

Section 7.06 Lot Design and Public Place Reservation.

Intent – The requirements of this Section are intended to provide for the orderly growth of the Town of Holly Springs and its extra-territorial jurisdiction by establishing guidelines for: the layout and design of *projects* and *subdivisions*; the dedication or reservation of recreation areas to serve the needs of the owners or residents of a *project* or *subdivision*; adequate provision of parks, schools and playgrounds; and, the arrangement of *lots* such that there will be no foreseeable difficulties, for reasons of topography or other conditions, in securing *UDO permits* or building permits to build on all *lots* in compliance with this UDO, the Town of Holly Springs' Building Code or other applicable local, state or federal regulations.

A. General Requirements.

1. Suitability of Land for Construction or Development.

Land which as been determined, on the basis of engineering or other expert surveys to pose an ascertainable danger to life or property by reason of such land's unsuitability for construction or development shall not be subdivided for the purpose of such construction or development, until or unless the *subdivider* has taken the necessary measures to correct said conditions and to eliminate said dangers.

Land areas which have been used for the disposal of solid waste, including but not limited to construction / demolition debris sites and sanitary land fill sites, shall not be *subdivided* unless the site is certified as suitable for the proposed construction or development by: the Wake County Health Department; a structural engineer licensed in the State of North Carolina; and, a soils expert.

2. Name Duplication of *Projects* and *Subdivisions* Prohibited.

The name of a *project* or *subdivision* shall not duplicate or closely resemble in sound or spelling the name of an existing *project* or *subdivision* within the Town of Holly Springs or its extra-territorial jurisdiction.

3. Dedication of any Public Place or Other Ground by *Final Plat*.

Pursuant to GS § 160A-372, land shall be dedicated and reserved within in each *subdivision* for school sites or recreation areas.

The approval of a *final plat* shall not be deemed to constitute or affect the acceptance by the Town of Holly Springs of any school site, recreation area or other land shown on the *final plat*. The *Town Council* may, by resolution, accept any dedication made to the public of lands when such lands or facilities are located within the *project* or *subdivision* jurisdiction of this UDO. Acceptance of dedication of lands located within the *project* or *subdivision* jurisdiction of this UDO, but outside the corporate limits of the Town of Holly Springs, shall not

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place on the Town of Holly Springs any duty to open, operate, repair or maintain any school site, recreation area or other land. [Amended Ordinance #04-06]*

4. Dedication of any Public Place or Other Ground by Grant of Easement.

Any school site, recreation area or other land may be dedicated to the Town of Holly Springs by separate grant of easement for such public purposes, subject to the approval, by resolution, by the *Town Council*. Acceptance of dedication of lands located within the jurisdiction of this UDO, but outside the corporate limits of the Town of Holly Springs, shall not place on the Town of Holly Springs any duty to open, operate, repair or maintain any school site, recreation area or other land. [Amended Ordinance #04-06]*

B. Lots.

1. Lot Arrangement.

- a. Relation to *Use* and Topography – The design, character, *grade*, location and orientation of all *lots*, shall be appropriate for the uses proposed, and logically related to existing and proposed topography.
- b. *Frontage* – Every *lot* shall be laid out to have sufficient *frontage* to comply with the *frontage* requirements of the *district* in which such *lot* is located. Every *lot* shall be capable of providing *access*, in conformance with the Town of Holly Springs' Engineering Design and Construction Standards, to a *street* constructed, or to be constructed, in accordance with the provisions, standards and specifications of this UDO and the Town of Holly Springs' Engineering Design and Construction Standards.
- c. Conformity with *Preliminary Plan* – No *final plat* shall be approved unless the *lot* layout shall be in substantial conformity with the approved *preliminary plan*. In no event shall a *final plat* be deemed to be in substantial conformity with the *preliminary plan* if the number of *lots* indicated on the *final plat* is increased above the number of *lots* approved as part of the *preliminary plan*.

2. *Lot* and *Out Lot* Numbering.

- a. *Lots* – All *lots* shall be consecutively numbered.
- b. *Out Lots* – *Out lots* in *integrated centers*, or *lots* in a *business park* or *industrial park*, shall be identified by consecutive alphabetical or numerical order.

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- c. Duplication of Numbers Prohibited – The numbering or lettering of individual *lots* shall be consecutive and shall continue such consecutive progression through all phases or sections of a *project* or *subdivision*.

3. *Lot Dimensions.*

- a. Compliance – *Lot* dimensions, including but not limited to: *lot width*; *lot depth*; and, *lot area*, shall comply with the minimum standards of the applicable *district*, variance grant or *development plan* approval.
- b. *Lot Area* Limitation – Land reserved for any proposed *street*, drainage pond, wetland or lands subject to periodic flooding shall not be counted in satisfying any *minimum yard* or *lot area* requirements of this UDO.

No part of the minimum *lot area* required under the applicable *district*, variance grant or *development plan* approval may be satisfied by land that is under water in a pond, lake or other impoundment.

- c. General – In general, *lots* shall be arranged so that:
 - (1) *Side lot lines* are at right angles to *street* lines (or radial to curving *street* lines) unless a deviation from this rule will give a better *street* or *lot* plan;
 - (2) Dimensions of *corner lots*, *through lots* or *triple frontage lots* shall be large enough to allow for the erection of *buildings* while observing the minimum required *front yard setback* applicable on each *street frontage*; and,
 - (3) Commercial or industrial *lots* shall be of adequate size and configuration to provide for *off-street parking areas*, *off-street loading areas*, *yards*, *bufferyards* and other applicable requirements of this UDO.

4. *Lot Orientation.*

The *lot line* common to the *street right-of-way* line shall be the *front lot line*. Whenever feasible, *lots* shall be arranged so that the *rear lot lines* do not abut the *side lot line* of an adjacent *lot*.

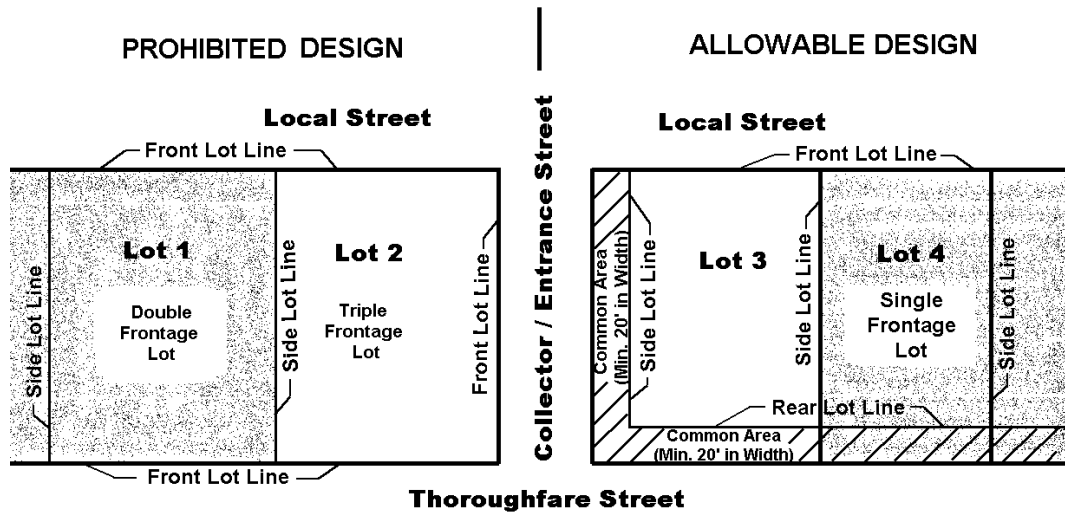
5. *Double Frontage Lots.*

Double frontage lots shall be avoided whenever practical. *Double frontage lots* may be acceptable when necessary to provide for the separation of a development and its related *access* points from the traffic on a bordering *major thoroughfare street* or *minor thoroughfare street* or to overcome specific disadvantages of topography and orientation affecting the *project* or *subdivision*.

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6. *Triple Frontage Lots.*

Triple frontage lots (those *lots* which have *frontage* on three (3) *streets*) shall be prohibited in residential developments unless a waiver is granted by the *Town Council*. [Amended Ordinance #04-06]*



Single, Double and Triple Frontage Lots

7. *Lot Access.*

See Town of Holly Springs' Engineering Design and Construction Standards.

8. *Lot Drainage.*

See Town of Holly Springs' Engineering Design and Construction Standards.

9. Debris and Waste.

No junk, rubbish, or other waste materials of any kind resulting from the construction of public *improvements*, whether natural (i.e., cut trees, debris or rocks) or construction related (i.e., concrete, or building materials) shall be buried in any land at any time, nor shall these materials be left or deposited on any *lot* or *street* within a phase or section of the *project* or *subdivision* at the time of the release of the *performance bond* or other surety for such phase or section.

10. Soil Preservation, Final Grading and Lawn Preparation.

No final *Certificate of UDO Compliance* shall be issued until final grading and seeding or sodding has been completed for the entire *lot* including the area between the *street* curb and the *sidewalk* in accordance with approved *construction drawings*, except those portions of the *lot* covered by *buildings*,

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parking areas, interior access drives or other improvements authorized by *UDO permit*, or where the *grade* has not been changed and natural vegetation has not been damaged.

It is recommended that all lawn areas not provided with automatic irrigation systems should be seeded or sodded for permanent lawn cover during the planting season which runs between the months of September and May of each year. Lawn areas which are prepared during the months of June, July or August may be planted with a temporary lawn cover, or treated in some other manner as approved by the *Director of Engineering*, to minimize or prevent soil erosion and fugitive dust particle emissions.

The *Director* may issue a *Certificate of UDO Compliance* during the months of June, July or August if a bond for landscaping as provided for in Section 7.01, L. – Installation of Landscaping of this UDO is provided.

11. Waterbodies and Watercourses.

See Town of Holly Springs' Engineering Design and Construction Standards.

12. Fencing.

The developer or *subdivider* may be required to install fencing on or around such *lot, block, common area or other portion of a proposed project or subdivision* in order to mitigate a potential hazard. Fencing so required shall be installed in compliance with the General Regulations for the applicable *district*.

Any such fencing, when located in a *front yard* of: a *subdivision* or any non-residential use in a R-30, R-20, R-15, R-10 or R-8 *district*; any project in the R-MF-8 or R-MF-15 *district*; any Commercial / Mixed Use *district*; or, any Industrial *district*, located within a *Gateway Corridor* shall be depicted, detailed and approved as part of any *development plan* for Architectural and Site Design Review, *master plan* for subdivision approval, or *preliminary plan* for *subdivision* approval.

13. *Building Setback Lines*.

Minimum *building setback* lines shall be regulated by the *setback* provisions of the *districts* of this UDO applicable to the *project or subdivision*. *Setbacks* in excess of such UDO standards may be platted, however, such excess *setback* requirements will not be enforced by the Town of Holly Springs unless such excess *setback* requirement is part of a *conditional use district* requirement, *variance grant* or *development plan* approval.

