**Minimum Design Criteria (MDC) Team
7/27/2015
Triangle J COG, Durham**

|  |  |
| --- | --- |
| **Attendees** |  |
| ***Team Members*** |  |  | ***Others*** |  |
| Eban Bean Bradley Bennett Jonathan BivensTim ClinkscalesTracy DavisBoyd DevaneHunter FreemanMike GallantJoe Hinton Marc HouleRon HorvathBill HuntLinda Lewis | **[ ]** **[x]** [x] [x] [ ] [x] [ ] [ ] [ ] [x] [ ] [ ] [x]  | Brian LipscombAnnette Lucas Mike MacIntyreTodd Miller Cameron MooreTom MurrayRobert PattersonDerek PielechPeter RaabeJoe FaulknerJD SolomonVirginia SpillmanToby VinsonRob Weintraub | [x] [x] [ ] [x] *[ ]* [ ] [ ] [ ] [x] [x] [x] [x] [ ] [x]  | Julie Ventaloro, NC DEMLRSue Homewood, NC DWRBrian Eames, Durham CountyRobert Josey, NC DEMLRLauren Witherspoon, City of RaleighMcKenzie Gentry, City of RaleighChester Patterson, City of Burlington Nick Serrano, ASLA Mike Mullis, Mullis Design Group NC Board of Landscape Architects Meg Nealon, Chairman Stan Williams, Member Chuck Smith, Member Mark Wilson, Vice Chair Jeff Gray, Legal Counsel |

 **Quote of the Day:** Jonathan – Tim, all your plans will be in gold leaf with encrusted diamonds.
 Tim -- We do believe in the gold standard.

**Rule Review continued**
Annette - Today we’re going to cover the “process” rules: 2H .1003 (signatures, procedures); 2H .1006 (standard permitting process); 2H .1007 (fast-track permitting process: application); 2H .1008 (fast-track permitting process: as-built package);2H .1009 (permit transfers/renewals). Next month, we’ll be looking at rules for coastal counties, and NPDES rules.

🌢

**Rule 2H .1006**
Todd – What if people get in the middle of a project and they discover there’s a better way? How would modification work?
Linda – In standard process, they’d do a major modification.
Todd – Where if they’re in the fast-track, they’d be able to make the changes on the fly.
Linda – I get calls saying they submitted an application last month and want to make a change. Then we’ll find out about modifications during inspection. Other times, they’ll want to do a mod on their own. Sometimes it’s not built yet. I think that kind of modification where it’s not built at all could come in fast-track.
Annette – Say they had an existing permit through the regular process. Now they want a complete new design. Could they still go through fast track?
Linda – We would transfer permit to new permit holder, and they would submit a modification.
Todd – I was thinking about project in Swansboro where they discovered they had better soils than they thought, but they didn’t want to stop the process to do a modification.
Bradley – If they choose to start over and follow the MDC, then they could do fast track.
Linda – Then we would probably rescind the first permit.
Jonathan – If we have a mining permit, we want to switch to reclamation plan with DOT, we’re required to close out the mining permit. We can’t switch it without closing it out, getting a release, sign it off their books before we can get the reclamation plan. I think you need to allow flexibility to let it switch midstream – any close out requirements, bonds required?
Linda – Not that I’m aware of. For a project half built, what we do with municipalities implementing state stormwater for us. Muni’ is issuing a permit on top of existing state stormwater permit. We tell the city go ahead and permit entire thing, including what we permitted, then send us a copy of their permit, then we rescind the existing state stormwater permit.
Jonathan – I’m good with that. Other agencies are not. That’s why I asked the question.

