

**AN ORDINANCE TO AMEND VARIOUS PROVISIONS
OF THE *UNIFIED DEVELOPMENT ORDINANCE* RELATED TO
SEDIMENTATION AND EROSION CONTROL
AND DUE TO STATE LEGISLATION
(TC1700006)**

WHEREAS, the Durham Board of County Commissioners wishes to amend certain provisions in the *Unified Development Ordinance* by making technical revisions to sedimentation and erosion control requirements and to comply with other various state legislation; and

WHEREAS, it is the objective of the Durham Board of County Commissioners to have the UDO promote regulatory efficiency and consistency and the health, safety, and general welfare of the community;

NOW, THEREFORE, be it ordained that Article 3, Applications and Permits; Article 9, Landscaping and Buffering; Article 12, Infrastructure and Public Improvements; and Article 15, Enforcement, of the *Unified Development Ordinance* are amended to make the following changes set forth in the deletions (strikethroughs) and additions (underlining) below:

PART 1

[Amendments to Sedimentation and Erosion Control requirements within Sec. 3.8, Sedimentation and Erosion Control; Sec. 12.10, Sedimentation and Erosion Control; and Sec. 15.5, Sedimentation and Erosion Control Enforcement and Penalties.]

Sec. 3.8 Sedimentation and Erosion Control

[Paragraphs not listed remain unchanged]

3.8.1 Applicability

B. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, no person shall initiate any land-disturbing activity that will disturb more than one acre or requires a sedimentation and erosion control plan under Sec 12.10 unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for the activity is filed with and approved by the County Sedimentation and Erosion Control Office. Pursuant to Sec. 113A-57(4) of the North Carolina Sedimentation Pollution Control Act of 1973, land-disturbing activity that requires a sedimentation and erosion control plan under Sec. 12.10, Sedimentation and Erosion Control, shall not commence until at least 30 days after a sedimentation and erosion control plan is filed with the County Sedimentation and Erosion Control Office, regardless of when the plan is approved.

3.8.2 Application Requirements

A. Erosion and Sedimentation Control Plan

1. Three-Two copies of a sedimentation and erosion control plan and one preliminary set of construction drawings shall be filed with the County Sedimentation and Erosion Control Office. A digital copy of approved construction drawings must be submitted upon their approval.

3. A sedimentation and erosion control plan shall be prepared by, and bear the seal and signature of, a registered professional engineer, registered landscape architect, registered architect, registered land surveyor, or certified professional ~~sediment and erosion control specialist in erosion and sediment control~~. The County Sedimentation and Erosion Control Officer or designee may, however, deem such a seal and signature not necessary due to site simplicity (as the absence of sensitive geographical features and receiving watercourses) and the limited nature of the sedimentation and erosion control measures required.

B. Land-Disturbing Permit

3. The Sedimentation and Erosion Control Officer or designee shall require security to assure performance of the conditions of the permit whenever a land-disturbing activity is in excess of five acres or whenever the Officer or designee determines that the activity may result in significant off-site damage. The applicant shall file with the Officer or designee an improvement security in the form of a performance ~~or cash~~ bond or letter of credit. The amount shall be that which the Officer or designee deems sufficient to cover all costs of protection or other improvements required for conformity with standards specified in this section and Sec. 12.10, Sedimentation and Erosion Control. The security may be adjusted or released as the amount of disturbed area changes. The security shall be released when the Officer or designee has certified that all of the requirements of such sections have been met. Forfeiture of the improvement security shall not release the person conducting the land disturbing activity of their obligation to install and maintain necessary erosion control measures, to stabilize the site, or any other obligation of this section or Sec. 12.10, Sedimentation and Erosion Control, or any rule or order promulgated in furtherance thereof.

3.8.4 Action by Sedimentation and Erosion Control Office

~~A. The County Sedimentation and Erosion Control Office shall forward a copy of each complete sedimentation and erosion control plan to the Durham Soil and Water Conservation District for review and comment.~~

BA. The County Sedimentation and Erosion Control Officer or designee shall review each complete sedimentation and erosion control plan submitted and within 30 days of receipt shall notify the person submitting the plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete plan within 30 days of receipt shall be deemed approval. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Disapproval of a plan must specifically state in writing the reasons for disapproval.