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14. *Lot Addressing.*

Addresses for all *lots* within a *project* or *subdivision* shall conform as closely as practical to the address guidelines contained in the Town of Holly Springs Development Procedures Manual. Wherever possible, the address pattern for new *projects* or *subdivisions* shall be laid out so as to reserve one (1) address number for each twenty (20) feet of *frontage* of a *lot*. Addresses shall conform to the nearest number which approximates the location of the proposed *driveway*, *building* or entrance doorway on a *lot*. Numbers assigned to the west side of north/south *streets* and the north side of east/west *streets* shall be even numbers. Numbers assigned to east side of north/south *streets* and the south side of east/west *streets* shall be odd numbers.

Corner lots shall be assigned two address, one for each *street frontage* of the *lot*. Any *single family dwelling* located on a *corner lot* shall utilize only the address assigned to the *street frontage* that corresponds to the main entrance into the *dwelling*.

Whenever *single family dwelling* or *two family dwelling projects* or *subdivisions* are served by individual mailboxes, all individual mailboxes shall be located on the *street frontage* which correspond to the main entrance to the *dwelling* and the *street* address used for the *lot*.

C. Greenways.

In any case in which a greenway is indicated on an adopted plan of the Town of Holly Springs as being located on lands proposed for development, such greenway shall be dedicated and developed. [Amended Ordinance #07-16]*

D. Buffer Areas.

1. *Buffer Areas* Required.

- a. *Buffer areas* shall be required of any *project* or *subdivision* which abuts the *right-of-way* of I-540, US 1, NC 55 Bypass or any *major thoroughfare* within the Town of Holly Springs and its extra-territorial jurisdiction.
- b. *Buffer areas* shall be required within any *project* or *subdivision* which includes any drainage ways, waterbodies and watercourses, recreational facilities, *open space*, undisturbed buffers, *riparian buffers* or Environmental Buffer Areas which are required by the regulations of this UDO or other applicable regulations.
- c. *Buffer areas* shall be required whenever landscape *yard areas*, *greenbelts*, or other areas which are required to be set aside as separate from *lot area*,

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as in the case of the residential *development options* of Section 2.09 – Development Options, or any other provision of this UDO. [Amended Ordinance #10-11]*

2. Types of *Buffer Areas* – *Buffer areas* may include common areas, *greenbelts*, drainage ways, waterbodies and watercourses, recreational facilities, *open space*, undisturbed buffers, *riparian buffers* or Environmental Buffer Areas which are required by the regulations of this UDO or other applicable regulations. [Amended Ordinance #07-16]
3. Identification of *Buffer Areas* - *Buffer areas* shall be clearly identified, delineated and labeled on all *construction drawings, final plats, development plans*, or any site plans or plot plans submitted for a *UDO Permit* or any other form of *development petition* required pursuant to this UDO.
4. Regulation – When *buffer areas* are required, the *buffer areas* shall be subject to the following regulations:
 - a. All *buffer areas* shall be either:
 - (1) deeded to the property owners' association for maintenance as provided for in the covenants and restrictions for the *project* or *subdivision*; or,
 - (2) covered by appropriate documentary assurances acceptable to the *Town Council* to provide for continual maintenance and which includes a clear description of the ownership and maintenance responsibilities for such buffer areas. [Amended Ordinance #04-06]
 - b. Whenever a landscape yard area or *greenbelt* is required to be set aside as a *buffer area*, the *final plat* or other legally binding restriction shall include a statement that plant materials within such *buffer areas* shall not be removed unless dead, diseased or threatens to become a danger to human life or property.
 - c. *Buffer areas*, when abutting the *right-of-way* of I-540, US 1, NC 55 Bypass or a *major thoroughfare* shall not be less than the *minimum front yard* and *minimum building setback* for the applicable district, measured from and parallel to such *right-of-way*, and shall be landscaped in accordance with the requirements of Section 7.01 – Landscape Regulations of this UDO.

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- d. *Buffer areas* :
- (1) if zoned to a R-30, R-20, R-15, R-10 or R-8 *district*, shall either:
 - (a) not be allowed to be part of an individual *lot*, or
 - (b) if part of an individual *lot*, shall not be allowed to count toward the minimum *lot area* requirement of the applicable *district*; or,
 - (2) if zoned R-MF-8 *District*, R-MF-15 *District*, any Commercial / Mixed Use *District* or any Industrial *District*, may either:
 - (a) be part of a *lot*, or
 - (b) part of a common area separate from a *lot*.
- e. Environmental *Buffer Areas* – Certain areas within the Town of Holly Springs and its extra-territorial jurisdiction may be subject to the following Environmental *Buffer Area* regulations:
- (1) Bass Lake Watershed Buffer – Any proposed *project* or *subdivision* which is located within the Bass Lake Watershed and which includes lands lying within one-hundred (100) feet of any perennial stream within the Bass Lake Watershed shall establish a restricted, undisturbed buffer and conservation easement extending a minimum distance of one-hundred (100) feet from the top of the natural bank on either side of such perennial stream. *Access* to the undisturbed buffer and conservation easement area, via abutting *right-of-way* or other form of access easement deemed acceptable by the *Town Council*, shall be provided on: [Amended Ordinance #04-06]*
 - (a) the *final plat*; or,
 - (b) by separate grant of access easement subject to the approval, by resolution, of the *Town Council*. [Amended Ordinance #04-06]*
 - (2) Neuse River Basin *Riparian Buffer* Protection [Amended Ordinance #03-03] - Any proposed *project* or *subdivision* which is located within the Town of Holly Springs or its extra-territorial jurisdiction in the Neuse River Basin shall provide *riparian buffer* areas on both sides of all *perennial* and *intermittent streams*; including lakes, ponds, and other bodies of water (features). All perennial features indicated on the most recent version of the 1:24,000 scale (7.5 minutes) quadrangle topographic maps prepared by the United States Geological Survey (USGS) and/or on the most recent

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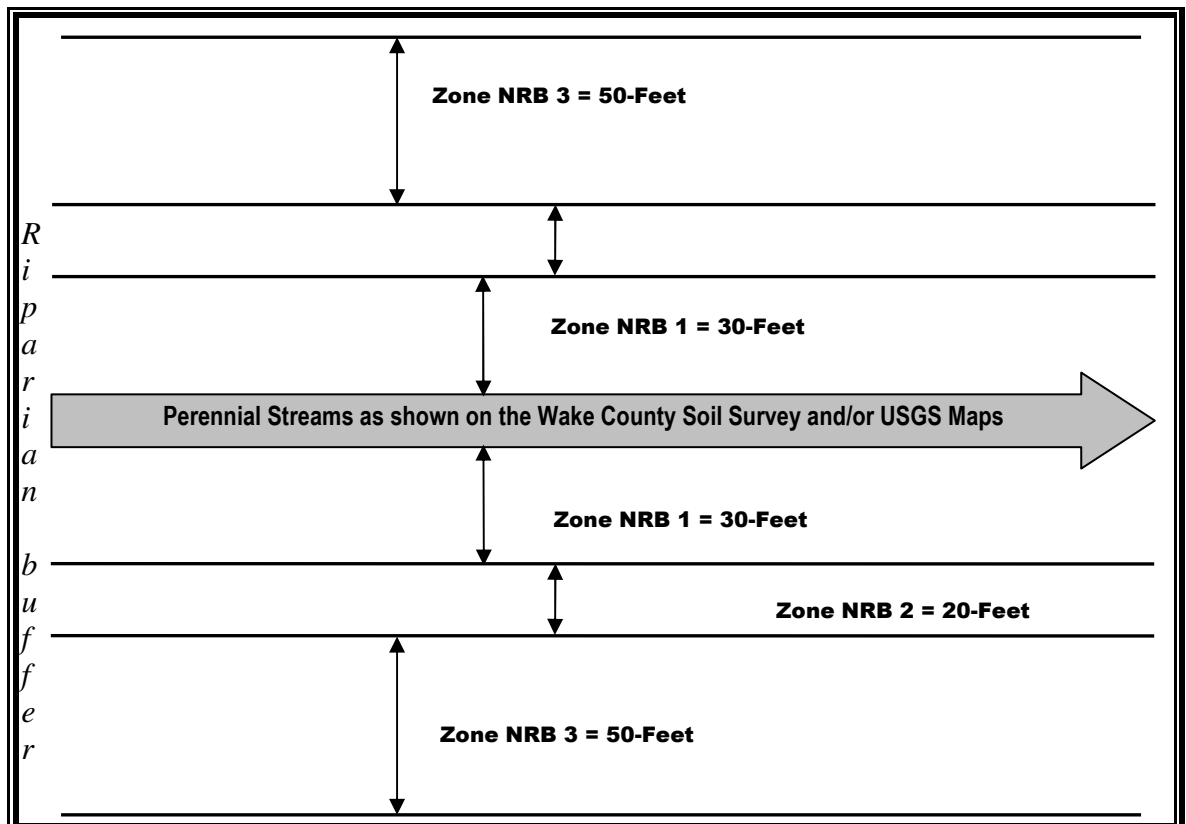
version of the Soil Survey of Wake County, North Carolina, prepared by the United States Department of Agriculture (USDA) shall provide the 100-foot-wide *riparian buffers* directly adjacent to such surface waters (or features), excluding wetlands. In the event of a discrepancy between these two maps that would affect a required buffer the most restrictive map shall apply. Other surface waters (or Features) shall provide the 50-foot-wide *riparian buffers* directly adjacent to such surface waters (or features).

All requirements of Section 7.06, D. - Buffer Areas, of this UDO shall apply to any buffer area established to satisfy the *Riparian Buffer Protection Rules*.

