

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP

Attorneys and Counselors at Law

4140 Parklake Avenue / GlenLake One / Second Floor / Raleigh, NC 27612

Tel: 919.877.3800 Fax: 919.877.3799

www.nelsonmullins.com

Dennis A. Wicker

Tel: 919.329.3813

dennis.wicker@nelsonmullins.com

August 25, 2016

Dear Chairman Cole and Members of the Watershed Review Board:

In recent years, Chatham County has completed a number of important plans, and has begun updating its Land Conservation and Development Plan, adopted in 2001. The County Watershed Protection Ordinance poses a barrier to implementing a key element of these recent plans: a targeted, planned employment center, the Moncure Megasite. This Megasite is located in a small, WSIV Protected Area for the Cape Fear River and is limited to 36% impervious area with no higher intensity option for development.

Moncure Holdings, LLC owns 2,272 acres targeted for the Moncure Megasite. The property is suited for more intense development than allowed by the Watershed Protection Ordinance for reasons of supporting existing economic development plans; compatibility with existing and surrounding area land use; environmental characteristics of the site; and area transportation networks.

Enclosed is a requested text change to the Watershed Protection Ordinance intended to support development of the planned, targeted Moncure Megasite in the portion of the WSIV PA draining to the state designated Cape Fear WSIV PA. The requested amendment would allow up to ten percent of this PA to develop up to seventy percent impervious area, called a special non-residential intensity allocation (SNIA). The SNIA requested herein for the Cape Fear WSIV Protected Area is allowed as an option by the State in its Watershed Supply Watershed Protection Regulations, and is allowed by the County in three of its watershed classifications that are intended to be more protective than or equally protective as the WSIV Protected Areas. The text change also provides conditions for SNIA approval, including consistency with plans for the Moncure Megasite and stormwater management requirements. Without the 10%/70% provision, Moncure Holdings LLC cannot move forward in certifying its site with the State as "shovel ready" or ready for development within one year.

In terms of Watershed Protection, Moncure Holdings sees this as an opportunity to improve some existing conditions on site and develop a major employment center in an environmentally responsible manner. Moncure Holdings will

- Clean up the existing contaminated site of the Performance Fiber Industry and turn it into a brownfield site suitable for development.

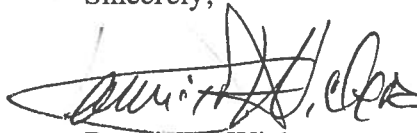
August 25, 2016

Page 2

- Upgrade the existing 244,000 gallon per day wastewater discharge into the Haw River watershed.
- Meet requirements of the County's robust stormwater ordinance including provide high quality stormwater treatment
- Provide 100 foot buffers along perennial streams, 50 foot buffers along intermittent streams and around wetlands, and 30 foot buffers along ephemeral streams, as applicable.
- Protect the floodplain areas.
- Cluster the employment in such a way as to preserve farmland and rural area in other watershed area of the County and with existing compatible land uses.

On behalf of Moncure Holdings, LLC, we look forward to discussing the text amendment request and answering any questions you might have.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis A. Wicker", written over a horizontal line.

Dennis A. Wicker

DAW/gn
Enclosure

TEXT AMENDMENT REQUEST APPLICATION

(1) Applicant Information:

Name Moncure Holdings LLC

Address: 2717 New Hill Olive Chapel Road, New Hill, NC 27562

Phone No: (H) _____
(W) 303-516-3478
(M) _____

(2) Name of Ordinance for Text Amendment:

Chatham County Watershed Protection Ordinance

(3) Text of Ordinance to be varied:

Section 302 Page 27 and Section 302 Page 33

Existing Language:

See Attachment 1

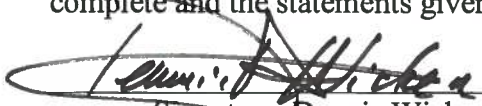
Requested Language Change:

See Attachment 1

(4) Reasons for the requested text amendment: In the space below and on additional paper if needed, describe the reasons for the request and why you think it is justified.