Item (2) List of submittal requirements
Annette – We have all these lists in the rules stating what has to be provided because RRC requires us to spell out in rules anything we will require people to do. We are asking for two hard copies and one digital copy. This is in the hope that one day we can move to a digital system. The State doesn’t provide us with those big screens for reviewing plans so we still need paper copies for now.
[goes through what rule will require be shown on plans]
Is everyone okay with minimum size of plans being 22 by 34 inches? [no comments from team]
What we tried to do is make items in fast track as parallel as possible with regular process. Most of these items are items we already require.
Todd – Is there a need for authorization by property owner?
Sue Homewood – That’s in 2H .1003.
Todd – In the case of recording these documents before submit an application, do we really want to encourage people to do that before the review?
Annette – We’ve tried to word it so that they can give us the recorded deed restrictions or proposed. Nearly all the time, all that’s not done at the time they submit for their permit.
Linda – To approve modification, we would want to see copy of what’s been recorded.
Todd – Should we just ask for copies of proposed?
Linda – It doesn’t matter to me.
Todd – Instead of saying it’s an option to submit either recorded documents or proposed documents, seems you would want to go through review first.
Linda – It may not matter. Even when we go through the documents after it’s permitted, they’re not right. Language is often left out, so many mistakes.
Jonathan – Todd’s point is that it has a better chance of getting recorded property after it’s reviewed/permitted. Letting them have proposed is a good idea. You’ll still have some that have to change, but you’ll have a better shot.
Annette – Maybe the verbiage could be more clear.
Todd – You are evaluating the documents you’re submitting, and if they’re not satisfactory, you’ll require changes. Don’t want several versions floating out there.
Linda – Drainage easements will always be on the recorded plat. That won’t get done until after permit is issued anyway.
Annette – Will change to something like: Encourage proposed deed restrictions and protective covenants and drainage easements for new projects so they can be reviewed before they are recorded.
Linda – Do we go into making sure we get plans of the site itself (parking, buildings, etc), not just the SCMs?
Annette – We do say all existing and proposed built-upon area.
Linda – What about lot layouts? Does this cover that? Probably not. Say “subdivision lots.”
Jonathan – That language could lead you to think house footprint and driveway.
Linda – Maybe subdivision lots should go under different category?
Boyd – Does that apply to commercial?
Annette – Intended to apply to everything.
Linda – There are people out there that may not show lot lines for subdivision if it’s not in the rule.
Annette – How do we deal with issue that we want to see all proposed BUA except those associated with single-family lots.
Boyd – Do we really care? We don’t always know how big a lot they’ll divide commercial lot into. I lock them in – can’t go over whatever impervious. Do we need to know exactly where it is?
Sue Homewood – You can’t know you’re meeting setbacks necessarily if you’re not showing lot lines, where streams run across lots. If they had 50 acres with 6 streams on it, they should show how they’re dividing properties to meet setbacks.
Tim – It says in here to show all boundaries and setbacks.
Sue Homewood – You have to show where all the BUA will be.
Boyd – I got a project right now that they don’t know exactly where it will be.
Sue Homewood – So how can you review the stormwater plan?
Tim – Because it’s getting to the BMP, and it’s in the drainage area -- that’s how.
Sue Homewood - I’m thinking how can they design their BMP?
Tim – They’ll know the size, not the orientation.
Jonathan – They could have outparcels they don’t know what will be on that, without knowing the BUA. In subdivision, you don’t know what house plans, driveway orientation, anything.
Linda – With commercial subdivision, all lots draining to one BMP, we require every lot owner get an offsite permit from us to use that facility.
Sue Homewood – Original permit is more conceptual.
Linda – It’s the master permit that contains the design criteria for the BMP proposed and assigns how much BUA is assigned to each lot. This is for commercial only. Don’t do that for residential – that’s a little overwhelming in large subdivisions. That’s why we hand those off to HOA.
Annette – Part of the issue is that this rule requires it to show proposed BUA. Maybe something like this: . . . except for BUA associated with single family residential lots and outparcels on commercial developments, subdivision lot lines.
Rob W – In the past, what you’re asking for in plan is existing built-upon areas. Calculations say what the future BUA is. So it doesn’t matter how much BUA per lot. Why do we want to illustrate future stuff or break it down any more than that?
Linda – I don’t understand the question.
Jonathan – Why do we want to show this nebulous information which is probably not correct on the plan? Our BMPs are designed for 250,000 SF, or 25,000 SF for lot, why not just do that instead of putting something artificial on plan?
Virginia – To record a plat, you need a BUA allocation for each lot. In order to design, you need to know how much BUA each lot will have.
Jonathan – That doesn’t mean I can draw shapes on a plan that are accurate. A note can have it rather than a drawing.
Linda – When I write a permit for commercial development with lots, we don’t require that every lot be shown how it will be built out for master permit. We assign an overall BUA for the BMPs, then divvy it out for each lot. We don’t require them to show us where that BUA is on the lot at that time. They will when they get their final permit. We’re saying you show contours and drainage patterns for all existing and proposed BUAs except for SF lots, commercial outparcels. We need opportunity to make sure what we are permitting is within limitations of what their BMP can withstand. Just because we write permit that says BMP is capable of treating so much BUA, we don’t know that what they want to do is within that. Overbuilding is a big issue right now on our permits. That’s what happens if don’t have a plan that shows where building and parking goes. You can’t check amount of BUA. If we leave it open ended with allocation, blank site -- If someone comes to us for a permit, we need to see BUA on a plan.
Boyd – Most of the time BUA is on the plan.
Linda – I have run across those times – client comes in and wants a 2-acre parcel instead of ½ acre. I tell them to come back and modify plan.
Sue Homewood- Is that because they’re doing common elements -- is that why they’re coming back?
Linda – When put road in, permit covers that, and still don’t know how will subdivided rest of property. When you figure it out, come back and modify. But for now, the road is all you’re permitted for.
Sue Homewood – Maybe we work in the concept of phasing here somehow. I don’t think what we’ve drafted accounts for those conceptual commercial scenarios. Might have to allow them to come in without all the information.
Annette – I agree with Linda that with standard process, they’re getting a review. We look at size of practice. Bill Hunt has found that 20-30% of practices going in are undersized. Rob and Jonathan – let’s move on, but staff feel like we need to check the design based on where BUA is going. We’ll work on the flexibility in the language some more.
Rob W – I disagree that subdivision or site plan is separate from building permit. We’re trying to enforce something at the wrong step in the process.
Linda – Georgette is always advocating for getting county building inspector involved in this process, but apparently, that’s not possible.

Lease/Sales Agreement
Rob W – Two items that are more trivial but could stimulate conversation: 2(c) – copy of lease or sales agreement – that’s not public information. If you say you can black out terms – why don’t we have acknowledgement that there is a lease or sales agreement instead of making them black out terms?
Annette – This came from the application, not the rule. How do others feel about this?
Jonathan – I don’t think that’s public information. On other contract forms, you have to submit a letter that you have an agreement with property owner, get property owner to sign they can make an application for this property.
Sue Homewood – I think that’s the intent. If person applying is not the landowner, gives us something that says person has legal authority to apply. We’ll fix that.
JD – Helpful to know what’s in the rule already versus what’s new.
Sue Homewood – Some of new stuff comes from years of writing permits, needs updating.
Bradley – There’s a part of our statute that talks about issuing permits where person has to show they’re financially responsible.
Jonathan – This has two specific documents that aren’t public information.
Digital copies
Rob W – Why put the hard copies/digital copies in a rule? Can you just say acceptable format as determined by staff?
Jonathan – Tim, all your plans will be in gold leaf with encrusted diamonds.
Tim - We do believe in the gold standard.
Annette – I’ll ask RRC the question.
Jonathan – Are we going to see this information on the application form? Can you reference the application?
Annette – That’s an emphatic “no” from the RRC. That’s rules without rulemaking.
Peter – Rules review process is now far more specific now to eliminate subjectivity.

Todd - f(1) change “engineer” to “designer.”
Tim – Is “engineer” in code right now?
Annette – I don’t think so. I think that was on application.
Tim – If it says it now, that means only engineers should be submitting.