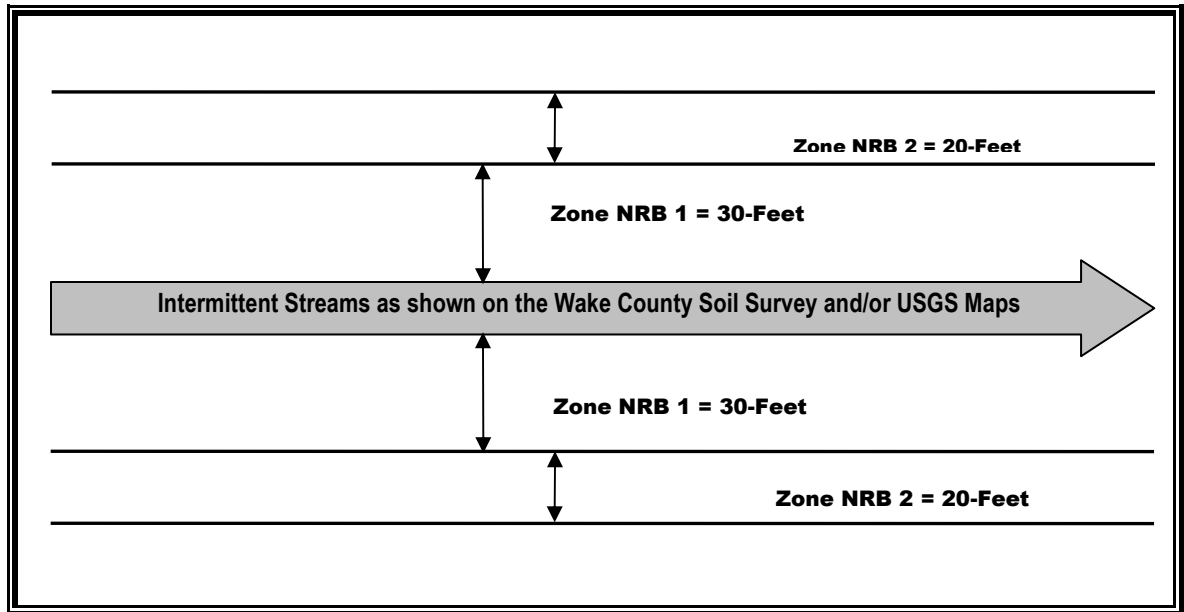
(a) Delineation of the Riparian buffer Zones:

- (i) Zone NRB1 (30 feet landward adjacent to *stream* bank) on both sides of the *stream*.
- (ii) Zone NRB2 (20 feet landward adjacent to Zone NRB1) on both sides of the *stream*.
- (iii) Zone NRB3 (50 feet landward adjacent to Zone NRB2) on both sides of the *perennial stream*.

Riparian Buffer Zones for Perennial Features



Riparian Buffer Zones for Intermittent Features



The buffers shall be measured horizontally from the edge of the water body (i.e., from *top of bank*).

(b) Activity within the *Riparian buffer Zone*:

- (i) The State of North Carolina, Division of Water Quality regulates activity within Zones NRB 1 & NRB 2 of the *riparian buffer* in the Neuse River Basin. Activity may take place within any *riparian buffer* zone as defined by Neuse *Riparian Buffer Rules*, 15A NCAC 2B.0233 as amended. The following documentation will be required by the Town prior to permitting development activity to commence within Zones NRB1 & NRB2.
 1. An authorization certificate that documents that the NC Division of Water Quality has approved an *allowable* use.
 2. An opinion from the NC Division of Water Quality that vested rights have been established for that activity.
 3. A letter from the NC Division of Water Quality documenting that a variance has been granted for the proposed activity.
- (ii) The Town of Holly Springs regulates activity in Zone NRB3 of the *riparian buffer* which shall be as defined by Zone 2 requirements established by the Neuse *Riparian Buffer Rules*, 15A NCAC 2B.0233 as amended. All activity in Zone

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NRB3 must comply with all other Town, State and Federal regulations.

- (iii) All timbering activity in the buffer must also comply with the Town’s Soil Erosion and Sediment Control, Stream and Wetland Protection, Land Disturbance Ordinance 02-06, Town Code Section 9-5023, as amended.
- (iv) All activity in Zone NRB 3 shall comply with the following Neuse River Basin Table of Approved Uses.

Neuse River Basin Table of Approved Uses		
<p>The following chart sets forth the <i>allowable</i> uses and in the Neuse River Basin and their designation as <i>Exempt</i>, <i>Allowable</i>, <i>Allowable with Mitigation</i>, and <i>Prohibited</i>. Under the Neuse River Basin <i>Riparian buffers</i> Rule 15A NCAC 02B .0233 which are copied for your reference, the Town of Holly Springs recommends that you consult the North Carolina Division of Water Quality for all questions and concerns regarding any activity in Zones NRB 1 and NRB 2 of the <i>Riparian Buffer</i>. Conditions of uses in the Town-mandated portion of the buffer (Zone NRB 3) are also described in the chart. All activities must have construction drawing approval prior to commencing work. All activities must comply with all other Federal, State and Town regulations. It is recommended that you notify the Town of Holly Springs Department of Engineering prior to commencing <i>exempt</i> uses in any zone of the <i>riparian buffer</i>.</p>		
	Please Note This column is for reference only	Town-mandated Portion of the buffer
	Zone NRB 1 & NRB 2	Zone NRB 3
Airport facilities:		
• Airport facilities that impact equal or less that 150 linear feet or one-third of an acre of <i>riparian buffer</i>	<i>Allowable</i>	<i>Allowable</i>
• Airport facilities that impact greater than 150 linear feet or one-third of <i>riparian buffer</i>	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Archaeological activities	<i>Exempt</i>	<i>Exempt</i>
Bridges	<i>Allowable</i>	<i>Allowable</i>
Dam maintenance activities	<i>Exempt</i>	<i>Exempt</i>
Drainage ditched, roadside ditches and stormwater outfalls through <i>riparian buffers</i> :		
• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	<i>Exempt</i>	<i>Exempt</i>
• New drainage ditches, roadside ditches, and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the <i>riparian buffer</i>	<i>Allowable</i>	<i>Allowable</i>
• New drainage ditches, roadside ditches, and stormwater outfalls provided that do not provide control for nitrogen before discharging though the <i>riparian buffer</i>	<i>Prohibited</i>	<i>Allowable</i>
• Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch	<i>Prohibited</i>	<i>Prohibited</i>

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Drainage of a pond in a natural drainage way provided that a new <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules are established adjacent to the new channel	<i>Exempt</i>	<i>Exempt</i>
Driveway crossings of streams and other surface waters subject to this Rule:		
• Driveway crossing on single family residential lots that disturb equal or less than 25 linear feet or 2,500 square feet of <i>riparian buffer</i>	<i>Exempt</i>	<i>Exempt</i>
• Driveway crossing on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of <i>riparian buffer</i>	<i>Allowable</i>	<i>Allowable</i>
• In a subdivision that cumulatively disturb equal or less than 150 linear feet or one-third of an acre of <i>riparian buffer</i>	<i>Allowable</i>	<i>Allowable</i>
• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of <i>riparian buffer</i>	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Fences provided that disturbance is minimized and installation does not result in removal of the forest vegetation	<i>Exempt</i>	<i>Exempt</i>
Forest Harvesting – see Item (11) of the Neuse Buffer Rules and Section 9-5023 of the Town of Holly Springs Soil Erosion and Sedimentation Control Ordinance		
Fertilizer Application:		
• One-time fertilizer application to establish replanted vegetation	<i>Exempt</i>	<i>Exempt</i>
• Ongoing fertilizer application	<i>Prohibited</i>	<i>Prohibited</i>
Greenway/hiking trails located	<i>Allowable</i>	<i>Allowable</i>
Historic Preservation	<i>Exempt</i>	<i>Exempt</i>
Landfills as defined by G.S. 130A-290	<i>Prohibited</i>	<i>Prohibited</i>
Mining Activities:		
• Mining activities that are covered by the Mining Act provided that new <i>riparian buffers</i> that meeting the requirements of Items (4) and (5) of the Neuse Buffer Rule are established adjacent to the relocated channels	<i>Allowable</i>	<i>Allowable</i>
• Mining activities that are not covered by the Mining Act OR were new <i>riparian buffers</i> that meet the requirements or Items (4) and (5) of the Neuse Buffer Rules are not established to the relocated channels	<i>Allowable with Mitigation</i>	<i>Allowable with Mitigation</i>
• Wastewater or mining dewatering wells approved NPDES permit	<i>Exempt</i>	<i>Exempt</i>
Non-Electric Utility Lines:		
• Impacts other than perpendicular crossing in Zone 2 only	<i>Allowable</i>	<i>Allowable</i>
• Impacts other than perpendicular crossings in Zone 1	<i>Allowable with Mitigation</i>	<i>Allowable</i>
• Impacts other than perpendicular crossings in Zone 3		<i>Allowable</i>
Non-electric utility lines perpendicular crossing of streams and other surface waters subject to the Neuse Buffer Rules:		
• Perpendicular crossing that disturb equal or less than 40 linear feet of <i>riparian buffer</i> with a maintenance corridor equal to or less than 10 feet in width	<i>Exempt</i>	<i>Allowable</i>

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• Perpendicular crossing that disturb greater than 40 linear feet of <i>riparian buffer</i> with a maintenance corridor greater than 10 feet in width	<i>Allowable</i>	<i>Allowable</i>
• Perpendicular crossing that disturb greater than 40 linear feet but equal or less than 150 feet of <i>riparian buffer</i> with a maintenance corridor equal to or less than 10 feet in width	<i>Allowable</i>	<i>Allowable</i>
• Perpendicular crossing that disturb greater than 40 linear feet but equal or less than 150 feet of <i>riparian buffer</i> with a maintenance corridor greater than 10 feet in width	<i>Allowable with Mitigation</i>	<i>Allowable</i>
• Perpendicular crossing that disturb greater than 150 linear feet of <i>riparian buffer</i>	<i>Allowable with Mitigation</i>	<i>Allowable</i>
On-site sanitary sewer sewage systems - new ones that use ground absorption	<i>Prohibited</i>	<i>Prohibited</i>
Overhead electrical utility lines:		
• Impacts other than perpendicular crossing in Zone 2 only	<i>Exempt</i>	<i>Exempt</i>
• Impacts other than perpendicular crossing in Zone 1	<i>Exempt</i>	<i>Exempt</i>
• Impacts other than perpendicular crossing in Zone 3 only		<i>Exempt</i>
Overhead electrical utility line perpendicular crossing of <i>streams</i> and other surface waters subject to the Neuse Buffer Rules:		
• Perpendicular crossing that disturb equal to or less than 150 linear feet of <i>riparian buffer</i>		
• Perpendicular crossing that disturb greater than 150 linear feet of <i>riparian buffer</i>	<i>Exempt</i>	<i>Exempt</i>
Periodic maintenance of modified natural <i>streams</i> such as canals and grasses travelway on one side of the surface water when alternative forms of maintenance access are not practical		<i>Exempt</i>
Playground Equipment:		
• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	<i>Exempt</i>	<i>Exempt</i>
• Playground equipment installed on lands other than single family lots or that requires removal of vegetation.	<i>Allowable</i>	<i>Allowable</i>
Ponds in natural drainage ways, excluding dry ponds:		
• New Ponds provided that a <i>riparian buffer</i> that meets requirements of Items (4) and (5) of the Neuse Buffer Rules	<i>Allowable</i>	<i>Allowable</i>
• New Ponds where a <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the <i>riparian buffer</i> or the stream channel	<i>Allowable</i>	<i>Allowable</i>
Railroad crossing of streams and other surface waters subject to this Rule:	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Railroad crossings of streams and other surface waters subject to the Neuse Buffer Rules		
• Railroad crossings that impact equal to or less than 40 linear feet of <i>riparian buffer</i>	<i>Exempt</i>	<i>Exempt</i>

