

# **LAKE LURE TOWN COUNCIL WORK SESSION MEETING PACKET**

Wednesday, September 27, 2023  
8:30 a.m.



**Mayor Carol C. Pritchett**  
**Mayor Pro Tem David DiOrio**  
**Commissioner Patrick Bryant**  
**Commissioner Scott Doster**  
**Commissioner Jim Proctor**

# **TOWN OF LAKE LURE**

## **Town Council Work Session Meeting**

Wednesday, September 27, 2023 - 8:30 AM

Lake Lure Municipal Center



---

## **Agenda**

- I. Call to Order**
- II. Agenda Adoption**
- III. Review Zoning and Planning Board Recommendation for Soil and Erosion Control Ordinance - Page 1**
- IV. Finance Presentation for Vehicle Insurance Savings - Page 31**
- V. Discuss Advertising a RFQ for Audit Contract - Page 32**
- VI. Discuss Chimney Rock Village Water Agreement - Page 33**
- VII. Discuss Emergency Communications - Page 47**
- VIII. Review Proposed Electric Vehicle Ordinance Amendment - Page 48**
- IX. Discuss Recusals - Page 50**
- X. Discuss Additional SRF Loan - Page 63**
- XI. Discuss Off-Season Beach Schedule Request from Lake Lure Tours - Page 68**
- XII. Review Proposals for the Lease of the Former ABC Store - Page 70**
- XIII. Discuss Taking Action at Work Session Meetings - Page 76**
- XIV. Discuss Public Works Laydown Area - Page 77**
- XV. Discuss Lake Level for Reservoir Drain Installation - Page 78**
- XVI. Discuss Change Order Procedures - Page 79**
- XVII. Discuss Policies Relating to Subaqueous Sanitary Sewer System (SASS) Installation - Page 80**
- XVIII. Review PANGAEA Proposal - Page 112**
- XIX. Project Manager Updates - Page 116**

**XX. Town Manager Updates - Page 117**

**XXI. Adjournment**

**LAKE LURE TOWN COUNCIL**  
**AGENDA ITEM REQUEST FORM**  
**Meeting Date: September 27, 2023**

**SUBJECT:** Review Zoning and Planning Board Recommendation for Soil and Erosion Control Ordinance

**AGENDA INFORMATION:**

**Item Number:** III  
**Department:** Community Development  
**Contact:** Michael Williams, Community Development Director  
**Presenter:** Michael Williams, Community Development Director

**BRIEF SUMMARY:**

The Town is required to include language in the Code of Ordinances based on North Carolina's model ordinance for soil erosion and sedimentation control. The Zoning and Planning Board reviewed requirements at their August 15<sup>th</sup> meeting and recommended that Town Council adopt the November 2021 NC Department of Environmental Quality's sample Erosion and Sedimentation Control ordinance, with the addition of the Town's existing and higher thresholds for the minimum area of disturbance requiring an approved plan and permit, as the Town's new Chapter 22 Erosion and Sedimentation Control ordinance.

**ATTACHMENTS:**

Recommendation from the Zoning and Planning Board; 2021 NC Department of Environmental Quality's Model Ordinance for Soil Erosion and Sedimentation Control



Chair Nelson reiterated that the Town should go with what the state specifies about selling beer at a winery or vice versa. Others expressed that this should be allowed in the Town if it is allowed by the state. Mr. Ellis noted that one other definition that is not addressed is taprooms. Mr. Ellis recommended that this be discussed further and improve definitions based on what the Town wants regarding mixed beverages. Commissioner Doster expressed that he would not be opposed to a place that makes its own alcohol selling another form of malt beverage, but he could see an issue with allowing such establishment to serve mixed beverages. Chair Nelson requested that staff have a discussion with the Town Manager and Council regarding the administrative interpretation of these issues and others agreed.

There was consensus to allow for additional discussion by Town Council prior to the Board re-visiting the topic.

## VI. NEW BUSINESS

- A. *Review of State-required revisions to our Chapter 22, Article II: Soil Erosion and Sedimentation Control ordinance with request for board recommendation to the Town Council to approve the revisions.*

Director Williams explained that the Town is a local program for the state for enforcing soil and erosion control in Lake Lure. It was noted that one requirement regarding soil and erosion is that the Town must have a definition in the ordinances based on the state's model ordinance. Director Williams noted that the Town is hoping to update the current language, but keep some regulations that enforce additional standards. Director Williams requested a recommendation from the Board to Council to solidify the Town's soil erosion and sedimentation control ordinance. Chair Nelson read staff's recommendation that were provided in the meeting packet.

**Mr. Keenan made a motion to recommend that Town Council adopt the November 2021 NC Department of Environmental Quality's sample Erosion and Sedimentation Control ordinance, with the addition of the Town's existing and higher thresholds for the minimum area of disturbance requiring an approved plan and permit, as the Town's new Chapter 22 Erosion and Sedimentation Control ordinance. Mr. Ellis seconded. All voted in favor.**

## VII. AUGUST DEPARTMENT REPORT

Board members reviewed the August Department Report that was available in the meeting packet.

Chair Nelson asked about the status of the cell tower. Director Williams explained that the cell tower project is still moving forward. Chair Nelson asked if all of the State Historic Preservation Office (SHPO) requirements had been satisfied. Director Williams answered that SHPO had a consulting firm complete interviews and create a plan which is not yet finalized, but SHPO has already given permission for the cell tower to be built and the final plan should be completed by the end of the month.

MODEL LOCAL ORDINANCE

SOIL EROSION and SEDIMENTATION CONTROL

Revised November 2021

SEDIMENTATION CONTROL COMMISSION

RALEIGH, NORTH CAROLINA

11/4/2021

## TABLE OF CONTENTS

SECTION 1	Title .....	3
SECTION 2	Purpose .....	3
SECTION 3	Definitions .....	3
SECTION 4	Scope and Exclusions .....	7
SECTION 5	Mandatory Standards for Land-Disturbing Activity .....	8
SECTION 6	Erosion and Sedimentation Control Plans .....	11
SECTION 7	Basic Control Objectives .....	16
SECTION 8	Design and Performance Standards .....	17
SECTION 9	Storm Water Outlet Protection .....	19
SECTION 10	Borrow and Waste Areas .....	21
SECTION 11	Access and Haul Roads .....	21
SECTION 12	Operations in Lakes or Natural Watercourses .....	21
SECTION 13	Responsibility for Maintenance .....	21
SECTION 14	Additional Measures .....	22
SECTION 15	Fees .....	22
SECTION 16	Plan Appeals .....	22
SECTION 17	Inspections and Investigations .....	23
SECTION 18	Penalties .....	24
SECTION 19	Injunctive Relief .....	27
SECTION 20	Restoration After Non-Compliance .....	28
SECTION 21	Severability .....	28
SECTION 22	Effective Date .....	28

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO PROVIDE FOR THE CONTROL OF SOIL EROSION AND SEDIMENTATION.

NOW, THEREFORE, BE IT ORDAINED by the (Governing Body) of the (City), (Town), (County) hereby adopts the following ordinance.

SECTION 1            Title

This ordinance may be cited as the (city), (town), (county) Soil Erosion and Sedimentation Control Ordinance.

SECTION 2            Purpose

This ordinance is adopted for the purposes of:

- (a) regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation; and
- (b) establishing procedures through which these purposes can be fulfilled.

SECTION 3            Definitions

As used in this ordinance, unless the context clearly indicates otherwise, the following definitions apply:

- (a) Accelerated Erosion - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (b) Act - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (c) Adequate Erosion Control Measure, Structure, or Device - means one which controls the soil material within the land area under responsible control of the Person conducting the land-disturbing activity.
- (d) Affiliate – means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another Person.

- (e) Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and sedimentation plan review responsibilities in accordance with the provisions of the Act.
- (f) Being Conducted - means a land-disturbing activity has been initiated and not deemed complete by the Approving Authority.
- (g) Borrow - means fill material that is required for on-site construction that is obtained from other locations.
- (h) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (i) Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
- (j) Commission - means the North Carolina Sedimentation Control Commission.
- (k) Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (l) Department - means the North Carolina Department of Environmental Quality.
- (m) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environmental Quality.
- (n) Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (o) District - means the \_\_\_\_\_ Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (p) Energy Dissipator - means a structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.
- (q) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (r) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

- (s) High Quality Waters - means those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.
- (t) High Quality Water (HQW) Zones –means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW’s.
- (u) Lake or Natural Watercourse – means any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond.
- (v) Land-disturbing Activity - means any use of the land by any Person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (w) Local Government - means any county, incorporated village, town or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.
- (x) Natural Erosion - means the wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (y) Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another Person.
- (z) Person - means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.
- (aa) Person Conducting the Land-Disturbing Activity - means any Person who may be held responsible for violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- (bb) Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other Person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that Person.
- (cc) Plan - means an erosion and sedimentation control plan.
- (dd) Sediment - means solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

- (ee) Sedimentation - means the process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.
- (ff) Siltation - means sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.
- (gg) Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (hh) Stormwater Runoff - means the runoff of water resulting from precipitation in any form.
- (ii) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another Person.
- (jj) Ten-Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in ten years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (kk) Tract - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (ll) Twenty-five Year Storm - means a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority to be equaled or exceeded, on the average, once in 25 years, and of a duration that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (mm) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (nn) Undertaken - means the initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.
- (oo) Velocity - means the speed of flow through a cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
- (pp) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.