Linda – In f(2), you didn’t take any of our comments about location map? I got a location map one time that was two state road numbers. No clue where it was. “Nearest major intersection with one, two or three digit road numbers”
Brian L – What if you’re in a rural county with no nearby major intersection?
Linda – Even those.

Jonathan – In f(1), why do we need term “firm” in addition to “designer”?
Jonathan – I can simplify item 2 a little. Just require people to put a quad map. Quad map is universal thing, with project shown, gives latitude and longitude.
Marc – We already have a quad map requirement.
Jonathan – If you can meet it with a quad, you don’t need location map.
Linda – If quad map disappears, we have nothing on the plans that shows us where this project is.
Tim – Biggest thing is not requiring it to be to scale.
JD – Might want written description of where it is, roads and intersection.
Tim – This is only for regular submittal, not fast track.
JD – My bet is it will be made same in both places.
Linda – It’s more about having something on the set of plans itself, not a separate page. Item (f) will be on the plans.
Annette – Anything else on Item 2?

Item (3) Division Review of Applications
Annette – We would like authority in rule to return an application if required information is not provided after division has notified and given them a chance to submit the required information. We’ve had a policy about this, but it hasn’t been in a rule.
Rob W – You said that application, you review it for completion, then you review what’s there. Is that what you’re saying is in 3(a)(i)(1)? My question is why can’t you make the completion review 30 days? Not fair to applicant to wait 90 days to find out there’s a missing check.
Linda – The pendulum has swung so many ways on this issue. Years ago when I was swamped, they were getting irritated it was taking 60 days or so to tell them they missed a signature. That’s when we started the completion review. Then they were getting irritated that they were getting letters pointing out that they missed few little things, and we didn’t accept application until they got it right. If you put in the rules that a completeness review will be done, keep in mind that it gets looked at in different ways by different folks.
Tim – Odds you’ll get a complete review is small, so just assume it’ll be 30 days, then 90 days.
Jonathan – I think 90 days is ample time if you get the information you need. You don’t need another way to extend it.
Tim – If you submit after 30 days, it shouldn’t be 90 more days to get next set of comments. Should be 45 days the second time.
Annette – To me, completeness review should be done by consultant before submit the plans. If we have list in the rule for what’s required, why are they having state do their QA/QC for them?
Jonathan – I don’t disagree, but is that happening?
Tim – There’s redundancies, too much paperwork. That’s why sometimes there’s not completeness.
JD – I like that quick 2, 3 week check, while 90 days is still clicking along.
Annette – In wetlands, consultants would call and ask when I was going to review the plans. I said I will review the plans within 30 days. That’s regardless of what you submitted was garbage or wonderful and complete application. Statutorily, I had 60 days, but by policy was shortened to 45 days. I never came close to that time period. If I had to send you a hold letter or something, it would go back in queue, 30 days. People want to know how long until you get a response from the reviewer? Our statute gives us 90 days, but we want to streamline, have staff tighten it up to 60, 45 days.
Jonathan – Won’t you do a completeness review anyway?
Annette – Staff would review the whole thing – ready to permit, not to permit.
Tim – If you’re talking about two 90 days, that’s almost half a year. Too long.
JD – If it had to be accepted in 90 days, than it would police itself.
Annette – It’s hard for us to promise that you’ll get your permit in 90 days regardless of the quality. I like that the applicant/consultant control their own fate, follow the rule. If you give us everything, even except for a couple minor things, they’ll have no problem getting their permit.
JD – People don’t want to admit it, but some staff who don’t like certain applicants, reviews get delayed.
Annette – I liked everyone equally.
Jonathan – I agree that you should control your own destiny. If permit goes over time due to our fault, no extension. If they send in garbage, you notify them, then takes 60 days more with garbage. If someone submits you a complete package, should be some sort of reward for doing that. This is very open ended the way it is here. We do significant reviews in 10-15 days to DOT, people we have contracts with. Permitting items do drag out – still needs to be defined.
Virginia – We get 10 business days to send comments back. Then there’s 12 reviews, and everyone gets 10 days -- all kinds of reviews. If they reply within 5 days, they get 5 days. If longer than 5 days, and you have major comments, then you have another 10 days. There is incentive to resubmit in timely manner. If you get comments, and you’re not getting anywhere, you call the engineer and make sure you’re on the same page.
JD – Different process there, TRC.
Virginia – This is a long process, water/sewer, stormwater, watershed, planning, etc.
Jonathan – TRC is typically before you do the submittals. Then you submit different parts of plans, utilities, etc – all subject to tight timeframes both ways.
Virginia – Average for designer submitting in timely manner, assume 2 – 2.5 months to go through TRC process. We also offer sketch plan review, before too much design, make sure you’re going the right way.
Mckenzie Gentry - Raleigh is similar. Doesn’t depend on the turnaround time of the engineer. We have different submittal types, different reviews. 2-3 months for a project.
Jonathan – 90 day clock is the issue. We have 10 day clock on every submittal except entire bridges, which get 15.
Sue Homewood – I would kill to be able to do a turnaround time for permits. Would love to have less projects to work on and give everyone a review in 5 days. Without support and staff, there’s a level we just can’t function.
Jonathan – We understand that. But the 90 plus 90 --
Linda – Do you want to do it like Coastal Management does? Clock starts ticking. Add info requested, clock stops. When info is submitted, clock starts ticking again.
Annette – Rewards people who do sloppy stuff at beginning.
Jonathan – If you get all information 30 days prior to 90 days expiring, 90 days is still good.
Tim – Doesn’t change the timeframe. 90 days is too many.
JD – No intermediate approval like with local government that keeps process going. I know along the way if I’m not going to make 90 days. Now that this is going to rules, someone can sue you if you don’t follow the rules.
Sue Homewood – Every completeness review takes away from time doing technical review.
Jonathan – Maybe we need to talk about the whole thing? Revise process and shorten it. Is that possible? Someone can wait until Day 89 to tell you to resubmit or ask comments.
Annette – We’re not going to be able to resolve this right now. 90 days is what we have in statute. We need to ask our leaders if tightening that up is something we want to do. Staff is not in a position because we have to adhere to other parties. Tim, I hear you. Six months is unacceptable -- to get a comment on day 89, then not get your permit on the next day 89. Jonathan, we’ve heard you about completeness review. We need to talk to staff about how they feel about that taking time from technical review. We will try to address your issues as much as we can.