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<ul style="list-style-type: none"> Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 feet or one-third of an acre of <i>riparian buffer</i> 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> Railroad crossings that impact greater than 150 linear feet or one-third acre of <i>riparian buffer</i> 	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	<i>Exempt</i>	<i>Exempt</i>
Road impacts other than crossings of <i>streams</i> and other surface waters subject to the Neuse Buffer Rules	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Road crossings of <i>streams</i> and other surface waters subject to the Neuse Buffer Rules:		
<ul style="list-style-type: none"> Road Crossings that impact equal or less than 40 linear feet of <i>riparian buffer</i> 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> Road crossings that impact greater than 40 linear feet of <i>riparian buffer</i> but equal to or less than 150 feet or one-third acre of <i>riparian buffer</i> 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> Road crossings that impact greater than 150 linear feet or one-third acre of <i>riparian buffer</i> 	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Scientific <i>Stream</i> Studies and <i>Stream</i> Gauging	<i>Exempt</i>	<i>Exempt</i>
Stormwater management ponds excluding dry ponds:		
<ul style="list-style-type: none"> New stormwater management ponds provided that a <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is established adjacent to the pond. 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> New stormwater management ponds where a <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is NOT established adjacent to the pond 	<i>Allowable with Mitigation</i>	<i>Allowable</i>
<ul style="list-style-type: none"> Stormwater management ponds located in Zone 3 only 		<i>Allowable</i>
<i>Stream</i> restoration	<i>Exempt</i>	<i>Exempt</i>
Streambank stabilization	<i>Allowable</i>	<i>Allowable</i>
Temporary Roads:		
<ul style="list-style-type: none"> Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetating, are conducted immediately after construction 	<i>Allowable</i>	<i>Allowable</i>
Temporary sediment and erosion control devices:		
<ul style="list-style-type: none"> In Zone 2 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow in accordance with Item (5) of the Neuse Buffer Rules 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> In Zones 1 and 2 to control impacts associated with uses approved by NC DWQ or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer. 	<i>Allowable</i>	<i>Allowable</i>

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• In-stream temporary erosion and sediment control measures for work within a stream channel	<i>Exempt</i>	<i>Exempt</i>
Underground electric utility lines:		
• Impacts other than perpendicular crossings in Zone 3 only		<i>Exempt</i>
• Impacts other than perpendicular crossings in Zone 2 only	<i>Exempt</i>	<i>Exempt</i>
• Impacts other than perpendicular crossings in Zone 1	<i>Exempt</i>	<i>Exempt</i>
Underground electric utility lines perpendicular crossing of streams and other surface waters subject to the Neuse Buffer Rules:		
• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer	<i>Exempt</i>	<i>Exempt</i>
• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer	<i>Allowable</i>	<i>Allowable</i>
Vegetation Management:		
• Emergency fire control measures provided that topography is restored	<i>Exempt</i>	<i>Exempt</i>
• Periodic mowing and harvesting of plant products in Zone 3 only	<i>Exempt</i>	<i>Exempt</i>
• Periodic mowing and harvesting of plant products in Zone 2 only	<i>Exempt</i>	<i>Exempt</i>
• Planting vegetation to enhance the riparian buffer	<i>Exempt</i>	<i>Exempt</i>
• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	<i>Exempt</i>	<i>Exempt</i>
• Removal of Poison Ivy	<i>Exempt</i>	<i>Exempt</i>
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	<i>Exempt</i>	<i>Exempt</i>
Water dependent structures as defined in 15A NCAC 2B .0202	<i>Allowable</i>	<i>Allowable</i>
Water supply reservoirs:		
• New reservoirs where a riparian buffer that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is established adjacent to the reservoir	<i>Allowable</i>	<i>Allowable</i>
• New reservoirs where a riparian buffer that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is NOT established adjacent to the reservoir	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Water Wells	<i>Exempt</i>	<i>Exempt</i>
Wetland Restoration	<i>Exempt</i>	<i>Exempt</i>

(c) Modifications and Waivers of Neuse River Riparian Buffer Areas

- (i) In State regulated Zones NRB1 & NRB2 where obvious conflicts between actual field conditions and USGS and Wake County Soil Survey maps exist, appeals may be made to the North Carolina Division of Water Quality, in accordance with the Neuse Riparian buffer Rules, 15A NCAC 2B.0233. If an applicant obtains a map revision,

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permit, or variance by NC Division of Water Quality or the NC Environmental Management Commission, the applicant shall submit all documentation, including corresponding maps, to the Town of Holly Springs, Department of Engineering. Engineering staff will review the information provided by the applicant during the *construction drawing* review process or earlier if the information required is available. After the review staff will ask for additional documentation or recommend approval of the *construction drawings* provided that the *construction drawings* correspond with all of the NC Division of Water Quality requirements. The Director of Engineering or his/her designee shall grant approval of the *construction drawings* consistent with NC Division of Water Quality ruling.

- (ii) **All Other Requests for Waivers:** In all other instances where a *waiver* is requested for the Town-mandated *riparian buffer*, applicants may appeal to the *Town Council*. The applicant must provide documentation to the Department of Engineering to support the appeal, in the *construction drawing* review process, or as early as the *preliminary plan* or *development plan* review process, if sufficient information exists for review. Engineering staff will review the documentation and ask for additional information as needed. Once the review is complete, the Engineering staff shall schedule the matter to be considered at a *Town Council Meeting*, and shall recommend approval or disapproval of the *waiver*. [Amended Ordinance #04-06]*

1. In evaluating such *waivers*, the *Town Council* shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, in accordance with the following Findings of Fact: [Amended Ordinance #04-06]*

- (a) The carrying out of the strict letter of the UDO will result in practical difficulties in the development of the property included in the *Waiver* Petition.
- (b) Approval will observe the spirit of the UDO.
- (c) Approval will secure public safety and welfare.
- (d) Approval will provide substantial justice.

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- (e) There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands, buildings, or structures in the Town or there is a particular characteristic of a proposed use which makes the application of certain *development standards* of the UDO, as requested in the petition for *waiver of development standards*, unrealistic.
 - (f) Granting the *Waiver* requested will not confer any special privileges that are denied to other property owners or residents with similar properties or circumstances.
 - (g) A literal interpretation of the provisions of the UDO would deprive the applicant of rights commonly enjoyed by other owners and residents of the Town in which the property is located.
 - (h) The requested *Waiver* will be in harmony with the purpose and intent of the UDO and will not be injurious to the neighbor or to the general welfare.
 - (i) The special circumstances given rise to the *Waiver* request are not as result of actions of the Applicant.
 - (j) *Waiver* requested is the minimum waiver that will make possible the legal use of the land, building or structure.
2. Written findings shall be submitted to the Department of Engineering, in writing, by the applicant included with the Development *Waiver* Petition.
3. Upon consideration of the findings and the purposes of this ordinance, the *Town Council* shall issue a waiver only upon a showing of good and sufficient cause. The *Town Council* may attach such conditions to the granting of a waiver as it deems necessary to further the purposes of this ordinance. [Amended Ordinance #04-06]*

4. Conditions of Waiver:

- (a) A waiver may not be issued when the waiver will be in violation of other Federal, State, or local laws, regulations, or ordinances.
- (b) All waivers must be determined prior to the approval of the construction drawings.

(d) **Mitigation:**

- (i) Persons who wish to undertake or are required to provide *mitigation* shall be required to meet the requirements of acceptable *mitigation* practices as outlined in the Town of Holly Springs Engineering Design and Construction Standards in order to proceed with their proposed use.
- (ii) *Best Management Practices (BMP's)* used for *mitigation* shall be included in a platted drainage easement.

(e) **Description of Buffer Areas on Development Petition:** *Stream* buffers (Zones NRB1, NRB2 and NRB3) shall be graphically shown on all *preliminary plans, development plans, construction drawings, erosion control plans and final plats* or any site plan or plot plan submitted for a *UDO Permit* as outlined in section 7.06, D.,3. The buffers shall be clearly labeled “*Riparian buffer*” and zones shall be clearly shown and labeled with zone restrictions noted.

(f) **Lots Containing Riparian Buffer Area:**

- (i) **Residential and Non-residential Construction:** New construction of or substantial improvements to any residential structure shall be located outside of the *riparian buffer* area. No proposed *building* lot that is wholly or partly in the *riparian buffer* area shall be approved unless there is established on the *final plat* a line representing the limits of the *riparian buffer* area and a minimum usable area as specified in the following table. The usable lot area is defined by the area of the lot outside of the *riparian buffer* area that will contain the *structure* and related *setbacks*. This area must be contiguous.

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District	Minimum Contiguous Lot Size Outside of <i>Riparian Buffer</i>
R-30	15,000 square feet
R-20	10,000 square feet
R-15, R-10, R-8	8,000 square feet
PUD	8,000 square feet or the min. lot size for lots based on the PUD, whichever is less

(g) **Riparian buffer Education Packets:** The developer of any *project* or *subdivision* shall be required to provide all property owners of *lots* with *riparian buffers* on or adjacent to any State or Town-mandated buffer, shall receive a *riparian buffer* education packet from the developer at the time of the sale of the property.

(h) **Tree Protection Requirements:**

- (i) Tree protection fencing shall be present on all *development plans* clearly showing protection of the *riparian buffer*.
- (ii) Tree protection fencing shall be present on each development site prior to initiating any timbering or land disturbing activity.
- (iii) Tree protection fencing and signage must meet the criteria outlined in the Town of Holly Springs Engineering Design and Construction Standards.

(i) **Vested Rights:**

- (i) **Purpose:** The purpose of this part is to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability and fairness to the reasonable expectations of landowners affected by this Ordinance in recognition that approval of land *development projects* or *subdivisions* typically follows significant landowner investment in site development.
- (ii) **Establishment of Vested Rights:** A vested right with respect to this Section shall be established upon the approval of a site specific *development plan*, or a *PUD* plan approval, that is currently valid or has been submitted for formal development review and continues on the current review schedule.
- (iii) **Exceptions:** Excepted from the provision in subsection 7.06, 4., e., (2), (i), (ii) above is any vesting of rights on property located partially or entirely within Zone 1 or Zone 2 of the

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Neuse River Basin, as defined by 15A NCAC 02B .022. Vested rights within these Zones shall be determined in accordance with 15A NCAC 02B .022, *et seq.*

- (iv) **Vested rights shall run with the land:** The right to carry out development in accordance with the site specific *development plan* or *PUD* approval shall attach and run with the land, and is not a personal right to the landowner. All successors and heirs to the original landowner shall be entitled to exercise such rights, as long as any development occurs in accordance within the approved plan as noted above.