## SECTION 4

### Scope and Exclusions

- (a) Geographical Scope of Regulated Land-Disturbing Activity. This ordinance shall apply to land-disturbing activity within the territorial jurisdiction of the (city), (town), (county) and to the extraterritorial jurisdiction of the (city), (town), (county) as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.
- (b) Exclusions from Regulated Land-Disturbing Activity. Notwithstanding the general applicability of this ordinance to all land-disturbing activity, this ordinance shall not apply to the following types of land-disturbing activity:
  - (1) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:
    - (i) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
    - (ii) dairy animals and dairy products.
    - (iii) poultry and poultry products.
    - (iv) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
    - (v) bees and apiary products.
    - (vi) fur producing animals.
    - (vii) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
  - (2) An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
  - (3) An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the General Statutes.



- (4) A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in G.S. 113A-56(a).
  - (5) An activity which is essential to protect human life during an emergency.
  - (6) Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
  - (7) Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2
- (c) Plan Approval Requirement for Land-Disturbing Activity. No Person shall undertake any land-disturbing activity subject to this ordinance without first obtaining a Plan approval from the (city)(town)(county).
  - (d) Protection of Property - Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.
  - (e) More Restrictive Rules Shall Apply - Whenever conflicts exist between federal, state, or local laws, ordinance, or rules, the more restrictive provision shall apply.
  - (f) Plan Approval Exceptions. Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed \_\_\_\_\_ acre in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

SECTION 5                    Mandatory Standards for Land-Disturbing Activity

No land-disturbing activity subject to the control of this ordinance shall be undertaken except in accordance with the following mandatory standards:

- (a) Buffer zone
  - (1) Standard Buffer. No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.

- (i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
  - (ii) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (2) Trout Buffer. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.
  - (i) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
  - (ii) Trout Buffer Measurement. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
  - (iii) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (10%) of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
  - (iv) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh Surface Water Classification and Standards."
- (b) Graded Slopes and Fills. The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be

demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

- (c) Fill Material. Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.
- (d) Ground Cover. Whenever land-disturbing activity that will disturb more than \_\_\_\_\_ acre is undertaken on a tract, the Person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that are sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in Section 8(c)(4), provisions for a permanent ground cover sufficient to restrain erosion must be accomplished within 90 calendar days following completion of construction or development.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH.]

- (e) Prior Plan Approval. No Person shall initiate any land-disturbing activity that will disturb more than \_\_\_\_\_ acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the (city)(town)(county). An erosion and sedimentation control plan may be filed less than 30 days prior to initiation of a land-disturbing activity if the plan is submitted under an approved express permit program. The land-disturbing activity may be initiated and conducted in accordance with the plan once the plan has been approved.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. LOCAL PROGRAMS MAY HAVE PERMITS WHICH ALLOW FOR LAND DISTURBING ACTIVITIES TO BE INITIATED SUBSEQUENT TO BOTH A PLAN APPROVAL AND THE LOCAL PERMIT BEING ISSUED. IN THIS CASE, THE ABOVE SENTENCE WILL NEED TO BE REVISED OR EXPANDED.]

The (city)(town)(county) shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

- (f) The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

SECTION 6

Erosion and Sedimentation Control Plans

- (a) Plan Submission. A Plan shall be prepared for all land-disturbing activities subject to this ordinance whenever the proposed activity will disturb more than \_\_\_\_\_ acre on a tract. The Plan shall be filed with the (city)(town)(county); a copy shall be simultaneously submitted to the \_\_\_\_\_ Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

[NOTE: ONE ACRE OR LESS SHALL BE SPECIFIED IN THE ABOVE PARAGRAPH. THE LAST SENTENCE IN PARAGRAPH (a) DEALING WITH PLAN SUBMISSIONS MAY BE DELETED IF SUBMISSIONS TO THE SOIL AND WATER CONSERVATION DISTRICTS ARE NOT REQUIRED UNDER PARAGRAPH (f) BELOW.]

- (b) Financial Responsibility and Ownership. Plans may be disapproved unless accompanied by an authorized statement of financial responsibility and documentation of property ownership. This statement shall be signed by the Person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the Person financially responsible, (2) the owner of the land, and (3) any registered agents. If the Person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the Plan, the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in subsections (c) or (k) of this section, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.
- (c) If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.
- (d) Environmental Policy Act Document. Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment Policy Act (G.S. §113A-1, et seq.) shall be deemed incomplete until a complete environmental document is available for review. The (city)(town)(county) shall promptly notify the Person submitting the Plan that the 30-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.
- (e) Content. The Plan required by this section shall contain architectural or engineering

drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the (city)(town)(county) on request.

- (f) Soil and Water Conservation District Comments. The District shall review the Plan and submit any comments and recommendations to the (city)(town)(county) within 20 days after the District received the Plan, or within any shorter period of time as may be agreed upon by the District and the (city)(town)(county). Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the Plan.

[NOTE: PARAGRAPH (f) MAY BE DELETED WITH CONSENT FROM THE SEDIMENTATION CONTROL COMMISSION.]

- (g) Timeline for Decisions on Plans. The (city)(town)(county) will review each complete Plan submitted to them and within 30 days of receipt thereof will notify the Person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The (city)(town)(county) will review each revised Plan submitted to them and within 15 days of receipt thereof will notify the Person submitting the Plan that it has been approved, approved with modifications, or disapproved. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.
- (h) Approval. The (city)(town)(county) shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The (city)(town)(county) shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The (city), (town), (county) may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance whereby no land-disturbing activity has been undertaken.
- (i) Disapproval for Content. The (city)(town)(county) may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.
- (j) Other Disapprovals. The (city)(town)(county) shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The (city)(town)(county) may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under subsection (k) of this section upon finding that an applicant

or a parent, subsidiary, or other affiliate of the applicant:

- (1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to this Article and has not complied with the notice within the time specified in the notice.
- (2) Has failed to pay a civil penalty assessed pursuant to this Article or a local ordinance adopted pursuant to this Article by the time the payment is due.
- (3) Has been convicted of a misdemeanor pursuant to G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to this Article.
- (4) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to this Article.

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the (city)(town)(county) pursuant to subsection (j) of this section, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The (city)(town)(county) shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of Section 16(a), the applicant may appeal the local government's disapproval of the plan directly to the Commission.

For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

- (k) Transfer of Plans. The (city)(town)(county) administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.
- (1) The (city)(town)(county) may transfer a plan if all of the following conditions are met:
    - (i) The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and documentation of property ownership.
    - (ii) The (city)(town)(county) finds all of the following:
      - a. The plan holder is one of the following:
        1. A natural person who is deceased.
        2. A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
        3. A Person who has been lawfully and finally divested of title to the property on which the permitted activity is

occurring or will occur.

4. A Person who has sold the property on which the permitted activity is occurring or will occur.
    - b. The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
    - c. The successor-owner is the sole claimant of the right to engage in the permitted activity.
    - d. There will be no substantial change in the permitted activity.
  - (2) The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
  - (3) The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
  - (4) Notwithstanding changes to law made after the original issuance of the plan, the (city)(town)(county) may not impose new or different terms and conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the (city)(town)(county) from requiring a revised plan pursuant to G.S. 113A-54.1(b).
- (l) Notice of Activity Initiation. No Person may initiate a land-disturbing activity before notifying the agency that issued the Plan approval of the date that land-disturbing activity will begin.
- (m) Preconstruction Conference. When deemed necessary by the Approving Authority, a preconstruction conference may be required and noted on the approved plan.
- (n) Display of Plan Approval. A Plan approval issued under this Article shall be prominently displayed until all construction is complete, all temporary measures have been removed, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.
- (o) Required Revisions. After approving a Plan, if the (city)(town)(county), either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the (city), (town), (county) shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the (city)(town)(county) determines that the Plan is inadequate to meet the requirements of this ordinance, the (city, (town), (county) may require any revision of the Plan that is necessary to comply with this ordinance.
- (p) Amendment to a Plan. Applications for amendment of a Plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the (city)(town)(county), the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

- (q) Failure to File a Plan. Any Person engaged in land-disturbing activity who fails to file a Plan in accordance with this ordinance, or who conducts a land-disturbing activity except in accordance with provisions of an approved Plan shall be deemed in violation of this ordinance.
  