Item (b) – Public notice
Peter – Hard to provide comments on something that’s not a final product.
Jonathan – I’m good with that. Make sure we have a complete package, then put out the complete package for comments. This could add a 30-day comment period. All this needs to be rolled into the 90 days, which is itself too long.
Bradley – Public notice is not a regular process. This just says the Director may do that.
Tim – Has there ever been one?
Bradley – Not that I know of.
Sue Homewood – Right to have a public hearing is in statute.
Bradley – We do some individual wastewater or certain individual stormwater permits every time, but not these types of permits typically.
Rob W – How does someone find out about raising issue to Director for public meeting? Is there a whole separate set of rules that guide the public meeting?
JD – Director can make it any time.
Jonathan – If they’re going to have a public meeting, make it so have to advertise by day 30. Why can’t you do that? There needs to be something reasonable built in here.
JD – Usually you know well in advance whether the Director’s going to call that card or not. Because it’s a controversial project. On a normal project, Director is not going to want the political heat of slowing you down. What Peter said is right. You don’t public notice until there’s a final document with technical review.
Jonathan – it doesn’t have to be 100% complete for Corps projects.
JD – Corps projects, like NEPA projects, have public input at different stages. But when you do that public notice, it’s got to be final.
Jonathan – I understand. Complete to the point that it’s clear what’s happening.
Rob W – Is there a separate set of rules that guide these things, independent? Why do we have to address it within this?
JD – You can have this item up front and not have it here in this rule.
Bradley – That’s where it was before -- final action on permits. If that makes people feel better, we can include that in that spot instead. We’ll look back at old rule -- Director decision making -- and fit it there.

Item 3(c) –Division investigations
Tim – This doesn’t need to be in a rule.
Bradley – Regardless of if we take it out of the rule, it’s in the statute. What happens is that the statute is general authority for Commission. Rule helps you figure out how to carry it out.
Tim – I understand, but it doesn’t need to be in rule. If Director is involved, applicant won’t be happy anyway. What are “such investigations”? Is it related to Item 3(b)?
Annette – We should probably just say “investigations.”
Linda – Deemed necessary to write permit?
Annette – To determine compliance with requirements of this Section. Take out “lends assistance. . . .”
Todd – Specify that this applies to the certain project, don’t leave so wide open to investigating anything.
Jonathan – I thought we said if you have wetlands delineated or streams determined, that won’t be investigated or changed?
Linda – Sometimes applicant will say you need to go out to site to see for yourself – proximity of site to stream, how land lays, flows, any number of reasons. Ability to go out there before we write permit and have access to property is what this is for.
Jonathan – Open ended. Can you reevaluate wetlands or soil types, those kinds of things? All of a sudden, all engineering will need to be done. May change viability of the project.
Linda – If we hadn’t been to site, there would be no judgement on that.
Jonathan – Does your investigation allow you to go back and redo work done by professionals?
Annette – I think yes. For example, one time someone proposed to put a biocell adjacent to a wetland. I was wondering about separation from SHWT. I brought our Raleigh Regional Office soil scientist to the site and he did a soil boring.
Tim – Who’s to say guy at the state is more accurate than private soil scientist? If someone applied for a permit that way, that’s a different story. Doesn’t mean we should go around investigating.
Annette – I wouldn’t say I go out on every site and do this. This particular situation was very strange.
Jonathan – Let’s write this as a “hit by a bus” document. If I get hit by a bus, I want the next guy to be able to pick up this project and understand what’s going on. Investigation should be limited to situations where information is incorrect or inaccurate.
JD – I think it needs to be part of the 90 days.
Jonathan – And not so open ended.
JD – I agree.
Sue Homewood – What if we worked it in: to provide information essential to the review, then Division may conduct inspection. Will this help clarify it’s not willy nilly?
JD – If someone really smells bad, you want the right to do it.
Annette – Staff will work on this and try to bring this back to you next meeting.

Item 3(d) Division fails to act within 90 days
Annette – Except for (ii), this is from existing rule .1003.
Brian – Is there supposed to be a difference in (iii) and (v)?
Annette – I don’t know. We’ll revisit those.