- (v) **Subsequent Changes Prohibited:**
 - 1. A vested right, once established as provided for in this Ordinance, precludes any zoning action by the Town which would change, alter, impair, diminish, or otherwise delay the development or use of the property as set forth in the site specific *development plan* or approved *PUD* plan as submitted, except:
 - (a) Upon written consent of the Landowner;
 - (b) Upon a finding by the *Town Council* after notice and public hearing that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site specific *development plan*; [Amended Ordinance #04-06]*
 - (c) To the extent that the landowner receives compensation for all costs, expenses and other losses incurred by the landowner.
 - (d) Where the *Town Council* finds, after notice and public hearing, that the landowner or his representative supplied intentionally inaccurate information or made material misrepresentations which made a difference in the approval of the site specific *development plan* or *PUD* plan; [Amended Ordinance #04-06]*

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- (e) Upon the enactment of a State or federal law or regulation which precludes development as contemplated in the site specific *development plan* or *PUD plan*, in which case the *Town Council* may after notice and public hearing, allow for a modification of the plan so as to comply with the new State or federal law or regulation; [Amended Ordinance #04-06]*

- 2. Vested rights under this Ordinance shall not preclude the application of overlay zoning which may impose additional requirements but does not affect the allowable type or use density, or other ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town.

- (vi) **Changes to Site Specific Development Plan or Approved PUD Plan:** Changes made by the owner of the project as listed in the *development petition* to a site specific *development plan* or an approved *PUD plan* must be approved by the Department of Engineering as not significantly deviating from the original site specific *development plan*. Other changes to the plan will terminate the vested rights.

- (j) **Administrative Procedures:**
 - (i) **Inspections of Work in Progress:** As the work pursuant to a permit progresses, the Environmental Inspector shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Environmental Inspector has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action. The Environmental Inspector shall have the ability to direct the owner of the project for corrective actions in accordance with the approved plan. The directive shall give a compliance date. If corrective actions are not met by the compliance date the Environmental Inspector may initiate other enforcement actions.

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- (ii) **Stop-Work Orders:** Whenever a *project* or *subdivision* is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Director of Engineering may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the owner of the project as listed in the development petition by certified mail and facsimile. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (iii) **Order to Take Corrective Action:** In order to continue work on the project, the property owner shall supply a revised plan showing proposed replanting of an equivalent *riparian buffer* and pay the required *riparian buffer* fines in the amount of \$500.00 a square foot of disturbed buffer area. Any revised plan revised presented for review will be processed by the Town Staff in the normal established development petition review process and shall not be expedited in any way. The Department of Engineering shall lift the Stop-Work order in writing within 48 hours of the approval of the revised plan and receipt of fines paid in full.
- (iv) **Revocation of Permits:** The Director of Engineering may revoke and require the return of development related permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable local law may also be revoked.
- (v) **Appeal:** Any owner who wishes to appeal issuance of a Stop-Work Order to the *Town Council* may do so by giving notice of appeal in writing to the Clerk of the Town within ten (10) days following issuance of the order. In the absence of an appeal, the order of the Department of Engineering shall be final. The *Town Council* shall hear an appeal within a reasonable time frame and may affirm, modify and affirm, or revoke the order. [Amended Ordinance #04-06]*
- (vi) **Failure to Comply with Order:** The failure to comply with a Stop Work Order, an Order to Take Corrective Action, or a

demand to return a revoked development related permit constitutes a violation of this Ordinance.

(k) Violations of this Ordinance; Appeals:

- (i) **Enforcement:** Enforcement of the provisions of this Ordinance may be by any one or more of the methods enumerated in the following provisions, and the institution of any action by the Town under any of these methods shall not relieve any party from any other civil or criminal proceedings.
- (ii) **Equitable Remedies:** The Town may apply for any appropriate equitable remedy from a court of competent jurisdiction to enforce the provisions of this Ordinance, including but not limited to Orders for injunction and Orders for abatement. An order for abatement may direct that any buildings or other structures on the property be closed, demolished, or removed, that improvements or repairs be made, or to take any other action necessary to bring the property into compliance with this Ordinance. Whenever a party is cited for contempt by a court and the Town has executed an Order for abatement, the Town shall have a lien in the nature of a mechanic's or materialman's lien on the property for the cost of executing the Order for abatement thereof.
- (iii) **Criminal Prosecution:** Violations of this Ordinance shall constitute a misdemeanor or infraction as provided by the General Statute §14-4. The maximum fine, term of imprisonment, or infraction penalty to be imposed for a violation maximum as allowed by law. Each day's continuing violation shall be a separate and distinct offense.
- (iv) **Civil Penalties:** Any act constituting a violation of this Ordinance shall subject the offender to a civil penalty to be recovered by the Town in a civil action in the nature of a debt or as otherwise provided herein if the offender fails to pay the penalty within five days from and after the receipt of a citation of a violation. All citations shall be subject to a civil penalty in the amount of \$5,000.00 unless a higher amount is provided herein.

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1. **Citation Contents:** A citation for violation of this Ordinance shall contain, among other things as the Department of Engineering may include:
 - (a) A statement upon its face of the amount of the penalty for the specific violation if the penalty is paid within five days from its issuance;
 - (b) A statement notifying the offender that failure to pay within the prescribed time shall subject the offender to a civil action in the nature of a debt for the stated penalty plus additional penalties and costs, including reasonable attorney fees.
 - (c) Further provide that the offender may answer the citation by mailing the citation along with payment to: The Town of Holly Springs, Engineering Department, PO Box 8, Holly Springs, NC, 27540.
2. Each day's continuing violation shall be a separate and distinct offense.

(v) **Appeals:**

1. **Appeals in General:** An appeal of a citation must be made in writing to the Town Clerk and to the Department of Engineering within five days of the receipt of a citation.
2. Hearings held pursuant to this section shall be held by the *Town Council* within thirty days from the date the appeal is filed with the Clerk's office. The *Town Council* shall then render a decision no later than twenty-one days following said hearing. The *Town Council* decision shall constitute final action regarding the appeal. [Amended Ordinance #04-06]*
3. Judicial review of the final action by the *Town Council* may be had in the Superior Court of Wake County. [Amended Ordinance #04-06]*

- (3) **Cape Fear River Basin Riparian Buffer Protection** [Amended Ordinance #03-03]-
Any proposed *project* or *subdivision* which is located within the

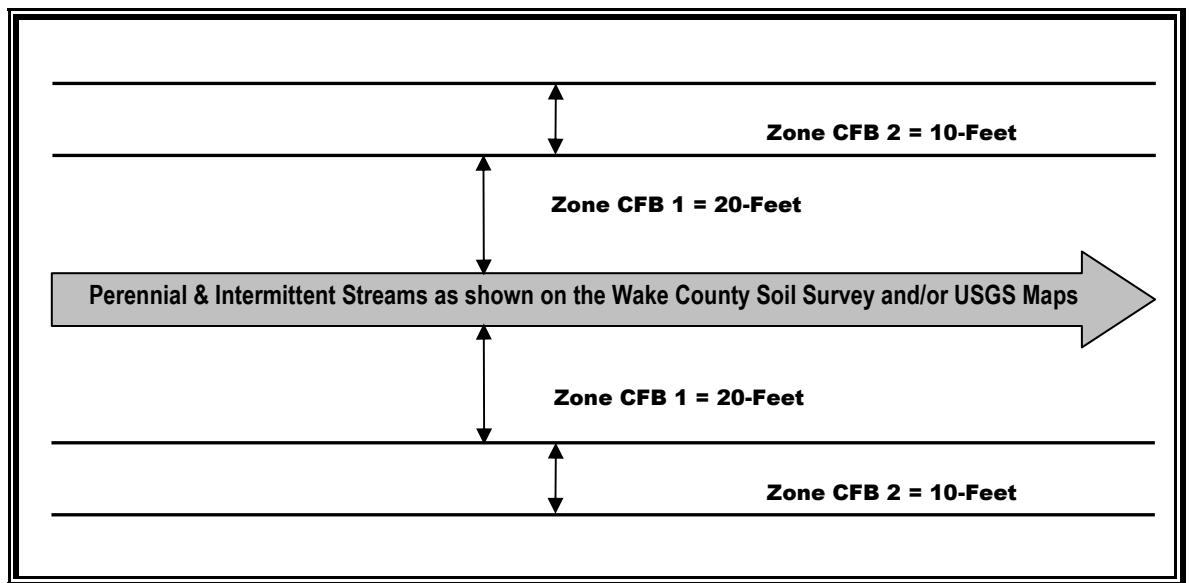
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Town of Holly Springs or its extra-territorial jurisdiction in the Cape Fear River Basin shall provide *riparian buffers* on both sides of all *perennial* and *intermittent streams*; including lakes, ponds, and other bodies of water (features). All features indicated on the most recent version of the 1:24,000 scale (7.5 minutes) quadrangle topographic maps prepared by the United States Geological Survey (USGS) and/or the most recent version of the Soil Survey of Wake County, North Carolina prepared by the United States Department of Agriculture (USDA) shall provide the 30-foot-wide *riparian buffers* directly adjacent to such surface waters (or features), excluding wetlands.

All requirements of Section 7.06, D. - Buffer Areas, of this UDO shall apply to any buffer established to satisfy the *Riparian buffer* Protection Rules.

(a) Delineation of the *Riparian Buffer* Zones:

- (i) **Zone CFB1 (20 feet landward adjacent to *stream* bank) on both sides of the *stream*.**
- (ii) **Zone CFB2 (10 feet landward adjacent to Zone 1) on both sides of the *stream*.**



The buffers shall be measured horizontally from the edge of the water body (i.e., from *top of bank*).

(b) Activity within the *Riparian Buffer* Zone:

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- (i) All built upon area shall be out of both of the buffer Zones CFB1 and CFB2 (30 feet landward of all perennial and intermittent features).
- (ii) All activity taking place must comply with all other Town, State and Federal regulations.
- (iii) All timbering activity in the buffer must also comply with the Town’s Soil Erosion and Sediment Control, Stream and Wetland Protection, Land Disturbance Ordinance 02-06 Section 9-5023.
- (iv) Zone CFB1 shall consist of a vegetated area that is undisturbed except for the uses outlined in the Cape Fear River Basin Table of Approved Uses.
- (v) Zone CFB2 shall consist of a stable vegetated area that is undisturbed except for the activities outlined in the Cape Fear River Basin Table of Approved Uses. The Town of Holly Springs recommends keeping natural undisturbed vegetation in this area to the maximum extent practicable.