- (r) Self-Inspections. The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG 010000. The Person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by Section 6(r) of this Ordinance or G.S. 113A-54.1(e), the following apply:

- (1) The inspection shall be performed during or after each of the following phases of the plan;
  - (i) initial installation of erosion and sediment control measures;
  - (ii) clearing and grubbing of existing ground cover;
  - (iii) completion of any grading that requires ground cover;
  - (iv) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and
  - (v) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or Person in control shall conduct and document inspections until the project is permanently stabilized as set forth in Sub-Item (iii) of this Item.
  
- (2) Documentation of self-inspections performed under Item (1) of this Rule shall include:
  - (i) Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
  - (ii) Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
  - (iii) The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A



template for an example of an inspection and monitoring report is provided on the DEMLR website at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site.

- (iv) A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

Except as may be required under federal law, rule or regulation, no periodic self-inspections or rain gauge installation is required on individual residential lots where less than one acre is being disturbed on each lot.

## SECTION 7                      Basic Control Objectives

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

- (a) Identify Critical Areas - On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.
- (b) Limit Time of Exposure - All land-disturbing activities are to be planned and conducted to limit exposure to the shortest time specified in G.S. 113A-57, the rules of the aforementioned Chapter, or as directed by the Approving Authority.
- (c) Limit Exposed Areas - All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.
- (d) Control Surface Water - Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.
- (e) Control Sedimentation - All land-disturbing activity is to be planned and conducted to prevent off-site sedimentation damage.

- (f) Manage Stormwater Runoff - Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

SECTION 8                      Design and Performance Standards

- (a) Except as provided in Section 8(b)(2) and Section 8(c)(1) of this ordinance, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the latest edition of the United States Department of Agriculture (USDA), Natural Resources Conservation Service’s “National Engineering Field Handbook”, or other acceptable calculation procedures.
- (b) HQW Zones. In High Quality Water (HQW) zones the following design standards shall apply:
  - (1) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within the boundaries of the tract. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.
  - (2) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service’s “National Engineering Field Handbook” or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.
  - (3) Sediment Basin Design. Sediment basins within HQW zones shall be designed and constructed according to the following criteria:
    - (i) use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;
    - (ii) have a minimum of 1800 cubic feet of storage area per acre of disturbed area;
    - (iii) have a minimum surface area of 325 square feet per cfs of the

- Twenty-five Year Storm (Q25) peak flow;
- (iv) have a minimum dewatering time of 48 hours;
- (v) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in subparagraphs (3)(ii) through (3)(v) of this sub-section if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

- (4) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other forms of ditch liners proven as being effective in restraining accelerated erosion. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(c) Design Standards for The Upper Neuse River Basin (Falls Lake Watershed)

In addition to any other requirements of State, federal, and local law, land-disturbing activity in the watershed of the drinking water supply reservoir that meets the applicability requirements of Session Law 2009-486, Section 3. (a), shall meet all of the following design standards for sedimentation and erosion control:

- (1) Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the runoff of the 25-year storm that produces the maximum peak rate of runoff as calculated according to procedures set out in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "Engineering Field Handbook" found through [nrcs.usda.gov](http://nrcs.usda.gov) or according to procedures adopted by any other agency of the State or the United States.
- (2) Sediment basins shall be planned, designed, and constructed so that the basin will have a settling efficiency of at least 70 percent for the 40-micron size soil particle transported into the basin by the runoff of the two-year storm that produces the maximum peak rate of runoff as calculated according to procedures in the latest edition of the United States Department of Agriculture Natural Resources Conservation Service's "National Engineering Field Handbook" or according to procedures adopted by any other agency of the State or the United States.
- (3) Newly constructed open channels shall be planned, designed, and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit

steeper side slopes or where the side slopes are stabilized by using mechanical devices, structural devices, or other ditch liners sufficient to restrain accelerated erosion. The angle for side slopes shall be sufficient to restrain accelerated erosion, as determined by the Approving Authority, based on soil conditions.

- (4) For an area of land-disturbing activity where grading activities have been completed, temporary or permanent ground cover sufficient to restrain erosion shall be provided as soon as practicable, but in no case later than seven calendar days after completion of grading. For an area of land-disturbing activity where grading activities have not been completed, temporary ground cover shall be provided as follows:
  - (i) For an area with no slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 14 calendar days.
  - (ii) For an area of moderate slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of 10 calendar days. For purposes of this Item, "moderate slope" means an inclined area, the inclination of which is less than or equal to three units of horizontal distance to one unit of vertical distance.
  - (iii) For an area of steep slope, temporary ground cover shall be provided for the area if it has not been disturbed for a period of seven calendar days. For purposes of this Item, "steep slope" means an inclined area, the inclination of which is greater than three units of horizontal distance to one unit of vertical distance.

## SECTION 9                      Storm Water Outlet Protection

- (a) Intent. Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.
- (b) Performance standard. Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:
  - (1) the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
  - (2) the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (1) or (2) of this Paragraph cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by 10%.

Maximum Permissible Velocities Table

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

<u>Material</u>	F.P.S.	M.P.S.
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (Colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8

Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.

(c) Acceptable Management Measures - Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The (city)(town)(county) recognizes that the management of storm water runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives, while not exhaustive, are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in storm water discharge velocities by using vegetated or

roughened swales and waterways in place of closed drains and high velocity paved sections:

- (3) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
  - (4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
  - (5) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.
- (d) Exceptions - This rule shall not apply where it can be demonstrated to the (city), (town), (county) that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

#### SECTION 10            Borrow and Waste Areas

If the same Person conducts the land-disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity, unless the borrow or waste activity is regulated under the Mining Act of 1971, G.S. 74, Article 7, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same Person, they shall be considered by the Approving Authority as separate land-disturbing activities.

#### SECTION 11            Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

#### SECTION 12            Operations in Lakes or Natural Watercourses

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

#### SECTION 13            Responsibility for Maintenance

During the development of a site, the Person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of this Ordinance, the Act, or any order adopted pursuant to this ordinance or the Act. After site development, the landowner or Person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency.

SECTION 14            Additional Measures

Whenever the (city)(town)(county), determines that accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the Person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

SECTION 15            Fees

The (city)(town)(county), may establish a fee schedule for the review and approval of Plans.

[NOTE: THE LOCAL PROGRAM SHALL CONSIDER THE ADMINISTRATIVE AND PERSONNEL COSTS INCURRED FOR REVIEWING THE PLANS AND FOR COMPLIANCE RELATED ACTIVITIES.]

[NOTE: UNDER G.S. §113A-60(a), THE FEE FOR A SINGLE-FAMILY LOT IN A RESIDENTIAL, OR COMMON PLAN OF, DEVELOPMENT THAT IS LESS THAN ONE ACRE CANNOT EXCEED \$100.00 PER LOT.]

SECTION 16            Plan Appeals

- (a) Except as provided in Section 16(b) of this ordinance, the appeal of a disapproval or approval with modifications of a Plan shall be governed by the following provisions:
  - (1) The disapproval or modification of any proposed Plan by the (city)(town)(county), shall entitle the Person submitting the Plan to a public hearing if such Person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
  - (2) A hearing held pursuant to this section shall be conducted by the (city)(town)(county), (appropriate local agency), within \_\_\_\_\_ days after the date of the appeal or request for a hearing.

- (3) The agency conducting the hearings shall make recommendations to the governing body of the (city)(town)(county), within \_\_\_\_ days after the date of the hearing on any Plan.
- (4) The Governing Body of the (city)(town)(county), will render its final decision on any Plan within \_\_\_\_ days of receipt of the recommendations from the agency conducting the hearing.
- (5) If the (city)(town)(county) upholds the disapproval or modification of a proposed Plan following the hearing, the Person submitting the Plan shall then be entitled to appeal the (city)(town)(county)'s decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

[NOTE: THE APPEALS PROCEDURES ABOVE ARE INCLUDED ONLY TO ENSURE THAT EACH LOCAL ORDINANCE CONTAINS PROCEDURES FOR APPEALS. THE PROCEDURE SHOULD BE WRITTEN TO CONFORM TO APPLICABLE EXISTING PROCEDURES, OR AS CREATED FOR THE ADMINISTRATION OF THE ORDINANCE.]

