

Meeting of the Johnston County Board of Commissioners

June 3, 2013

6:00 p.m.

The Johnston County Board of Commissioners met in regular session Monday, June 3, 2013 at 6:00 p.m. in the Commissioners' Meeting Room, Johnston County Courthouse Annex, Smithfield, North Carolina. The following members were present:

Present: Chairman Jeffrey P. Carver, Vice Chairman Tony Braswell, Cookie Pope, Allen L. Mims, Jr., DeVan Barbour, Ted G. Godwin, and Chad M. Stewart
Absent: None
Also Present: County Manager Rick J. Hester, Clerk to the Board Paula G. Woodard, County Attorney David F. Mills, and Paralegal/Deputy Clerk to the Board Dana Cuddington

Chairman Jeffrey P. Carver called the meeting to order at 6:00 p.m. and the following business was transacted.

1. Public Comment

None.

2. Public Hearing; Rezoning and Special Use Requests

Advertised – The Smithfield Herald – May 22 and 29, 2013. Certified letters were mailed to adjoining property owners on May 20, 2013. A notice was posted at the location on April 2, 2013 for Case 13-05.

The Chairman opened the Rezoning Hearing for Case 13-05

Case 13-05 Petition to rezone a 1.18 acre tract located at 582 Old Drug Store Road in Cleveland Township from Agricultural Residential (AR) to Community Business (CB). Tax ID: 06D01015E. Owner: Jeffrey M. Warren and Christina B. Warren. Applicant: Jeffrey M. Warren.

Planning Director Berry Gray stated the petition is to rezone a 1.18 acre tract located at 582 Old Drug Store Road in Cleveland Township from Agricultural Residential to Community Business. Mr. Gray reported the existing land use is residential and there is a house on the property. He noted the applicant is requesting the rezoning in order to open a hair salon on the site. He stated the applicant may also have long term commercial plans for the property in the future. Mr. Gray reviewed the zoning map with the Board and stated the surrounding uses are zoned Agricultural Residential and used for residential and agricultural purposes; General Business for a restaurant, modular home sales and veterinary clinic and pet boarding, as well as Old Drug Store Business Park which has over a dozen different businesses; General Business – Special Use District for a day care facility; and Agricultural Residential – Special Use District for a mixed use PUD-multifamily, single family and commercial uses. The area is located within a designated “Primary Growth Area” on the County’s Comprehensive Land Use Plan which denotes an area in which high levels of growth pressures currently exist or are anticipated near term. Additionally, this site is in the vicinity of a “Regional Center” commercial activity node.

Upon a question by Commissioner Ted G. Godwin, Mr. Gray reported the property directly behind the subject site is presently vacant, but it is intended as a residential subdivision with single family lots. He stated there is also property to the south and adjacent to the vacant residential subdivision zoned Community Business.

At the inquiry of Chairman Jeffrey P. Carver, Mr. Gray stated the Board approved multifamily uses south of the subject site on Japwood Drive; however, it is his understanding that those apartments are on hold at the present time.

Applicant Jeffrey Warren, 1939 Matthews Road, Clayton, stated he has owned the subject site for a while and he currently rents the existing house on the site. Mr. Warren reported he plans to build a small hair salon on the property for his wife and may have other commercial development in the future.

Commissioner Allen L. Mims, Jr. asked the applicant if the property is served by water and wastewater.

Mr. Warren confirmed the site is served by water and wastewater.

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Mr. Gray stated the Planning Board recommended approval.

There being no further comments, the Chairman closed the Rezoning Hearing for Case 13-05.

Decision on Rezoning Case 13-05

Case 13-05 Petition to rezone a 1.18 acre tract located at 582 Old Drug Store Road in Cleveland Township from Agricultural Residential (AR) to Community Business (CB). Tax ID: 06D01015E. Owner: Jeffrey M. Warren and Christina B. Warren. Applicant: Jeffrey M. Warren.

Commissioner Cookie Pope moved the Board conclude and adopt a statement that the rezoning requested is consistent with the Comprehensive Land Use Plan, and it is therefore reasonable and in the public interest, and further that the petition for rezoning case 13-05 to rezone a 1.18 acre tract located at 582 Old Drug Store Road in Cleveland Township from Agricultural Residential to Community Business be approved. Commissioner Tony Braswell seconded the motion, which carried by unanimous vote.

3. Public Hearing – Code of Ordinances Amendment – Land Development Code – Erosion and Sediment Control Ordinance Advertised – The Smithfield Herald – May 22 and 29, 2013.

Chairman Jeffrey P. Carver opened the public hearing to allow for public comment on a proposed amendment to the Code of Ordinances as it relates to an erosion and sediment control ordinance.

Stormwater Administrator Jamie Guerrero presented the draft erosion and sediment control ordinance and explained it would allow the County to request approval from the State for delegated authority. Mr. Guerrero stated the ordinance as proposed has the same rules and regulations as the State currently has with nothing more stringent proposed. He stated the County would also use the same Design Manual as the State. Mr. Guerrero reported staff deals with the local development community on a daily basis and the program could be administered by the County's inspectors at the same time as they are inspecting utility projects for the new developments. He noted the County's utility inspectors are currently being trained as erosion control inspectors to accomplish the dual task. Mr. Guerrero also noted the advantage of having a local program is that potential problems can often be addressed upfront before they become major issues.

Mr. Guerrero stated just as with the riparian buffer protection ordinance that was adopted last month, the erosion and sediment control program would exempt activities related to agricultural, timber/forest land production, mining, and any other activity that is deemed essential to protect human life during an emergency. He stated the program would apply to all other activities that disturb an area greater than one acre, which is the State's current regulation as well. Mr. Guerrero reported there will be a fee associated with the program and staff is in the process of reviewing the State's fee schedule as well as surrounding counties/municipalities to determine a fair cost to cover the expense of the program.