Item 4 Completion Submittal requirements
Annette – I’ll admit I made up this stuff in Item 4. Some of you have been saying we don’t do a lot on tail end of review process to make sure what was built matches what was approved.
Linda – Call it a “Designer’s Certification.” Designer’s Certification that states that the project was built as approved.
Tim – Let’s make sure we’re not talking about shooting inverts for pipes at post-.
Annette – I think (b)(ii) would imply that you would do that.
Tim – We understand BMP needs to be shot, but not the collection system.
Annette – Added “The inverts of the SW collection system may be the proposed design –“
Rob W – Instead of referencing size of plans, can you reference same size as original plans were.
Jonathan – “same scale as permit plans”
Rob W – Why on as builts are you saying burden of providing evidence that it will comply with water quality? Why asking for it again?
Annette – Only if there’s variation. If as builts are pretty much same as approved, no problem, of course. But if there’s variation, you’ll want to explain it.
JD – Cost of collecting and storing information for the state, FOIA requests. I get the BMP part of it. Why are we generating a whole other set of documents. Can’t we just take in the certificate and BMP dimensions and be done with it?
Annette – Some are saying state should step it up by getting as builts like local governments do, help with inspections, shifting to compliance on tail end. Like I said, I made all this up, so we can streamline this is if you think it’s appropriate.
Tim – Unless it’s changed, shouldn’t have to submit items in (b)(i) and (ii). It’s already gotten filed.
Annette – Issue is are you going to know if as builts matches permitted drawings if you don’t make someone do as builts? You’re saying we don’t need (b), just (c)?
Tim – Right.
Annette – This we would need only if there are changes.
Todd – Why would you have changes without modifying the permit?
Linda – Say “minor” changes.
Annette – What’s “minor”?
Linda – I didn’t mean to say I wanted plans for minor changes.
JD – Just have the as builts for the BMPs, not for the whole site.
Linda – Some people’s definition of what’s a “minor” variation is suspect, shall we say.
Tim – Collection system has little to do with stormwater system. If you add inlet, I don’t think you should have to add that to the permit.
Todd – If it’s going straight to the storm drain which is going to the estuary --
Peter – Would the flow to the BMP change? Erosive flow to BMP not originally designed to handle that additional flow.
Jonathan – On (4)(c)(2), you have underdrains listed. Are those collection?
Annette – Underdrains to SCM like in a biocell, permeable pavement.
Jonathan – I don’t think you can get shots on those, they’re buried. You don’t want to be digging up completed devices to get an as built.
Linda – There will be one invert where it discharges.
Marc – Most of those have clean outs.
Annette – Or observation well.
Brian L – There might be an elbow, so getting to the invert of the underdrain --
Jonathan – You can shoot where it discharges, but for a 300-foot run, outside of inspector that was there when it was put in, you can’t dig it back up.
Peter – I hear what you’re saying. Having poorly installed underdrain could have water quality issues. When it’s been installed before gets covered, couldn’t you take photo of it at that point?
JD – Would be part of certification.
Marc – Witnessed it, but wouldn’t be part of as built.
Annette – All conveyance devices that can be observed. . . .underdrain discharge points if accessible.
Jonathan – I think “if accessible” is fine, but “that can be observed” will open it up --
Rob W (c)(iii) – Can you say spec sheets if they differ from original specifications.
Brian – (f) – add word “plans” after “as builts.”
JD – Either it’s compliant with permit or not. Is it up to staff to decide if it’s compliant or not? Seems like a pretty big liberty there.
Annette – Will address that to direct that applicant modify the permit, not be given a “pass” by the staff. We’ll work on this.

Item (5) Division Action on Completion Submittal
Annette – Do you all like having this item here, and do you like what it says?
Todd – Why say “may” instead of “shall”?
Annette – We don’t currently do this now. And if staff have a bunch of new applications, staff might not have time to do this.
JD – It may be part of your purview anyway as the division. You might not have to require them to submit all this.
Sue Homewood – Not necessary, but these are the types of activities that may occur.
Tim – I don’t think it matters if it’s fast track or this track, the process should be the same.
Annette – With regular process, we’ve already reviewed all this.
Bradley – One difference here is that someone might have to go and modify their permit.
Tim – No offense, but permit doesn’t matter. It’s about what’s in the field. Should be same process.
JD – I may disagree with you a little bit. Fast track is being built to performance standard. This other tree says no performance standard, but a review process up front. I agree for practical purposes, it goes to the same point. Fast track needs a formalized as built review.
Tim – At end of day, supposed to certify it’s correct. Because you don’t submit plans and regulators say it’s good – If you’re trying to protect water quality standards, it doesn’t matter the process you go through to get the permit. Construction’s all that matters.
JD – So you want to make this “shall”?
Boyd – How much time do we have to do this review? Do we have legal authority to put Item (5) to the Rule?
Sue Homewood – Permit requires they have to build what was reviewed.
Boyd – How much longer can we hold it to look at it again?
Sue Homewood – We can go out there 6 years later and find it wasn’t built in compliance and enforce on that.
JD – I would say we strike (5) from the standard process.
Marc – I agree. If you put it in there, someone would expect action.
Peter – I like the concept of (5). What this does it someone built something that doesn’t comply with wq standards, state hasn’t had time to review as builts, someone from outside can come in and force that review.
Tim – Permit stuff is all innuendo. All that matters is what’s built. There should be some teeth on this. Will promote person who doesn’t know what they’re doing to play a game of chance.
JD – Now you get a certification. If there are issues, Division has right to come in and review. That’s the way it works now. On fast track, we’ve taken out pre-review, so there needs to be as-built review for that process.
Annette – I think people in favor if taking out (5) is because Division already has statutory authority to do this.
Virginia – What happens with local governments? Will we also have right to inspect? Would that wording help us?
Bradley – Local governments do have right to inspect, ability to implement ordinances. I don’t think anything we’re doing affects that. By taking this out, we’ll still have ability to inspect the site.
Todd – Issue is whether state ought to inspect every site.

🌢

**NC Board of Landscape Architects**
Meg Nealon – Definition of “qualified professional” in our proposed rules is limited to professional engineers. Opportunity to share with you what our law states, our education, our practice, our disciplinary process, the things that make us qualified to do stormwater design. Our hope is that “qualified professional” will include landscape architects.
Law 89A – “Performance of services in connection with development of land areas. . . .”
Standards for licensure in NC: 1) Graduation from accredited program; 2) passage of LARA exam -- exam is updated every 7 years or so and one section covers drainage/stormwater management, including preparing soil and erosion control plans, stormwater plans; and 3) work for 4 years under direct supervision of registered landscape architect.

Stan Williams – Our education starts at university level. At NC State, for example, they teach stormwater systems design, pipe sizing and require students to go through projects using those standards. LA’s also need to get 4 years of experience under licensed LA before licensure. Four sections on exam: one is focused on design, including stormwater.

Jeff Gray – Disciplinary process for this Board is not unlike other Boards in NC. There are no felony violations for any of our Boards except for claiming to be CPA. Professional licenses can be revoked or suspended. Our Board has code of professional conduct in our rules. We have disciplinary review committee appointed by the Chair. Chair chooses a licensed LA to help in the investigation. We understand one concern you all had in thinking a PE is only qualified professional is that there is no disciplinary action. I assure you that we have that disciplinary process in place.