CB. If, following commencement of a land-disturbing activity pursuant to an approved sedimentation and erosion control plan, the County Sedimentation and Erosion Control Officer or designee determines that the plan is inadequate to meet the requirements of this section or Sec. 12.10, Sedimentation and Erosion Control, the Officer or designee may require such revisions as it deems necessary to comply with such sections. Failure to approve, approve with modifications, or disapprove a revised plan within 15 days of receipt shall be deemed approval. Pending approval of a revised plan, work shall cease or shall continue only as authorized by the Officer or designee.

DC. The County Sedimentation and Erosion Control Officer or designee shall review each permit application that does not require an approved sedimentation and erosion control plan and within 14 calendar days of receipt shall notify the person submitting the application that it has been issued or denied.

3.8.5 Action by Durham Soil and Water Conservation District

~~The Durham Soil and Water Conservation District shall review a sedimentation and erosion control plan and submit any comments and recommendations to the County Sedimentation and Erosion Control Office within 20 days of receipt, or within any shorter period of time as may be agreed upon by the District and the Office. Failure of the District to submit its comments and recommendations within 20 days or within any agreed upon shorter period of time shall not delay final action on the plan.~~

3.8.6-5 Preconstruction Conference

When deemed necessary by the Sedimentation and Erosion Control Officer, or designee, a preconstruction conference may be required.

3.8.6 Self Inspections

~~The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with Sec. 12.10. The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections conducted by the Durham County Sedimentation and Erosion Control Office.~~

Sec. 12.10 Sedimentation and Erosion Control

[Paragraphs not listed remain unchanged]

12.10.2 Applicability

A. **Exemptions.** The following activities do not require a permit under this section:

~~2. Land disturbing activities for the stockpiling of raw or processed sand, stone or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;~~

32. Land-disturbing activities that are less than 12,000 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated. Notwithstanding this provision, an erosion control plan and/or permit may be required by the Sedimentation and Erosion Control Officer or designee when off-site damage is occurring, or if the potential for off-site damage exists. Additionally, this section may apply when the applicant, or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan;

43. As set forth in NCGS § 113A-52.01, land-disturbing activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants,

dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:

- e. Bees and apiary products; and
- f. Fur animals; and
- g. Mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances;

- 54. Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality, as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality, the provisions of this Article shall apply to such activity and any related land-disturbing activity;
- 65. Land-disturbing activities undertaken by persons as defined in NCGS § 113A-52(8) who are otherwise regulated by the provisions of the Mining Act of 1971, NCGS § 74-46--74-68;
- 76. Land-disturbing activities over which the state has exclusive regulatory jurisdiction as provided in NCGS § 113A-56(a);
- 87. Land-disturbing activities undertaken for the duration of an emergency, activities essential to protect human life; and
- 9. This section shall not require ground cover on cleared land forming the future basin of a planned reservoir.
- 8. Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act; and
- 9. Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations Sec. 12.2 (January 1, 2014 Edition).

B. Plan Required

Plan	Less than 12,000 s.f.	12,000 s.f. to 20,000 s.f.		More than 20,000 s.f.
		MR	MR(*R)	
Permit	MR	R	R	
<u>Plan to District</u>				<u>R</u>

MR - May be required when off-site damage is occurring, the potential for off-site damage exists, or if the applicant or a parent, subsidiary, or other affiliate of the applicant has engaged in any activity enumerated in paragraph 3.8.7, Disapproval of Plan.

R - Required.

*R - Required in a Lake Michie/Little River Critical Area (M/LR-A), Lake Michie/Little River Protected Area (M/LR-B), Falls/Jordan Critical Area (F/J-A) and Eno River Critical Area (E-A).

12.10.4 Mandatory Standards for Land-Disturbing Activity

L. In high quality water (HQW) zones, uncovered areas shall be limited at any time to a maximum total area of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered with the written approval of the Director of DENR-DEQ, Division of Energy, Mineral and Land Resources.