Commissioner Tony Braswell asked if the program would apply to the municipal limits. Commissioner Braswell also asked if the program could be administered with the current staff level.

Mr. Guerrero reported the County's program would not apply to municipal or ETJ limits unless the towns enter into a Memorandum of Agreement with the County for the County to administer the program within their boundaries. Mr. Guerrero stated it is his understanding that there are a couple of towns that are interested in discussing this option with the County. Mr. Guerrero stated the County can administer the program at the current staffing level; however, he noted that building is beginning to pick up. Mr. Guerrero reported he plans to tailor the program so the utility inspectors can inspect for erosion and sediment control at the same time as they are inspecting utility installations to avoid multiple trips.

Commissioner Allen L. Mims, Jr. expressed his concerns about the ETJ areas of the towns, noting that he frequently receives calls from citizens regarding issues in the ETJ areas where the citizen has been told by the town that they cannot regulate nuisance issues within ETJ limits. Commissioner Mims questioned if the erosion and sediment control program would be considered a land use or nuisance matter.

County Attorney David Mills stated he could research if the erosion and sediment control program is considered a land use issue or a general police power issue and noted the answer would determine if it is effective in the ETJ.

Commissioner Mims suggested postponing a decision on the ordinance until the County Attorney renders an opinion.

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Mr. Guerrero clarified that if the issue pertains to erosion and sediment control, and the towns choose not to piggyback on the County's ordinance, then the State would have jurisdiction over the matter within the ETJ areas.

Mr. Mills stated if the Board adopts the ordinance, an effective date would need to be established.

Mr. Guerrero stated the Board can set an effective date; however, he noted the County will still have to get approval from the State for delegated authority once the ordinance is adopted, and that process could take 60 to 90 days.

Mr. Mills suggested adopting the ordinance with the effective date being the first day of the month following approval from the State for delegated authority.

There being no further comments, the Chairman closed the public hearing.

Upon a motion by Commissioner Allen L. Mims, Jr., seconded by Commissioner DeVan Barbour, and carried by unanimous vote, the Board adopted the following erosion and sediment control ordinance to be effective on the first day of the month following approval from the State for delegated authority of the erosion and sedimentation control program. (Note: The ordinance will be added to the Johnston County Code of Ordinances Land Development Code once it becomes effective.)

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

Section 1

Title

This ordinance may be cited as the Johnston County Soil Erosion and Sedimentation Control Ordinance.

Section 2

Purpose

This ordinance is adopted for the purposes of:

- (a) regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (b) establishing procedures through which these purposes can be fulfilled.

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 Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
- (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 which 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 natural watercourse.
- (h) Commission - means the North Carolina Sedimentation Control Commission.
- (i) Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (j) Department - means the North Carolina Department of Environment and Natural Resources.
- (k) Director - means the Director of the Division of Land Resources of the Department of Environment and Natural Resources.
- (l) Discharge Point - means that point at which storm water runoff leaves a tract of land.
- (m) Energy Dissipator - 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.
- (n) Environmental and Stormwater Manager - means the personnel within the Johnston County Public Utilities Department whose job responsibility includes the administration and enforcement of the Johnston County Erosion and Sediment Control Ordinance.

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- (o) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (p) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (q) High Quality Waters - means those classified as such in 15A NCAC 2B.0101(e) (5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).
- (r) High Quality Water (HQW) Zones - means areas within one mile and draining to HQW's.
- (s) Lake or Natural 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.
- (t) Land-disturbing Activity - means any use of the land by any person in residential, industrial, education, 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.
- (u) 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.
- (v) 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.
- (w) Parent - means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (x) Person - 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.
- (y) 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.
- (z) Person Responsible for the Violation - means:
 - (1) the developer or other person who has or holds himself out as having financial or operation control over the land-disturbing activity; or
 - (2) the landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- (aa) Phase of Grading - means one of two types of grading: rough or fine.
- (bb) Plan - means an erosion and sedimentation control plan
- (cc) 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.
- (dd) 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 lake or natural watercourse.
- (ee) 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.
- (ff) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (gg) Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- (hh) Subsidiary - means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (ii) Ten-Year Storm - means the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (jj) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (kk) Twenty-five Year Storm - means the storm water runoff resulting from precipitation of an intensity expected to be equaled or exceeded on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (ll) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (mm) 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 of land.

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- (nn) Velocity - means the average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.
- (oo) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- (pp) Working Days - means days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 4 Scope and Exclusions

(a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of Johnston County and to the extraterritorial jurisdiction of the Towns as allowed by agreement between local governments or other appropriate legal instrument or law.

(b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:

- (1) Any activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
 - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
 - (ii) dairy animals and dairy products.
 - (iii) poultry and poultry products.
 - (iv) livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats.
 - (v) bees and apiary products.
 - (vi) fur producing animals.
- (2) An Activity undertaken on forestland 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 Department. If land-disturbing activity undertaken on forestland 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.
- (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.
- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
- (5) An activity which is essential to protect human life during an emergency.
- (c) Plan Approval Requirement for Land-Disturbing Activity. No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval therefor from Johnston County
- (d) 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.
- (e) More Restrictive Rules Shall Apply - Whenever conflicts exists between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
- (f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed 1 acre(43,560 square feet) in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

Section 5 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) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.
 - (1) 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 natural watercourse.
 - (2) 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.