See Attachment 2

I hereby certify that I am making application for the landowner or myself and that the information provided is complete and the statements given are true to the best of my knowledge.


Signature Dennis Wicker
Owner/Authorized Agent

8/30/16
Date

The following must be signed by the owner if person other than the owner is making this application.

I hereby certify that Dennis Wicker is an authorized agent for said property and is an authorized agent for said property and is permitted by me to file this application.


Owner's Signature Jason Kaplan

August 25, 2016
Date

Existing Text and Requested Changes Chatham County Watershed Protection Ordinance WSIV Watershed Area – Protected Area

Existing Language and Request Text Changes (underline)

Section 302 Watershed Areas Described, Page 27. (E) WS-IV Watershed Areas Protected Area (WS-IV-PA) (2) Density and Built-upon Area (b)

All Other Residential and Non-Residential –development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without curb and gutter street types, development shall not exceed thirty-six percent (36%) built-upon area on a project by project basis. In addition, in the portion of the WSIV PA draining to the state designated Cape Fear WSIV PA, non-residential uses may occupy ten percent (10%) of the PA with a seventy percent (70%) built upon area when approved as a special non-residential intensity allocation (SNIA). The Watershed Administrator is authorized to approve SNIAs consistent with provisions of this ordinance and consistent with plans for the Moncure Megasite Employment Center in the PA, as referenced in the Conceptual Plan Rural Preservation and Targeted Employment, adopted July 15, 2013. Projects must be located substantially within the designated Moncure Megasite Employment Center. Projects must minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed. No residential or non-residential lot shall be less than 40,000 square feet, except within an approved cluster development (#6), compact community, or conservation subdivision. (#12)

Reasons for Requested Text Changes

The requested text change to the Chatham County Watershed Protection Ordinance is intended to support development of the planned, targeted Moncure Megasite in the portion of the WSIV PA draining to the state designated Cape Fear WSIV PA. The special non-residential intensity allocation (SNIA) requested herein for the Cape Fear WSIV Protected Area is allowed as an option by the State in its Watershed Supply Watershed Protection Regulations, and allowed by the County in three of its watershed classifications that are intended to be more protective than or equally protective as the WSIV Protected Areas. The text change also provides more clarity on the conditions for SNIA approval.

State and Chatham County Water Supply Watershed Protection Regulation

In the early 1990's, the State of North Carolina adopted Water Supply Watershed Protection Rules (hereafter referred to as the State Rules) governing all water supply watersheds in the State. Water supply watersheds were designated as WS1 (smaller, less developed watersheds) to WSIV (larger, more urbanized watersheds). The State Rules, among other things, required a designated "Critical Area" nearest the water supply, a designated "Balance of Watershed" that extend to the watershed ridgeline for the smaller watersheds (i.e. WS1-WSIII), and a designated "Protected Area" for the larger WSIV watersheds that extends beyond the Critical Area for 5 to 10 miles, depending on the type of water supply. Regulations for new development and redevelopment fell into a high density option and a low density option, with more restrictive requirements placed on the Critical Area. For watersheds classified as WSIII and WSIV Protected Area, the State Rules stipulated that local jurisdictions allowing only the low density option could add a provision that 5% of the Protected Area in the WSIII and 10% of the Protected Area in the WSIV may develop up to 70% impervious area, if stormwater runoff is managed for the development site. These voluntary (5%/70% and 10%/70%) options were intended to provide opportunities for targeted development such as economic nodes, churches, and fire departments that may need higher imperviousness than allowed in the WSIII and WSIV Protected Area low density options (i.e., 24% and 36% impervious area, respectively). The State Rules became effective August 3, 1992. Local governments were required to adopt local ordinance implementing the State Rules.