- (b) In the event that a Plan is disapproved pursuant to Section 6(j) of this ordinance, the applicant may appeal the (city)(town)(county)'s disapproval of the Plan directly to the Commission.

## SECTION 17            Inspections and Investigations

- (a) Inspection. Agents, officials, or other qualified persons authorized by the (city), (town), (county), will periodically inspect land-disturbing activities to ensure compliance with the Act, this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the measures required in the Plan are effective in controlling erosion and sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.
- (b) Willful Resistance, Delay or Obstruction. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the (city), (town), (county), while that person is inspecting or attempting to inspect a land-disturbing activity under this section.
- (c) Notice of Violation. If the (city)(town)(county) determines that a Person engaged in land-disturbing activity has failed to comply with the Act, this ordinance, or rules, or orders adopted or issued pursuant to this ordinance, a notice of violation shall be served upon that Person. The notice may be served by any means authorized under GS 1A-1, Rule 4. The notice shall specify a date by which the



Person must comply with the Act, or this ordinance, or rules, or orders adopted pursuant to this ordinance, and inform the Person of the actions that need to be taken to comply with the Act, this ordinance, or rules or orders adopted pursuant to this ordinance. Any Person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this ordinance. If the Person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the (city)(town)(county) shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. The notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures.

- (d) Investigation. The (city)(town)(county), shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and who presents appropriate credentials for this purpose to enter at reasonable times, any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.
- (e) Statements and Reports. The (city)(town)(county), shall also have the power to require written statements, or filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

## SECTION 18            Penalties

### (a)    Civil Penalties

- (1)    Civil Penalty for a Violation. Any Person who violates any of the provisions of this ordinance, or rule or order adopted or issued pursuant to this ordinance, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the (city)(town)(county) may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the Person has not been assessed any civil penalty under this subsection for any previous violation, and that Person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).

[NOTE: UNDER G.S. §113A-61.1(d), DAMAGE OR DESTRUCTION OF A SILT FENCE OCCURRING DURING LAND-DISTURBING ACTIVITIES OR CONSTRUCTION ON A DEVELOPMENT PROJECT SHALL NOT BE ASSESSED A CIVIL PENALTY PROVIDED THAT THE SILT FENCE IS REPAIRED OR REPLACED WITHIN THE COMPLIANCE PERIOD/DEADLINE NOTED IN THE INSPECTION REPORT OR NOTICE OF VIOLATION. ENSURE VIOLATORS HAVE AN OPPORTUNITY TO CORRECT THESE VIOLATIONS. THIS STATUTE DOES NOT APPLY TO OFF-SITE SEDIMENT THAT OCCURS DUE TO THE SILT FENCE NOT BEING IN PLACE, BUT MERELY DAMAGE TO THE SILT FENCE ITSELF.]

- (2) Civil Penalty Assessment Factors. The governing body of the (city)(town)(county) shall determine the amount of the civil penalty based upon the following factors:
  - (i) the degree and extent of harm caused by the violation,
  - (ii) the cost of rectifying the damage,
  - (iii) the amount of money the violator saved by noncompliance,
  - (iv) whether the violation was committed willfully, and
  - (v) the prior record of the violator in complying or failing to comply with this ordinance.
  
- (3) Notice of Civil Penalty Assessment. The governing body of the (city)(town)(county) shall provide notice of the civil penalty amount and basis for assessment to the Person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the (city)(town)(county) shall direct the violator to either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the (city)(town)(county) (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the (city, town, county commission/board) for remission of the assessment within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
  
- (4) Final Decision: The final decision on contested assessments shall be made by the governing body of the (city)(town)(county) in accordance with (the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program.)
  
- (5) Appeal of Final Decision. Appeal of the final decision of the governing body of the (city)(town)(county) shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the governing body of the (city)(town)(county).

(6) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the (city, town, county commission/board) within 30 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:

- (i) Whether one or more of the civil penalty assessment factors in G.S. 113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
- (ii) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
- (iii) Whether the violation was inadvertent or a result of an accident.
- (iv) Whether the petitioner had been assessed civil penalties for any previous violations.
- (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
- (vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

[NOTE: THE PETITIONER HAS THE BURDEN OF PROVIDING INFORMATION CONCERNING THE FINANCIAL IMPACT OF A CIVIL PENALTY ON THE PETITIONER AND THE BURDEN OF SHOWING THE PETITIONER'S FINANCIAL HARDSHIP. THE CITY/TOWN/COUNTY COMMISSION OR BOARD MAY REMIT THE ENTIRE AMOUNT OF THE PENALTY ONLY WHEN THE PETITIONER HAS NOT BEEN ASSESSED CIVIL PENALTIES FOR PREVIOUS VIOLATIONS AND PAYMENT OF THE CIVIL PENALTY WILL PREVENT PAYMENT FOR NECESSARY REMEDIAL ACTIONS. THE CITY/TOWN/COUNTY COMMISSION OR BOARD MAY NOT IMPOSE A PENALTY UNDER THIS SECTION THAT IS IN EXCESS OF THE CIVIL PENALTY IMPOSED BY THE LOCAL PROGRAM.]

[NOTE: THE FOREGOING PROCEDURES ARE OFFERED AS GUIDANCE TO LOCAL GOVERNMENTS TO ENSURE THAT CIVIL PENALTIES ARE ACCOMPANIED BY REMISSION REQUESTS AND APPEAL PROCEDURES, INCLUDING HEARING OPPORTUNITIES. REFER TO THE REMISSION GUIDELINES FOR LOCAL GOVERNMENT EROSION AND SEDIMENT CONTROL PROGRAMS FOR THE FULL PROCEDURE.]

- (7) Collection. If payment is not received within 30 days after it is due, the (city)(town)(county) may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- (8) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the (city)(town)(county) under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the (city)(town)(county) may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the (city)(town)(county) for the prior fiscal year.

[IN ANY EVENT, THE COST PERCENTAGE SHALL NOT EXCEED TWENTY PERCENT (20%) OF PENALTIES COLLECTED.]

- (b) Criminal Penalties. Any Person who knowingly or willfully violates any provision of this ordinance, or rule or order adopted or issued by the Commission or a local government, or who knowingly or willfully initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in G.S. 113A-64.

## SECTION 19 Injunctive Relief

- (a) Violation of Local Program. Whenever the governing body has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the (city)(town)(county), or any term, condition, or provision of an approved Plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the (city)(town)(county), for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the superior court of the county in which the violation is occurring or is threatened.
- (b) Abatement of Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is

necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this ordinance.

SECTION 20            Restoration After Non-Compliance

The (city)(town)(county), may require a Person who engaged in a land-disturbing activity and failed to retain sediment generated by the activity, as required by G.S. 113A-57 (3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this ordinance.

SECTION 21            Severability

If any section or section or sections of this ordinance is/are held to be invalid or unenforceable, all other sections shall nevertheless continue in full force and effect.

SECTION 22            Effective Date

This ordinance becomes effective on \_\_\_\_\_.

[IN ESTABLISHING AN EFFECTIVE DATE, THE LOCAL GOVERNMENT SHOULD CONSIDER THE NEED FOR LEAD-TIME TO ORIENT AND EDUCATE THOSE AFFECTED BY FULL IMPLEMENTATION OF THE ORDINANCE.]

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Finance Presentation for Vehicle Insurance Savings

**AGENDA INFORMATION:**

**Item Number:** IV  
**Department:** Finance  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Stephen Ford, Finance Director

**BRIEF SUMMARY:**

Town Staff has recently discovered that various Town vehicles had remained on the Town's insurance policy despite being sold and no longer under the Town's ownership. Since this discovery, the Finance Department has worked towards removing all former Town vehicles from the Town's insurance policy. Finance Director Stephen Ford will present on the resulted cost savings for vehicle insurance.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Advertising a RFQ for Audit Contract

**AGENDA INFORMATION:**

**Item Number:** V  
**Department:** Finance  
**Contact:** Stephen Ford, Finance Director  
**Presenter:** Stephen Ford, Finance Director

**BRIEF SUMMARY:**

Finance Director Stephen Ford would like to discuss the possibility of advertising for RFQs for the auditing contract in the future. The Town has worked with Martin and Starnes Associates for an abundance of years and it is standard procedure to change audit firms periodically to ensure a variety of practical insights.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Chimney Rock Village Water Agreement

**AGENDA INFORMATION:**

**Item Number:** VI  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

After approving a previous extension of the Agreement to Operate Water System between the Town and Chimney Rock Village, the Agreement will officially expire on December 31, 2023. Town staff has been working on drafting a new water agreement that will begin in 2024. The new draft includes various amendments to the original agreement, as well as updated cost estimates. Town Manager Hank Perkins has been in contact with Village Administrator Stephen Duncan and has provided him with the Town's latest proposed draft agreement and cost estimates.

