

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF
ALDERMEN'S REASONS FOR ADOPTING AN AMENDMENT TO THE TEXT OF THE
CARRBORO LAND USE ORDINANCE

Draft Resolution No. 159/2011-12

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO MODIFY THE MITIGATION OPTIONS FOR IMPACTS TO STREAM BUFFERS ON EPHEMERAL STREAMS

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with *Carrboro Vision 2020* regarding efforts to: protect water resources, particularly the following sections:

5.22 Carrboro should adopt a strategy and set of policies to protect all of our creeks, streams, ponds, and lakes.

5.23 Carrboro should be proactive in managing its stormwater, promoting active maintenance of facilities, reducing impacts of increased impervious surface, and minimizing impacts on waterways.

Section 2. The Board concludes that its adoption of the above described amendment is reasonable and in the public interest because the Town seeks to remain consistent with its adopted plans or policies.

Section 3. This resolution shall become effective upon adoption.

A RESOLUTION ADOPTING A STATEMENT EXPLAINING THE BOARD OF
ALDERMEN'S REASONS FOR REJECTING AN AMENDMENT TO THE TEXT OF THE
CARRBORO LAND USE ORDINANCE

Draft Resolution No.

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO MODIFY THE MITIGATION OPTIONS FOR IMPACTS TO STREAM BUFFERS ON EPHEMERAL STREAMS

NOW, THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is not consistent with Town plans and policies.

Section 2. The Board concludes that its rejection of the above described amendment is reasonable and in the public interest because existing regulations are appropriate.

Section 3. This resolution shall become effective upon adoption.

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO MODIFY
THE MITIGATION OPTIONS FOR IMPACTS TO STREAM BUFFERS
ON EPHEMERAL STREAMS

****DRAFT 4-25-2012****

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-269.7 (d) of the Carrboro Land Use Ordinance is rewritten to read as follows:

(d) OPTIONS FOR MEETING THE MITIGATION DETERMINATION.

- (1) For impacts to buffers on intermittent and perennial streams, payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund (pursuant to 15A NCAC 02B .0269, Jordan Water Supply Nutrient Strategy: Riparian Mitigation Fees to the NC Ecosystem Enhancement Program), contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank so long as the mitigation programs alternative to the Riparian Buffer Restoration Fund comply with the most current banking requirements of the US Army Corps of Engineers and the most current applicable trading criteria associated with water quality mitigation. For impacts to ephemeral streams, payment may be made only to the Town's Water Quality Enhancement Fund.
- (2) Donation of real property or of an interest in real property pursuant to subsection (f) of this Section;
- (3) Riparian buffer enhancement, or riparian buffer restoration. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to subsection (g) of this Section.

Section 2. Subsection 15-269.7(f) is amended by adding a new subsection (f)(5) to read as follows:

- (5) The deed conveying the real property interest must be delivered to the Town prior to final plat approval (for mitigation that is required in connection with a subdivision) or to the issuance of a certificate of occupancy (for mitigation that is required in connection with an unsubdivided development).

Section 3. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 4. This ordinance shall become effective upon adoption.

Art. XVI FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**Section 15-269.7 Mitigation for Water Quality Buffers**

- (a) **PURPOSE.** The purpose of this section is to set forth the mitigation requirements for water quality buffer protection in relation to either a use shown in Section 15-269.5(d) as "allowable with mitigation" or a use for which a variance has been granted pursuant to Section 15-92(j).
- (b) **THE AREA OF MITIGATION.** Staff shall determine the required area of mitigation, which shall apply to all mitigation options identified in this section, according to the following:
 - (1) The impacts in square feet to each zone of the buffer shall be determined by adding the area of the footprint of the activity causing the impact to the riparian buffer, including any clearing and grading within the buffer necessary to accommodate other activities, and the area of any ongoing maintenance corridors within the buffer associated with the activity.
 - (2) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in subsection (b)(1) to each zone of the riparian buffer:
 - a. Impacts to Zone one of the riparian buffer shall be multiplied by three;
 - b. Impacts to Zone two of the riparian buffer shall be multiplied by one and one-half.
- (c) **THE LOCATION OF MITIGATION.** The mitigation effort shall be located within the Town's planning jurisdiction, and as close to the location of the impact as feasible.
- (d) **OPTIONS FOR MEETING THE MITIGATION DETERMINATION.** The mitigation determination may be met through one of the following options:
 - (1) Payment of a compensatory mitigation fee to to the Riparian Buffer Restoration Fund (pursuant to 15NCAC 02B .0269, Jordan Water Supply Nutrient Strategy: Riparian Mitigation Fees to the NC Ecosystem Enhancement Program and contingent upon acceptance of payments by the NC Ecosystem Enhancement Program), to the Town's Water Quality Enhancement Fund, or to a private mitigation bank so long as the mitigation programs alternative to the Riparian Buffer Restoration Fund comply with the most current banking requirements of the US Army Corps of Engineers and the most current applicable trading criteria associated with water quality mitigation.
 - (2) Donation of real property or of an interest in real property pursuant to subsection (e) of this Section;
 - (3) Riparian buffer enhancement, or riparian buffer restoration. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Item (f) of this Section.

Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION

- (e) **PAYMENT TO THE WATER QUALITY ENHANCEMENT FUND.** Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee to the Water Quality Enhancement Fund as allowed here shall use the following procedure:
- (1) The Town shall establish annually, and include on the Miscellaneous Fees and Charges Schedule, a per square foot buffer mitigation fee. The fee shall be based upon a reasonable estimate of the per square foot cost of accomplishing riparian buffer restoration.
 - (2) The amount of the compensatory mitigation fee due shall be determined by multiplying the area in square feet of mitigation calculated in accordance with subsection (b) by the per square foot buffer mitigation fee.
 - (3) The required fee shall be submitted to the Town prior to construction plan approval.
- (f) **DONATION OF PROPERTY.** Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property to the Town shall meet the following requirements:
- (1) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund, the Water Quality Enhancement Fund, or another alternative, private mitigation bank. The value of the property interest shall be determined by an appraisal performed in accordance with subsection (f)(4)d of this Section. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee, the applicant shall pay the remaining balance due.
 - (2) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
 - (3) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION

- a. The property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of the Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin developed by the NC Division of Water Quality.
 - b. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration.
 - c. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water.
 - d. The size of the restorable riparian buffer on the property to be donated shall equal or exceed the acreage of riparian buffer required to be mitigated under the mitigation responsibility determined pursuant to Item (b) of this Section.
 - e. The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use.
 - f. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation.
 - g. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs.
 - h. The property shall not contain any building, structure, object, site, district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended.
 - i. The property shall not contain any hazardous substance or solid waste.
 - j. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations.
 - k. The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort.
 - l. The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (4) At the expense of the applicant or donor, the following information shall be submitted to the Town with any proposal for donations or dedications of interest in real property:

Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION

- a. Documentation that the property meets the requirements laid out in subsection (f)(3) of this Section;
 - b. USGS Survey 1:24,000 scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
 - c. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;
 - d. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
 - e. A title certificate from a licensed NC attorney.
- (g) **RIPARIAN BUFFER RESTORATION OR ENHANCEMENT.** Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
- (1) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - a. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to subsection (b) of this Section; or
 - b. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to subsection (b) of this Section.
 - (2) The location of the riparian buffer restoration or enhancement shall comply with the requirements in subsection (d) of this Section.
 - (3) The width of the riparian buffer restoration or enhancement site shall comply with Section 15-269.3 as measured horizontally on a line perpendicular to the surface water.
 - (4) The applicant shall submit a restoration or enhancement plan for approval. The restoration or enhancement plan shall contain the following:
 - a. A map of the proposed restoration or enhancement site;

Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION

- b. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;
 - c. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
 - d. A fertilization plan; and
 - e. A schedule for implementation.
- (5) Within one year after the permit issuing authority has approved the restoration or enhancement plan, the applicant shall present proof that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of the riparian buffer protection program.
 - (6) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal and other water quality enhancement functions.
 - (7) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.
- (h) The Town may determine that the option described in 15-269.7(e) does not apply to a public utility as defined in this Article if the mitigation options specified above in 15-269.7(f) and (g) are found to not be feasible.

ORANGE COUNTY PLANNING & INSPECTIONS DEPARTMENT
Craig N. Benedict, AICP, Director

Administration
(919) 245-2575
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www.co.orange.nc.us



131 W. Margaret Lane
P O Box 8181
Hillsborough,
North Carolina, 27278



TRANSMITTAL DELIVERED VIA EMAIL

May 8, 2012

Christina Moon, AICP
Planning Administrator
Town of Carrboro
301 W. Main St.
Carrboro, NC 27510

SUBJECT: Joint Planning Review of Proposed Ordinance Amendments

Dear Tina:

Thank you for the opportunity to review the following Land Use Ordinance amendments received by us on April 27, 2012 and proposed for town public hearing on May 22:

- *Relating to mitigation options for impacts to stream buffers on ephemeral streams*

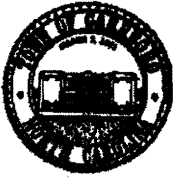
We have reviewed the amendments and find no inconsistency with the adopted *Joint Planning Area Land Use Plan*.

If you have any questions or need additional information, please let me know.

Sincerely,

A handwritten signature in cursive script that reads "Perdita Holtz".