Chatham County adopted its Watershed Protection Ordinance December 6, 1993. It included the required Water Supply Watershed designated areas for Jordan Lake, University Lake, the Cape Fear River, Rocky River, Haw River, and Deep River, as applicable. The Chatham County Watershed Protection ordinance had three additional designated areas: River Corridor, River Corridor Special Area, and Local Watershed Area. The Local Watershed Area is all of the land in County land outside of the other designated watershed areas and designated municipal (i.e., Siler City and Pittsboro) watershed jurisdictions. The County allowed only the low density option in the designated Balance of Watershed Areas and Protected Areas. It allowed the 5%/70% option in the WSIII Protected Area, and a 50% impervious area bonus allocation in the River Corridor Special Area. The County Watershed Ordinance allowed the 10%/70% provision in the Local Watershed Area. As noted above, the 5%/70 and 10%/70% bonuses were called Special Non-residential Intensity Allocations (SNIAs). The County did not allow the 10%/70% SNIA provision in the WSIV Protected Areas.

Recent Planning in Chatham County and Watershed Ordinance Impacts

In recent years, the County has completed a number of important plans and has begun updating its Land Conservation and Development Plan, adopted in 2001. The 1993 County Watershed Protection Ordinance poses a key barrier to implementation of these recent plans: a targeted, planned employment center, the Moncure Megasite, is located in a small, WSIV Protected Area for the Cape Fear River and is limited to 36% impervious area with no higher intensity option for development. Without the 10%/70% provision, the property owners cannot move forward in certifying the site with the State as shovel ready for immediate development.

Some significant recommendations in these recent local plans include but are not limited to

- In 2013, the Economic Development Corporation (EDC) adopted a Conceptual Plan for development in the County called *Rural Preservation with Targeted Employment*. The Plan focuses the majority of growth in or near existing towns and existing and proposed employment centers. The Conceptual Plan map (see Figure 1) shows planned, targeted employment centers within Siler City and Pittsboro planning areas (Chatham-Siler City Advanced Manufacturing Site and Chatham Park, respectively). These municipal areas have the high density option for development in the designated watershed area. In the northern portion of the County, existing, developed employment/activity centers are also highlighted (Cole Plaza and Briar Chapel). Goldston is an existing employment/activity center primarily in the Local Watershed Area. The planned Moncure Megasite is targeted in the Southeast portion of the County and in the portion of the Protected Area draining to the state designated WSIV Protected Area for the Cape Fear River intake for the City of Sanford (see Figure 2). Of the targeted employment centers in the Conceptual Plan, the Moncure Megasite is the only *planned* site that does not have a high density option. The Chatham County Board of Commissioners adopted the Conceptual Plan on July 15, 2013
- In 2014, the Chatham County Economic Development Corporation (EDC) also adopted a Chatham County Economic Development Strategic Action Agenda 2015-2020. Several of the goals of the action plan included generating more in-county jobs, retaining the County's rural character with targeted employment areas, strengthening downtowns, and diversifying the tax base. Key strategic recommendations to achieve these goals included supporting the development of "shovel ready" and certified sites for business growth (at locations consistent with current land use planning) and prioritizing infrastructure availability for Chatham Park, the Moncure Super Park, and the Chatham-Siler City Advanced Manufacturing Site. The Chatham County Board of Commissioners provided valuable input in development of the Economic Development Strategic Action Agenda. The EDC recommended development of a new Comprehensive Land Use Plan for the County and a land use pattern for the plan that supports the Conceptual Plan, *Rural Preservation with Targeted Employment*.
- Comprehensive Plan for Chatham County, Phase 1 Report was completed and approved by the Chatham Board of Commissioners in April, 2016. The Report issued findings and recommendations to guide the development of the Comprehensive Plan. Based on review of previous adopted plans and stakeholder input, the Report says the Land Use Portion of the Comprehensive Plan must accomplish a number of objectives, including but not limited to: including a realistic land use plan that recognizes growth coming; reinforcing municipalities as

centers; creating more balanced and diversity in land uses (including increasing tax base through commercial and industrial uses and encouraging economic development that provides local job options); supporting agriculture; protecting the environment and rural character; evaluating other locations across the County for potential business development. The Phase 1 Report highlights the importance of the EDC's Strategic Action Agenda, including the research, board retreat, surveys, and community focus group meetings on which it was based. The Report states that the Comprehensive Plan will consider specific ways to implement the Strategic Action Agenda, including evaluating the current status of the two economic development "megsites", their readiness and attractiveness for various potential uses, and recommended land uses in proximity to these sites. It is anticipated that the Comprehensive Plan will be completed in mid-2017 and that ordinance changes pursuant to the adopted Comprehensive Plan would be adopted in 2018 and beyond. This timeframe is not compatible with the immediate need to plan for the Moncure Megasite, including the need to secure needed built-upon area limits and to make it "shovel ready".

