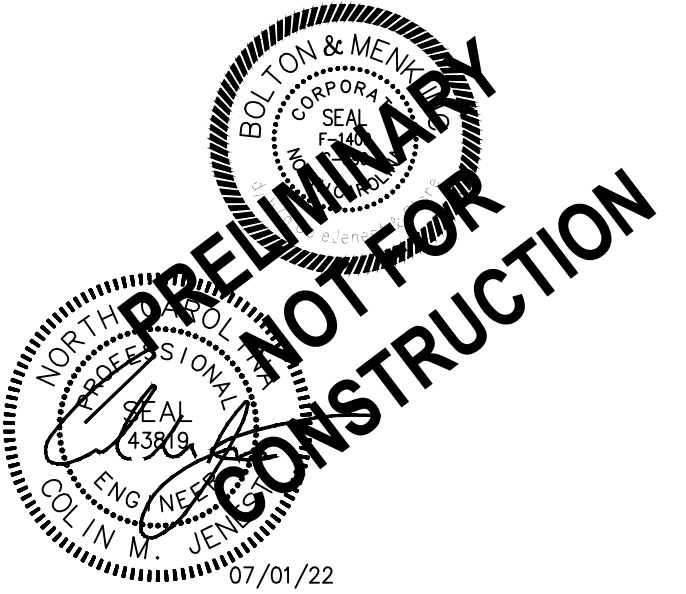
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ADJACENT PARCELS & ZONING INFORMATION

Project No.
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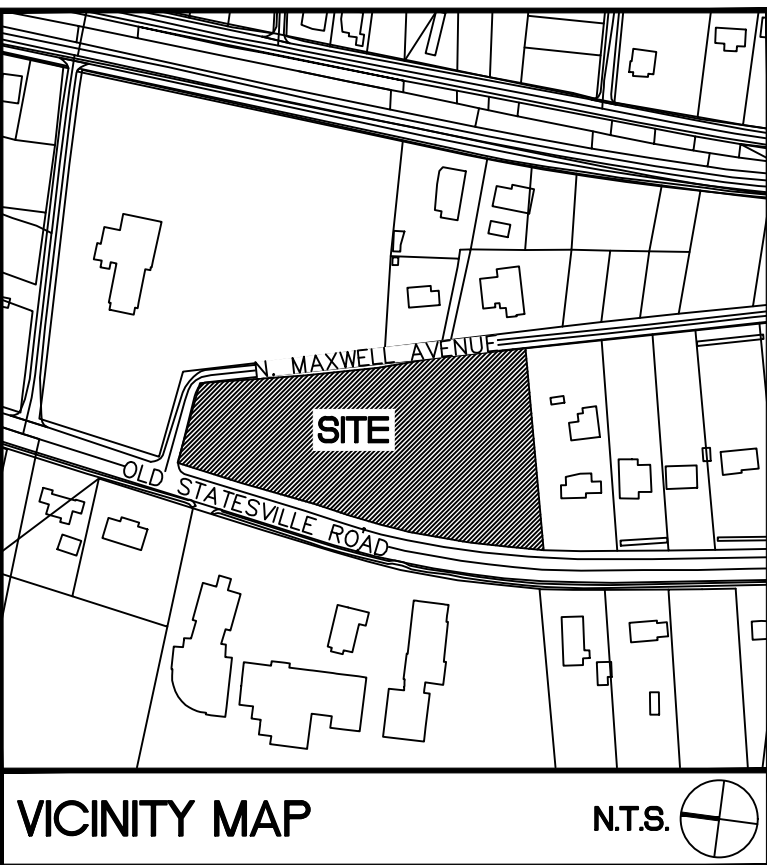
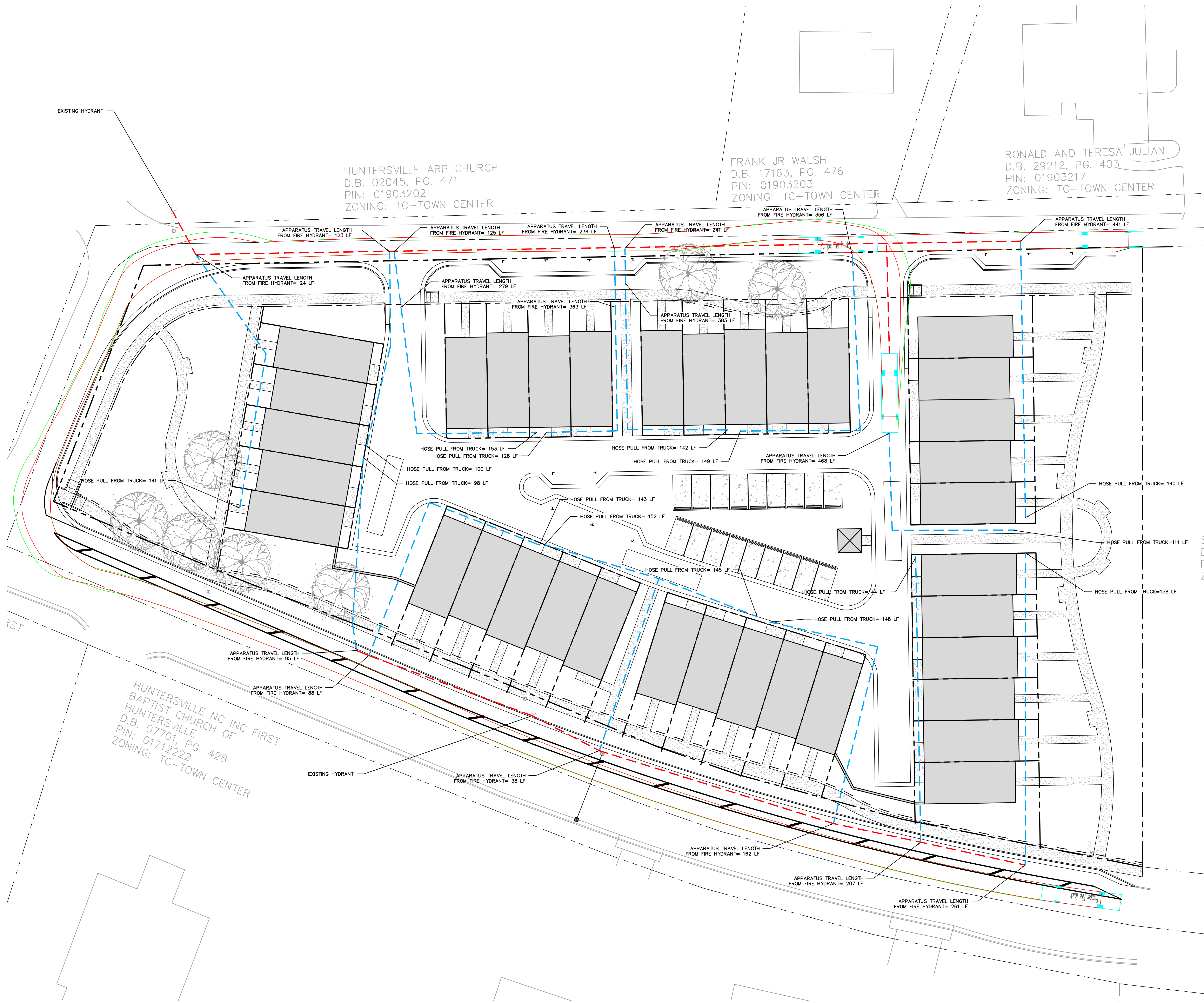