**ATTACHMENTS:**

Latest Draft of the Agreement to Operate Water System; Chimney Rock Water Works Cost Analysis Summary



Chimney Rock Village

STATE OF NORTH CAROLINA  
COUNTY OF RUTHERFORD

**AGREEMENT TO OPERATE WATER SYSTEM**

THIS CONTRACT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, ~~2023~~2023, by and between the Town of Lake Lure, a North Carolina Municipal Corporation hereinafter referred to as "Lake Lure" and the Chimney Rock Village, a North Carolina Corporation hereinafter referred to as "Chimney Rock".

**WITNESSETH**

WHEREAS, Lake Lure and Chimney Rock are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement, and the signatories hereto have been authorized to execute this document on behalf of the Lake Lure Town Commission and the Chimney Rock Village Council; and

WHEREAS, Lake Lure currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Chimney Rock owns and operates a water treatment and distribution system, and is also engaged in the enterprise of managing, operating, maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lake Lure and Chimney Rock previously entered into an Agreement to Operate Water System ("prior agreement") on or about April 15, 2003; and

WHEREAS, Chimney Rock has tended written notice as required by the prior agreement to Lake Lure of its intent to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure has notified Chimney Rock in writing as required by the prior agreement of its decision to renew the prior agreement subject to the modifications contained herein; and

WHEREAS, Lake Lure and Chimney Rock each have facilities and services that are mutually beneficial and have agreed that continued cooperation in the management and operation of both water systems would serve the best interest of both municipalities; and

WHEREAS, Lake Lure and Chimney Rock have a mutual interest in maintaining a level of cooperation between their water services delivery programs.

## Chimney Rock Village

NOW THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Lake Lure and Chimney Rock mutually agree that this agreement shall become effective on ~~April 15~~January 1st, 2023-2024 and it shall continue in effect for a period of ~~10~~5 years from its effective date (April 15, ~~2033~~2029), or extended by the mutual, written consent of both parties, or until superseded by an alternative agreement.

~~1.2.~~Lake Lure and Chimney Rock have the option to renew this lease agreement for one (1) additional term of five (5) years (the "Option"). The Option will be deemed exercised automatically unless either party delivers written notice as provided herein below to the other party of its decision not to exercise or agree to the Option. This decision not to exercise or agree to the Option shall be sent to the other party no later than one hundred eighty (180) days prior to the termination of the original Term. Either party, so long as that party is not in breach of this Lease, has the right to elect to not exercise the Option as provided herein, with or without cause.

~~2.3.~~Lake Lure agrees to assume the responsibility for managing and operating Chimney Rock's water system and program throughout the term of this agreement and that such responsibilities shall, at a minimum, include:

- a. Overseeing and managing the operation of the water system; and
- b. Providing the supervisory and operational personnel necessary to adequately manage, operate and maintain said water system; and
- c. Reading the meters for all metered customers on the water system; and
- d. Billing all customers for water services rendered and providing other relevant customer services, on a bi-monthly schedule (every other month), or may follow the Town's regular billing cycle if more frequent, utilizing Chimney Rock's adopted water rates and charges; and
- e. Providing the accounting services necessary to account for all funds that pass through Chimney Rock's water program, in accordance with applicable state laws and regulations; and
- f. Insuring compliance with applicable state environmental laws and regulations, so long as such compliance is within the control of Lake Lure; and
- g. Monitoring the water system facilities to insure their proper operation and protection; and

## Chimney Rock Village

- h. Repairing and maintaining the water system and related facilities, as such repairs and maintenance are warranted, subject to the exclusion listed in paragraph 4.5 below.

3.4. Lake Lure further agrees to manage, operate and maintain the Chimney Rock water system and program to the same standard that the Town manages, operates and maintains its own water system and program.

4.5. Lake Lure's responsibilities under this agreement does not extend to paying the costs associated with capital improvements or major repairs to the system. The Town of Lake Lure's assigned management (Town Manager or assigned/appointed contact or Department Head) will notify the Village's Mayor and or Administration of Chimney Rock Village for approvals of any repairs that are estimated to equal to or exceed \$1,000????? or the purchase of any equipment which cost is estimated to equal to or exceed \$500?????. The Village will within a reasonable time, per issue and/or situation, notify the Town of approvals or any plans of action to address repairs or equipment purchases, thus allowing the Village time to consult with the Village's engineer of record or decide to have. "Major repairs" shall be defined as those repairs which cannot be made with hand tools or equipment normally operated by the Town of Lake Lure's maintenance staff or which require the hiring of outside assistance. Repairs conducted by the Town shall be undertaken by the Town force account labor and/or by a contractor performing such repairs on behalf of the Town.

5.6. Lake Lure agrees that the responsibility for managing, operating and maintaining the Chimney Rock water system and program shall rest with its Town Manager and the Manager shall be accountable to Chimney Rock for timely and accurate communication, information and reporting for all important policy, operational, and financial matters relating to Chimney Rock's water system and program.

6.7. Lake Lure shall immediately notify Chimney Rock upon becoming aware of any activity, problem or circumstance that might present a danger to the health, safety and welfare of Chimney Rock water users. Further, Lake Lure shall take appropriate action to remedy such activity, problem or circumstance and to avoid or minimize disruptions in service. Chimney Rock shall immediately take those steps necessary to alleviate such activity, problem or circumstance where such measures are beyond the control of Lake Lure.

7.8. Lake Lure and Chimney Rock agree to maintain compliance with all laws and regulations, which apply to the ownership, operation and maintenance of both water systems, including adherence to the terms and conditions of all state permits, which establish appropriate water quality standards for the systems.

~~8. Lake Lure further agrees that upon the effective date of this agreement it will maintain the sewer rates charged to Chimney Rock sewer customers equal to the rate that is charged to Lake Lure customers that are inside of Lake Lure's corporate limits.~~

10. Chimney Rock hereby agrees to compensate Lake Lure for reducing the sewer rates charged to Chimney Rock customers, as provided for in paragraph 8. Said compensation shall be made in two parts:

~~— Water Storage Capacity. Chimney Rock agrees to convey to Lake Lure the permanent use of 100,000 gallons of capacity in Chimney Rock's 250,000-gallon water storage reservoir located at Terrance Drive. Said use shall be perpetual and shall carry with it Chimney Rock's obligation to adequately operate and maintain said reservoir and insure that the facility will remain in service throughout its normal life expectancy, which is defined at 50 years. The value of this conveyance shall be established at \$12,000 per year for the 10-year term of this agreement, said value to be offset by services rendered by Lake Lure and the reduction in sewer rates pursuant to this agreement.~~

~~— Potable Water Supply. Chimney Rock agrees to convey to Lake Lure a continuing and uninterrupted quantity of potable water from its water system, at meeting points that are mutually acceptable to the parties of this agreement. Said quantity of water shall not exceed 4.62 million gallons during each year, except that the flow of water cannot exceed 12,670 gallons for any 24-hour period, unless specifically approved by Chimney Rock Village. Conveyances of water shall be recorded and accounted for quarterly by Chimney Rock Village. Each quarterly period will be accounted for separately and deficits or surpluses in total quarterly conveyance will not be carried forward. Quantities in excess of the quarterly maximum established herein will be purchased by the Town of Lake Lure, at a cost per 1,000 gallons. The rate per 1,000 gallons will be the same rate as charged per 1,000 gallons for Chimney Rock Village base residential customers.~~

9. Monetary Compensation. Chimney Rock shall pay ~~\$15,000~~ Lake Lure annually, beginning with the effective date of this contract, ~~to Lake Lure~~ for managing, operating and maintaining the Village's water system and program, plus parts, supplies, costs for laboratory tests and similar expenses. Said compensation shall be paid in equal monthly payments, which shall be deducted by Lake Lure from the proceeds it collects from the sale of water in Chimney Rock. The amount of annual payment will be in accordance with costs as determined during Lake Lure's annual audit process from costs that have been associated with the Town's provision of management Chimney Rock's water system. These costs shall be in an audit schedule for Lake Lure that accounts for the Town's Water and Sewer Fund Schedule of Revenues and Expenditures.

from Chimney Rock's water system is insufficient to compensate Lake Lure in accordance with the terms provided for herein, Lake Lure shall submit a written notification to Chimney Rock accounting for the actual proceeds collected and requesting that Chimney Rock remit the balance owed to Lake Lure within 30 days of the date of the notification.