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- (b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.
- (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. Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices 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 said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8(b)(5) of this ordinance, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 21 calendar days following completion of construction or development, whichever period is shorter.
- (e) Prior Plan Approval. No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by Johnston County. The County shall forward to the Director of the Division of Water Quality 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) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

Section 6 Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than one acre on a tract. The applicant must provide to the Johnston County Environmental and Stormwater Manager or designee the number of copies of the Plan as prescribed by the Environmental and Stormwater Manager at least 30 days prior to the commencement of the proposed activity.
- (b) Financial Responsibility and Ownership. The erosion and sediment control plan must include an authorized statement of financial responsibility and ownership that complies with following:
 - (1) is signed by the financially responsible party for the land-disturbing activity or his attorney in fact, including the mailing and street addresses of the principal place of business of the person financially responsible, the owner of the land, and any registered agents;
 - (2) 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 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 erosion and sedimentation control plan must include the owner's written consent for the applicant to submit an erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
- (c) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. 113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. Johnston County shall promptly notify the person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (d) Content. The Plan required by this section shall contain architectural and engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately described the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs, of specific site requirements.
- (e) Timeline for Decisions on Plans. Johnston County will review each complete Plan submitted and within 30 days of receipt thereof will notify the person submitting the Plan that it has been approved, approved with modifications, approved with performance reservations, or disapproved.
- (f) Approval. Johnston County shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The County may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance.
 - (i) If no construction activity has begun prior to the expiration date of the land disturbance permit, the permit becomes null and void.

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- (ii) If construction activity has begun, but the certificate of completion has not been issued prior to the expiration date of the land disturbance permit, the permit must be renewed.
- (iii) The land disturbance permit may be renewed for a maximum of two (2) years by submitting a request for permit extension 30 days prior to the expiration date. Extension of the original permit approval beyond the maximum two-year renewal period is not allowed. Any change of ownership must be reflected in a revised financial responsibility form.
- (iv) Projects may be phased using multiple permits. The phasing of a project under a single permit is not allowed. Each project phase requires a separate and independent plan submittal, review fees, permit approval, and payment of applicable land disturbance fees.
Commentary: The phasing of large and/or complex projects should be considered when it is anticipated that the maximum permit validity period of 5 years (the original permit has a 3 year validity, plus the maximum renewal period of 2 years) may be insufficient to complete all work or in instances where it may be desirable to obtain certificates of completion for phases, rather than one certificate of completion for the entire project.
- (v) Failure to renew the land disturbance permit, in accordance to this section, is the same as failure to submit an erosion and sediment control plan in accordance with this article and may be subject to a civil penalty of up to \$5,000 per day. Any person who is subject to civil penalty under this subsection may be subject to additional civil penalties for violation of any other provisions of this article, or rules or orders adopted or issued pursuant to the erosion and sedimentation control regulations of this article.
- (vi) If the property associated with the approved plan is sold in whole or in part before all conditions of the approved plan are met, the land disturbance permit holder must provide notice to the new owner of conditions of the land disturbance permit and provide Johnston County with revised financial responsibility forms.

(g) **Disapproval for Content.** The County shall disapprove a Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

(h) **Other Disapprovals.** The County may disapprove a Plan if

- (i) implementation of the Plan would result in a violation of the rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters;
- (ii) the applicant is conducting or has conducted land-disturbing activity without an approved Plan, or has received notice of violation on a previously approved erosion and sedimentation control plan and has not complied with the notice within the time specified in the notice;
- (iii) 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.
- (iv) 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;
- (v) Has failed to substantially comply with state rules or local ordinances and regulations adopted pursuant to the North Carolina Sedimentation Pollution Control Act.

In the event that a Plan is disapproved pursuant to this subsection and disapproved after the appeal process established in Section 17, the County shall notify the Director of the North Carolina State Division of Land Resources of such disapproval within ten (10) days. The County shall advise the applicant and the Director in writing as to the specific reasons that the Plan was disapproved.

(i) **Notice of Activity Initiation.** No person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.

(j) **Preconstruction Conference.** When deemed necessary by the approving authority a preconstruction conference may be required.

(k) **Display of Plan Approval.** A Plan approval issued under this article 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.

(l) **Required Revisions.** After approving a Plan, if the County either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the County shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity

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pursuant to an approved Plan, the County determines that the Plan is inadequate to meet the requirements of this ordinance, the County may require any revision of the Plan that is necessary to comply with this ordinance.

(m) Amendment to a Plan. Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the County, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

(n) Failure to File a Plan. Any person engaged in land-disturbing activity who fails to file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.

(o) Inspections and Records. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall 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 G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Section 7 Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

- (a) Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which 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 activities are 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 off-site 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, a Plan is to include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

Section 8 Design and Performance Standards

(a) Except as provided in Section 8(b)(2) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed 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, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

(b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:

- (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.
- (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
- (3) Settling Efficiency. Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 millimeter) size soil particle transported into the basin by the runoff of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Service's "National

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Engineering Field Manual for Conservation Practices” or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

- (4) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.
- (5) Ground Cover. Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 21 calendar days following completion of construction or development, whichever period is shorter.

SECTION 9 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
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 County 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;

June 3, 2013 – 6:00 p.m. Continued

- (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 County that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

Section 10 Borrow and Waste Areas

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the Mining Act of 1971, and waste areas for surplus materials other than landfills regulated by the Department's Division of Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

Section 11 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.

Section 12 Operations in Lakes or Natural Watercourses

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

Section 13 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 site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

Section 14 Additional Measures

Whenever the County determines that significant 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 will be required to and shall take additional protective action.