Cape Fear River Basin Table of Approved Uses		
<p>The following chart sets forth <i>allowable</i> uses in the Cape Fear River Basin and their designation as <i>Exempt</i>, <i>Allowable</i>, <i>Allowable with Mitigation</i>, and <i>Prohibited</i>. Conditions of uses in the Town-mandated buffer (Zones CFB1 & CFB2). All activities must comply with all other Federal, State or Town regulations. It is recommended that you notify the Town of Holly Springs Department of Engineering prior to commencing <i>exempt</i> uses in any zone of the <i>riparian buffer</i>.</p>		
	Zone CFB 1	Zone CFB 2
Airport facilities:		
• Airport facilities that impact equal or less that 150 linear feet or one-third of an acre of <i>riparian buffer</i>	<i>Allowable</i>	<i>Allowable</i>
• Airport facilities that impact greater than 150 linear feet or one-third of <i>riparian buffer</i>	<i>Allowable with Mitigation</i>	<i>Allowable</i>
Archaeological activities	<i>Exempt</i>	<i>Exempt</i>
Bridges	<i>Allowable</i>	<i>Allowable</i>
Dam maintenance activities	<i>Exempt</i>	<i>Exempt</i>
Drainage ditched, roadside ditches and stormwater outfalls through <i>riparian buffers</i> :		
• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	<i>Exempt</i>	<i>Exempt</i>
• New drainage ditches, roadside ditches, and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before	<i>Allowable</i>	<i>Allowable</i>

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the conveyance discharges through the <i>riparian buffer</i>		
<ul style="list-style-type: none"> • New drainage ditches, roadside ditches, and stormwater outfalls provided that do not provide control for nitrogen before discharging though the <i>riparian buffer</i> 	<i>Prohibited</i>	<i>Prohibited</i>
<ul style="list-style-type: none"> • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch 	<i>Prohibited</i>	<i>Prohibited</i>
Drainage of a pond in a natural drainage way provided that a new <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules are established adjacent to the new channel	<i>Allowable</i>	<i>Allowable</i>
Driveway crossings of streams and other surface waters subject to this Rule	<i>Allowable</i>	<i>Allowable</i>
Fences provided that disturbance is minimized and installation does not result in removal of the forest vegetation	<i>Prohibited</i>	<i>Prohibited</i>
Forest Harvesting - see Section 9-5023 of the Town of Holly Springs Soil Erosion and Sedimentation Control Ordinance	<i>Prohibited</i>	<i>Allowable</i>
Fertilizer Application:		
<ul style="list-style-type: none"> • One-time fertilizer application to establish replanted vegetation 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> • Ongoing fertilizer application 	<i>Prohibited</i>	<i>Prohibited</i>
Greenway/hiking trails	<i>Prohibited</i>	<i>Prohibited</i>
Historic Preservation	<i>Exempt</i>	<i>Exempt</i>
Landfills as defined by G.S. 130A-290	<i>Prohibited</i>	<i>Prohibited</i>
Mining Activities:		
<ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new Riparian Buffers that meeting the requirements of Items (4) and (5) of the Neuse Buffer Rule are established adjacent to the relocated channels 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> • Mining activities that are not covered by the Mining Act OR were new <i>riparian buffers</i> that meet the requirements or Items (4) and (5) of the Neuse Buffer Rules are not established to the relocated channels 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> • Wastewater or mining dewatering wells approved NPDES permit 	<i>Exempt</i>	<i>Exempt</i>
Non-Electric Utility Lines - Impacts other than perpendicular crossing	<i>Prohibited</i>	<i>Prohibited</i>
Non-electric utility lines perpendicular crossing of <i>streams</i> and other surface waters:	<i>Allowable</i>	<i>Allowable</i>
On-site sanitary sewer sewage systems - new ones that use ground absorption	<i>Prohibited</i>	<i>Prohibited</i>
Overhead electrical utility lines - impacts other than perpendicular.	<i>Allowable</i>	<i>Exempt</i>
Overhead electrical utility line perpendicular crossing of <i>streams</i> and other surface waters subject to the Buffer Rules:		
<ul style="list-style-type: none"> • Perpendicular crossing that disturb equal to or less than 150 linear feet of <i>riparian buffer</i> 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> • Perpendicular crossing that disturb greater than 150 	<i>Allowable</i>	<i>Allowable</i>

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linear feet of <i>riparian buffer</i>		
Periodic maintenance of modified natural <i>streams</i> such as canals and grasses travelway on one side of the surface water when alternative forms of maintenance access are not practical	<i>Allowable</i>	<i>Allowable</i>
Playground Equipment:		
<ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> • Playground equipment installed on lands other than single family lots or that requires removal of vegetation. 	<i>Allowable</i>	<i>Allowable</i>
Ponds in natural drainage ways, excluding dry ponds:	<i>Allowable</i>	<i>Allowable</i>
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the <i>riparian buffer</i> or the stream channel	<i>Allowable</i>	<i>Allowable</i>
Railroad crossing of streams and other surface waters subject to this Rule:	<i>Allowable</i>	<i>Allowable</i>
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	<i>Exempt</i>	<i>Exempt</i>
Road impacts other than crossings of <i>streams</i> and other surface waters subject to the Buffer Rules	<i>Allowable with Mitigation</i>	<i>Allowable with Mitigation</i>
Road crossings of <i>streams</i> and other surface waters subject to the Buffer Rules:	<i>Allowable</i>	<i>Allowable</i>
Scientific <i>Stream Studies</i> and <i>Stream Gauging</i>	<i>Exempt</i>	<i>Exempt</i>
Stormwater management ponds excluding dry ponds:	<i>Allowable</i>	<i>Allowable</i>
<i>Stream Restoration</i>	<i>Allowable</i>	<i>Allowable</i>
Streambank stabilization	<i>Allowable</i>	<i>Allowable</i>
Temporary Roads:		
<ul style="list-style-type: none"> • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored with in six months of initial disturbance 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored with in six months of initial disturbance 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> • Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetating, are conducted immediately after construction 	<i>Allowable</i>	<i>Allowable</i>
Temporary sediment and erosion control devices:	<i>Prohibited</i>	<i>Allowable</i>
Underground electric utility lines - Impacts other than perpendicular	<i>Prohibited</i>	<i>Allowable</i>
Underground electric utility lines perpendicular crossing of streams and other surface waters subject to the Buffer Rules:		
<ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of <i>riparian buffer</i> 	<i>Allowable</i>	<i>Allowable</i>
<ul style="list-style-type: none"> • Perpendicular crossings that disturb greater than 40 linear feet of <i>riparian buffer</i> 	<i>Allowable with Mitigation</i>	<i>Allowable with Mitigation</i>
Vegetation Management:		
<ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored 	<i>Exempt</i>	<i>Exempt</i>
<ul style="list-style-type: none"> • Periodic mowing and harvesting of plant products. 	<i>Prohibited</i>	<i>Exempt</i>

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• Planting vegetation to enhance the <i>riparian buffer</i>	<i>Exempt</i>	<i>Exempt</i>
• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	<i>Exempt</i>	<i>Exempt</i>
• Removal of Poison Ivy	<i>Exempt</i>	<i>Exempt</i>
• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	<i>Exempt</i>	<i>Exempt</i>
Water dependent structures as defined in 15A NCAC 2B .0202	<i>Allowable</i>	<i>Allowable</i>
Water supply reservoirs:		
• New reservoirs where a <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is established adjacent to the reservoir	<i>Allowable</i>	<i>Allowable</i>
• New reservoirs where a <i>riparian buffer</i> that meets the requirements of Items (4) and (5) of the Neuse Buffer Rules is NOT established adjacent to the reservoir	<i>Allowable</i>	<i>Allowable</i>
Water Wells	<i>Prohibited</i>	<i>Prohibited</i>
Wetland Restoration	<i>Allowable</i>	<i>Allowable</i>

(c) Modifications and Waivers of Cape Fear River *Riparian Buffer* Areas

- (i) ***Buffer Areas for Map Inconsistency:*** Where obvious conflicts between actual field conditions and USGS and Wake County Soil Survey maps exist, appeals may be made to the North Carolina Division of Water Quality in accordance with the Neuse *Riparian Buffer* Rules, 15A NCAC 2B.0233. If an applicant obtains a map revision, permit, or variance by NC Division of Water Quality or the NC Environmental Management Commission, the applicant shall submit all documentation, including corresponding maps, to the Town of Holly Springs, Department of Engineering. Engineering staff will review the information provided by the applicant during the *construction drawing* review process or earlier if the information required is available. After the review staff will ask for additional documentation or recommend approval of the *construction drawings* provided that the *construction drawings* correspond with all of the NC Division of Water Quality requirements. The *Director of Engineering* or his/her designee shall grant approval of the *construction drawings* consistent with NC Division of Water Quality ruling. [Amended Ordinance #09-15]*

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Total Drainage Area	Buffer Size	Type of Buffer
0-4.9 Acres	0' on both sides of the stream	None
5-9.9 Acres	10' on both sides of the stream	Undisturbed
10-19.9 Acres	20' on both sides of the stream	Undisturbed
20+ Acres	30' buffer on both sides of the stream	20' undisturbed Zone CFB1 10' vegetated Zone CFB2

(ii) **Modifications:** In instances where an alternate *Buffer Area* is requested for the Town-mandated to be consistent with criteria allowable under 401 and 404 Permits of the Federal Clean Water Act, applicants may request an appeal to the Director of the Department of Engineering or his/her designee. The applicant must provide documentation to the Department of Engineering prior to the appeal, in the *construction drawing* review process, or as early as the *preliminary plan* review process, if sufficient information exists for review. Engineering staff will review the documentation and ask for additional information as needed. Once the review is complete, the Engineering staff shall recommend approval or disapproval of the modification.

(iii) **All Other Requests for Waivers:** In all other instances where a *waiver* is requested for the Town-mandated *riparian buffer*, applicants may appeal to the *Town Council*. The applicant must provide documentation to the Department of Engineering to support the appeal, in the *construction drawing* review process, or as early as the *preliminary plan* or *development plan* review process, if sufficient information exists for review. Engineering staff will review the documentation and ask for additional information as needed. Once the review is complete, the Engineering staff shall schedule the matter to be considered at a *Town Council Meeting*, and shall recommend approval or disapproval of the *waiver*. [Amended Ordinance #04-06]*

1. In evaluating such waivers, the *Town Council* shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, in accordance with the following Findings of Fact: [Amended Ordinance #04-06]*

(a) The carrying out of the strict letter of the UDO will result in practical difficulties in the development of the property included in the

Waiver Petition.

- (b) Approval will observe the spirit of the UDO.
 - (c) Approval will secure public safety and welfare.
 - (d) Approval will provide substantial justice.
 - (e) There are exceptional conditions pertaining to the particular piece of property in question because of its shape, size, or topography, that are not applicable to other lands, *buildings*, or *structures* in the Town or there is a particular characteristic of a proposed use which makes the application of certain *development standards* of the UDO, as requested in the petition for *waiver of development standards*, unrealistic.
 - (f) Granting the *Waiver* requested will not confer any special privileges that are denied to other property owners or residents with similar properties or circumstances.
 - (g) A literal interpretation of the provisions of the UDO would deprive the applicant of rights commonly enjoyed by other owners and residents of the Town in which the property is located.
 - (h) The requested *Waiver* will be in harmony with the purpose and intent of the UDO and will not be injurious to the neighbor or to the general welfare.
 - (i) The special circumstances given rise to the *Waiver* request are not as result of actions of the Applicant.
 - (j) *Waiver* requested is the minimum waiver that will make possible the legal use of the land, building or structure.
2. Written findings shall be submitted to the Department of Engineering, in writing, by the applicant included with the Development *Waiver* Petition.
 3. Upon consideration of the findings and the purposes of this ordinance, The *Town Council* shall issue a

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waiver only upon a showing of good and sufficient cause. The *Town Council* may attach such conditions to the granting of a waiver as it deems necessary to further the purposes of this ordinance.