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www.nc811.org
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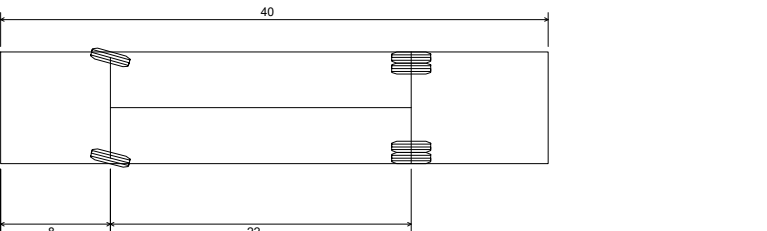
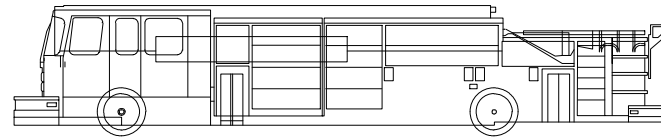


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LEGEND

SYMBOL

	PROJECT BOUNDARY
	SCHEMATIC BUILDING FOOTPRINTS

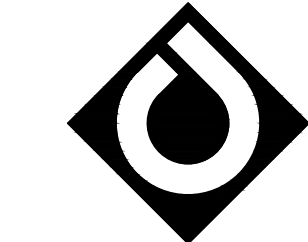


B-40 Ladder Truck
Overall Length 40.000ft
Overall Width 8.167ft
Overall Body Height 7.745ft
Min Body Ground Clearance 0.656ft
Track Width 8.167ft
Lock-to-lock time 5.00s
Max Wheel Angle 45.00°

- NOTE:**
- FIRE HYDRANTS WILL BE LOCATED WITHIN 600' OF MOST REMOTE POINT OF ANY STRUCTURE FOR (NFPA13R) OR 200' FOR (NFPA 13). SPECIFIC LOCATIONS WILL BE DETERMINED DURING CONSTRUCTION DOCUMENTATION.
 - ALL ROUTES THE FIRE APPARATUS WILL TRAVEL WILL BE DESIGNED TO SUPPORT LOADS OF 80,000 POUNDS.

DEVELOPMENT SUMMARY

PROJECT NAME:	MAXWELL AVENUE TOWNHOMES
PARCEL NUMBER:	01903105, 01903122, 01903104, 01903103, 01903102, 01903123
SITE ACREAGE:	± 2.79 ACRES
EXISTING USE:	SINGLE-FAMILY RESIDENTIAL
PROPOSED USE:	ATTACHED TOWNHOMES
EXISTING ZONING DISTRICT:	TC - TOWN CENTER
PROPOSED USE:	35 TOWNHOME UNITS



ColeJenest & Stone

Shaping the Environment
Realizing the Possibilities

Land Planning
+ Landscape Architecture
+ Civil Engineering
+ Urban Design

200 South Tryon Street, Suite 1400
Charlotte, North Carolina 28202
p+ 704 376 1555 f+ 704 376 7851
[url+ www.colejeneststone.com](http://www.colejeneststone.com)

NORTH STATE DEVELOPMENT
18825 W CATAWBA AVE.
SUITE 250
CORNELIUS, NC 28031

MAXWELL AVE. TOWNHOMES

14826 N OLD STATESVILLE RD
HUNTERSVILLE, NC 28078

EMERGENCY VEHICLE ACCESS

Project No.

4810

Issued

04/01/22

Revised

07/01/22 TOWN COMMENTS



SCALE: 1"=20'
0 10' 20' 40'

SP-500

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- CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ENSURING THAT ALL EXISTING UTILITIES ARE LOCATED PRIOR TO CONSTRUCTION.
- CONTRACTOR IS RESPONSIBLE FOR PLACING BARRICADES, USING FLAG MEN, ETC., AS NECESSARY TO ENSURE THE SAFETY OF THE PUBLIC.
- ALL PAVEMENT CUTS, CONCRETE OR ASPHALT, ARE TO BE REPLACED ACCORDING TO THE STANDARDS OF THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, OR LOCAL JURISDICTION, WHICHEVER IS MORE STRINGENT.
- SHORING SHALL BE IN ACCORDANCE WITH OSHA TRENCHING STANDARDS, 29 CFR, PART 1926, SUBPART P, OR AS AMENDED.

GENERAL NOTES:

- INSTALLATION GUARANTEE REQUIRED
1. A FINAL CERTIFICATE OF OCCUPANCY MAY BE ISSUED PRIOR TO THE INSTALLATION OF TREES AND SHRUBS, EXCLUDING YARD TREES DURING THE NON-PLANTING SEASON IF A CASH BOND, SURETY BOND OR LETTER OF CREDIT IS ISSUED FOR 120% OF THE COST OF MATERIALS AND INSTALLATION. PLANTING SHALL BE COMPLETED DURING THE NEXT PLANTING SEASON.
2. THE PLANTING SEASON SHALL RUN FROM OCTOBER 15 TO MARCH 15, EXCEPT FOR EXTREME WEATHER CONDITIONS AS DETERMINED BY STAFF. A FINAL CERTIFICATE OF OCCUPANCY SHALL NOT BE GIVEN DURING THE PLANTING SEASON UNLESS ALL OF THE LANDSCAPING IS COMPLETELY INSTALLED ACCORDING TO THIS ARTICLE.

- MAINTENANCE SURETY REQUIRED
1. DEVELOPERS SHALL ENTER INTO A MAINTENANCE SURETY AGREEMENT WITH MECKLENBURG COUNTY GUARANTEEING THE VIABILITY OF STREET TREES AND TREES AND SHRUBS PLANTED IN BUFFER YARDS FOR A PERIOD OF 1 YEAR FOLLOWING PLANTING. THE AMOUNT OF THE SURETY SHALL BE EQUAL TO 50% OF THE VALUE OF THE NEW TREES OR LANDSCAPE MATERIAL AND THEIR INSTALLATION. THE MAINTENANCE SURETY SHALL BE PROVIDED WHEN ALL OF THE REQUIRED TREES AND SHRUBS HAVE BEEN PLANTED.