—The compensation component provided for in paragraph ~~9(e)~~<sup>9</sup> shall be reviewed ~~at the 5 year anniversary date of this agreement to annually to~~ maintain equity between the value of Lake Lure's annual cost for managing, operating and maintaining

~~10. Chimney Rock Village's water system, except that Lake Lure and Chimney Rock each reserves the right to call for an interim review of this compensation formula in the event that its cost of managing, operating and maintaining the water system has changed substantially for any reason. This annual cost will be viewed as the temporary costs for Lake Lure to provide management services. Prior to the beginning of each contract year, actuals costs for the prior year as determined by audit process will be compared against the temporary costs. If there is a credit or debit due for Chimney Rock as a result of these comparisons, it will appear as a debit or credit for the January billing for services to Chimney Roack Village. Each audit schedule cost for the year shall become the "temporary cost" for each subsequent year.~~

~~16. Chimney Rock agrees that it will notify Lake Lure at least 12 months in advance of its determination that it will not be able to provide the quantity of water that is provided for in paragraph 9(b). In such event, Chimney Rock agrees to pay Lake Lure for the deficit of water conveyance at a rate that equals Lake Lure's cost for producing potable water from its own system. Said compensation shall be made to Lake Lure monthly, based on Lake Lure's estimate of the water that it would have normally used minus the quantity of water that is actually delivered by Chimney Rock, within the maximum quantities that are established in paragraph 9(b).~~

~~17.11.~~ Chimney Rock agrees to create policies that shall provide Lake Lure with guidance concerning Lake Lure's fulfillment of its duties to manage, operate, and maintain as required under this agreement. If Lake Lure has questions concerning its duties under this agreement that is not answered in the policies, then Chimney Rock will provide Lake Lure with timely guidance. The policies provided by Chimney Rock to Lake Lure shall be strictly followed and any breach of the policies shall be construed as a material breach of the contract. The policies may be called "Procedures and Guidelines" or another term that the parties reasonably understand to be the policies created by Chimney Rock for Lake Lure. Such policy guidance and timely decisions shall include water rates and charges that are adequate to generate sufficient revenues to offset all of the management, operation, and maintenance expenses for the water system and program.

## Chimney Rock Village

- ~~18.12.~~ 18.12. Chimney Rock agrees to correct demonstrated deficiencies in the water system and make improvements that are necessary for such regulatory compliance.
- ~~19.13.~~ 19.13. Chimney Rock agrees that the Village and its water customers shall abide by all of the user policies and procedures adopted by Lake Lure for its water system, unless Chimney Rock specifically amends such policies and procedures for its users and provided that such amendments do not hinder Lake Lure's ability to comply with the provisions of this agreement.
- ~~20.14.~~ 20.14. Chimney Rock Village and the Town of Lake Lure agree that both municipalities and their respective water customers shall abide by and adhere to all policies, restrictions and other ordinances that may be adopted by both governing bodies which impose water restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought conditions or during other emergency or critical situations, which for public health or financial reasons justify said policies, restrictions, and ordinances.
- ~~21.15.~~ 21.15. Chimney Rock agrees to tender at least a ~~six month~~180 day written notice to Lake Lure prior to the expiration of this agreement ~~or subsequent renewals of this agreement~~ if it desires to renew said agreement ~~or any subsequent renewal to this agreement~~.
- ~~22.16.~~ 22.16. The Town of Lake Lure agrees to notify Chimney Rock Village in writing of its decision to renew or not to renew this agreement ~~or an subsequent renewal to this agreement~~ on or before 90 days after having received notification of the Chimney Rock's desire to renew this ~~agreement or any subsequent renewal of this agreement~~.
- ~~23.17.~~ 23.17. Lake Lure and Chimney Rock shall maintain backflow protection at all points of connections between the two water systems to prevent the backflow of water into each water system. Chimney Rock's policies and ordinances pertaining to backflow protection shall be consistent with those policies and ordinances adopted for Lake Lure's water system.
- ~~24.18.~~ 24.18. Lake Lure and Chimney Rock both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
- ~~25.19.~~ 25.19. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lake Lure and Chimney Rock that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution,



## Chimney Rock Village

including the use of outside experts or arbitrators, shall be the preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within 90 days from the date they first arise, either party may seek such other remedies as may be available to it.

26.20. Default and Termination. This agreement may be terminated for cause, as set forth below, prior to its stated expiration date by Lake Lure or Chimney Rock in accordance with terms and conditions set forth herein. The rights of Lake Lure and Chimney Rock to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement:

- a. The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
- b. The determination that any representation, warranty or covenant made by either party is false and/or misleading in any material respect.
- c. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement.
- d. The failure of The Town or Village to make any payments required to be made by it pursuant to the terms of this agreement within 90 days of receipt of notice or invoice from the other party.
- e. Any action by Chimney Rock to divest itself of its water system or its related facilities so that it no longer controls the supply of potable water which is conveyed or sold to Lake Lure under the terms, covenants and conditions of this agreement.
- f. Any action by Lake Lure to divest itself of its water system or its related facilities so that it no longer possesses the capacity to manage, operate and maintain Chimney Rock's water system, in accordance with the terms and conditions of this agreement.
- g. Any order of a court of competent jurisdiction, of any federal or state law or regulation which would make this contract illegal, subject to the further provisions of paragraph 36 below if applicable.

27.21. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter,

## Chimney Rock Village

within 10 days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than 30 days after written notice thereof by the other party, or if the nonperformance or failure cannot be reasonably remedied within the same 30 day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within 15 days of the receipt of such notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.

~~28.~~22. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.

~~29.~~23. To the extent allowed by, Lake Lure shall indemnify, defend and hold harmless Chimney Rock, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Lake Lure's breach of this agreement or the negligent or willful acts of omission of Lake Lure or its agents, servants, employees, or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Chimney Rock.

~~30.~~24. To the extent allowed by law, Chimney Rock shall indemnify, defend and hold harmless Lake Lure, its elected and appointed officers, and its duly authorized agents, servants and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from Chimney Rock's breach of this agreement or the negligent or willful acts of omissions of Chimney Rock or its agents, servants, employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of Lake Lure.

~~31.~~25. NOTICES: For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party.



Chimney Rock Village

**To Lake Lure:**

Town of Lake Lure  
Post Office Box 255  
Lake Lure, NC 28746-0255  
Facsimile Number: (828) 625-8371  
Attention: Town Manager

**To Chimney Rock Village:**

Chimney Rock Village  
Post Office Box 300  
Chimney Rock, NC 28720-0300  
Facsimile Number: (828) 625-4456  
Attention: Mayor and/or Village Clerk

~~32.26.~~ This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement signed by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.

~~33.27.~~ Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party to third parties in any manner whatsoever.

~~28.~~ No written waiver by any party to this agreement at any time of breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or a consent to any subsequent breach of the same or any other provision.

~~35.29.~~ The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.

~~36.30.~~ This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

~~37.31.~~ Time shall be of the essence in this agreement and each and every term and condition thereof.

~~38.32.~~ Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

~~39.33.~~ If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.

Chimney Rock Village

40.34. In the event of litigation between Lake Lure and Chimney Rock as to the terms, performance, or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.

41.35. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.

42.36. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written, after being approved in open meeting by the respective governing board of each municipality.

**TOWN OF LAKE LURE, NORTH CAROLINA**

By: \_\_\_\_\_  
Mayor

(SEAL)  
Attest

By: \_\_\_\_\_  
Town Clerk

**CHIMNEY ROCK VILLAGE, NORTH CAROLINA**

By: \_\_\_\_\_  
Mayor

(SEAL)  
Attest


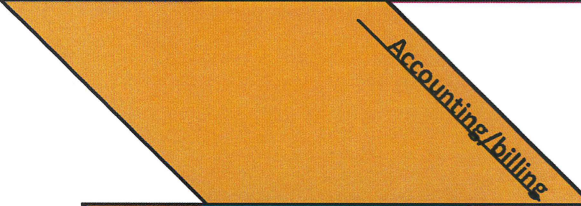


By: \_\_\_\_\_  
Village Clerk

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_  
Steve Ford, Finance Officer  
Officer Town of Lake Lure

By: \_\_\_\_\_  
Stephen G. Duncan, Finance  
Chimney Rock Village

## Chimney Rock Water Works Cost Analysis Summary

<u>Field Labor -Annual</u>	\$	18,000.00
<u>Field Vehicle Costs</u>	\$	4,000.00
<u>Equipment Costs</u>	\$	3,000.00
<u>Administrative Costs:</u>		
 Collection	\$	4,500.00
 Accounting/billing	\$	11,500.00
 Supplies	\$	1,000.00
 Miscellaneous	\$	3,000.00
<u>System Supplies</u>	\$	6,000.00
		in addition to billed supplies
<b>TOTAL System Cost Estimate</b>	<b>\$</b>	<b>51,000.00</b>

**Field Labor:**

FTE daily hours, Well Inspectations, field repairs (average)

2 hours            X            \$25.00 rate            7 days weekly X 52 we    \$            18,200.00

<b>Field Vehicle Costs: associated with field labor</b>			
16 daily miles	X.655 rate	X 365 miles	<b>\$3,825.00</b>

<b>Collection and Accounting Costs</b>			
445 FTE hours annual			
Customer Service Coordinator(CSC), Adm Assist (ADM) , Finance and Town Manager			
	Rate		
<u>CSC</u>	340	\$35	\$11,900.00
<u>ADM</u>	75	\$22	\$1,650.00
<u>Finance</u>	20	\$40	\$800.00
<u>Town Manager</u>	10	\$80	\$800.00
	445 hours		<u>\$15,150.00</u>

**Supplies include invoice forms, postage, other correspondence**

**Miscellaneous and System supplies include labor overruns, equipment, and parts needed for repairs**

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Emergency Communications

**AGENDA INFORMATION:**

**Item Number:** VII  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

Council will discuss best practices for communicating pertinent information in the event of an emergency.