Meg Nealon – Our primary concern is in your drafting of your fast-track process that LA’s be included among those professionals that are identified as “qualified.” I invite any questions that you all have.

Tim – We are a group voted unanimously that engineers would be only ones that could submit for fast track. Second, you say in education that you take stormwater, but I looked it up and no classwork says anything about stormwater in 10 semesters. Nothing against the education or curriculum of LA’s, but to do stormwater -- not one class about hydrology and stormwater management. In fast track legislation, process of establishing liability of qualified professional. How do insurance carriers deal with landscape architecture firms outside of multi-jurisdictional firms?

Jeff Gray – What qualifies every PE out there to do stormwater?
Tim – Because engineering board sets that as the qualification.
Jeff Gray – Where does it say in these rules it can only be PEs?
Tim – It set up this MDC to determine who was qualified professional.
Jeff Gray – Does that mean any PE out there can go in and do this?
Tim – Yes.
Jeff Gray – So my cousin who is a mechanical engineer --
Tim – He would face disciplinary action.
Jeff Gray – How much training does a PE have in their school on the items to draw appropriate stormwater plans?
Tim – I have at least 3 classes: Hydrology . . .
Jeff Gray – How long have you been practicing?
Tim – 2003.
Jeff Gray – Were you aware that the Board of Engineers and Land Surveyors worked out these differences as to who can do stormwater plans in North Carolina?
Tim – It’s irrelevant to me. We on this board determined who is qualified professionals. I think engineers should be the only ones submitting for fast-track stormwater management.
Jeff Gray – That’s why I’m here. I’m curious what you based your knowledge on.
Tim – I believe qualifications to do design plans for stormwater management -- it should be for only engineers.
Jeff Gray – I’ve read the minutes. Yours appear to be the only comments in there. Did you read the Board statute that they are by law allowed to do this?
Tim – What does that have to do with setting criteria for fast track stormwater? We’re not going against they can’t submit for stormwater plans – it’s only limited to fast track.
Jeff Gray – I think that’s up for interpretation.
Chuck Smith – What makes fast track different?
Annette – What we’re discussing is who’s qualified to submit for a fast track application, which means applicant submits it to division with no technical review up front. Qualified professional for fast track is set higher because there is no technical review. Standard review process, there has been no discussion on who is qualified for standard review. I’m just trying to inform you, not argue either way.
Jeff Gray – What I’m hearing is that only PEs that are qualified to do this should do this. The same is true for this Board. Most of what everybody learned from a practical standpoint after they were licensed.
Tim – I’m a blunt guy. But if people want to do engineering, they need to sit for the engineering exam. Sitting for LA exam is not the same for sitting for the engineering exam.
Jeff Gray – All of this is worked out with the Legislature, memo of understanding with Board of Engineers. Board of Engineers recognizes that LA’s can do this. I understand you have your personal feelings about this. I understand you disagree with the Board of Engineers here.
Tim – We voted here. I might have spoken, but everybody voted.
Jeff Gray – Most of this has been worked out long before now. Qualified professional is more than just a PE for fast track. If LA goes outside his area of qualification – if he/she doesn’t do stormwater – they’ll be subject to discipline just like engineer. We’re hoping to educate you all and answer your questions.
Tim – How does individual doing landscape architecture -- how does insurance deal with it?
Stan Williams – I had my own E&O insurance to cover everything necessary, including stormwater. At least two nationally-recognized insurance firms were offering E&O insurance at that time. Insurance is not an issue.
Nick Serrano – There are five graduate level courses at NC State which incorporate stormwater in their purview: Site Design and Plan Review, 6 credits; documentation and advanced level stormwater design incorporated into Design Development and Construction, 6 credits; two required courses land courses Grading and Site Systems, 3 credits; Construction Materials and Documentation, 3 credits.
Marc – Are you required to get a Master’s to be licensed?
Nick Serrano – If you came to North Carolina with a license from another state, you could get licensed here. NC State only has a graduate course. NC A&T has undergraduate program.
Stan Williams – Each program gets reaccredited depending on course offerings, whether undergraduate or graduate.
Chuck Smith – I’ve served on one of the accreditation teams. Many slots are held by volunteers. They spread these out so no one person spends too much personal time doing too many of these.
Marc – To clarify -- on undergrad level, are there hydraulics courses?
Chuck Smith – Depends on the school. Different universities place different emphasis on landscape architecture. Some are more stormwater, design, transportation. You’ll learn a lot through experience based on the expertise you’re trying to achieve. Then you’re tested to make sure you do have the expertise, competency you need. The test that stormwater falls under takes the longest for people to pass. There are certain parts of the exam that the sooner you take it outside of school, the more likely you are to pass certain portions. Further away from graduation, more experience, more likely to pass other parts, of which stormwater is a part. Not just educational issue. It’s a testing issue, an experience issue. What they’re doing today in stormwater many learned by experience. Hunter Freeman has told me this.
Mark Wilson – I practice in Asheville. We’re a small office of two partners. We carry one million dollars in liability all the time. Recently, we were short listed to submit design for project for Greensville, SC project that wanted two million dollars insurance. We went out and got that. It wasn’t an issue. At my school at UGA, I had two quarters of stormwater drainage and design. Our office was primary designer for water and sewer for Buncombe County schools. Using baseball outfield for drainage using Carolina Stalite. From a practice perspective, grading and drainage, stormwater are part of everything we design.
Nick Serrano – During accrediting process, schools required to demonstrate minimum proficiency whether undergrad or graduate.
JD – Are landscape architecture degrees B.A.’s or B.S.’s?
Stan Williams – I don’t think I’ve seen a B.A. program requesting accreditation.
JD – There’s usually a methodology for certification on which examination is based on. What’s the methodology used?
Stan Williams – I can’t answer that particular question. CLARB testing is intensive, reviewed every 5 years. When that’s done, it’s combined with a view of the statistically valid test results to determine whether or not questions and answers were the answers supposed to be given to those questions.