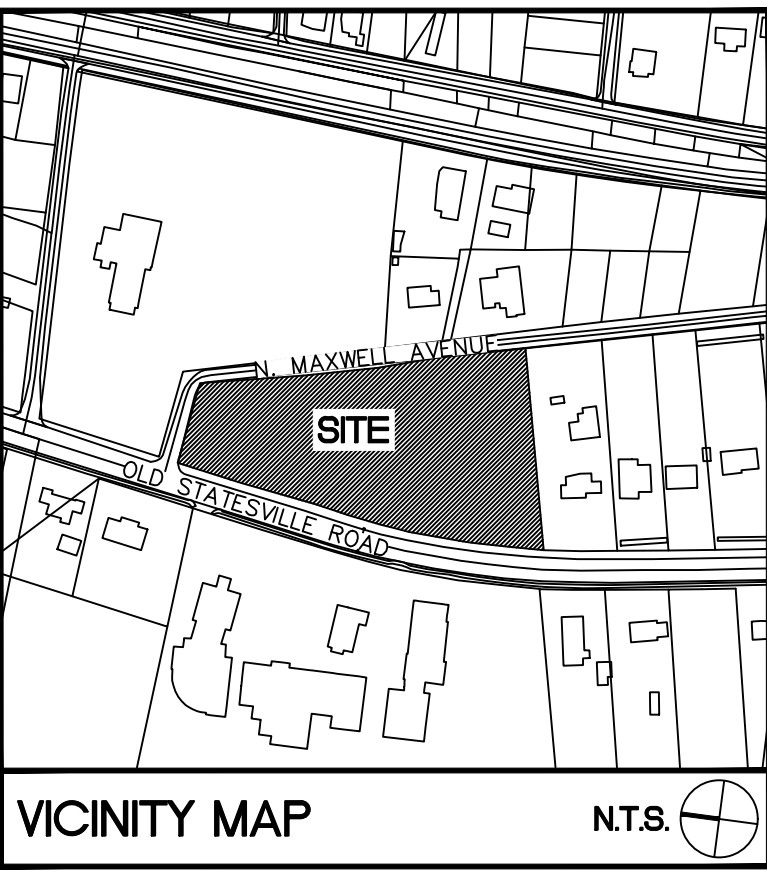
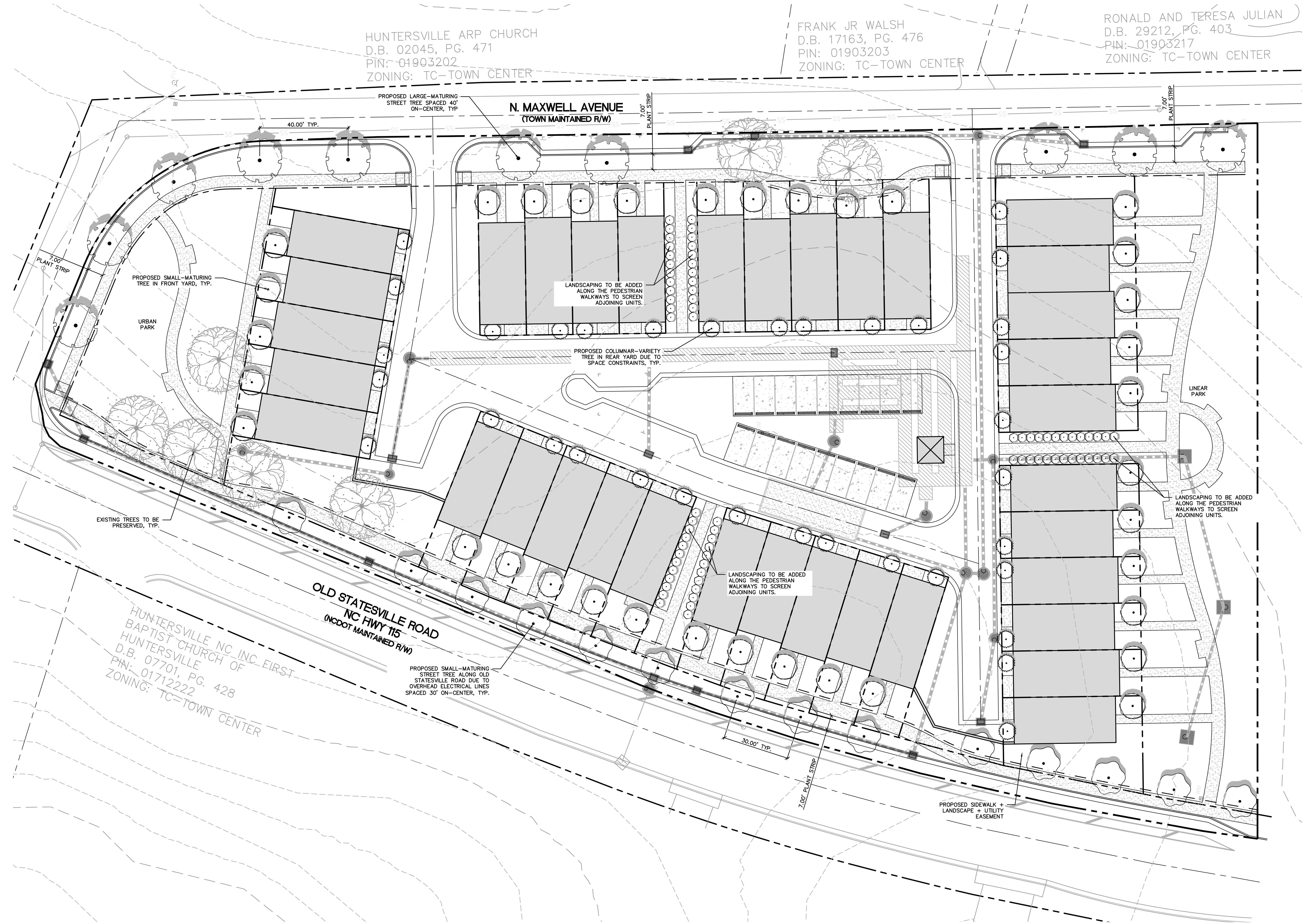
GENERAL PLANTING NOTES

1. SIZE AND GRADING STANDARDS OF PLANT MATERIAL SHALL CONFORM TO THE LATEST EDITION OF "AMERICAN STANDARDS FOR NURSERY STOCK", BY THE AMERICAN NURSERY & LANDSCAPE ASSOCIATION, INC.
2. HEIGHT AND WIDTH SPECIFICATIONS FOR SHRUBS INDICATED ON PLANT SCHEDULE SHALL TAKE PRECEDENCE OVER CONTAINER SIZE.
3. ALL ANNUAL/PERENNIAL BEDS SHALL BE AMENDED BY THE CONTRACTOR PER THE SPECIFICATIONS AND RAISED 8" ABOVE EXISTING OR PROPOSED GRADE. CONTRACTOR SHALL PROVIDE TOPSOIL AS REQUIRED TO RAISE GRADES.
4. CONTRACTOR SHALL MOUND ALL PARKING LOT ISLANDS TO 8" ABOVE BACK OF CURB AT THE CENTER OF ISLAND. CONTRACTOR SHALL SUPPLY AND PLACE ADDITIONAL TOPSOIL IF NECESSARY FOR MOUNDING AS INDICATED ON CONSTRUCTION DOCUMENTS.
5. CONTRACTOR SHALL MULCH ALL SHRUB BEDS WITH AGED SHREDED HARDWOOD BARK AS SHOWN IN DETAIL. CONTRACTOR SHALL MULCH ALL ANNUAL/PERENNIAL BEDS WITH 1" PINE BARK FINES.
6. ALL DISTURBED AREAS NOT INDICATED TO RECEIVE SOD OR MULCH SHALL BE SEED BY THE CONTRACTOR.
7. CONTRACTOR SHALL REMOVE ALL HARD LUMPS OF CLAY, STONES OVER 1" IN DIAMETER, AND ALL CONSTRUCTION DEBRIS INCLUDING GRAVEL, ROOTS, LIMBS AND OTHER DELETERIOUS MATTER WHICH WOULD BE HARMFUL, OR PREVENT PROPER ESTABLISHMENT AND/OR MAINTENANCE OF LAWN AND PLANTING AREAS.
8. IN GRASS AREAS WHERE CONSTRUCTION GRAVEL IS EMBEDDED IN THE SOIL, CONTRACTOR SHALL REMOVE CONTAMINATED SOIL TO A DEPTH OF 8" AND FILL WITH CLEAN TOPSOIL. CONTRACTOR SHALL IMPORT TOPSOIL AT NO CHARGE TO OWNER IF REQUIRED TO FILL THESE EXCAVATIONS.
9. CONTRACTOR SHALL RESEED/RESOD LAWN AREAS DAMAGED DUE TO PLANT MATERIAL INSTALLATION.
10. CONTRACTOR SHALL COORDINATE ALL PLANTING IN THE RIGHT-OF-WAY

