

ATTACHMENT A

**A RESOLUTION APPROVING AN EXTENSION OF THE DATE ON WHICH A
CUP WOULD OTHERWISE EXPIRE FOR THE BALLENTINE AIS CUP
LOCATED AT 8110 OLD NC 86
Resolution No. 132/2008-09**

WHEREAS, the Carrboro Board of Aldermen approved a Conditional Use Permit for the Ballentine AIS, CUP at 8110 Old NC 86 on August 28, 2007; and

WHEREAS, Section 15-62(a) of the Town of Carrboro Land Use Ordinance states that a CUP will expire automatically within two years of the issuance date if less than ten percent (10%) of the total cost of the project has been completed on site, unless the permit-issuing authority extends the expiration date pursuant to the findings found in Section 15-62(c) of the Land Use Ordinance; and

WHEREAS, the Board of Aldermen finds, per Section 15-62(c) of the LUO, that: 1) the CUP has not yet expired, 2) the permit recipient has proceeded with due diligence and in good faith, and 3) conditions have not changed so substantially as to warrant a new application.

NOW, THEREFORE BE IT RESOLVED by the Carrboro Board of Aldermen that the expiration date for the Ballentine AIS, Conditional Use Permit is hereby extended to August 28, 2010.

STAFF REPORT

TO: Board of Aldermen

DATE: June 16th, 2009

PROJECT: Ballentine AIS, CUP

APPLICANT
And OWNERS: M/I Homes
Raleigh, NC

PURPOSE: Conditional Use Permit Extension Request for the
Ballentine AIS CUP located on 8110 Old NC 86.

EXISTING ZONING: Residential-20 (R-20): 33.5 acres; Rural Residential (RR):
17.63 acres.

TAX MAP NUMBER: 7.23.C.31

LOCATION: 8110 Old NC 86

TRACT SIZE: 51.06 acres (2,224,173.6 sf)

EXISTING LAND USE: Vacant

PROPOSED LAND USE: 26.100, Major subdivision consisting of the following uses:
1.111, single family detached
1.321, multifamily, townhomes, (no greater than 20% of
the units may have more than three (3) bedrooms).

SURROUNDING
LAND USES: North: RR , vacant, proposed Orange County Park
South: R-20, single-family residential.
West: RR, Old NC 86, single-family residential
East: RR, R-20, Multifamily residential – townhomes,
vacant.

ZONING HISTORY: R-20, RR since 1988

BACKGROUND

The Vice President of Land Development for M/I Homes, Mr. Jeremy Medlin, has requested an extension of the date on which a previously issued Conditional Use Permit (CUP) would otherwise expire (**Attachment C**). The Board of Aldermen originally granted the Conditional Use Permit on August 28, 2007 (**Attachment D**). The CUP allows construction of a 96 dwelling unit subdivision, with associated infrastructure and open space. (**Attachment E**).

Upon realizing that the permit expiration date was nearing, Mr. Medlin contacted staff to discuss the possibility of seeking an extension. In a letter submitted to staff regarding this matter, Mr. Medlin cited economic factors as reasons why M has not moved forward expeditiously with construction of the project (**see Attachment B**).

Should the Board choose to grant the permit extension request, please note that construction plans must still be reviewed and approved and a pre-construction meeting must be held before construction may begin. To date, the project does not yet have a set of approved construction plans; however, the applicant has completed two rounds of construction plans review.

APPLICABLE LUO PROVISIONS

Extensions to the date on which a permit would otherwise expire must be granted in accordance with Section 15-62 (Expiration of Permits) of the LUO, which is attached for your information (**Attachment F**). Specifically, please note that Section 15-62(a) of the LUO dictates that the CUP would expire on August 28, 2009 in this case (i.e.- two years after the date of issuance) because less than ten percent (10%) of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on the development authorized by the permit has been completed on the site.

Section 15-62(c) gives the permit-issuing authority (Board of Aldermen) the authority to grant an extension to the date on which the permit would otherwise expire. Section 15-62(c) reads as follows:

“(c) The permit-issuing authority may extend for a period up to one year the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to one year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.”