Section 15 Existing Uncovered Areas

- (a) All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation.
- (b) The County shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the County. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.
- (c) The County reserves the right to require preparation and approval of a Plan in any instance where extensive control measures are required.
- (d) This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

Section 16 Fees

- (a) The County shall establish a fee schedule for the review and approval of Plans.
- (b) In establishing the fee schedule, the County shall consider the administrative and personnel costs incurred for reviewing the Plans, inspecting the activity, and for related compliance activities.

Section 17 Plan Appeals

The appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:

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- (a) The disapproval or modification of any proposed Plan by the County shall entitle the person submitting the Plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
- (b) A hearing held pursuant to this section shall be conducted by the Johnston County Director of Utilities within 30 days after receipt of the request.
- (c) At least 7 days prior to the hearing, the Director of Utilities must publish a notice of hearing, at least once, in a newspaper of general circulation in the County.
- (d) The Director of Utilities must render a decision in writing within 7 days after the hearing.
 - (i) In the event that the appeal is not granted, the Director of Utilities must notify the Director of the North Carolina Division of Land Resources of the disapproval within 10 days.
 - (ii) The Director of Utilities must advise the applicant and the Director of the North Carolina Division of Land Resources in writing as to the specific reasons the request was disapproved.
- (e) If the Director of Utilities does not grant the appeal, the person submitting the erosion and sedimentation control plan has 15 days following the denial to appeal the County's decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d).
- (f) If any proposed erosion and sedimentation control plan is disapproved, the applicant may appeal County's decision directly to the North Carolina Sedimentation Control Commission.

Section 18 Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the County will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required 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 certificate of approval of each Plan.
- (b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the County while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the County determines 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, a notice of violation shall be served upon that person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance.
- (d) Investigation. The County 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.
- (e) Statements and Reports. The County shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

Section 19 Penalties

(a) Civil Penalties

- (1) Civil Penalty for a Violation. Any person who violates any of the provisions of this ordinance, or rule or order 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. The maximum civil penalty amount that the County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation.
- (2) Civil Penalty Assessment Factors. The County shall determine the amount of the civil penalty based upon the following factors:
 - (i) the degree and extent of harm caused by the violation,
 - (ii) the cost of rectifying the damage,
 - (iii) the amount of money the violator saved by noncompliance,
 - (iv) whether the violation was committed willfully, and
 - (v) the prior record of the violator in complying or failing to comply with this ordinance.
- (3) Notice of Civil Penalty Assessment. The Johnston County Stormwater and Environmental Manager shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under

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G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for a hearing.

- (4) Hearing. A hearing on a civil penalty shall be conducted by the Johnston County Board of Adjustment in accordance with the Johnston County Code of Ordinance Section 14-594(b)(c).
 - (5) Final Decision. The Planning Director shall notify the applicant of the board's decision in writing and shall file a copy of it with the County Planning Department and with the Johnston County Environmental and Stormwater Manager.
 - (6) Appeal of Final Decision. A decision of the board of adjustment on an application for appeal may be appealed to the superior court by an aggrieved party. Such appeal shall be in the nature of certiorari and must be filed within 30 days of the filing decision in the office of the planning department.
 - (7) Collection. If payment is not received within 30 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
 - (8) Credit of Civil Penalties. Civil penalties collected pursuant to this ordinance shall be credited to the general fund of Johnston County as nontax revenue.
- (b) Criminal Penalties. 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 which may include a fine not to exceed \$5,000 as provided in G.S. § 113A-64.

Section 20 Injunctive Relief

(a) Violation of Local Program. Whenever the governing body of Johnston County has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by County, or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.

(b) Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, 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 the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

Section 21 Restoration After Non-Compliance

The County may require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

Section 22 Severability

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

4. Compliments to Staff

Chairman Jeffrey P. Carver complimented Stormwater Administrator Jamie Guerrero on his recent assistance to a citizen with a stormwater runoff matter. Chairman Carver noted the citizen received a fast response and was satisfied. Chairman Carver stated Mr. Guerrero's response is an excellent example of customer service and he complimented the entire Utilities staff for their work.

5. Call for Public Hearing – Code of Ordinances Amendment – Open Space Fee In Lieu

Planning Director Berry Gray requested the Board to schedule a public hearing for the July 1, 2013 6:00 p.m. meeting for the purposes of allowing public comment and discussion on an amendment to the Code of Ordinances – Chapter 14 – Land Development Code as it relates to prorating the open space fee in lieu.

Staff/Workload Analysis for Erosion & Sediment Control Program

Johnston County has sufficient staff in place to effectively maintain its own Erosion & Sediment Control Program within its Public Utilities Department. The County currently conducts plan review and issues permits for development that requires additions to the public water system and storm water controls (all land disturbing projects one acre and above). In addition, the County is in the process of obtaining primacy to review and enforce a riparian buffer program.

Plan review and enforcement for all of these programs falls under the Development Engineer, Environmental and Stormwater Manager, Jamie Guerrero, P.E., CPSWQ. He currently conducts all development plan review and will add the review of erosion and sediment control plans to his responsibilities. The majority of the inspection responsibilities will fall to the Environmental Technician II and the Engineering and Environmental Technician. These positions will also be required to perform plan review. The Utilities Project Manager will conduct inspections on projects that fall under his department, primarily large utility projects, large commercial, and industrial projects. The Engineering CADD/GIS Technician, who conducts field verification of as-built mapping, will also be trained to inspect erosion and sediment control measures. Please refer to the attached organization charts for further clarification.