11. ALL STRAPPING AND TOP 2/3 OF WIRE BASKET SHALL BE CUT AWAY AND REMOVED BY THE CONTRACTOR FROM ROOT BALL PRIOR TO BACKFILLING PLANTING PIT. CONTRACTOR SHALL REMOVE TOP 1/3 OF THE BURLAP FROM ROOT BALL.
12. FOR NEW TREE PLANTING AREAS, CONTRACTOR SHALL REMOVE ALL PAVEMENT, GRAVEL SUB-BASE AND CONSTRUCTION DEBRIS; REMOVE COMPACTED SOIL AND ADD 24" NEW TOPSOIL, OR AMEND THE TOP 18" OF EXISTING SOIL, TO MEET SPECIFIED TOPSOIL/PLANTING MIX STANDARDS FOR TREES (WITHIN ENTIRE MINIMUM AREA OF 200 SQUARE FEET PER TREE)
13. LARGE MATURING TREES SHALL BE A MINIMUM 25 TO 30 FEET FROM OVERHEAD DISTRIBUTION OR TRANSMISSION LINES. IF TREES CONFLICT WITH POWER LINES OR SIGNS, CONTRACTOR SHALL CONTACT LANDSCAPE ARCHITECT TO RESOLVE BEFORE PLANTING.
14. MINIMUM TREE SIZE AT PLANTING SHALL BE 2 INCH CALIPER FOR LARGE MATURING TREES AND 2 INCH CALIPER FOR SMALL MATURING TREES. ALL MULTI-STEM PLANTS SHALL BE TREE FORM, MAXIMUM THREE TO FIVE TRUNKS, AND A MINIMUM EIGHT FEET TALL.
15. MINIMUM SHRUB SIZE AT INSTALLATION SHALL BE 3" HT. WITH A MAXIMUM SPACING OF 6' O.C.
16. INSTALLER SHALL BE RESPONSIBLE TO REPAIR OR REPLACE PLANTINGS THAT FAIL IN MATERIALS, WORKMANSHIP, OR GROWTH WITHIN SPECIFIED WARRANTY PERIOD (ONE YEAR FROM DATE OF FINAL ACCEPTANCE BY OWNER).
17. FOR SEED ED AREAS, AN ACCEPTABLE LAWN AT THE END OF THE MAINTENANCE PERIOD SHALL CONSIST OF A HEALTHY, UNIFORM, CLOSE STAND OF GRASS, FREE OF WEEDS AND SURFACE IRREGULARITIES, WITH TOTAL GRASS COVERAGE EXCEEDING 90 PERCENT OVER ANY 10 SQ. FT. AND BARE SPOTS NOT EXCEEDING 5 BY 5 INCHES, WITH AT LEAST 85% OF THE TOTAL GRASS COVERAGE CONSISTING OF THE SPECIFIED GRASS SPECIES.
18. PER ARTICLE 8.9 F THE TOWN OF HUNTERSVILLE ZONING ORDINANCE, NO PLANTING, STRUCTURE, SIGN, FENCE, WALL, MAN-MADE BERM, OR OTHER

- OBSTRUCTION TO VISION SHALL BE INSTALLED, CONSTRUCTED, SET OUT, OR MAINTAINED SO AS TO OBSTRUCT CROSS-VISIBILITY IN THE SIGN TRIANGLE BETWEEN 30 INCHES AND 72 INCHES ABOVE THE LEVEL OF THE CENTER OF THE STREET INTERSECTION.
19. TREE PLACEMENT SUBJECT TO CHANGE DURING PRELIMINARY PLAN BASED ON LOCATION OF UTILITIES AND SIGHT DISTANCE PER THE TOWN'S ENGINEERING STANDARDS AND PROCEDURES MANUAL.
20. TREES ARE NOT TO BE PLANTED ON TOP OF STORM LINES, WITHIN STORM DRAINAGE EASEMENTS, WITHIN 10' OF STORMWATER STRUCTURES, OR WITHIN 40' OF A STOP SIGN.
21. TREE GRATES AND ASSOCIATED IRRIGATION SYSTEMS REQUIRED BY TOWN ARE TO COMPLY WITH THE TOWN ZONING REQUIREMENTS. ALL INSTALLATIONS OF IRRIGATION SYSTEMS WITHIN THE RIGHT-OF-WAY OF STATE-MAINTAINED STREETS REQUIRE AN ENCROACHMENT AGREEMENT EXECUTED THROUGH NCDOT. TREES INSTALLED WITHIN TOWN MAINTAINED RIGHT-OF-WAY LIMITS SHALL BE PER TOWN REQUIREMENTS. TREES INSTALLED WITHIN THE RIGHT OF WAY OF STATE MAINTAINED STREETS REQUIRE A PLANTING PERMIT FROM NCDOT. NCDOT'S REVIEW AND APPROVAL PROCESS MAY INCLUDE ADDITIONAL REQUIREMENTS.
22. A DRAINAGE SYSTEM IS REQUIRED FOR ALL IRRIGATED PLANTING AREA LOCATED ADJACENT TO STREETS. ALL IRRIGATION/DRAINAGE SYSTEMS REQUIRE AN ENCROACHMENT AGREEMENT EXECUTED BY NCDOT FOR STATE-MAINTAINED ROADS. CONTACT NCDOT FOR ADDITIONAL INFORMATION REGARDING COST, SUBMITTAL AND LIABILITY INSURANCE COVERAGE REQUIREMENTS.
23. LANDSCAPE INSPECTIONS MAY INCLUDE THE FOLLOWING:
SUBDRAINAGE INSPECTION
TREE PIT/HELL OR PLANTING STRIP INSPECTION
SOIL MIX APPROVALS/ INSPECTIONS
TREE APPROVALS/INSPECTIONS
TREE PLANTING INSPECTION
IRRIGATION INSPECTION
FINAL WALK THROUGH

ALL INSPECTIONS SHALL BE PERFORMED BY TOWN AND/OR TOWN REPRESENTATIVE



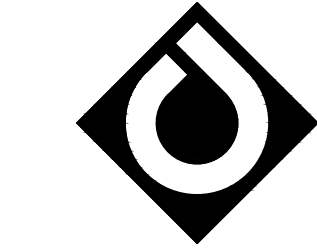
SURVEY DISCLAIMER
CURRENT PLAN SET IS BASED ON BOUNDARY SURVEY AND TREE SURVEY COMPLETED BY R.B. PHARR & ASSOCIATES, P.A., DATED 3/24/2022. TOPOGRAPHIC AND EXISTING SITE IMPROVEMENTS ARE BASED ON GEOGRAPHICAL INFORMATION SYSTEM (GIS) DATA PROVIDED BY MECKLENBURG COUNTY AT <https://polaris3g.mecklenburgcounty.nc.gov/>.

LEGEND

SYMBOL	
	PARCEL LINE / PROJECT BOUNDARY
	SCHEMATIC BUILDING FOOTPRINTS
	SCHEMATIC SIDEWALK LOCATION
	SMALL-MATURING TREE
	LARGE-MATURING TREE
	REAR YARD COLUMNAR TREE
	FRONT YARD TREE
	EXISTING TREE TO PRESERVE
	PROPOSED UNDERGROUND DETENTION SYSTEM

DEVELOPMENT SUMMARY

PROJECT NAME:	MAXWELL AVENUE TOWNHOMES
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SUITE 250
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MAXWELL AVE. TOWNHOMES

14826 N OLD STATESVILLE RD
HUNTERSVILLE, NC 28078

PLANTING PLAN

THIS PLAN IS SCHEMATIC IN NATURE AND LOCATIONS OF ROADS, LOTS AND OTHER AREAS AND IMPROVEMENTS ARE SUBJECT TO FINAL DETERMINATION ON PRELIMINARY AND FINAL PLAN.

Project No.

4810

Issued

04/01/22

Revised

07/01/22 TOWN COMMENTS



SCALE: 1"=20'
0 10' 20' 40'

SP-600

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- North Carolina 811**
www.nc811.org
1. CONTRACTOR IS FULLY RESPONSIBLE FOR CONTACTING APPROPRIATE PARTIES AND ENSURING THAT ALL EXISTING UTILITIES ARE LOCATED PRIOR TO CONSTRUCTION.
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4. SHORING SHALL BE IN ACCORDANCE WITH OSHA TRENCHING STANDARDS, 29 CFR, PART 1926, SUBPART P, OR AS AMENDED.