Staff offers the following information related to the conditions outlined in Section 15-62(c):

1. The permit has not yet expired.

COMPLIANCE: *Yes, it is true that the permit has not yet expired. As previously mentioned, the permit would expire on August 28, 2009 should an extension not be granted.*

2. The permit recipient has proceeded with due diligence and in good faith.

COMPLIANCE: *Yes, the permit recipient has proceeded with due diligence and in good faith. Mr. Medlin states in his record that the economic downturn that has affected the nation has had a significant impact on his firm.*

3. Conditions have not changed so substantially as to warrant a new application.

COMPLIANCE: *Yes, it is true that conditions have not changed so substantially as to warrant a new application. No changes to the property have taken place since the permit was originally approved and no new changes are proposed to the original project.*

RECOMMENDATION

The Town Staff recommends that the Board of Aldermen adopt the attached resolution (**Attachment A**) approving the permit extension request. The new expiration date for the permit would be August 28, 2010.



ATTACHMENT C-1

Columbus/Cincinnati, Ohio

Indianapolis, Indiana

Chicago, Illinois

Tampa Bay/Orlando, Florida

Charlotte/Raleigh, North Carolina

Washington D.C.

May 29, 2009

Town of Carrboro
Attention: Board of Alderman
C/o: Martin Roupe/Jeff Kleaveland
301 West Main St.
Carrboro, NC 27510

Subject: Ballentine – CUP Extension Request

Ladies & Gentlemen of the Board of Alderman,

As many of you know we have been working on this project for over five years. We received CUP approval during your August 28, 2007 meeting. Ultimately the site will have 62 single family homes and 34 townhomes and will provide several affordable housing opportunities.

We worked diligently on the project until the fall of 2008. The 2nd review comments on the Construction Drawings were received August 5, 2008 and were being addressed when we had to place the project on hold due to the severe economic downturn that the country experienced. As a community, individual and industry, we all have suffered during 2007, 2008 and 2009. M/I Homes has been forced to close several divisions in the past two years and in November 2008 we experienced layoffs locally for the first time in the history of the division. With limited resources available we reached a point where we had to maintain a strictly defensive position in order to stay the course and survive. Given this stance we are proud to say that we remain a strong company and have the best intentions to grow the division once the economy returns to a more stable environment.

We still consider Ballentine a viable opportunity and look forward to partnering with the City and County on its development. Given the current economy I respectfully request that you consider granting us a CUP extension per LUO Section 15-62 subsection c (please see attachment). I would also like to mention that other municipalities have considered and applied such extensions thru new and amended ordinances.

We feel as a company that 2010 will be a much better year for all. We continue to look forward to being part of your community. I appreciate your consideration of our request and would be happy to provide any additional information that you may need. Please extend the courtesy of an extension for this project.

Sincerely,

Jeremy Dowd Medlin
Vice President of Land Development

1511 Sunday Drive • Suite 100 • Raleigh, North Carolina 27607 • 919/828-1106 • 919/828-0663 Fax

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PREPARED BY AND RETURN TO:
 TOWN CLERK
 TOWN OF CARRBORO
 301 West Main Street
 CARRBORO, NORTH CAROLINA 27510



**ORANGE COUNTY
 NORTH CAROLINA**

**TOWN OF CARRBORO
 CONDITIONAL USE PERMIT GRANTED
 Ballentine Property AIS**

On the date(s) listed below, the Board of Aldermen of the Town of Carrboro met and held a public hearing to consider the following application:

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|---|
| APPLICANT: M/I Homes |
| OWNERS: M/I Homes |
| PROPERTY LOCATION (Street Address): 8110 Old NC 86 |
| TAX MAP, BLOCK, LOT(S): 7.23.C.31 |
| PROPOSED USE OF PROPERTY: Major subdivision consisting of the following uses: 1.111 (single-family detached), 1.321 (multi-family, townhomes (no greater than 20% of the units may have more than three (3) bedrooms)) |
| CARRBORO LAND USE ORDINANCE USE CATEGORY: 26.100, 1.111, 1.321 |
| MEETING DATES: June 26, 2007 and August 28, 2007 |