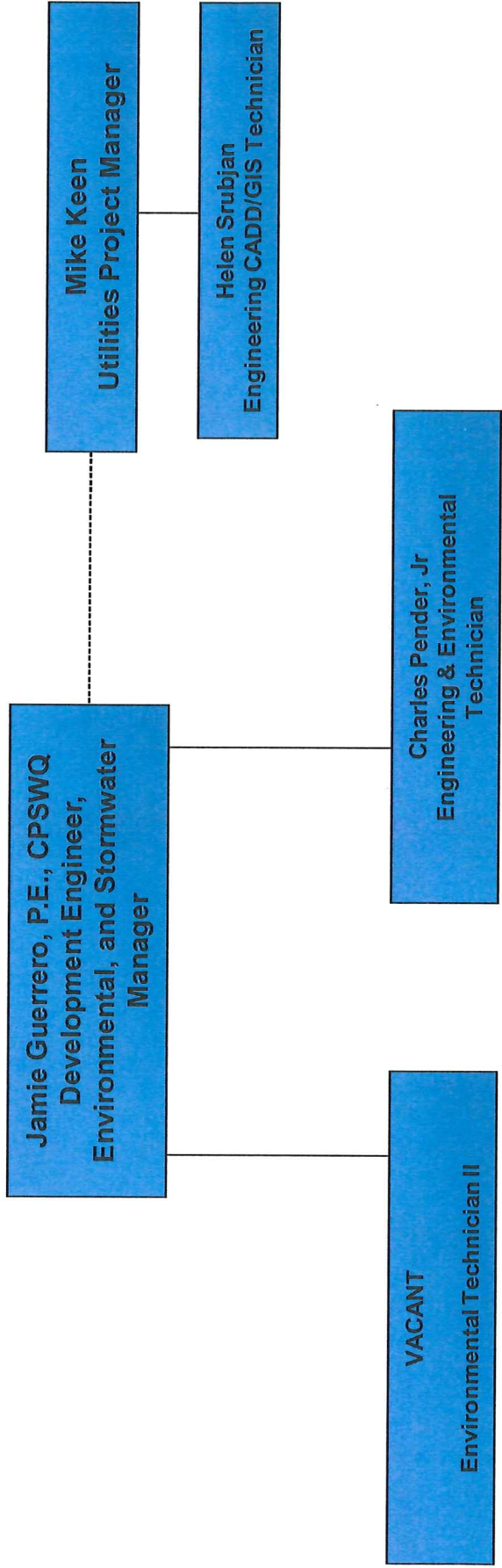
In 2012, the Public Utilities Department reviewed and inspected approximately 60 projects. To date, our department has reviewed 26 projects in 2013. Assuming development rate remains constant, we expect about 60 projects a year to require erosion and sediment control plans. On average, the review of an erosion and sediment control plan is expected to take 3 hours per project. The additional inspection and time needed to determine compliance with the plan is expected to be 3 - 12 hours per project .

Johnston County created the Environmental Technician II and the Engineering and Environmental Technician position to accommodate the additional inspection required for both the Erosion & Sediment Control program and the Riparian Buffer Program. Creating these positions allows the Development Engineer, Environmental and Stormwater Manager to reduce his inspection hours to accommodate the estimated 180 hours per year of additional plan review and administration.

The additional cost of running an Erosion & Sediment Control program will be offset by review fees. The County has set the review fees at \$250 per disturbed acre for the first 8 acres with a \$65 per acre fee for each additional acre.