Maxwell Avenue Townhomes Subdivision Sketch Plan

Neighborhood Meeting Report

Date: July 20, 2022

Time: 6:00pm-7:00pm

Location: Huntersville Arts and Cultural Center, 109 S. Old Statesville Road

Applicants and the neighborhood attendees discussed the following comments and questions:

Comments

- Pleased to see that there are no through connectors from Maxwell Avenue to HWY 115
- Ingress and egress to the property looks well planned out
- Maxwell Avenue is relatively dead right now and these townhomes will help activate it
- It is difficult to get to the Presbyterian Church cemetery due to parking issues
- Previously there was a mixed-use project looking to go at this location
- There are many planned traffic improvements in the Sherwood area
- Downtown development in Huntersville was slowed because of the growth of Birkdale
- The Town and NCDOT are putting a lot of money into transportation and greenways in the area
- Development is coming to downtown Huntersville and it needs to be done the right way to ensure character
- Would like to see elevations and design concepts when development reaches that stage

Questions

1. Does zoning allow townhomes on this property? **Yes.**
2. Can the Town provide information on the status of the Sherwood traffic circle? **Applicant does not have this information.**
3. Questions shown on the plan:
 - How many trees will be saved? **Shown on plan and meets Ordinance requirements of 30% specimen trees saved.**
 - What is the size of the units (height, square footage)? **Don't know at this point, but will be in compliance with Ordinance.**
 - Are garages going to be provided? **Yes.**
 - Where is the greenway in relation to the project? **On the west side of 115.**
 - How is stormwater handled? **An underground system that will meet Ordinance requirements.**
4. What is the Town of Huntersville going to do with the property they own around Maxwell Avenue? **Applicant does not have this information.**
5. What is the price point for these townhomes? **Don't know at this point – will depend on market.**
6. What type of people will these be marketed to? **No demographic is singled out.**
7. Will the units be for sale or rent? **Planned for sale at this point.**
8. Has there been any communication from the Presbyterian and Baptist churches? **Yes, there has been communication with the Baptist Church.**
9. What sort of impact will 35 townhomes have on the surrounding CMS schools? **Staff obtained an impact statement from CMS, which will be in the staff report. No increase in percentage of utilization. A total of 6 students.**



Planning Services

4421 Stuart Andrew Blvd.

Charlotte, NC 28217

Phone: 980-343-6246

Email: planning@cms.k12.nc.us

Town of Huntersville: 14826 N. Old Statesville Road Maxwell Ave Townhomes

IMPACT OF THE PROPOSED DEVELOPMENT

Proposed Housing Units: 35 single family attached

CMS Planning Area: North

Average Student Yield per Unit: 0.1812

This development may add 6 students to the schools in this area.

The following data is as of 20th Day of the 2021-22 school year.

<i>Schools Affected</i>	<i>Total Classroom Teachers</i>	<i>Building Classrooms/ Teacher Stations</i>	<i>20th Day, Enrollment (non-ec)</i>	<i>Building Classroom/ Adjusted Capacity (Without Mobiles)</i>	<i>20th Day, Building Utilization (Without Mobiles)</i>	<i>Additional Students As a result of this development</i>	<i>Utilization As of result of this development (Without Mobiles)</i>
HUNTERSVILLE ELEMENTARY	44.50	37	747	621	120%	4	120%
BAILEY MIDDLE	73.65	57	1370	1060	129%	1	129%
WILLIAM A. HOUGH HIGH	117.8	100	2470	2097	118%	1	118%

The total estimated capital cost of providing the additional school capacity for this new development is \$217,000; calculated as follows:

Elementary School: **4**x \$34,000 = \$136,000

Middle School: **1**x \$37,000 = \$37,000

High School: **1**x \$44,000 = \$44,000

RECOMMENDATION

Adequacy of existing school capacity is a significant problem. We are particularly concerned about a case where school utilization exceeds 100% since the proposed development may exacerbate the situation. Approval of this petition may increase overcrowding and/or reliance upon mobile classrooms at the schools listed above.

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Jackie Huffman, Deputy Town Manager

Date: August 15, 2022

Subject: Huntersville Fire Department contract

EXPLAIN REQUEST:

Approve contract with Huntersville Fire Department (HFD) to provide fire services. The current HFD contract expires in October 2022. This contract would renew that 5 year expiring contract for an additional 5 year period. This contract does provide that in the event the HFD no longer provides services to the Town, that the existing assets would be turned over to the Town at no additional cost to the Town.

ACTION RECOMMENDED:

Approve contract.

FINANCIAL IMPLICATIONS:

N/A

ATTACHMENTS:

1. Huntersville Fire Department - Operating and Services Agreement 2022

OPERATING AND SERVICES AGREEMENT FOR FIRE PROTECTION SERVICES

This Operating and Services Agreement ("Agreement") is made effective as of the ____ day of _____, 2022, (the "Effective Date") by and between the Town of Huntersville, North Carolina, a North Carolina Municipal Corporation (hereafter "Town") and Huntersville Fire Department, Inc. (hereafter "Fire Department"), formerly Huntersville Volunteer Fire Department, Inc, collectively the "Parties."

RECITALS

1. Town is a municipal corporation organized under the laws of the State of North Carolina, with authority to provide essential services, including fire protection services, to its citizens.
2. The Fire Department is a North Carolina nonprofit corporation consisting of members and employees who provide fire protection and other emergency services. It was established pursuant to Articles of Merger filed with the North Carolina Secretary of State on April 1, 2010, whereby Gilead Volunteer Fire and Rescue Department (hereafter "Gilead") was merged into Huntersville Volunteer Fire Department, Inc. resulting in a surviving nonprofit corporation renamed Huntersville Fire Department, Inc.
3. North Carolina General Statutes § 69-25.6 provides that a Municipal Corporation may provide for fire protection in a fire protection district by contracting with any incorporated nonprofit volunteer or community fire department.
4. Town and Fire Department previously entered into an Operating and Services Agreement, dated as of May 26, 1995 relating to the Fire Department's provision of fire protection services to the Town and Fire Department's use of Town-owned fire stations. Town and Fire Department have entered into subsequent agreements for fire protection services, and the current agreement dated October 15, 2017 terminates as of October 15, 2022. The Town-owned fire stations are designated as Huntersville Fire Stations # 1, 3, and 4 ("Town-owned Fire Stations").¹ The Town-owned Fire Stations were financed in part with tax-exempt general obligation bonds issued by the Town.
5. The fire station owned and operated by Gilead prior to the April 2010 merger continues to be owned by the surviving Fire Department and is designated Huntersville

¹ Fire Station 1 is located at 110 S Old Statesville Road Huntersville, NC. Fire Station 3 is located at 13423 Eastfield Road Huntersville, NC. Fire Station 4 is located at 8826 McIlwaine Road Huntersville, NC.

Fire Station # 2.²

6. It is contemplated that Town may construct future fire stations, as additional stations or as a replacement for existing stations, particularly Huntersville Fire Station # 2.

7. Revenue procedures issued by the Internal Revenue Service, specifically Revenue Procedure 93-19, dictate the standards by which management or service contracts with non-governmental service providers will not be treated as a private business use of a facility causing tax-exempt government bonds to be converted to taxable, private use bonds. It is the intent that this Agreement at all times be construed to comply with the provisions of Revenue Procedure 93-19 and any subsequent, related revenue procedures.

8. Town provides substantial funding to Fire Department to provide fire protection services within the Town. Beginning Fiscal Year 2012-2013, rather than making direct funding payments to the various fire departments serving unincorporated areas, Mecklenburg County ("County") established fire service districts and levies property taxes within the unincorporated areas of those districts. The Huntersville Fire Service District ("District") is generally within the Town's extra-territorial or sphere of influence area.

9. By an Inter-local Cooperation Agreement dated July 1, 2012, a copy of the most recent version dated July 1, 2021 of which is attached hereto as Exhibit A ("County Agreement"), County and Town agreed that Town will provide fire protection and emergency services within the District, which it may do by contracting with Fire Department, and that the tax so levied in the District shall be payable to the Town for the sole purpose of providing fire and emergency services within the District.