Plans for Moncure Megasite

The 2,632 acre Moncure Megasite is located on Old US Highway 1 with access via Pea Ridge Road and US Highway 1. The site is suited for more intense development than allowed by the Watershed Protection Ordinance for reasons of supporting existing economic development plans; compatibility with existing and surrounding area land use; area transportation networks; and environmental characteristics of the site and related cost of land development. More detailed information about each of these factors is provided below.

Supporting Chatham County Economic Development Plans

As noted above, the Moncure Megasite is included in the EDC Conceptual Plan and Strategic Action Agenda. The Action Agenda specifically calls for the County to support the site in making it shovel ready. The proposed text amendments would better meet the goals of rural preservation and targeted employment.

Compatible Existing Land Uses

The area currently has industrial uses (coal ash depository, recycling center, and the old Performance Fiber Industry location being turned into a Brownfield site). No residential development exists in the immediate area. The Shearon Harris Nuclear Facility is nearby in Wake County.

Area Transportation Networks

The site is in close proximity to Old US Hwy 1 interchange with I-540, I-40 and within 60 miles of I-85 and I-95. It currently served by a four-rail siding system served by CSX, with a second rail siding system proposed and to be served by Norfolk Southern. It is within 14 minutes of an Executive Regional Jetport and approximately 30 minutes from the RDU international airport.

Excellent Environmental Characteristics

A study was completed on a portion of the site (1,400 acres) in 2014. The study found that the site is flat, with 1,125 acres outside the encumbrances of wetlands or floodplains. The location of stream, wetland and floodplain areas on the site allow for large, continuous developable areas. The water table is deeper than 25 feet below grade. There is no shallow bedrock. (An additional 1,100 acres is under evaluation at this time.) The site, if developed under the 10%/70% Water Supply Watershed Protection Provision, would be required to meet the state requirements for stormwater management, including minimizing impervious area, directing stormwater away from surface waters, and incorporating stormwater best management practices. The site will be required to meet the County's robust stormwater management requirements. The topography, soil characteristics, and hydrology of the site will result in lower land development costs and impacts, including grading, infrastructure, and stormwater management. In addition, development of the site offers opportunities to improve existing conditions, including cleaning up the old Performance Fiber Plant site and creating a developable area; upgrading the existing 244,000 gallon per day wastewater treatment plant on site; and potentially helping to remove existing wastewater spray irrigation sites nearby.

Summary of Requested and Proposed Text Change

Attachment 1 details existing text and the requested text change to the Watershed Protection Ordinance WS-IV Watershed Areas – Protected Area. The requested text change would add a Special Non-residential Intensity Allocation (10%/70%), for the portion of the Protected Area draining to the state designated Cape Fear WSIV Protected Area for the City of Sanford intake. This selected Protected Area is 18,988 acres. Using the 10%/70% rule; 10% of area is 1,899 acres. That could yield 1,329 impervious acres at 70% imperviousness. The remaining developable land would need to develop at a maximum of 36% imperviousness. This 1,899 acre allocation would support the targeted Moncure Megasite Employment Center. The requested text change also provides the conditions for approval, including but not limited to stormwater management requirements and consistency with the planned Moncure Megasite Employment Center. The stormwater management requirements meet the criteria established by the State Rules and are consistent with the County's existing requirements for Special Non-residential Intensity Allocations in other designated watershed districts.