**LAKE LURE TOWN COUNCIL**  
**AGENDA ITEM REQUEST FORM**  
**Meeting Date: September 27, 2023**

**SUBJECT:** Review Proposed Electric Vehicle Ordinance Amendment

**AGENDA INFORMATION:**

**Item Number:** VIII  
**Department:** Police  
**Contact:** Sean Humphries, Police Chief  
**Presenter:** Sean Humphries, Police Chief

**BRIEF SUMMARY:**

Signage for the Town's electric vehicle (EV) charging station specify a limit of two hours of parking and charging station usage. Code of Ordinance Section 30-62 details regulations regarding parking and use of electric vehicle charging stations, but does not include the specified time limit displayed on signage. In order to make such time limit enforceable, Town staff is recommending the addition of the specified time limit under Section 30-62 (e) of the Code of Ordinances. Furthermore, staff is recommending that the time limit be increased from two hours to four hours.

**ATTACHMENTS:**

Draft Ordinance Amending Chapter 30 ("Traffic and Vehicles") Article III ("Parking Violations: Enforcement") Section 30-62 ("Parking and Use of Electric Vehicle Charging Stations") of the Town of Lake Lure Code of Ordinances

**DRAFT ORDINANCE NO.**

**AN ORDINANCE AMENDING CHAPTER 30 (“TRAFFIC AND VEHICLES”) ARTICLE III (“PARKING VIOLATIONS: ENFORCEMENT”) SECTION 30-62 (“PARKING AND USE OF ELECTRIC VEHICLE CHARGING STATIONS”) OF THE TOWN OF LAKE LURE CODE OF ORDINANCES**

**WHEREAS**, Town staff has identified issues within the Town’s parking regulations that need to be addressed in the Town Code of Ordinances and has made recommendations to the Board of Commissioners on how the issues should be addressed; and,

**WHEREAS**, the Board of Commissioners has considered the issues and the Town staff’s recommendations and has determined that the Staff’s recommendations are well-founded;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS FOR THE TOWN OF LAKE LURE:**

**Section 1.** Section 30-62 (“Parking and Use of Electric Vehicle Charging Stations”) subsection (c) (“Signage required”) is amended to read as follows:

- (c) *Signage required.* Where public electric vehicle charging stations are constructed and installed on property owned by the town, the town shall cause appropriate signs and markings to be placed in and around the parking spaces of said stations, indicating prominently thereon the parking regulations. The signs shall state that the parking space is reserved for charging purposes and that there is a four hour charging limit. A second sign shall provide information on how owners of towed vehicles may retrieve the same.

**Section 2.** All ordinances, resolutions, or policies of the Town in conflict with the amendments herein adopted are void to the extent of the conflicts.

**Section 3.** This Ordinance shall become effective upon adoption.

This \_\_\_ day of October, 2023.

ATTEST:

\_\_\_\_\_  
Olivia Stewman, Town Clerk

\_\_\_\_\_  
Carol Pritchett, Mayor

Approved as Form:

\_\_\_\_\_  
William C. Morgan, Jr.  
Town Attorney



**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Recusals

**AGENDA INFORMATION:**

**Item Number:** IX  
**Department:** Council  
**Contact:** William Morgan, Town Attorney  
**Presenter:** William Morgan, Town Attorney

**BRIEF SUMMARY:**

Town Attorney William Morgan will lead discussion regarding rules and procedures for recusals from voting.

**ATTACHMENTS:**

North Carolina General Statute § 160A-75 (“Voting”); North Carolina School of Government’s *County and Municipal Government in North Carolina* Chapter 7 (“Ethics and Conflicts of Interest”)

**§ 160A-75. Voting.**

(a) No member shall be excused from voting except upon matters involving the consideration of the member's own financial interest or official conduct or on matters on which the member is prohibited from voting under G.S. 14-234 or G.S. 160D-109. In all other cases except votes taken under G.S. 160D-601, a failure to vote by a member who is physically present in the council chamber, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote. The question of the compensation and allowances of members of the council is not a matter involving a member's own financial interest or official conduct.

(b) Notwithstanding subsection (a) of this section, a vote or failure to vote by any member present by means of simultaneous communication in accordance with G.S. 166A-19.24 shall be treated as if the member were physically present only during the period while simultaneous communication is maintained for that member.

(c) An affirmative vote equal to a majority of all the members of the council not excused from voting on the question in issue, including the mayor's vote in case of an equal division, shall be required to adopt an ordinance, take any action having the effect of an ordinance, authorize or commit the expenditure of public funds, or make, ratify, or authorize any contract on behalf of the city. In addition, no ordinance nor any action having the effect of any ordinance, except an ordinance on which a public hearing must be held pursuant to G.S. 160D-601 before the ordinance may be adopted, may be finally adopted on the date on which it is introduced except by an affirmative vote equal to or greater than two thirds of all the actual membership of the council, excluding vacant seats and not including the mayor unless the mayor has the right to vote on all questions before the council. For purposes of this section, an ordinance shall be deemed to have been introduced on the date the subject matter is first voted on by the council. (1917, c. 136, subch. 13, s. 1; C.S., s. 2821; 1971, c. 698, s. 1; 1973, c. 426, s. 16; 1979, 2nd Sess., c. 1247, s. 7; 1983, c. 696; 2001-409, s. 9; 2005-426, s. 5.1(a); 2013-126, s. 11; 2015-160, s. 5; 2019-111, s. 2.5(n); 2020-3, ss. 4.31(h), 4.33(a); 2020-25, s. 51(a), (b), (d).)

## Chapter 7

# Ethics and Conflicts of Interest

Frayda S. Bluestein and Norma R. Houston

---

### Ethics in Government: Why It's Important / 115

#### I. Requirements for Local Elected Officials / 116

Ethics Education Requirement / 116

Local Codes of Ethics / 116

Censuring Board Members / 117

#### II. Conflicts of Interest in Voting / 117

The Duty to Vote / 117

What Constitutes Financial Interest / 118

Number of People Affected / 119

Extent of the Financial Interest (Benefit or Detriment) / 119

Likelihood That the Financial Impact Will Actually Occur / 119

#### III. Conflicts of Interest in Contracting / 119

Contracts for Personal Benefit / 119

Gifts and Favors / 121

Misuse of Confidential Information / 122

#### IV. Conflicts of Interest for Specific Categories of Officials and Public Employees / 122

Building Inspectors / 122

Project Designers / 122

Public Hospital Officials and Employees / 123

Local Management Entity (LME) Board Members / 123

Housing Authorities / 123

#### V. Conflicts of Interest Applicable to Federal Grant Funds / 123

---

Additional Resources / 124

About the Authors / 124

---

## Ethics in Government: Why It's Important

The conduct of local government officials and public employees affects public perceptions of and trust in government. Citizens expect local officials and public employees to act in the best interest of the public and not to use their office for their personal benefit. In some cases, laws restrict the conduct of local public officials, but in many cases they have a choice in how to act, for example, when deciding whom to hire, when to contract, and how to vote. North Carolina laws governing the conduct of local officials focus on financial interests in voting and contracting as well as on other ways in which government decision makers might personally benefit from the actions they take. In addition, constitutional due process requirements focus on the need for fair and unbiased decision making when certain types of private rights are at stake.

---

This material is a chapter from the School of Government publication [County and Municipal Government in North Carolina](#), Second Edition.