Having heard all the evidence and arguments presented at the hearing, the Board finds that the application is complete, that the application complies with all of the applicable requirements of the Carrboro Land Use Ordinance for the development proposed, and that therefore the application to make use of the above-described property for the purpose indicated is hereby approved, subject to all applicable provisions of the Land Use Ordinance and the following conditions:

1. The applicant shall complete the development strictly in accordance with the plans submitted to and approved by this Board, a copy of which is filed in the Carrboro Town Hall. Any deviations from or changes in these plans must be submitted to the

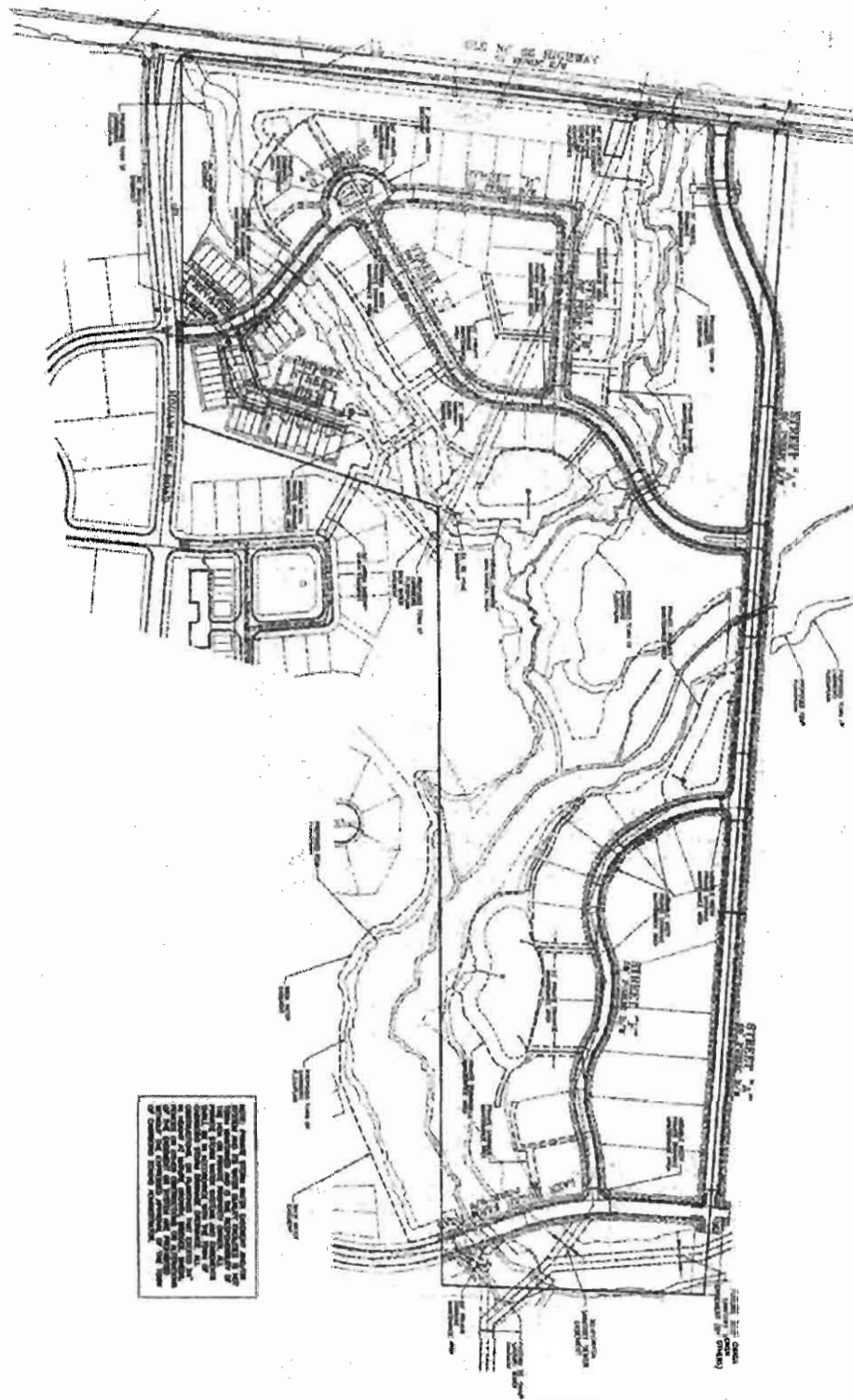
- Development Review Administrator in writing and specific written approval obtained as provided in Section 15-64 of the Land Use Ordinance.
2. If any of the conditions affixed hereto or any part thereof shall be held invalid or void, then is permit shall be void and of no effect.
 3. Certificates of Occupancy for seventeen (17) "market-rate" units will be withheld until such time as the corresponding affordable units (units 1, 2, 3, 4, 5, 6, 7, 25, 26, 27, 28, 29, 30, 31, 32, 33, & 34) are granted COs and are offered for sale or rent for an amount consistent with the language found in Section 15-182.4 of the Town of Carrboro Land Use Ordinance. Each affordable unit that meets this qualification may reduce the number of withheld market rate COs by one.
 4. If the Land Trust is unable to sell any affordable unit within one year of the date it receives a certificate of occupancy, M/I Homes will be released from its obligation to sell that unit to the Land Trust and may sell the unit in accordance with the affordable housing provisions of the Carrboro Land Use Ordinance in existence prior to June 26, 2007 (the date of their amendment). Per the requirements of Section 15-128 of the Land Use Ordinance, the Board authorizes use of the referenced, pre-June 26, 2007 provisions based the findings of "substantial expenditures". Should this scenario transpire, in accordance with Section 15-182.4, the developer shall include in the restrictive covenants applicable to the subdivision, and in the deeds for the affordable units, covenants and restrictions that are sufficient to ensure that the affordable units will remain affordable as described in that section. Those covenants and restrictions shall include provisions that will allow the Town of Carrboro to enforce the commitment that the housing units remain affordable. These documents shall be subject to the approval of the Town Attorney.