Figure 1. Rural Preservation and Targeted Employment Conceptual Plan

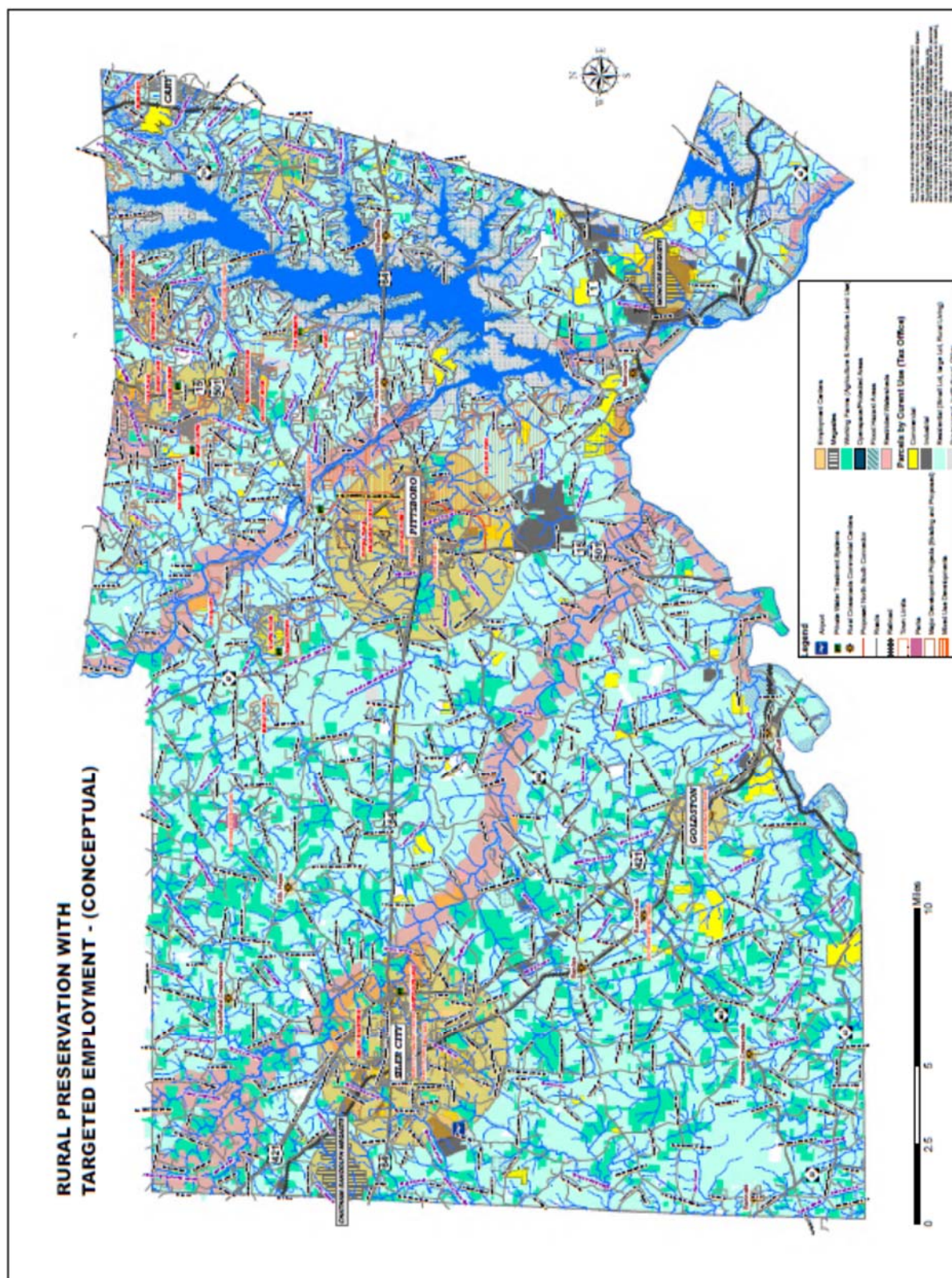


Figure 2. Portion of Protected Area Draining to State Designated WSIV Cape Fear Protected Area