12.10.8 Operations in Lakes or Natural Watercourses

~~Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided.~~

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

12.10.10 Self-Inspections

Where inspections are required by paragraph 3.8.6, Self-Inspections, the following apply:

A. The person who performs the inspection shall make a record of the site inspection by documenting the following items:

1. All of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in Sub-item (1)(e) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
2. The completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
3. The location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in Sub-item (1)(e) of this Rule)

from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;

4. That maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
5. Any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.

B. The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.

C. The inspection shall be performed during or after each of the following phases of a plan:

1. Installation of perimeter erosion and sediment control measures;
2. Clearing and grubbing of existing ground cover;
3. Completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
4. Completion of storm drainage facilities;
5. Completion of construction or development; and
6. Quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

12.10.10-11 Additional Measures [Text remains unchanged]

Sec. 15.5 Sedimentation and Erosion Control Enforcement and Penalties

[Paragraphs not listed remain unchanged]

15.5.3

If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan, a notice of violation shall be served upon that person. The notice may be served by any means authorized under NCGS § 1A-1, rule 4. The notice shall specify a date by which the person must comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted pursuant to those sections or the Act, or an approved sedimentation and erosion control plan and inform the person of the actions that need to be taken to comply. If the person engaged in land-disturbing activity fails to comply within the time specified, enforcement action shall be initiated. If the person engaged in the land-disturbing activity has not received a previous notice of violation as specified in this section, the Erosion Control Officer or designee shall deliver the notice in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program or cooperative extension program, or by the provision of written documents such as Department of Environmental Quality or County Sedimentation and Erosion Control Office documents. If the Erosion Control Officer or designee is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

15.5.7 Civil Penalties

- A. Any person who violates any of the provisions of the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, or rules or orders adopted or issued pursuant to those sections or the Act, or who initiates or continues a land-disturbing activity for which sedimentation and erosion control plan and/or land-disturbing permit is required except in accordance with such plan or permit shall be subject to civil penalties. The maximum civil penalty for a violation shall be \$5,000.00, or \$5,000.00 per day for a continuing violation. Civil penalties may be imposed from the date a violation was commenced. Each day of continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this section for any previous violation and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is \$25,000.00.
- B. The Sedimentation and Erosion Control Officer or designee shall impose the civil penalties authorized by this section. The Sedimentation and Erosion Control Officer or designee shall notify the person upon whom the civil penalties are imposed of the amount and the reason for the penalties of the amount of the penalty, the reason for assessing the penalty, the option available to that person to request remission of the civil penalty under Sec. 15.5.8, the date of the deadline for that person to make the remission request regarding this

particular penalty, and when that person has not been assessed any civil penalty under this section for any previous violation, the date of the deadline for that person to abate continuing environmental damage resulting from the violation in order to be subject to the maximum cumulative total civil penalty under this section. In determining the amount of the penalties the Sedimentation and Erosion Control Officer or designee shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with the Act, this section, Sec. 3.8, Sedimentation and Erosion Control, Sec. 12.10, Sedimentation and Erosion Control, rules or orders adopted or issued pursuant to those sections or the Act, or an approved sedimentation and erosion control plan. The notice of civil penalties shall be served by any means authorized under NCGS § 1A-1, rule 4, and shall direct the violator to either pay or contest the civil penalties, within 30 days after receipt of the notice, by filing a petition for a contested case under NCGS § 150B, art. 3. The administrative law judge hearing the matter shall make a recommended decision to the Board of Commissioners. If either party wishes to challenge the recommended decision, they must file with the Clerk to the Board of Commissioners, and serve on the other parties, and the Office of Administrative Hearings, specific exceptions and objections, detailing the errors of fact or law they contend exist within the recommended decision, and other written argument they wish to submit, within 30 days after the issuance of same. Other parties shall file any response they wish to make to a submission of exceptions and objections within 30 days of service of same, but may not use this subsequent filing to submit new, or additional, exceptions and objections of their own. The recommended decision and any written submissions of the parties will be reviewed by the Board of Commissioners within 90 days after the official record in this matter is served upon the Clerk to the Board of Commissioners by the Office of Administrative Hearings. The Board of Commissioners shall adopt or modify the recommended decision consistent with the provisions of NCGS § 150B-36. Appeal of the decision of the Board of Commissioners shall be in accordance with NCGS § 150B, art. 4.