 5. That, prior to final plat approval, the applicant provides to the Town, in accordance with applicable LUO provisions, a financial security sufficient to construct their portion of the remaining, uncompleted road and stream crossing, from the eastern terminus of Street A, as shown on plans, to the property line directly to the east. The value of said security shall be determined by the Consulting Engineer with approval by the Town Engineer and shall be retained until the road segment and stream crossing is constructed or until an alternate stream crossing is constructed. Furthermore, the estimate shall be renewed annually and adjusted for inflation via the Consumer Price Index. The security shall be returned to the applicant if (1), the Town determines that the road and crossing will not be constructed, or (2), a period of ten years has passed from the date of initial posting of the financial security with the Town.
 6. That prior to construction plan approval the applicant provide to the Town evidence of a shared-access easement (or equivalent) agreed upon by Orange County so as to allow for the construction of Street A, as shown on the approved CUP plans.
 7. That prior to construction plan approval the applicant provide to the Town evidence that the portion of property owned by the Lake Hogan Farms Homeowner's Association necessary to allow Street B2 to connect to the Hogan Hills Road R/W has been substantially secured.
 8. That prior to construction plan approval, the applicant receive a driveway permit from NCDOT in accordance with any conditions imposed by such agency including but not limited to encroachment/maintenance agreements for lighting and sidewalks.
 9. That the applicant provide on the property, a 10' paved trail (meeting the Town of Carrboro's greenway standard) within a public access easement along the entirety of the Old NC 86 road frontage. The alignment may meander to avoid trees and other obstacles as needed.
 10. That written authorization is provided from the Town of Carrboro Public Works Director prior to allowing the use of asphalt for the proposed mixed-use trail that fronts Old NC 86.
 11. That an offer of dedication of the open space areas on east side of Lake Hogan Farm road extension be made to the Town.
 12. That the 10' greenway trails demonstrate compliance on the construction plans with the greenway facilities specifications identified in the AASHTO Guide for the Development of Bicycle Facilities.
 13. That the single family home lots, when developed have sufficient room to conveniently park two cars, off of the street, without blocking the sidewalk. Garages may not be counted toward this requirement. This parking will be shown on individual plot plans during the building permit stage.
 14. That, for the townhome parking lots, the Board hereby allows a deviation from the parking requirements of 15-291(g), finding that 57 spaces are sufficient to serve the 34