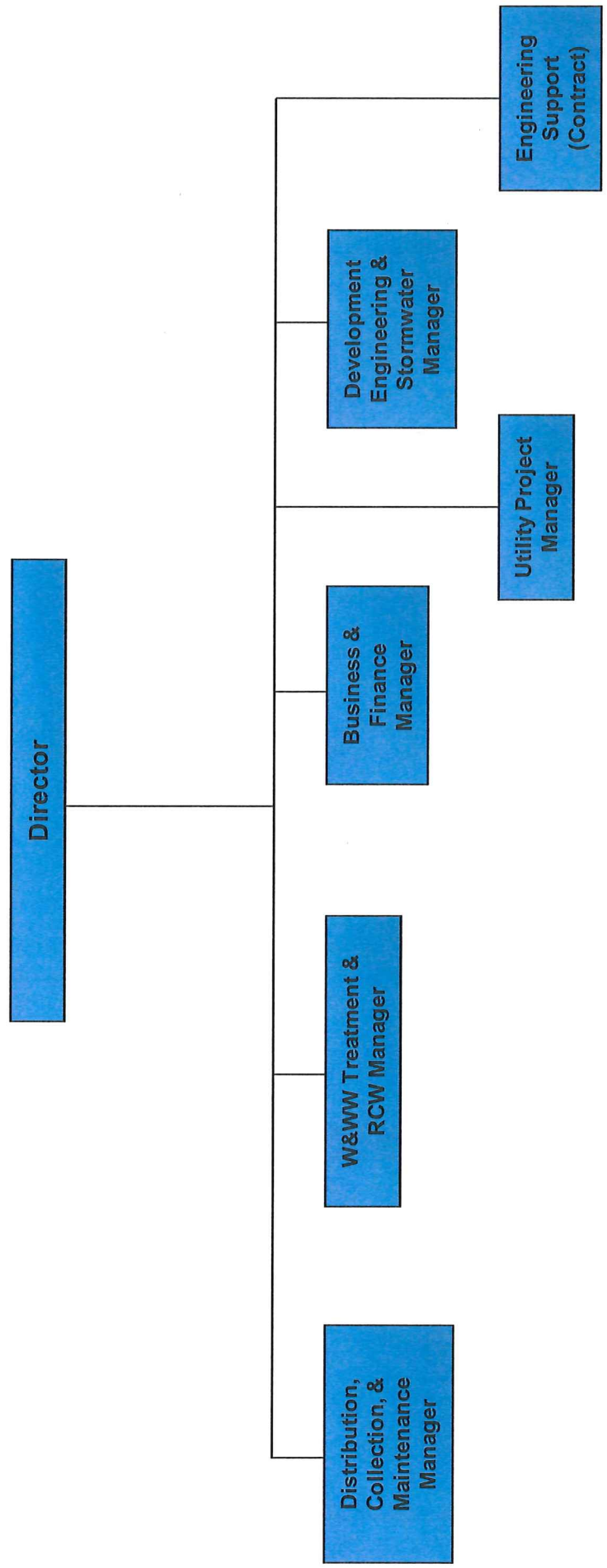


Department of Utilities Erosion & Sediment Control Program Staff





Department of Utilities Management Structure



MEMORANDUM OF AGREEMENT

BETWEEN

THE NORTH CAROLINA SEDIMENTATION CONTROL COMMISSION

AND

JOHNSTON COUNTY

This MEMORANDUM OF AGREEMENT is entered into between the **North Carolina Sedimentation Control Commission** (hereinafter, "Commission") and **Johnston County** (hereinafter, "Local Government," collectively, "Parties") for the purpose of clarifying their roles in the enforcement of the Sedimentation Pollution Control Act of 1973, N.C. Gen. Stat. Ch. 113A Art. 4 and any rules adopted pursuant to the Act (hereinafter collectively, "SPCA.")

Part I. Local Program Creation.

A. Model Ordinance

The Parties agree that the Commission shall do the following:

1. Per N.C. Gen. Stat. § 113A-54 (d) (1), provide a model erosion and sedimentation control ordinance (hereinafter, "model ordinance") for adoption by local governments who wish to operate a delegated local sedimentation and erosion program (hereinafter, "local program.")
2. Update its model ordinance upon changes in the SPCA.

B. Proposed Ordinance Review

The Parties agree that:

1. Local governments who choose to create and operate a local program may do so by ordinance (hereinafter, "local program ordinance".) However, the local government must submit the proposed local program ordinance to the Commission staff for review prior to adoption. Local governments must adopt the ordinance prior to submission to the Commission for approval.
2. North Carolina General Statute § 113A-60(b) requires the Commission to review, approve, approve as modified, or disapprove proposed local program ordinances based upon the minimum requirements of the SPCA.
3. The Commission shall review a local program ordinance submitted and, within 90 days of receipt thereof, shall notify the local government submitting the program that it has been approved, approved with modifications, or disapproved.

4. The local program's erosion and sedimentation control standards must equal or exceed those of the SPCA.

Part II. Responsibilities and Expectations of the Commission.

A. Local Program Review

The Parties agree that the Commission shall do the following:

1. Review periodically approved local programs for compliance with the SPCA. The results of the reviews shall be presented at the next quarterly meeting of the Commission.
2. If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement.
3. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.

B. Training and Education for Local Programs

The Parties agree that the Commission shall provide the following:

1. Educational programs in erosion and sedimentation control directed toward persons engaged in land-disturbing activities, general educational materials on erosion and sedimentation control, and instructional materials for persons involved in the enforcement of the SPCA and erosion and sedimentation control rules, ordinances, regulations, and plans.
2. Manuals and publications to assist in the design, construction and inspection of erosion and sedimentation control measures.
3. Periodic reviews of local erosion and sedimentation control programs and through the reviews provide recommendations to improve program administration.
4. Technical assistance in review of draft erosion and sedimentation control plans for complex activities.

C. Concurrent Jurisdiction

The Parties agree that the Commission shall maintain concurrent jurisdiction with the local government for land-disturbing activities and may take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

Part III. Responsibilities and Expectations of the Local Government.

A. Enforcement

The Parties agree that the local government shall administer its own local program ordinances, through the following:

1. Enforce the provisions of the SPCA.
2. Administer the SPCA for all land-disturbing activity within its jurisdiction, including existing sites at the time the local government received program delegation. The Commission may continue to administer the SPCA over specific projects under enforcement action upon mutual agreement with the local government. The local program is not responsible for activities over which the Commission has exclusive jurisdiction.
3. Employ a sufficient number of qualified personnel. Qualified personnel shall be competent to review sedimentation and erosion control plans and conduct inspections of land-disturbing activities.
4. Provide adequate resources for plan review and compliance inspections.

B. Reporting

The Parties agree that the local government shall provide the following reports/information:

1. Monthly activity report to the Commission in the form adopted by the Commission.
2. Copy of all Financial Responsibility/Ownership forms to the Division of Energy, Mineral and Land Resources when draft erosion and sedimentation control plans are received.
3. Copy of Notices of Violation to the appropriate regional office of Division of Energy, Mineral and Land Resources.
4. Current contact information for their local program to the Division of Energy, Mineral and Land Resources.

C. Sediment and Erosion Control Plans for Land-Disturbing Activity Review

The Parties agree that the local government shall review erosion and sedimentation control plans for land-disturbing activity (hereinafter, "plans") submitted to its local program under the following standards:

1. Review plans within 30 days of receipt of a new plan and within 15 days of a revised plan.
2. Approve, approve with modifications, approve with performance reservations, or disapprove draft plans in conformance with the basic control objectives contained in 15A NCAC 04B .0106.