15.5.8 Remission of Civil Penalties

- A. A request for remission of a civil penalty imposed under Sec. 15.5 may be filed with the Sedimentation Control Commission within 60 days of receipt of the notice of assessment. Notification of a request for remission must also be filed with the County Engineer. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B, art. 3 of the General Statutes and a stipulation of the facts on which the assessment was based.
- B. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
 - 1. Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
 - 2. Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 - 3. Whether the violation was inadvertent or a result of an accident.
 - 4. Whether the petitioner had been assessed civil penalties for any previous violations.

5. Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
6. The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- C. The petitioner has the burden of providing information concerning the financial impact of a civil penalty on the petitioner and the burden of showing the petitioner's financial hardship.
- D. The Commission may remit the entire amount of the penalty only when the petitioner has not been assessed civil penalties for previous violations and payment of the civil penalty will prevent payment for necessary remedial actions.
- E. The Commission may not impose a penalty under this section that is in excess of the civil penalty imposed by the County.

15.5.8-9 **Criminal Penalties** [Text remains unchanged]

15.5.9-10 **Enforcement Alternatives** [Text remains unchanged]

15.5.10-11 **Restoration of Areas Affected by Failure to Comply** [Text remains unchanged]

PART 2

[Amendments due to SL2017-10]

Sec. 3.6 Subdivision Review

[Paragraphs not listed remain unchanged]

3.6.2 Actions Exempt from Subdivision Requirements

A. The following shall not be considered "subdivision" and are exempt from the provisions of this section:

1. The combination or recombination of lots, or portions of lots, previously created and recorded, if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;
2. The division of land into parcels greater than ten acres if no street right-of-way dedication is involved;
3. The public acquisition by purchase of strips of land for widening or opening streets or for public transportation system corridors; The acquisition of strips of land for public easements, including the widening or opening of streets or the location of utility right-of-way; and
4. The division of a tract in single ownership of which the entire area is no greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of this Ordinance; and
5. The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

PART 3

[Revisions regarding performance guarantees per SL2015-187 and SL2017-40]

Sec. 3.6 Subdivision Review

[Paragraphs not listed remain unchanged]

3.6.8 Final Plat Approval**E. Action by the Planning Director**

Staff review agencies shall complete review and transmit comments back to the Planning Director, or designee. The Planning Director or designee shall approve the plat as is, defer action for additional information and corrections, or disapprove it. If the final plat is disapproved or deferred, the Planning Director or designee shall notify the applicant of the reasons for such disapproval or deferral. The final plat shall be approved by the Planning Director or designee if it meets the following criteria:

6. Is accompanied by a ~~bond or other~~ performance guarantee deemed adequate in amount and form by the requesting department, if required infrastructure, including but not limited to stormwater, street, or water and sewer improvements, has not been completed in accordance with approved construction drawings, and if the department responsible for such infrastructure has consented to final plat approval pending its completion.

F. Issuance of Certificate of Compliance**1. Necessary Infrastructure**

~~a. If a final plat for a project has been approved prior to completion of stormwater facilities, water and sewer utilities, streets, sidewalks, and recreation facilities, certificates of compliance shall not be issued and permanent water or sewer service shall not be provided for buildings within the platted area until completion of required improvements except as further provided in paragraph b. below.~~

~~b. If the director or designee of the department responsible for acceptance or regulation of the required infrastructure determines in his/her reasonable discretion that delay will improve the quality of the infrastructure or will conserve resources, he/she may allow certificates of compliance to be issued. In such case, the responsible director or designee may require supplementation of the performance guarantee(s) that was provided prior to final plat approval, and shall, in addition, set a date by which the necessary infrastructure shall be completed. Examples of improvement for which delays may be granted include completing stormwater facilities after they are no longer needed as sedimentation basins; delaying final asphalt application on road surfaces for a period of time to detect problems; delaying construction of turn lanes until traffic thresholds are reached; delaying sidewalk segments as individual houses are built; and delaying construction of infrastructure that requires coordination with other planned infrastructure.~~

2. Other Improvements

~~For other required improvements, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the responsible department director or designee shall determine the time period within which the improvement must be completed.~~

GF. Expiration of Approval [Text remains unchanged]**Sec. 9.11 Extensions**

[Paragraphs not listed remain unchanged]

9.11.2 Extensions for All Other Development

D. The applicant shall also acknowledge that while a Conditional Certificate of Compliance may be issued, no Final Certificate of Compliance shall be issued while there is an active (pending) letter of request for extension of compliance with landscaping requirements unless a performance guarantee (such as a letter of credit or performance bond) sufficient to cover 150125% of the installed landscaping costs has been posted with the Inspections or Planning Department.