- townhomes. Per 15-292(a), the board makes this finding based on evidence submitted by the applicant as referenced in Attachment E of the staff report.
15. That the proposed street tree planting layout be revised to meet the spacing requirements of Section 15-315 of the LUO.
 16. That an "alternate" stormwater management facility be constructed as part of Phase 1 (West Side of Buckhorn Branch) of the development if, 10 months after Phase 1 final plat approval, either a) the Buckhorn Branch CLOMR is not received or, b) an approval for a bond extension to cover the construction of the stormwater management facility to treat Street 'A', is not obtained.
 17. That the Buckhorn Branch CLOMR be received prior to Phase 2 (East Side of Buckhorn Branch) final plat approval.
 18. That a LOMR be received prior to granting building permits for the final 50% of Phase 2 lots (9 Lots) unless a bond is posted covering a LOMR approval and any potential infrastructure modifications deemed necessary as a result of the LOMR approval process for Buckhorn Branch.
 19. That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in DXF format and shall include a base map of the whole project and all separate plan sheets. As-built DXF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
 20. That the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled maintenance activities for each unit in the development, (including cisterns, bioretention areas, swales, check dams, and irrigation pond), performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Environmental Planner for approval prior to construction plan approval. Upon approval, the plans shall be included in the homeowners' association documentation.
 21. That the developer provide a written statement from the electrical utility stating that electric service can be provided to all locations shown on the construction plans prior to the approval of the construction plans.
 22. That fire flow calculations and building-sprinkler design (as required) must be submitted and approved by the Town Engineer and Town Fire Department prior to construction plan approval.
 23. That the plans be revised such that the dumpsters and recycling facilities located between units 11 and 12 allow a clear 35' turning radius for efficient collection-vehicle access.
 24. That the Board authorizes the receipt of funds-in-lieu of 142.06 recreation points valued at \$26,022.55 to be used on proposed greenway improvements for Jones Creek. These funds are to be paid prior to final plat approval.
 25. That the subdivision must comply with the requirements of Section 15-177(d)-3a which specifies that developments of greater than 14 units provide a minimum of nine (9) significantly different house plans (i.e. elevations sets).
 26. That the applicant receive(s) CAPs from the Chapel Hill Carrboro City Schools District pursuant to Article IV, Part 4 of the Land Use Ordinance, prior to construction plan approval.
 27. That prior to construction plan approval, the applicant either meet the requirements through proof of compliance of, enhance or, find an alternate-to, the proposed hydrodynamic separators, such that they satisfy the Town's stormwater requirements with regards to water quality.
 28. That prior to Construction Drawing approval Town staff and the Consulting Engineer meets with NCDOT District Engineer to pursue the reduction in speed along Old NC 86. If NCDOT reduces the speed limit, the intersection could be moved to the original access easement location (subject to NCDOT approval). If not, the intersection would remain as shown on the CUP plans.
 29. That the homeowner's association document should contain language encouraging landscaping design and flora requiring no irrigation or water usage, and that the homeowner's association documents contain no language requiring or encouraging lawn and landscaping techniques or species which encourage regular water usage.
 30. All street construction on those streets proposed for acceptance by the Town of Carrboro shall be certified by an engineer. Engineering certification is the inspection by the

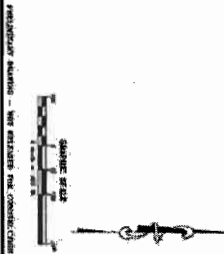
developer's engineer of the street's subgrade, base material, asphalt paving, sidewalks and curb and gutter, when used. The developer's engineer shall be responsible for reviewing all compaction tests that are required for streets to be dedicated to the town. The developer's engineer shall certify that all work has been constructed to the town's construction specifications.