3. Notify in writing the person submitting the plan that it has been approved, approved with modifications, approved with performance reservations or disapproved within 30 days of receipt of a new plan and within 15 days of a revised plan.
4. Include in written notifications of plan approval the following:
 - a. reference to NPDES General Stormwater Permit NCG 010000,
 - b. expiration date of the approval,
 - c. the right of periodic inspection, and
 - d. condition the approval upon the applicant's compliance with federal and State water quality laws, regulations and rules.
5. Enclose with all written permit notifications the following
 - a. NPDES General Stormwater Permit NCG 010000, and
 - b. Certificate of Approval for posting at the site of the land-disturbing activity.

D. Inspection

The Parties agree that the local government shall inspect all sites undergoing land-disturbing activity under the following standards:

- a. Periodically and regularly inspect sites undergoing land-disturbing activity within its jurisdiction. Periodically and regularly means with sufficient frequency to effectively monitor compliance with the SPCA and rules adopted pursuant to the SPCA and the local erosion and sedimentation control ordinance.
2. Document all inspections in writing, including electronic documents.
3. Inspection reports shall include, at a minimum, all information in the model sedimentation inspection report developed by the Commission.
4. Maintain inspection records for active projects in accordance with State and local record retention policies.

E. Enforcement

The Parties agree that the local government shall enforce its local program ordinance under the following standards:

1. Issue Notices of Violation (hereinafter, "NOV") for any significant violation of the SPCA, rules adopted pursuant to the SPCA, or the local erosion and sedimentation control ordinance documented in an inspection report. An NOV shall be issued to the persons responsible for the violations, pursuant to N.C. Gen. Stat. § 113A-61.1.
2. The NOV shall specify the following:
 - a. describe the violation with reasonable particularity
 - b. request that all illegal activity cease
 - c. the actions that need to be taken to comply with the SPCA and the local ordinance

- d. a date by which the person must comply with the SPCA and the local ordinance
 - e. inform the violator that any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and the local ordinance
3. Undertake appropriate enforcement actions, including injunctive relief, or assessment of civil penalties for an initial penalty or a daily penalty for continuing violations.
 4. Require a person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation.

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IN WITNESS HEREOF, the Parties enter into this Memorandum of Agreement, this the _____ day of _____ 2013.

SEDIMENTATION CONTROL COMMISSION

JOHNSTON COUNTY

By: _____
Robin K. Smith
Chair
Dated: _____

By: _____
Rick J. Hester
County Manager
Dated: 9/3/13

**DIVISION OF ENERGY, MINERAL AND LAND
RESOURCES**

Approved as to Form

By: _____
Tracy E. Davis
Director
Dated: _____

David Mills
Johnston County Attorney
Dated: 9/3/13

Approved as to Form

Counsel to the Commission
Dated: _____

Appendix I.

NORTH CAROLINA GENERAL STATUTES *Sedimentation Pollution Control Act (Ch. 113A Art. 4)* (selected statutes)

§ 113A-54. Powers and duties of the Commission.

- (d) In implementing the erosion and sedimentation control program, the Commission shall:
- (1) Assist and encourage local governments in developing erosion and sedimentation control programs and, as a part of this assistance, the Commission shall develop a model local erosion and sedimentation control ordinance. The Commission shall approve, approve as modified, or disapprove local programs submitted to it pursuant to G.S. 113A-60.

§ 113A-56. Jurisdiction of the Commission.

- (a) The Commission shall have jurisdiction, to the exclusion of local governments, to adopt rules concerning land-disturbing activities that are:
- (1) Conducted by the State.
 - (2) Conducted by the United States.
 - (3) Conducted by persons having the power of eminent domain other than a local government.
 - (4) Conducted by a local government.
 - (5) Funded in whole or in part by the State or the United States.
- (b) The Commission may delegate the jurisdiction conferred by G.S. 113A-56(a), in whole or in part, to any other State agency that has submitted an erosion and sedimentation control program to be administered by it, if the program has been approved by the Commission as being in conformity with the general State program.
- (c) The Commission shall have concurrent jurisdiction with local governments that administer a delegated erosion and sedimentation control program over all other land-disturbing activities. In addition to the authority granted to the Commission in G.S. 113A-60(c), the Commission has the following authority with respect to a delegated erosion and sedimentation control program:
- (1) To review erosion and sedimentation control plan approvals made by a delegated erosion and sedimentation control program and to require a

revised plan if the commission determines that a plan does not comply with the requirements of this Article or the rules adopted pursuant to this Article.

- (2) To review the compliance activities of a delegated erosion and sedimentation control program and to take appropriate compliance action if the Commission determines that the local government has failed to take appropriate compliance action.

(1973, c. 392, s. 7; c. 1417, s. 4; 1987, c. 827, s. 130; 1987 (Reg. Sess., 1988), c. 1000, s. 4; 2002-165, s. 2.5; 2006-250, s.2.)

§ 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 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. Local governments are authorized to create or designate agencies or subdivisions of local government to administer and enforce the programs. 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. 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.
- (b) The Commission shall review each program submitted and within 90 days of receipt thereof shall notify the local government submitting the program

that it has been approved, approved with modifications, or disapproved. The Commission shall only approve a program upon determining that its standards equal or exceed those of this Article and rules adopted pursuant to this Article.