10. Town and Fire Department wish to enter into this Agreement for the purpose of providing the terms by which Fire Department shall provide fire protection and emergency services to the Town and District and utilize the Town-owned fire stations to provide such services.

AGREEMENT

1. **Services.** Pursuant to the terms of this Agreement, and for the duration set forth herein, Fire Department will provide fire protection and emergency services as the primary provider to the Town as it presently exists, or as the city limits may be extended from time to time, and to the District (except such unincorporated areas of the District that may presently be served by other departments, so long as that other service continues). The Fire Department shall furnish said services to all persons and property located in

² Fire Station 2 is located at 5600 Beatties Ford Rd, Huntersville, NC.

the Town and the District in an efficient and workmanlike manner.

2. **Term.** This Agreement shall be for a period of five (5) years, beginning on the Effective Date, without an option to renew on the part of either party. However, the Parties may mutually agree to renew the Agreement.
3. **Possession.** Throughout the term of this Agreement as may be extended, and except as otherwise provided herein, Fire Department shall be the user of the Town-owned Fire Stations and Fire Station # 2. The right to use Town-owned Fire Stations, including any future Town-owned fire stations, shall be deemed a contribution of the Town to the Fire Department. Notwithstanding such right of use, the Town shall at all times maintain ownership and control of the Town-owned Fire Stations.
4. **Fire Department Standards.** Throughout the term of this Agreement, Fire Department will remain a fully qualified, equipped, and staffed fire department, meeting all state and local standards for volunteer fire department serving a suburban area. Without limiting the foregoing generality, Fire Department will also meet all of the standards of performance required by the County Agreement, which standards are incorporated herein by reference.
5. **Contribution.** Annual contributions, to be distributed in four equal, quarterly installments, by Town to Fire Department during the term of this Agreement, in addition to those provided below, shall be determined from time to time by Town, consistent with its established policies of assisting the Fire Department in providing fire protection and related emergency services to the Town. By this Agreement, Town is not obligating itself or future Boards of Commissioners of Town as to the level of support given to Fire Department, except as to the right of use of Town-owned Fire Stations as set forth herein or as otherwise provided in this Agreement. Any contribution by the Town shall only be used as directed by the Town Board of Commissioners for the provision of fire protection and related emergency services pursuant to this Agreement.
6. **Fire District Tax.** The District property tax levied by the County and paid to the Town under the County Agreement shall be used by the Town solely for provision of fire protection and related emergency services within the unincorporated areas of the District, including funding the Fire Department for the provision of those services. Such tax revenues shall be paid from time to time to Fire Department as determined in the Town's annual budget so long as this Agreement is in effect. The County Agreement provides that Town shall make recommendation to the County as to the fire tax rate for the District and shall request funding for

providing such services. Fire Department shall consult with the Town to determine the cost to the Fire Department for providing such services to the District.

7. **Termination.**

- a) Termination for Convenience. On the third anniversary of the Effective Date, Town shall have the option to terminate this Agreement, without penalty or cause, upon giving of six (6) months' notice of the exercise of the option to terminate.
- b) Termination for Cause. Notwithstanding the provisions of Subparagraph a) above, Town may at any time, upon giving of six (6) months' notice to the Fire Department, terminate this Agreement and regain possession of the Town-owned Fire Stations, if Town reasonably determines that Fire Department is engaging in unlawful or egregious conduct or is unable or unwilling to provide the level of service required by this Agreement or the County Agreement. If during the said six (6) month period, the Fire Department makes improvements satisfactory to the Town, no termination shall occur. During the six (6) month period, the Fire Department is not relieved of their responsibility to provide fire protection and emergency services in a manner otherwise consistent with the terms of this Agreement.
- c) Transition to Municipal Fire Department. If Town shall decide to establish a fire department as a department of Town, staffed in whole or in part by full time fire fighters and fire chiefs who are employees of Town, Town shall provide six (6) months' notice to Fire Department.
- d) Termination by Fire Department. If Fire Department reasonably determines that the level of additional support provided by Town is insufficient to maintain the services and standards of Fire Department as required by this Agreement, considering other sources of income, Fire Department may terminate this Agreement and cease fire protection services to Town upon giving Town one (1) year notice of its intent to terminate.

If this Agreement is terminated pursuant to this Section 7, or the Parties fail to mutually renew the terms of the Agreement, Fire Department's assets shall be distributed to Town in accordance with Clause 9 of this Agreement hereinbelow.

8. **Notices:** Unless otherwise provided herein, all notices and communications

required to be given shall be in writing and be deemed given by (i) personally delivered with written acknowledgment of receipt, (ii) deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested, or (iii) sent by a nationally recognized overnight courier, to the following addresses (provided that either party may change its notice address by notice to the other):

IF TO TOWN: Town of Huntersville
 Attn: Town Manager
 Post Office Box 664 (28070)
 101 Huntersville-Concord Road Huntersville
 North Carolina 28078

IF TO FIRE DEPT.: Huntersville Fire Department, Inc.
 Attn: Chief, Huntersville Fire Department, Inc.
 Post Office Box 471 (28070)
 110 S. Old Statesville Road Huntersville
 North Carolina 28078

9. **Liquidation or Dissolution of Fire Department.** Fire Department is a nonprofit corporation whose charter provides that, upon dissolution, the assets must be distributed to a qualified tax-exempt organization or to a federal, state, or local government. In recognition of the substantial funding and contributions provided by Town to Fire Department, Fire Department agrees that, upon dissolution, Fire Department's remaining assets, including all real property, tangible and intangible personal property, and all monetary assets, shall be distributed to Town.
10. **Merger.** Fire Department shall not merge with another entity without prior written approval from Town, which the Town will not reasonably withhold. In the event of a merger between the Fire Department and another entity, all assets of Fire Department shall be distributed to the Town in accordance with Clause 9 of this Agreement hereinabove prior to the merger. Notwithstanding such distribution to the Town, the merged entity may contract with the Town to provide fire protection and emergency services and such contract may provide for the use of some or all of the distributed assets by the merged entity.

11. **Agreement as to Use of Town-Owned Stations.** During the terms of this Agreement, or any mutually agreed upon renewals thereof, the following shall apply:

- a) Fire Department shall be the primary user of all Town-owned Fire Stations and any use other than that of the Fire Department shall not unreasonably interfere with the Fire Department's use. This provision shall not, however, preclude the Town from designating portions of any of the Town-owned Fire Stations for secondary Town usage, such as the establishment of a police office at Huntersville Station # 3. The Town or Fire Department may jointly authorize other uses from time to time, on a temporary basis, by appropriate agencies or departments of Town or authorized entities, provided that such other usage shall be authorized only after giving adequate advance notice to the Fire Department to enable Fire Department to re-position its equipment or take other appropriate measures so the Fire Departments ability to respond to fires or other emergencies shall not be compromised. Any uses in any area of any fire station other than by Fire Department shall not unreasonably interfere with the operation of the Fire Department.
- b) Fire Department shall be responsible for keeping the premises in a clean and sanitary condition, except that when uses other than that by the Fire Department are authorized, the using entity shall be responsible for such cleaning and maintenance, to the reasonable satisfaction of Fire Department.
- c) Fire Department shall be responsible for repairs and maintenance with the areas used by it, including all electrical, plumbing, heating and air conditioning systems, interior walls, windows and doors, and the exterior truck bay doors, up to a maximum of \$5,000.00 per lease year at each Town-owned Fire Station. Town shall be responsible for amounts in excess of \$5,000.00 per year and for major structural repairs to exterior walls, roofs, exterior doors (except truck bay doors) and windows, and similar major components on such Town-owned Fire Stations, unless, in all cases, damage thereto is caused by Fire Department, its agents, employees, or members while on duty with the Fire Department, in which case Fire Department shall be responsible.
- d) Utilities, such as water, sewer, telephone, alarm monitoring, internet, cyber security, electric and gas, shall be the responsibility of Fire Department, except to the extent that usage is attributable to users other than Fire Department, and provided further that if said utility is on a Town-owned system that does not allocate costs to specific sites (such as telephone at Fire Stations # 1, 3 and 4),

Town will pay such expense.