[Amended Ordinance #04-06]*

4. Conditions of Waiver:

- a. A waiver may not be issued when the waiver will be in violation of other Federal, State, or local laws, regulations, or ordinances.
- b. All waivers must be determined prior to the approval of the construction drawings.

(d) Mitigation:

- (i) Persons who wish to undertake or are required to provide *mitigation* shall be required to meet the requirements of acceptable *mitigation* practices as outlined in the Town of Holly Springs Engineering Design and *Construction Standards* in order to proceed with their proposed use.
- (ii) *Best Management Practices (BMP's)* used for *mitigation* shall be included in a platted drainage easement.

(e) Description of *Buffer Areas Development Petitions*: *Stream* buffers (Zones CFB1 and CFB2) shall be graphically shown on all *development plans, preliminary plans, construction drawings, erosion control plans* and final plats or any site plan or plot plan submitted for a *UDO Permit* as outlined in section 7.06, D.,3. The *buffer areas* shall be clearly labeled "*Riparian Buffer*" and zones shall be clearly shown and labeled with zone restrictions noted.

(f) Lots Containing *Riparian Buffer Area*:

- (ii) **Residential and Non-residential Construction:** New construction of or substantial improvements to any residential structure shall be located outside of the *riparian buffer* area. No proposed building lot that is wholly or partly in the *riparian buffer* area shall be approved unless there is established on the final plat a line representing the limits of the *riparian buffer* area and a minimum usable area as specified in the following table. The usable lot area is defined by the area of the lot outside of the *riparian buffer* area that will contain the structure and related setbacks. This area must be contiguous.

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District	Minimum Contiguous Lot Size Outside of <i>Riparian buffer</i>
R-30	15,000 square feet
R-20	10,000 square feet
R-15, R-10, R-8	8,000 square feet
PUD	8,000 square feet or the min. lot size for lots based on the PUD, whichever is more restrictive

(g) **Riparian buffer Education Packets:** The developer of any *project* or *subdivision* shall be required to provide all property owners of lots with *riparian buffers* on or adjacent to any State or Town-mandated buffer, shall receive a *riparian buffer* education packet from the developer at the time of the sale of the property.

(h) **Tree Protection Requirements:**

- (i) Tree protection fencing shall be present on all plans clearly showing protection of the *riparian buffer*.
- (ii) Tree protection fencing shall be present on each development site prior to initiating any timbering or land disturbing activity.
- (iii) Tree protection fencing and signage must meet the criteria outlined in the Town of Holly Springs Engineering Design and Construction Standards.

(i) **Diffuse Flow Requirements:** Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation. Techniques for providing diffuse flow are specified in the Town of Holly Springs Engineering Design and Construction Standards.

- (i) Concentrated runoff from ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the buffer.
- (ii) Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to prevent the formation of erosion gullies.
- (iii) *BMP's* for obtaining diffuse flow shall be included in a platted drainage easement.

(j) **Vested Rights:**

- (i) **Purpose:** The purpose of this part is to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability and fairness to the reasonable

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expectations of landowners affected by this Ordinance in recognition that approval of land development projects or subdivisions typically follows significant landowner investment in site development.

- (ii) **Establishment of Vested Rights:** A vested right with respect to this Section shall be established upon the approval of a site specific development plan, or a PUD plan approval, that is currently valid or has been submitted for formal development review and continues on the current review schedule.
- (iii) **Exceptions:** Excepted from the provision in subsection 7.06, 4., e., (3), (j), (ii) above is any vesting of rights on property located partially or entirely within Zone 1 or Zone 2 of the Neuse River Basin, as defined by 15A NCAC 02B .022. Vested rights within these Zones shall be determined in accordance with 15A NCAC 02B .022, *et seq.*
- (iv) **Vested rights shall run with the land:** The right to carry out development in accordance with the site specific *development plan* or *PUD* approval shall attach and run with the land, and is not a personal right to the landowner. All successors and heirs to the original landowner shall be entitled to exercise such rights, as long as any development occurs in accordance within the approved plan as noted above.
- (v) **Subsequent Changes Prohibited:**
 - 1. A vested right, once established as provided for in this Ordinance, precludes any zoning action by the Town which would change, alter, impair, diminish, or otherwise delay the development or use of the property as set forth in the site specific *development plan* or approved *PUD* plan as submitted, except:
 - a. Upon written consent of the Landowner;
 - b. Upon a finding by the *Town Council* after notice and public hearing that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as

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contemplated in the site specific *development plan*; [Amended Ordinance #04-06]*

- c. To the extent that the landowner receives compensation for all costs, expenses and other losses incurred by the landowner.
- d. Where the *Town Council* finds, after notice and public hearing, that the landowner or his representative supplied intentionally inaccurate information or made material misrepresentations which made a difference in the approval of the site specific *development plan* or *PUD plan*; [Amended Ordinance #04-06]*
- e. Upon the enactment of a State or federal law or regulation which precludes development as contemplated in the site specific *development plan* or *PUD plan*, in which case the *Town Council* may after notice and public hearing, allow for a modification of the plan so as to comply with the new State or federal law or regulation; [Amended Ordinance #04-06]*

- 2. Vested rights under this Ordinance shall not preclude the application of overlay zoning which may impose additional requirements but does not affect the allowable type or use *density*, or other ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation by the Town.

- (vi) **Changes to Site Specific Development Plan or Approved PUD Plan:** Changes made by the owner of the project as listed in the *development petition* to a site specific *development plan* or an approved *PUD plan* must be approved by the Department of Engineering as not significantly deviating from the original site specific development plan. Other changes to the plan will terminate the vested rights.

(k) Administrative Procedures:

- (i) **Inspections of Work in Progress:** As the work pursuant to a permit progresses, the Environmental Inspector shall make as

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many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Environmental Inspector has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action. The Environmental Inspector shall have the ability direct the owner of the *project* for corrective actions in accordance with the approved plan. The directive shall give a compliance date. If corrective actions are not met by the compliance date the Environmental Inspector may initiate other enforcement actions.

- (ii) **Stop-Work Orders:** Whenever a *project* or *subdivision* is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Director of Engineering may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the owner of the *project* as listed in the *development petition* by certified mail and facsimile. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (iii) **Order to Take Corrective Action:** In order to continue work on the *project*, the property owner shall supply a revised plan showing proposed replanting of an equivalent *riparian buffer* and pay the required *riparian buffer* fines in the amount of \$500.00 a square foot of disturbed *buffer area*. Any revised plan revised presented for review will be processed by the Town Staff in the normal established *development petition* review process and shall not be expedited in any way. The Department of Engineering shall lift the Stop-Work order in writing within 48 hours of the approval of the revised plan and receipt of fines paid in full.
- (iv) **Revocation of Permits:** The Director of Engineering may revoke and require the return of development related permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of local laws; or for false statements or

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misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable local law may also be revoked.

- (v) **Appeal:** Any owner who wishes to appeal issuance of a Stop-Work Order to the *Town Council* may do so by giving notice of appeal in writing to the Clerk of the Town within ten (10) days following issuance of the order. In the absence of an appeal, the order of the Department of Engineering shall be final. The *Town Council* shall hear an appeal within a reasonable time frame and may affirm, modify and affirm, or revoke the order.
[Amended Ordinance #04-06]*
- (vi) **Failure to Comply with Order:** The failure to comply with a Stop Work Order, an Order to Take Corrective Action, or a demand to return a revoked development related permit constitutes a violation of this Ordinance.

(I) Violations of this Ordinance; Appeals:

- (i) **Enforcement:** Enforcement of the provisions of this Ordinance may be by any one or more of the methods enumerated in the following provisions, and the institution of any action by the Town under any of these methods shall not relieve any party from any other civil or criminal proceedings.
- (ii) **Equitable Remedies:** The Town may apply for any appropriate equitable remedy from a court of competent jurisdiction to enforce the provisions of this Ordinance, including but not limited to Orders for injunction and Orders for abatement. An order for abatement may direct that any *buildings* or other *structures* on the property be closed, demolished, or removed, that improvements or repairs be made, or to take any other action necessary to bring the property into compliance with this Ordinance. Whenever a party is cited for contempt by a court and the Town has executed an Order for abatement, the Town shall have a lien in the nature of a mechanic's or materialman's lien on the property for the cost of executing the Order for abatement thereof.
- (iii) **Criminal Prosecution:** Violations of this Ordinance shall constitute a misdemeanor or infraction as provided by the General Statute §14-4. The maximum fine, term of

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imprisonment, or infraction penalty to be imposed for a violation maximum as allowed by law. Each day's continuing violation shall be a separate and distinct offense.

(iv) **Civil Penalties:** Any act constituting a violation of this Ordinance shall subject the offender to a civil penalty to be recovered by the Town in a civil action in the nature of a debt or as otherwise provided herein if the offender fails to pay the penalty within five days from and after the receipt of a citation of a violation. All citations shall be subject to a civil penalty in the amount of \$5,000.00 unless a higher amount is provided herein.

1. **Citation Contents:** A citation for violation of this Ordinance shall contain, among other things as the Department of Engineering may include:

- (a) A statement upon its face of the amount of the penalty for the specific violation if the penalty is paid within five days from its issuance;
- (b) A statement notifying the offender that failure to pay within the prescribed time shall subject the offender to a civil action in the nature of a debt for the stated penalty plus additional penalties and costs, including reasonable attorney fees.
- (c) Further provide that the offender may answer the citation by mailing the citation along with payment to: The Town of Holly Springs, Engineering Department, PO Box 8, Holly Springs, NC, 27540.

2. Each day's continuing violation shall be a separate and distinct offense.

(v) **Appeals:**

1. **Appeals in General:** An appeal of a citation must be made in writing to the Town Clerk and to the Department of Engineering within five days of the receipt of a citation.