- (c) If the Commission determines that any local government is failing to administer or enforce an approved erosion and sedimentation control program, it shall notify the local government in writing and shall specify the deficiencies of administration and enforcement. If the local government has not taken corrective action within 30 days of receipt of notification from the Commission, the Commission shall assume administration and enforcement of the program until such time as the local government indicates its willingness and ability to resume administration and enforcement of the program.
- (d) A local government may submit to the Commission for its approval a limited erosion and sedimentation control program for its jurisdiction that grants the local government the responsibility only for the assessment and collection of fees and for the inspection of land-disturbing activities within the jurisdiction of the local government. The Commission shall be responsible for the administration and enforcement of all other components of the erosion and sedimentation control program and the requirements of this Article. The local government may adopt ordinances and regulations necessary to establish a limited erosion and sedimentation control program. An ordinance adopted by a local government that establishes a limited program shall conform to the minimum requirements regarding the inspection of land-disturbing activities of this Article and the rules adopted pursuant to this Article regarding the inspection of land-disturbing activities. The local government shall establish and collect a fee to be paid by each person who submits an erosion and sedimentation control plan to the local government. The amount of the fee shall be an amount equal to eighty percent (80%) of the amount established by the Commission pursuant to G.S. 113A-54.2(a) plus any amount that the local government requires to cover the cost of inspection and program administration activities by the local government. The total fee shall not exceed one hundred dollars (\$100.00) per acre. A local government that administers a limited erosion and sedimentation

control program shall pay to the Commission the portion of the fee that equals eighty percent (80%) of the fee established pursuant to G.S. 113A-54.2(a) to cover the cost to the Commission for the administration and enforcement of other components of the erosion and sedimentation control program. Fees paid to the Commission by a local government shall be deposited in the Sedimentation Account established by G.S. 113A-54.2(b). A local government that administers a limited erosion and sedimentation control program and that receives an erosion control plan and fee under this subsection shall immediately transmit the plan to the Commission for review. A local government may create or designate agencies or subdivisions of the local government to administer the limited program. Two or more units of local government may establish a joint limited program and enter into any agreements necessary for the proper administration of the limited program. The resolutions establishing any joint limited program must be duly recorded in the minutes of the governing body of each unit of local government participating in the limited program, and a certified copy of each resolution must be filed with the Commission. Subsections (b) and (c) of this section apply to the approval and oversight of limited programs.

- (e) Notwithstanding G.S. 113A-61.1, a local government with a limited erosion and sedimentation control program shall not issue a notice of violation if inspection indicates that the person engaged in land-disturbing activity has failed to comply with this Article, rules adopted pursuant to this Article, or an approved erosion and sedimentation control plan. The local government shall notify the Commission if any person has initiated land-disturbing activity for which an erosion and sedimentation control plan is required in the absence of an approved plan. If a local government with a limited program determines that a person engaged in a land-disturbing activity has failed to comply with an approved erosion and sedimentation control plan, the local government shall refer the matter to the Commission for inspection and enforcement pursuant to G.S. 113A-61.1.

(1973, c. 392, s. 11; 1993 (Reg. Sess., 1994), c. 776, s. 7; 2002-165, s. 2.8; 2006-250, s. 3.)

**JOHNSTON COUNTY FINANCIAL RESPONSIBILITY/OWNERSHIP FORM
SEDIMENTATION POLLUTION CONTROL ACT**

No person may initiate any land-disturbing activity on one or more acres as covered by the Act before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Johnston County Department of Public Utilities. (Please type or print and, if the question is not applicable or the e-mail and/or fax information unavailable, place N/A in the blank.)

Part A.

1. Project Name _____
2. Location of land-disturbing activity: City or Township _____
Highway/Street _____ Latitude _____ Longitude _____
3. Approximate date land-disturbing activity will commence: _____
4. Purpose of development (residential, commercial, industrial, institutional, etc.): _____
5. Total acreage disturbed or uncovered (including off-site borrow and waste areas): _____
6. Amount of fee enclosed: \$ _____. The application fee of \$250.00 per acre (rounded up to the next acre) is assessed for the first 8 acres and an additional \$65 per acre for each additional acre (rounded up to the next acre).
7. Has an erosion and sediment control plan been filed? Yes _____ No _____ Enclosed _____
8. Person to contact should erosion and sediment control issues arise during land-disturbing activity:
Name _____ E-mail Address _____
Telephone _____ Cell # _____ Fax # _____
9. Landowner(s) of Record (attach accompanied page to list additional owners):

Name Telephone Fax Number

Current Mailing Address Current Street Address

City State Zip City State Zip
10. Deed Book No. _____ Page No. _____



Part B.

1. Person(s) or firm(s) who are financially responsible for the land-disturbing activity (Provide a comprehensive list of all responsible parties on an attached sheet):

Name E-mail Address

Current Mailing Address Current Street Address

City State Zip City State Zip
Telephone _____ Fax Number _____

2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the designated North Carolina Agent:

_____			_____		
Name			E-mail Address		
_____			_____		
Current Mailing Address			Current Street Address		
_____			_____		
City	State	Zip	City	State	Zip
Telephone_____			Fax Number_____		

(b) If the Financially Responsible Party is a Partnership or other person engaging in business under an assumed name, **attach a copy of the Certificate of Assumed Name.** If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent:

_____			_____		
Name of Registered Agent			E-mail Address		
_____			_____		
Current Mailing Address			Current Street Address		
_____			_____		
City	State	Zip	City	State	Zip
Telephone_____			Fax Number_____		

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath (This form must be signed by the Financially Responsible Person if an individual or his attorney-in-fact, or if not an individual, by an officer, director, partner, or registered agent with the authority to execute instruments for the Financially Responsible Person). I agree to provide corrected information should there be any change in the information provided herein.

Type or print name

Title or Authority

Signature

Date

I, _____, a Notary Public of the County of _____

State of North Carolina, hereby certify that _____ appeared personally before me this day and being duly sworn acknowledged that the above form was executed by him.

Witness my hand and notarial seal, this _____ day of _____, 20_____

Seal

Notary

My commission expires_____