Todd – I found an advisory opinion by AGO’s issued in March 2001 about this set of issues. He mentioned MOU. What exactly was worked out?
Jeff Gray – As other disciplines have developed in NC, geologists, LA’s, soil scientists, everybody have had to work with Board of Engineers. Board of Engineers have very broad statute. Board cannot regulate area for nonlicensees for practices that agreement says LAs regulate. To say that this profession doesn’t have qualifications and disciplinary process, not being recognized to do this type of work, and recognized by Board of Engineers as capable of doing this, is a fallacy.
Jonathan – I agree that everybody needs experience to learn what they’re going to do. Not many people get out of school are ready to do that job. Local experience is also important. Person that practices in mountains as compared to on the coast is different. Does the memorandum place any limits or draw line between what level of stormwater, hydraulics should be handled? Engineers and LAs are only supposed to sign something that you’ve got the skills.
Jeff Gray – It’s in the law. We can’t go out and just do a fast track permit like an engineer can do. It has to be incidental to the overall plan, which makes perfect sense. They couldn’t just go out and say I am going to design this, and I’m going to hire you, LA, to do fast track permitting for my stormwater. It has to be part of an overall plan.
Jonathan – Also depends on how detailed or complex.
Jeff Gray – They’re not going to exceed their scope.
Jonathan – Where does line for incidental come in?
Jeff Gray – Incidental part is that scope.
Chuck Smith – What would you say surface drainage system is? It’s very vague. That was how everyone could come together.
Brian – We don’t have that memorandum. Does that memo clarify what is surface vs subsurface?
Chuck Smith– It’s up to you to make that decision what you’re qualified for or not. Just like every engineer, every landscape architect. We’re asking for ability to discern that.
Jonathan – Does memorandum have any more clarity?
Chuck Smith – I worked in Withers and Ravenel for 15 years. There’s a segment of engineering community designing stormwater systems that doesn’t want to touch LID. LID community is more in line with LAs than engineers right now. That falls in the area you’re talking about. You’re trying to get black and white on something that has grays.
Rob W – One of our discussion points is that you need to draw the line somewhere. How much stormwater can you do without hydrology, without paved surface? If you’re fast tracking it, how can we be assured that stormwater, pipe sizing is being taken care of? I don’t think it’s because we were ill informed.
Stan Williams – It’s up to us. We’re all considering ourselves professionals around this table. Coming with this designation is the understanding that you need to know your limits. It’s incumbent on you to decide it’s time to bring somebody with specific education and experience to the table. We all have to do that. That’s why chemical engineers don’t sign electrical engineering drawings. With your license, you have to make good decisions with respect to your client, health, safety, welfare. Through our experience and examinations, we are also able to make those decisions. State law says we can do these things. Just says you;re empowered to do it.
Mark Wilson- It’s like you’re saying we’re not competent to go through fast track process and design these things without a review first.
JD – When this memo happened years ago, there was a battle between engineers and LAs that didn’t get worked out. Engineer wanted a study bill. No study bill. A law was passed. Word “incidental” was in there as compromise. MOU was done after LAs got ability to practice stormwater engineering for incidental. That issue is still raging on. It came down to the issue of enforcement. Bill before General Assembly that a Board can’t have one of its own members investigate a complaint. With Engineering Board, we have a third party investigate, not a member of our community. A member of the Board is assigned to oversee that process. Sometimes PEs are brought in to review the information. Board determines how to enforce the action. Maybe the law’s in place, but when you look at how the two boards are comprised, the enforcement’s been a problem. One board is structured differently than the other board in its enforcement activities. Fast track there’s no enforcement up front. That is one of the biggest questions about why this would be different.
Chuck Smith– About three years ago, we had a number of situations – we don’t have an investigator on staff. We hired an investigator for the 7 or 8 cases. Different situations call for different processes. We don’t just send out own in to review the issues, different from what we see on day to day basis. We did not review those ourselves.
Jeff Gray– We don’t have a need for a full-time investigator because we don’t have nearly as many LAs as there are PEs.
JD – As we look to public protection, enforcement will be a big thing. State has expressed a lot of concern about not having plan review for fast track process and how to enforce.
Stan Williams – We have been using outside investigators for past 3 years. Those guys think they’re really valuable. Not only do we look at enforcement as a Board, but also from investigators.
Jeff Gray– This Board is more than well equipped to investigate these. There aren’t going to be a lot of licensees doing this. There are lots of PEs that have filed applications to DENR over the years that weren’t qualified.
JD – As I said, this is not going to be the final stop. It’s got several other hurdles to go through. We’ve got to take an up or down vote or we’ll be here for 18 more months. We can’t revisit everything we’ve decided. I appreciate you guys coming in.
Bradley – We understand your concerns, we understand the process. We tried to do the best job we could to present something. This is a starting point. This will go to the EMC and the public. Session law did create this group to come up with set of standards and draft rules that ultimately the EMC can move forward with. With this particular issue, we’ve told people as an agency there are things in rules and statutes that the Boards make those decisions. We know there are places that LAs have skills and abilities that PEs don’t. We’ve tried to take those things into consideration.
Meg Nealon – We know that language isn’t final. We hope that emphasis will be on qualified professional, not limited to PEs. We are happy to share more information with you as you move forward. I hope it’s informative enough to shift thinking in our direction.
Annette – We’d appreciate it if you could share with us copy of the MOU, other documentation. It wasn’t clear to me on website how someone would go about filing a complaint with your Board.
Meg Nealon – On homepage, there’s a disciplinary flowchart.
Todd – One of keys to success of this effort is that stormwater systems are built as planned. How would LA document what gets constructed – this might be information you can provide to us.
Mark Wilson – We provide as builts.