- e) Fire Department shall be responsible for keeping all of its equipment secured and for taking whatever steps are deemed appropriate to prevent damage, loss, or theft of the equipment while on the premises. Fire Department does hereby hold Town harmless and does release and acquit Town for any loss or damage to Fire Department's vehicles and equipment, except for the intentional, wanton, or willful acts on part of Town, its authorized employees, or agents.
- f) Fire Department shall use the fire stations solely for the operation of a fire station, which term includes uses that are ancillary to the actual operation of a fire station, such as office facilities, training facilities, fund raising and similar uses, and also includes rescue and first responder services. This provision shall not be interpreted as precluding other Town uses as set forth in 11(a) above. Any use by or authorized by the Fire Department which is not directly related to the operation of the fire station or of Fire Department's mission of providing fire protection must have the prior approval of Town, which may be given by Town Manager.
- g) Fire Department shall make no changes to the exterior appearance of any Town-owned station or make interior modifications without express written consent of Town.

12. **Independent Agency.** Fire Department is a separate, independent corporation and is not an agency of the Town. This Agreement shall not be construed as establishing a joint venture, partnership, or any principal-agent relationship for any purpose between the Fire Department and the Town. Town shall not direct the operation, control or training of the members or employees of the Fire Department, approve or disapprove of the purchase of equipment (except as a result of a direct funding request), approve or disapprove of the membership, or in any other manner supervise any element of control over Fire Department. Employees of the Contractor shall remain subject to the exclusive control of the Fire Department. Fire Department agrees that it shall not discriminate in its membership or employment because of race, religion, color, sex (including gender identity or sexual orientation), age, disability, national origin, or genetic information, provided, however, that members and employees must be competent and capable of performing the requirements of the job. Town, however, shall during the term of this agreement have the reasonable right of approval of the person to serve as Chief of the Fire Department, since such person also serves as spokesperson for Town's fire protection and emergency services, unless such right affects the status of any tax-exempt obligations as set forth in paragraph 19, in which case this right shall be deemed removed. Fire Department shall be responsible for maintaining all records and paying all wages and benefits of paid employees of Fire Department. Fire Department shall be solely responsible for determining that the work conditions comply with all health and safety regulations and shall be responsible for filing any necessary reports or documents

relative thereto. Town assumes no responsibility for any violation of any Occupation, Health & Safety Act (OHSA) or any other similar State or Federal Act.

13. **Insurance.** Fire Department shall be responsible for obtaining and maintaining all appropriate and required insurance, specifically including the insurance requirements under the County Agreement. Fire Department will be responsible for all workers' compensation and other similar obligations. Fire Department will obtain special event insurance for those occasions, such as fund-raising dinners, when Fire Department coverage does not cover liability at such events. Town shall be responsible for obtaining and maintaining all insurance on Town-owned Fire Stations.
14. **Financial Statements.** Fire Department will, as a matter of information, provide Town with its annual financial statements, showing sources of all income, including contributions from Town and the nature of all such expenditures. These statements shall be provided within thirty (30) days after completion. Town shall not have any right of approval or disapproval of the statements. An independent audit shall be paid for by the Fire Department on an annual basis and submitted to Town within 30 days of completion. Any misuse of funds shall be a cause for terminating this Agreement. Fire Department agrees that it shall begin preparation of the financial statements within thirty (30) days after June 30th of each year and assure its timely completion and submission to Town. Additionally, and not by limitation, Fire Department will provide tax returns to the public as requested.
15. **Books and Records.** The Town Manager, Deputy Town Manager, or Finance Director may meet with the Fire Chief and/or Treasurer quarterly and as needed to discuss financial books and records of the Fire Department at a mutually convenient time. The Fire Department shall maintain a written accounting system, which provides adequate documentation of all of its receipts and disbursements including, but not limited to, those related to the expenditure of funds subject to this Agreement.
16. **Equipment Titles.** All vehicles and equipment of the Fire Department shall be titled in the name of the Fire Department during the term of this Agreement and shall not be titled in the name of the Town, even though contribution or payments from Town may have been used to acquire or finance the acquisition of such equipment.
17. **Replacement of Fire Stations, Equipment, and Vehicles.** Should any fire stations, equipment, or vehicles be replaced with new fire stations, equipment, or vehicles during the term of this Agreement, the sales proceeds and/or salvage values of the replaced fire stations, equipment, or vehicles will be used by Fire Department solely for the provision of fire protection and emergency services pursuant to this Agreement. The sales proceeds and/or salvage values of any replaced fire stations, equipment, or vehicles shall be factored into Fire Department's requests for funding from Town.

18. **Mutually Agreed Upon Renewal.** As set forth in Paragraph 2 of this Agreement, this Agreement shall be for a maximum of five (5) years and there is no option to renew this Agreement. Nevertheless, if neither party gives notice to the other at least sixty (60) days prior to the final termination date of this Agreement, such non-action shall be deemed a mutually agreed upon renewal of this Agreement for an additional five (5) year period on the same terms and conditions as are herein set forth, and specifically including the right of Town to terminate the Agreement, without cause, on a date which is three (3) years from date of the beginning of such renewal. Notice of the intent of either party to complete the termination at the end of such term shall be given in writing at least sixty (60) days prior to that time. A mutually agreed upon renewal shall be deemed to occur at the end of each subsequent five (5) year period unless notice is given by either party. At no time, however, shall this extension be deemed to abrogate the rights herein given by either party to earlier terminate the Agreement for any of the reasons set forth.
19. **Tax-Exempt Status.** It is the intent that the Agreement at all times complies with provision of any Revenue Rulings or Procedures in order to maintain a tax-exempt status of the funds used to finance the construction of any Town-owned Fire Stations, or any replacement to that financing. If any condition exists or arises which may cause this Agreement to be in violation thereof and is not promptly corrected, then this Agreement may be deemed void and the rights between the parties cease. Fire Department specifically agrees that there shall be no overlapping Board members in numbers precluded by Revenue Procedure 93-19 or successor procedure, nor any prohibited overlapping on the Board of either party or Chief Executive Officers of either party. The Fire Department further agrees that it is not entitled to and will not take any tax position that is inconsistent with being a service provider to the Town with respect to the Town-owned Fire Stations.
20. **Non-Assignability.** This agreement may not be transferred, assigned, or subcontracted by the Fire Department without the written consent of the Town.
21. **Anti- Discrimination and Equal Employment.** During the performance of the Agreement, Fire Department shall comply with all federal and state requirements concerning fair and equal employment and shall not discriminate against or deny the Agreement's benefits or services to any person on the basis of race, religion, color, creed, national origin, age, sex (including sexual orientation, gender identity, and pregnancy), disability or handicapping condition, or genetic information.
22. **Severability.** If any provision of this Agreement is found to be invalid or unlawful, then remainder of this Agreement shall not be affected thereby, and each remaining provision shall be valid and enforced to the fullest extent permitted by law.