2. Hearings held pursuant to this section shall be held by the *Town Council* within thirty days from the date the

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appeal is filed with the Clerk's office. The *Town Council* shall then render a decision no later than twenty-one days following said hearing. The *Town Council* decision shall constitute final action regarding the appeal. [Amended Ordinance #04-06]*

3. Judicial review of the final action by the *Town Council* may be had in the Superior Court of Wake County. [Amended Ordinance #04-06]*

E. School Sites.

In any case where the *Comprehensive Plan* indicates the specific location and size of a school site, as jointly determined by the *Town Council* and the Wake County Board of Commissioners, the *Director* shall immediately notify the Board of Education whenever an application for *master plan* or *preliminary plan* approval is filed with the Town of Holly Springs which includes all or part of a designed school site to be reserved. The Board of Education shall promptly decide whether the reserved site is still required. If the Board of Education determines that the reserved site is no longer required, the Board of Education shall so notify the *Director* of the Town of Holly Springs. If the Board of Education determines that the reserved site is required for future school purposes, the proposed *master plan* or *preliminary plan* shall not be approved without the reservation of the school site. The Board of Education shall then have a period of eighteen (18) months from the date of approval of the *final plat* for that portion of the *master plan* or *preliminary plan* which includes any part of or all of the reserved site within which to acquire the school site by purchase or by initiating condemnation proceedings. If the Board of Education has not purchased or begun proceedings to condemn the site within eighteen (18) months of the date of approval of the *final plat* for that portion of the *master plan* or *preliminary plan* which includes any part of or all of the reserved site, the *subdivider* may treat the land as freed from reservation. [Amended Ordinance #04-06]*

A *subdivider* may, but shall not be required to, file a *master plan* or *preliminary plan* that indicates an alternate use and development of the reservation area in the event that such land is freed from reservation. If the *subdivider* has submitted a proposed *master plan* or *preliminary plan* which includes an alternate use and development of the land subject to the reservation, and such alternative use and development has been conditionally approved, the *subdivider* may submit a revised *final plat* for review and approval upon expiration of the eighteen (18) month period specified above. The proposed revised *final plat* shall be labeled as a "Revised Final Plat for _____". The *Director* shall review the revised *final plat* and, upon determining that the revised *final plat* conforms to all requirements of this UDO, shall notify the *Review Officer* of such conformity and authorize the *Review Officer* to approve the *final plat* under the same terms and conditions applicable to any other *final plat* that was included as a section or phase of the proposed *master plan* or *preliminary plan*.

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If the *subdivider* has not submitted a proposed *master plan* or *preliminary plan* which includes an alternate use and development of the land subject to the reservation and such land is freed from reservation, such land shall be the subject of a new application for *master plan* or *preliminary plan* as set forth in this UDO.

F. Recreational Facilities and Open Space.

1. Dedication, Generally; Fee-In-Lieu of Dedication, Generally.

In order to provide park, recreation, *open space* or greenway sites to serve the future residents of the Town of Holly Springs and its extraterritorial jurisdiction, in conformance with any adopted plans of the Town of Holly Springs, every residential *subdivision* shall, at the time of *final plat*, include:

- a. the dedication of a portion of such land, as set forth in this Section, below;
- b. an equitable amount of land in another location; or,
- c. pay to the Town of Holly Springs a fee-in-lieu of dedication, as set forth in this Section, below.

2. Criteria for Dedication.

All land dedicated to the public for recreation and park development shall substantially meet the following criteria:

- a. Unit – The dedicated land shall form a single parcel of land except where the *Town Council* determines that two (2) parcels or more would be in the public interest. If two or more parcels are determined to be in the public interest, a path or *walkway*, developed in compliance with the provisions of sub-Section 7.07, C., 2., sub-Section 7.07, C., 3., and sub-Section 7.07, C., 4., regarding *sidewalks*, *walkways*, pedestrian / bike paths and pedestrian access easements. [Amended Ordinance #04-06]*
- b. Shape – The shape of the dedicated land shall be sufficiently square or round to be usable for recreational activities such as softball, tennis, croquet, etc.
- c. Location – The dedicated land shall be located so as to reasonably serve the recreation and *open space* needs of the *subdivision* for which the dedication was made and shall bear a reasonable relationship to the *use* of the area by the future inhabitants of the *subdivision* or residential development.
- d. Access – Public access to the dedicated land shall be provided either by direct *street frontage* or public easement at least twenty (20) feet in width.

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- e. Topography – Generally, dedicated land reserved for recreational purposes shall not exceed a five (5) percent slope.
 - f. Usableness – The dedicated land shall be usable for recreation. Lakes and wetlands may not be included in computed dedicated land area. Where the *Parks and Recreation Advisory Board* determines that recreational needs are being adequately met, either by other dedicated parcels of land or existing recreational facilities, then land that is not usable for recreation may be dedicated as *open space*.
 - g. Plans – Municipal and County plans shall be taken into consideration when evaluating proposals for the dedication of land for recreational purposes.
3. Criteria for Choice Between Dedication and Fee-in-Lieu.
- a. Whether the *Town Council* accepts the dedication of land or elects to require payment of a fee-in-lieu thereof, or a combination of both, shall be determined by but not limited to the following: [Amended Ordinance #04-06]*
 - (1) An adopted plan of the Town of Holly Springs;
 - (2) The recommendations of the Parks and Recreation Advisory Board;
 - (3) The recommendations of the *Planning Board*;
 - (4) Topography, geology, access and location of land in the *subdivision* available for dedication; and,
 - (5) Size and shape of the *subdivision* and land available for dedication.
 - b. The determination of the *Town Council* as to whether land shall be dedicated or whether a fee-in-lieu should be charged, or a combination of both, shall be final and conclusive. On *subdivisions* involving fewer than thirty-five (35) *lots* or *dwelling units*, only the payment of fees-in-lieu shall be required. [Amended Ordinance #04-06]*
4. Procedure for Determination Among Dedication, Fee-in-Lieu, or Combination.

The procedure for determining whether the *subdivider* is to dedicate land, pay a fee-in-lieu, or both, shall be as follows:

- a. *Subdivider* – At the time of filing a *master plan* or *preliminary plan* for *subdivision* approval, the owner of the property shall, as part of such filing, indicate whether such owner proposes to dedicate property for park and recreational purposes, or whether such owner desires to pay a fee-in-

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lieu thereof. If *subdivider* desires to dedicate land for this purpose, the *subdivider* shall designate the area thereof on the *master plan* or *preliminary plan* as submitted.

- b. Action of Town – At the time of the *master plan* or *preliminary plan* approval, as specified in Section 9.09 – Decision Matrix, the Town shall determine as a part of such approval, whether to require a dedication of land within the *subdivision*, payment of a fee-in-lieu thereof, or a combination of both.
 - c. Prerequisites for Approval of *Final Plat* – Where dedication is required, such dedication shall be shown upon the *final plat* submitted for approval. Where fees are required, the same shall be deposited with the Town prior to the recording of the *final plat*. *Open space* covenants for park or recreational facilities shall be submitted to the Town for review and approval prior to approval of the *final plat* and shall be recorded with the *final plat*.
 - d. Changes in *Master Plan* or *Preliminary Plan* Densities – In *subdivisions* where phases exist and changes in unit densities are possible the Town reserves the right to recalculate the area required for land dedication or fee-in-lieu charges should the number of *dwelling units* increase from the approved original *master plan* or *preliminary plan*.
5. Computation of Size of Area Required for Dedication.

The amount of land required to be dedicated is to be computed on the basis of the following formula:

- a. The area (in acres) of land to be dedicated shall not be less than one thirty-fifth (1/35) of an acre times the number of *dwelling units* or *lots*, whichever is greater, provided that for any land so dedicated which also:
 - (1) lies within an area within the one hundred year floodplain;
 - (2) has slopes greater than fifteen (15) percent; or,
 - (3) is included within overhead utility easements,shall be dedicated at a rate of one twentieth (1/20) of an acre.
- b. Where a fee-in-lieu is paid instead of dedication, the amount of such fee for the *subdivision* shall be determined in accordance with the provisions of the Town of Holly Springs Fee Schedule.
- c. Notwithstanding any other provision in the Town of Holly Springs' Town Code, the total fee-in-lieu of dedication charged for a *subdivision* shall not

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exceed the fair market value of the land area that would have otherwise been required to be dedicated by the *subdivision*. For the purpose of this Section, fair market value is to be determined with respect to a *subdivision*, at the time the initial application submittal is made to the Town of Holly Springs. Fair market value shall be determined by the *Director*. In the event of a disagreement about fair market value, such value shall be determined by the procedure provided in Section 7.06, F., 7., b., below.

6. Use of Land by Town; Use of Funds Received in Lieu of Dedication.
 - a. The land received by the Town of Holly Springs under this Section shall be used only for the purpose of providing neighborhood *open space*, park and recreational areas, but shall not be so restricted should the Town decide to sell such land as provided by the following paragraph.
 - b. The Town of Holly Springs shall have the right to sell any land dedicated to the Town for neighborhood park and recreation purposes on finding by the *Town Council* and the *Director of Parks and Recreation* that a particular piece of property is not feasible or compatible with adopted plans of the Town. [Amended Ordinance #04-06]*
 - c. Fees collected in lieu of dedications and any proceeds from such transactions or sales shall be held in a special fund by the Town, and the funds shall be used by the Town for the purpose of acquiring and developing public recreation areas as shown on the *Comprehensive Plan* and for no other purpose. The depository for such funds may be the same as permitted for other funds of the Town and, pending their expenditure in accordance with the terms of this Section, such funds may be invested as other funds of the Town. The Town may, at its discretion, add additional monies to the fund for the purpose of purchasing public recreational land to be used for public recreational purposes. On all matters not specifically provided for in this Section, the Local Government Budget and Fiscal Control Act shall be controlling.
7. Special Committee to Settle Disagreements Between Town and *Subdivider*.
 - a. In the event that the Town and the *subdivider* of land cannot agree upon the location, terrain, size or shape of the land necessary to be dedicated for a neighborhood recreation area, or cannot agree upon the details of provisions for an equitable amount of land in another location or where there is disagreement between the Town and the *subdivider*, such disagreement shall be determined by a special committee.
 - b. Such special committee shall consist of three members appointed as follows: one (1) member shall be a professional land appraiser appointed

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by the *Town Council*; one (1) member shall be a professional land appraiser appointed by the *subdivider*; and, one (1) member shall be a professional land appraiser appointed by the two appointed members. The special committee shall view the land and hear the contentions of both the Town and the subdivider. The findings of the special committee shall be by majority vote and shall be certified to the *Town Council* within forty-five (45) days of the time of appointment of the third member of the special committee. The costs of the professional land appraiser appointed by the *subdivider* and one-half (1/2) the cost of the professional land appraiser appointed by the appraisers shall be borne by the *subdivider*. The costs of the professional land appraiser appointed by the *Town Council* and one-half (1/2) the cost of the professional land appraiser appointed by the appraisers shall be borne by the *Town Council*. [Amended Ordinance #04-06]*

8. Privately Owned Park, Recreational, *Open Space* or Greenway Areas.

Private parks, club houses, swimming pools and other recreational, *open space* or greenway areas are encouraged, provided, however, private parks, club houses, swimming pools and other recreational or *open space* shall not be credited toward the requirement of this Section for the public dedication of land for such use. Greenways in compliance with the requirements of Section 7.10, A., 8., may be credited against the requirements of this Section.

9. Clubhouse as an *Accessory Use*.

Notwithstanding anything in this UDO to the contrary, a clubhouse, which may or may not be accompanied by such ancillary amenities as a swimming pool, game courts, meeting room, and the like, shall be considered a permitted *accessory use* to any residential *subdivision* or *project* when such clubhouse and ancillary amenities are indicated on a *preliminary plan* or *Master Plan* and specifically approved in connection with such *preliminary plan* or *Master Plan*.