 🌢

Annette – Three choices: a) go home; b) talk about what LAs just shared with us; c) discuss 2H .1003
Rob W – Let’s spend 5-10 minutes talking about what we just heard about. How many people will this affect?
Jonathan – Issue will be small subdivisions that by legislative law that governs them, they can do the roads in those, driveway pipe. My question is surface drainage vs subsurface drainage. Is subsurface drainage include storm drains? By attorney’s representation, they can do any type of storm drain. I don’t want them doing a dam for me.
Joe Faulkner – Even engineers would have another professional do that.
Jonathan – I’d like to see the MOU. There’s no clear point for me.
Brian – All we could find was 2001, which says what we’re talking about is not incidental sub drainage.
JD – If you’re doing basic landscape architect, you’ll have some drainage to it.
Tim – If you do it part of something, then you can do it. But if you do it by yourself, you can’t do it. You can do a stormwater pond in a system or you can’t. Not if I’m doing grading, then I can do the pond.
JD – You heard the attorney. People in this room and those people who are all credible doing this -- when somebody, either engineer or landscape architect go too far afield, how are they going to get hammered?
Marc – Stakes are a lot higher in this fast track program. You want to have a good hammer. Who do you want to give the reigns to? We have the ability to give the reigns to people who have the hammer, enforcement action, that the owner can go back to. You’ll have to really step up your game to go through this fast track process.
Annette – If we limit fast track to engineers, we’ll have to explain that to other people better than we have so far.
Sue Homewood – Fast track encompasses low density and high density projects? Value in differentiating between those?
Boyd – I think there’s merit in that suggestion. I’ve got one now from a PE. She says there won’t be any overflow because it’s designed for one-year storm. I think LA’s could do some parts.
Bradley – We focused so much on BMPs, we really didn’t focus on low density.
Annette – Sounds like LAs are more trained in grading --
Sue Homewood – And LID.
Annette – What does Team think about opening up fast track for low density?
Rob W – What about rain gardens on roofs?
Annette – Not LID, but low density, where you’re below having to do an engineered stormwater practice.
Rob W – Sometimes they can do urban infill better too.
JD – I think they need to bring us more information to consider. We need to give it a hard look. There’s a lot of middle ground.
Jonathan – When I went to school, we handled storm drainage, ditches. There wasn’t any stormwater, retention.
Tim – You had Hydrology. That’s one of my biggest things.
JD – There’s a good thing about differences in education – engineers are standardized across the country. In NC, until you change the law, they’re qualified to do incidental subsurface drainage, to do some stormwater, by law.
Joe Faulkner – I’ve permitted through the state several wet ponds.
Jonathan – Will we even have the right to make that decision?
Sue Homewood – Might need a DENR attorney’s opinion.

🌢

**2H .1003 Signatures on Permit Applications and Stormwater Program Procedures**
Change (a): at least the *manager*, or his authorized representative
Change (a) to be two lines, one for corporation and one for limited liability corporation.
Rob W – Under (b), wouldn’t you want managing partner, not general partner?
Jonathan – Any organization can make up a rule who can sign on behalf.
Linda – With proper documentation, yes.
Jonathan – Should (a) be corporations, then underneath that – let (b) be partnerships; otherwise we’ll go down to (z).
Annette – Okay. We’ll work on that.
Rob W – For sole proprietor, if two people own it together, do they both have to sign?
Linda – We haven’t required that in the past.
Jonathan – What if you have a pure joint venture? Equal, separate, both owners.
Annette – We’ll ask our attorneys about that.

Item (3) Permit Issuance
Annette – Our current rule says low density permits shall not require renewal. For high density permits, the renewal period is 8 years.
Rob W – If 7 years from now --
Linda – You don’t apply new rules to renewals. Looking at operation and maintenance.
Rob W – Why can’t we just enforce O&M guidelines? Why do we have to go back to permit?
JD – For wastewater permit renewals, you do have to change to meet current rules.
Linda – A large part of the renewal application is operation and maintenance. That’s our opportunity to make sure they have relevant copies, they’re doing what they need to be doing.
Rob W – You have the same right to review those, enforce those without the renewal. If TMDL requirements change, will that force everyone to change their designs?
Annette – What about low density projects? Should those have renewal too?
Rob W – If I build a house, I get a C/O. That permit’s done.
Jonathan – Don’t planning departments when they issue building permits and construction permits, don’t they have to meet what’s in the deeds? They do in Wake Forest. That’s why we get people coming in for adjustments, if possible.
Linda – When the county issues a building permit, they don’t look at state stormwater permit, have they complied with state’s BUA allocation.
Tim – They do indirectly, some counties.
Rob W – Is there anything in the rules that says you have a permit after it’s built?
Linda – Statute says you can’t issue it but for so long. I’d like to replace it with an annual compliance monitoring thing.
Jonathan – They have to go hire somebody to do a permit renewal for their subdivision.
Sue Homewood – Don’t high density projects have that now?
Linda – They do in NPDES.
Brian Eames -We have both in Durham County – annual inspection and renew 10 years. Part of the reason is because of the bond.
Lauren Witherspoon – In Raleigh, we don’t require permit renewals. We do annual inspections.
Rob W – When we transfer BMPs to HOA, HOA’s hire companies to inspect them once a year. Difference is do you send them somewhere, or do you keep them?
Bradley – There are some things about annual that could be done with statute changes. As example, Linda’s got 10,000 facilities permitted since 1989. Say 5,000 are high density. Annual report every year versus 8-year renewals. Pluses and minuses. Right now, this process gives us ability to look at it in a different light.
Brian L. – Can you lengthen it to 5-year report instead of 1 year?
Rob W – We already have O&M for annual inspection. And then every 8 years, have renewal. Do people stop inspecting it until year 7 or 8?
Sue Homewood – Catching a problem earlier is a benefit, but I don’t know how to work that.
Annette – We’ve heard you. We’ll go back and talk about that.

🌢

**Next Meeting – August 24, 2015 – 9:30 to 3:00, Rule Readoption continued: Coastal Stormwater and NPDES**