23. **No Third-Party Beneficiaries.** This Agreement is not intended for the benefit of any third party. The rights and obligations contained herein belong exclusively to the parties hereto, and shall not confer any rights or remedies upon any person or entity other than the parties hereto.
24. **No Waiver.** Failure of the Town to enforce any of the provisions of this Agreement at any time, or to request performance by the Fire Department pursuant to any of the provisions of this Agreement at any time shall in no way be construed as a waiver of such provisions, nor in any way affect the validity of this Agreement, or any part thereof, or the right of the Town to enforce each and every provision.
25. **Governmental Immunity.** Nothing contained in this Agreement shall constitute a waiver of the Town's governmental immunity or of any limitation on liability or damages created by law.
26. **Indemnification.** To the greatest extent allowed by North Carolina law Fire Department shall indemnify and hold harmless the Town, its officers, agents, employees and assigns from and against all claims, losses, costs, damages, expenses, attorneys' fees ("Claims"). In the event that any portion of the Agreement performed under the Agreement shall be defective in any respect whatsoever, Fire Department shall indemnify and save harmless the Town, its officers, agents, employees, and assigns from all loss or the payment of all sums of money, but only to the extent allowed by law. Nothing contained in this Agreement shall waive the Constitutional limitation on the Town indemnifying obligations of other parties.
27. **Governing Law.** This Agreement shall be interpreted according to the Laws of the State of North Carolina. All matters, whether sounding in contract or tort relating to the validity, construction, interpretation, and enforcement of the Agreement, shall be governed in all respects by the laws of the State of North Carolina and venue shall be proper only in a court of competent jurisdiction located in Mecklenburg County, North Carolina. Fire Department represents and warrants that it shall comply with all applicable federal, state, and local laws, regulations, and orders, including, not limited to, licensure requirements.

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Signature Page to Follow

IN WITNESS WHEREOF, Town and Fire Department have executed this Agreement after approval of its respective governing bodies, as of the date of execution of each respective party.

TOWN OF HUNTERSVILLE
A North Carolina Municipal Corporation

By: _____
Anthony Roberts, Town Manager

Dated: _____

ATTEST:

Janet Pierson, Town Clerk

APPROVED AS TO FORM:

Emily Sloop, Town Attorney

HUNTERSVILLE FIRE DEPARTMENT, INC
A North Carolina Non-Profit Corporation

By: _____
Chief, Huntersville Fire Department, Inc

Dated: _____

By: _____
Secretary, Huntersville Fire Department, Inc

Dated: _____

**Town of Huntersville
Town Board
August 15, 2022**

To: Town Board

From: Michael Jaycocks, Director of Parks & Recreation

Date: August 15, 2022

Subject: Hwy 21 Greenway Tunnel Agreement

EXPLAIN REQUEST:

The current Hwy 21/Gilead Road Improvements provide an at-grade crossing at a new traffic signal at the intersection of Hwy 21 and Arahova Drive. This crossing will connect the Downtown Greenway with the Torrence Creek Trib #2 via the new I-77 Greenway Tunnel. During the last couple of years, NCDOT staff, Town staff and Mecklenburg County staff have discussed the option of taking the Greenway under Hwy 21 instead of having the at-grade crossing at Arahova.

NCDOT has restarted the planning and design process for the next phase of Hwy 21 going north. Recently, NCDOT provided the Town with an option for a 10ft by 10ft tunnel to go under Hwy 21 as part of the next phase of Hwy 21. This tunnel would be approximately 119 ft long. The cost to go under Hwy 21 is estimated at \$3.25 million. The Town would enter into an agreement with NCDOT that would require the Town to fund the Greenway Tunnel. The project completion timeline is late 2027- early 2028. NCDOT would not need the funds from the Town until the project was completed. The Town will have numerous opportunities to apply for CRTPO Funds to help pay for this project. NCDOT will need to know if the Town has an interest in moving forward with an agreement by this September. The Greenway, Trail and Bikeway Committee unanimously recommended that the Town move forward with the Greenway Tunnel under Hwy 21.

ACTION RECOMMENDED:

Direct staff to work on an agreement.

FINANCIAL IMPLICATIONS:

\$3.25 million

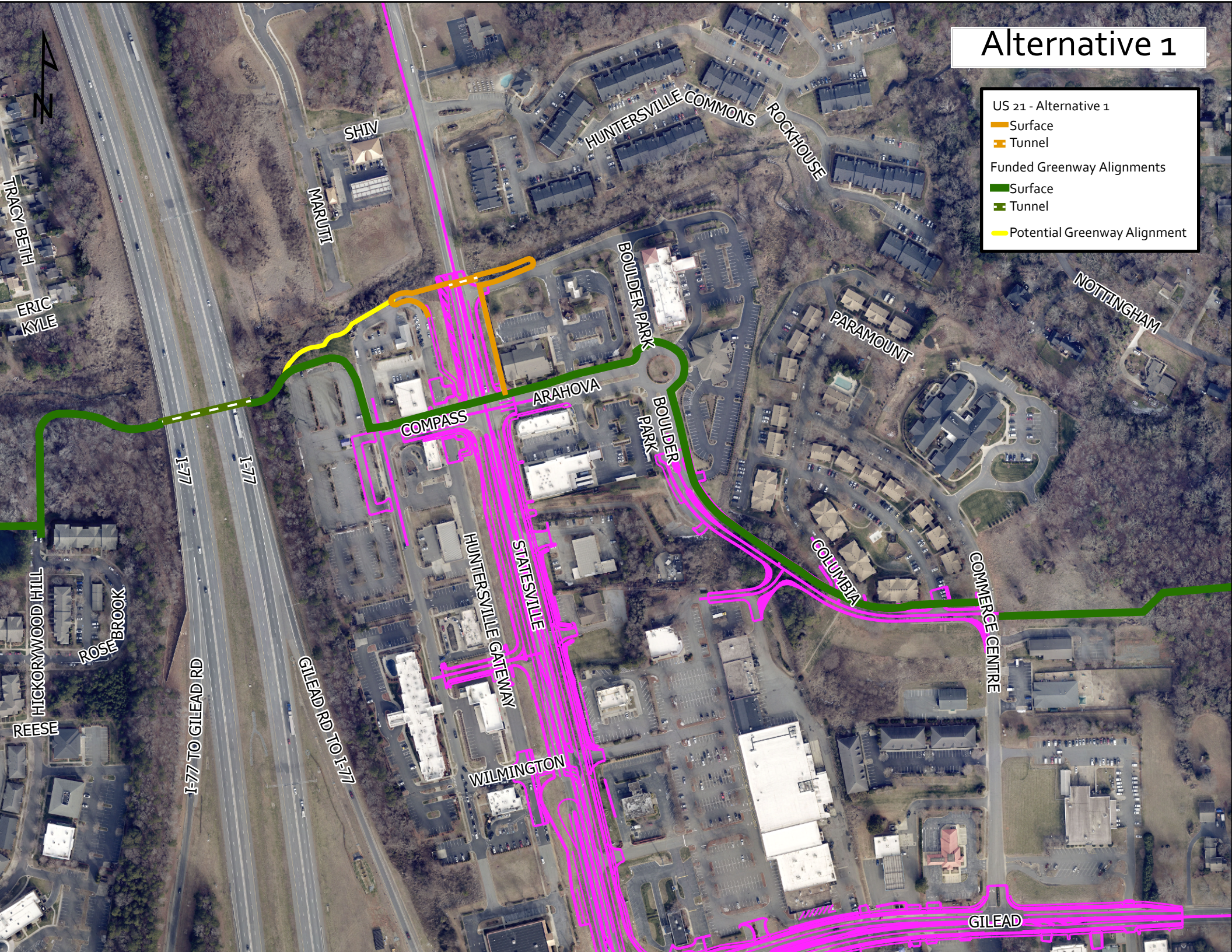
ATTACHMENTS:

1. Hwy 21 Tunnel Alt 1

2. Hwy 21 Tunnel Alternative 2

Alternative 1

- US 21 - Alternative 1
 - Surface
 - Tunnel
- Funded Greenway Alignments
 - Surface
 - Tunnel
- Potential Greenway Alignment



Alternative 2

US 21 - Alternative 2

Surface

Tunnel

Funded Greenway Alignments

Surface

Tunnel

Potential Greenway Alignment