This permit shall automatically expire within two years of the date of issuance if the use has not commenced or less than 10 percent (10%) of total cost of construction has been completed or there has been non-compliance with any other requirements of Section 15-62 of the Carrboro Land Use Ordinance.

If this permit authorizes development on a tract of land in excess of one acre, nothing authorized by the permit may be done until the property owner properly executes and returns to the Town of Carrboro the attached acknowledgment of the issuance of this permit so that the town may have it recorded in the Orange County Registry.



ALL EASEMENTS SHOWN ON THIS PLAN ARE TO BE CONSIDERED AS PART OF THE OVERALL EASEMENT PLAN. THE EASEMENTS SHOWN ON THIS PLAN ARE TO BE CONSIDERED AS PART OF THE OVERALL EASEMENT PLAN. THE EASEMENTS SHOWN ON THIS PLAN ARE TO BE CONSIDERED AS PART OF THE OVERALL EASEMENT PLAN.



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|------|-------------|
| DATE | DESCRIPTION |
| 8-2 | |

BALentine
CONDITIONAL USE PERMIT
 CARRBORO, NORTH CAROLINA
OVERALL EASEMENT PLAN

M/I HOMES, LLC
 1800 SUNDAY DRIVE, SUITE 112
 RENO, NV 89515, TEL: 775-784-0000
 RENO, NORTH CAROLINA 27607

| | |
|----------|--|
| APPROVED | |
| DATE | |



THE JOHN R. McADAMS COMPANY, INC.
 ENGINEERING/PLANNING/SURVEYING
 RESEARCH TRIANGLE PARK, NC
 P.O. BOX 14000 150 EPPING ROAD
 FROST (919) 581-5000 FAX (919) 581-5200

Town of Carrboro Land Use Ordinance Excerpt:

Section 15-62 Expiration of Permits.

(a) Zoning, special use, conditional use, and sign permits shall expire automatically if, within two years after the issuance of such permits: **(AMENDED 5/26/81)**

- (1) The use authorized by such permits has not commenced, in circumstances where no substantial construction, erection, alteration, excavation, demolition, or similar work is necessary before commencement of such use; or
- (2) Less than ten percent of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any development authorized by such permits has been completed on the site. With respect to phased development (see Section 15-61), this requirement shall apply only to the first phase.

(b) If, after some physical alteration to land or structures begins to take place, such work is discontinued for a period (i) of one year if the date of discontinuance occurs more than one year after the issuance of the permit, or (ii) equal to two years less the time between the issuance of the permit and the time work is discontinued if the date of discontinuance occurs less than one year after the issuance of the permit, then the permit authorizing such work shall immediately expire. However, expiration of the permit shall not affect the provisions of Section 15-63.

(c) The permit-issuing authority may extend for a period up to one year the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new application. Successive extensions may be granted for periods up to one year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.

(d) For purposes of this section, a permit within the jurisdiction of the Board of Aldermen or the board of adjustment is issued when such board votes to approve the application and issue the permit. A permit within the jurisdiction of the zoning administrator is issued when the earlier of the following takes place: **(AMENDED 11/10/81)**

ATTACHMENT F- 2

- (1) A copy of the fully executed permit is delivered to the permit recipient, and delivery is accomplished when the permit is hand delivered or mailed to the permit applicant; or
- (2) The zoning administrator notifies the permit applicant that the application has been approved and that all that remains before a fully executed permit can be delivered is for the applicant to take certain specified actions, such as having the permit executed by the property owner so it can be recorded if required under G.S. 15-46(c).

(e) Notwithstanding any of the provisions of Article VIII (Nonconforming Situations), this section shall be applicable to permits issued prior to the date this section becomes effective.