Perdita Holtz, AICP
Planning Systems Coordinator



TOWN OF CARRBORO

Environmental Advisory Board

301 West Main Street, Carrboro, North Carolina 27510

R E C O M M E N D A T I O N

THURSDAY, MAY 17, 2012

**LAND USE ORDINANCE TEXT AMENDMENTS TO MODIFY THE MITIGATION OPTIONS FOR
IMPACTS TO STREAM BUFFERS ON EPHEMERAL STREAMS**

Motion was made by Nina Butler and seconded by Bruce Sinclair that the Environmental Advisory Board recommends that the Board of Aldermen approve the draft ordinance.

VOTE: AYES: 6**ABSENT/EXCUSED:** Chicarel-Bayard**NOES: 0****ABSTENTIONS:**Associated Findings


By a unanimous show of hands, the Environmental Advisory Board membership indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Furthermore, the Environmental Advisory Board of the Town of Carrboro finds that the proposed text amendment is consistent with the findings from *Carrboro Vision 2020* regarding efforts to protect water resources, particularly the following sections:

5.22 Carrboro should adopt a strategy and set of policies to protect all of our creeks, streams, ponds, and lakes.

5.23 Carrboro should be proactive in managing its stormwater, promoting active maintenance of facilities, reducing impacts of increased impervious surface, and minimizing impacts on waterways.

VOTE: AYES: 6**ABSENT/EXCUSED:** Chicarel-Bayard**NOES: 0****ABSTENTIONS:**



 (Chair) 05-14-12
(Date)



TOWN OF CARRBORO

ATTACHMENT D - 3

Planning Board

301 West Main Street, Carrboro, North Carolina 27510

R E C O M M E N D A T I O N

THURSDAY, MAY 17, 2012

LAND USE ORDINANCE TEXT AMENDMENTS TO MODIFY THE MITIGATION OPTIONS FOR IMPACTS TO STREAM BUFFERS ON EPHEMERAL STREAMS

Motion was made by **Seils** and seconded by **Chaney** that the **Planning Board** recommends that the Board of Aldermen **approve** the draft ordinance. We believe the purpose of fee should be to fully offset cost of restoration and discourage destruction of resources, encouraging innovative site design and construction techniques. We also recommend that the fee structure reflect the actual cost of replacing the ecological resource lost and the cost to the community, rather than meeting the lowest common denominator provided by the state minimum fee.

VOTE:

AYES: Barton, Chaney, Clinton, Ferrer, Foushee, Killeen, Poulton, Schaefer, Seils,

NOES: None

ABSENT/EXCUSED: Hunt, Jaimeyfield

ABSTENTIONS: None

Associated Findings

By a unanimous show of hands, the **Planning Board** membership indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Furthermore, the **Planning Board** of the Town of Carrboro finds that the proposed text amendment is consistent with the findings from *Carrboro Vision 2020* regarding efforts to protect water resources, particularly the following sections:

5.22 Carrboro should adopt a strategy and set of policies to protect all of our creeks, streams, ponds, and lakes.

5.23 Carrboro should be proactive in managing its stormwater, promoting active maintenance of facilities, reducing impacts of increased impervious surface, and minimizing impacts on waterways.

Moved: SEILS, Seconded: FOUSHEE

VOTE:

AYES: Barton, Chaney, Clinton, Ferrer, Foushee, Killeen, Poulton, Schaefer, Seils,

NOES: None

ABSENT/EXCUSED: Hunt, Jaimeyfield

ABSTENTIONS: None

John Killeen, Chair

May 17, 2012

A RESOLUTION AMENDING THE MISCELLANEOUS FEES AND CHARGES
SCHEDULE TO ADD FEES FOR WATER QUALITY BUFFER MITIGATION AND TO
DIRECT FEES TO THE WATER QUALITY ENHANCEMENT FUND
Resolution No. 160/2011-12

WHEREAS, the Carrboro Board of Aldermen seeks to ensure the costs for products and services are fair and adequate.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO that the Aldermen amend the Miscellaneous Fees and Charges Schedule by renaming the item "Stream Determination," "Stream Determination and Water Quality Buffer Mitigation" and adding the following under this item:

Mitigation Fees for Impacts to Ephemeral Stream Water Quality Buffers	
Removal of vegetation	\$0.99 per sq ft*1.5
Grading or other changes that modify natural conditions of diffuse flow	\$12.50 per linear foot of stream disturbance for one or both sides of stream channel, depending on area of impact
Disturbance of stream channel	\$349 per linear foot of stream disturbance

BE IT HEREBY FURTHER RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO that the Aldermen direct these fees to the Water Quality Enhancement Fund as specified in Carrboro Land Use Ordinance Section 15-269.7.