Sec. 12.11 Performance Guarantees

[Paragraphs not listed remain unchanged]

12.11.1 Filing of Performance Guarantees

~~Performance guarantees, as described below, in an amount determined at the reasonable discretion of the director or designee of the City or County department(s) responsible for supervision and/or acceptance of the constructed infrastructure, shall be required for delays in completion of necessary infrastructure improvements, landscaping, and committed elements. Where the improvements have not been completed before final plat approval or issuance of a Certificate of Compliance for a building within the approved project, the responsible department director(s) or designee(s) shall specify the time period within which such improvements must be completed.~~

A. Applicability

A performance guarantee, as described below, shall be required if landscaping, recreational facilities, committed elements, or required infrastructure including but not limited to stormwater, streets, sidewalks, or water and sewer improvements, has not been completed in accordance with the approved construction drawings, site plan, or plat as applicable.

B. Amount

1. The responsible department shall require a performance guarantee in the amount of 125% of the reasonable estimated cost, as determined by the applicable director or designee, to complete the infrastructure or other improvement calculated as of the time the performance guarantee is issued. Administrative costs, inflation, and other contingencies shall be allowed for estimating the cost.
2. Any extension of the performance guarantee necessary to complete required improvements shall not exceed one hundred twenty-five percent (125%) of the reasonably estimated cost, as determined by the applicable director or designee, of completion of the remaining incomplete improvements still outstanding at the time the extension is obtained.

C. Timing

Where the improvements have not been completed before final plat approval or issuance of a Certificate of Compliance for a building within the approved project, the responsible department director(s) or designee(s) shall specify the time period within which such improvements must be completed.

12.11.2 Form and Conditions of Performance Guarantee

A. Form

~~Such A performance guarantee may be in the form of a surety bond, letter-of-credit, or other form of guarantee that provides equivalent security to a surety bond or letter of credit some other surety instrument acceptable to the City or County.~~

B. Conditions

~~Such A performance guarantee shall be conditioned upon the performance of all work necessary to complete the specified improvements and the delivery of all necessary encroachment agreements, with said performance and delivery to be done within a stipulated time period. The required amount of the guarantee shall be as determined by the City or County and shall allow for administrative costs, inflation, and other contingencies.~~

C. Release of Guarantee

~~The performance guarantee shall be returned or released, as appropriate, in a timely manner upon the acknowledgement by the city or county that the improvements and conditions for which the performance guarantee is being required are complete.~~

B. Completion

~~Once the conditions of the guarantee have been completed to the satisfaction of the City or County, the guarantee shall be released.~~

D. Extension

~~If the improvements are not complete and the current performance guarantee is expiring, the performance guarantee shall be extended, or a new performance guarantee issued, for an additional period until such required improvements are complete. A developer shall demonstrate reasonable, good faith progress toward completion of the required improvements that are the subject of the performance guarantee or any extension. All improvements shall be completed according to the City, County, or NCDOT standards and specifications, as applicable, and shall be acceptable for City or State maintenance. No guarantee shall be released until all of the appropriate agencies certify that all of the necessary improvements have been completed as required.~~

12.11.3 Issuance of Certificate of Compliance

~~For required improvements other than infrastructure, if the responsible department director or designee determines the completion of the improvement prior to issuance of a certificate of compliance is not practicable, and sufficient justification for the delay has been shown, certificates of compliance may be issued if an adequate performance guarantee is provided. In such event, the requirements for performance guarantees within this section shall apply.~~

PART 4

That the Unified Development Ordinance shall be renumbered, including references, as necessary to accommodate these changes and clarifications.

PART 5

That this amendment of the Unified Development Ordinance shall become effective upon March 1, 2018.