ISBN 978-1-56011-781-0. ©2014 School of Government. The University of North Carolina at Chapel Hill. This document may not be copied or posted online, nor transmitted, in printed or electronic form, without the written permission of the School of Government, except as allowed by fair use under United States copyright law. For questions about use of the document and permission for copying, contact the School of Government at [sales@sog.unc.edu](mailto:sales@sog.unc.edu) or call 919.966.4119.

# I. Requirements for Local Elected Officials

## Ethics Education Requirement

North Carolina law requires elected members of the governing boards of cities and counties, unified governments, consolidated city–counties, sanitary districts, and local boards of education to receive at least two (2) clock hours of ethics education within twelve (12) months after each election or reelection (or appointment or reappointment) to office. The education program must cover laws and principles that govern conflicts of interest and ethical standards of conduct at the local government level; it is designed to focus on both the legal requirements and the ethical considerations so that key governmental decision makers will have the information and insight needed to exercise their authority appropriately and in the public interest. The ethics education requirement is an ongoing obligation triggered by re-election or reappointment to office.<sup>1</sup>

While state law does not require ethics education for local employees and members of local appointed boards (such as boards of adjustment or advisory committees), a local governing board may impose this requirement on these groups under the board’s local ethics code or other ordinance or policy.

## Local Codes of Ethics

North Carolina law also requires the governing boards subject to the ethics education requirement to adopt ethics resolutions or policies (often referred to as “codes of ethics”) to guide board members in performing their duties.<sup>2</sup> The ethics resolution or policy must address at least five key responsibilities of governing board members enumerated by statute:

1. obey all applicable laws about official actions taken as a board member,
2. uphold the integrity and independence of the office,
3. avoid impropriety in the exercise of official duties,
4. faithfully perform duties,
5. act openly and publicly.

The statute does not impose or authorize sanctions for failure to comply with ethics codes. Boards have no explicit authority to sanction their members as a means of enforcing the ethics code or for other purposes. However, failure to adopt a code or to comply with its provisions may elicit citizen and media criticism and may itself be considered unethical.

As with the ethics education requirement, state law does not require that ethics codes be applied to local employees and members of local appointed boards (such as boards of adjustment or advisory committees), but a local governing board may choose to extend the provisions of its code of ethics to these groups.

Some state government officials and senior employees are subject to the State Government Ethics Act,<sup>3</sup> which establishes ethical standards of conduct for those covered under the act and regulates individuals and entities that seek to influence their actions. The North Carolina State Ethics Commission is responsible for enforcing the act, including investigating alleged violations. Most local government officials and employees are not subject to the State Government Ethics Act by virtue of their local government positions.<sup>4</sup> Consequently, the State Ethics Commission does not have the authority to investigate allegations of unethical conduct by local government officials.

1. N.C. Gen. Stat. (hereinafter G.S.) §§ 160A-87 and 153A-53.

2. G.S. 160A-86; G.S. 153A-53.

3. G.S. Chapter 138A.

4. Individual officials and employees may be subject to the act if they also serve in a state level capacity covered under it, such as serving on a covered state board or commission. In addition, voting members of the policy-making boards of Metropolitan Planning Organizations (MPOs) and Rural Transportation Planning Organizations (RPOs) (these boards are often referred to as “transportation advisory committees” or “TACs”) are subject to ethics requirements specific to their service on the MPO or RPO TAC (G.S. 136-200.2(g)–(k) for MPOs and G.S. 136-211(f)–(k) for RPOs). For more information about the state ethics and lobbying

## Censuring Board Members

Although state law does not provide specific authority for boards to sanction their members for ethical violations, elected boards do have general authority to pass resolutions or motions, and some boards use a motion or resolution of censure to address ethical or legal transgressions by board members, including violations of the board's code of ethics. This type of censure has no legal effect other than to express dissatisfaction or disapproval by the board (or a majority of the board) of the actions or behavior of one of its members. There are no specific procedural requirements for such an action. The School of Government's model code of ethics includes recommendations for a censure process.<sup>5</sup>

## II. Conflicts of Interest in Voting

Ethical and conflict of interest issues often arise as questions about whether a board member may, must, or must not vote on a particular matter in which he or she has some personal interest. In general, a governing board member has a duty to vote and may be excused from voting only in specific situations as allowed by statute. North Carolina law does not explicitly authorize county or city board members to abstain or recuse themselves from voting. Instead, the statutes describe limited grounds for which a member may be excused from voting.

The statutes governing voting by county and city board members are slightly different, and especially for cities there is some ambiguity about the proper procedure for excusing a member. The county statute, G.S. 153A-44, provides that the board may excuse a member, whereas the city statute, G.S. 160A-75, simply says that a member "may be excused" without specifying who does the excusing. Another important difference is that the city statute enforces the duty to vote by providing that if a person is present at the meeting, does not vote, and has not been excused, the person is considered to have voted "yes." The county statute does not contain this provision. Both statutes are specific, however, about the reasons for which a person may be excused from voting. In addition, three other statutes prohibit board members from voting in situations involving contracting, land use decisions, and quasi-judicial decisions.

### The Duty to Vote

Board members are often advised to avoid even the appearance of a conflict of interest, and in many situations and on many issues a board member may choose to act or to refrain from acting due to a concern about such an appearance. When it comes to voting, however, a board member's duty to vote overrides this choice, in some cases requiring a person to vote, while in only limited circumstances is a person required to refrain from voting. The general voting statutes—Sections 153A-44 (counties) and G.S. 160A-75 (cities) of the North Carolina General Statutes (hereinafter G.S.)—allow governing board members of cities and counties to be excused from voting *only* on matters

1. involving the consideration of the member's own official conduct or financial interest (board member compensation is not considered financial interest or official conduct) or
2. on which the member is prohibited from voting under the following statutes (discussed below):
  - (1) exemptions to the prohibition against directly benefiting under a public contract (G.S. 14-234),
  - (2) zoning matters (G.S. 153A-340(g); G.S. 160A-381(d)), and
  - (3) quasi-judicial decisions (G.S. 153A-345.1; G.S. 160A-388(e2)).

---

laws that apply to state officials, see Norma R. Houston, "State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments," *Local Government Law Bulletin* No. 135 (March 2014), <http://sogpubs.unc.edu/electronicversions/pdfs/lglb135.pdf>.

5. A. Fleming Bell, II, *A Model Code of Ethics for North Carolina Local Elected Officials* (Chapel Hill: UNC School of Government, 2010), <http://shopping.netsuite.com/s.nl/c.433425/it.A/id.2531/f>.

When there is a question about whether a board member has a conflict of interest in voting, the first thing to determine is what type of matter is involved. Specific statutes govern the standard to be applied, depending on the nature of the matter before the board for decision. The following is a short list of circumstances that will help identify the appropriate standard to apply:

1. If the matter involves a legislative land use matter (such as a rezoning or text amendment), the standard is as follows: a board member *shall not* vote where the outcome of the matter is reasonably likely to have a direct, substantial, and readily identifiable personal financial impact. G.S. 160A-381(d); G.S. 153A-340(g).
2. If the matter involves a quasi-judicial function (such as the issuance of a special use permit or an appeal of a personnel decision), the standard is as follows: a board member *shall not participate or vote* if the member has a fixed opinion (not susceptible to change) prior to the hearing; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome. G.S. 153A-345.1; G.S. 160A-388(e2). Note that this provision applies to any person (not just a governing board member) who serves on a board and exercises quasi-judicial functions.
3. If the matter involves a contract from which the member derives a direct benefit (this comes up only if the contract is allowed under an exception to the statute), the standard is as follows: the board member is *prohibited from participating or voting*. G.S. 14-234(b1).
4. For all other matters that come before the governing board for a vote, the standard is as follows: the board member *may be excused* if the matter involves the member's own financial interest or official conduct. G.S. 160A-75; G.S. 153A-44. As noted above, these general voting statutes specifically acknowledge a conflict under any of the other three statutes as grounds for being excused.

Note that each of the first three specific statutes *prohibits* the member from voting. Under the fourth statute, however, it is unclear whether the use of the word “may” in the general voting statutes is intended to make excusing a member from voting optional or whether it simply describes the permissible grounds for being excused.

## What Constitutes Financial Interest

North Carolina courts have often ruled on matters involving conflicts of interest. School of Government Professor Fleming Bell fully explores the case law in *Ethics, Conflicts, and Offices: A Guide for Local Officials*. It's important to note, however, that some conflict of interest cases arise in the context of constitutional due process considerations or contracting issues, matters that are now governed by specific statutes that incorporate the standards from the cases. School of Government Professor David Owens analyzes the case law on conflicts of interest in land use matters in *Land Use Law in North Carolina*.

Other matters are governed by the general voting statutes, which contain the more broadly stated “own financial interest” standard. Several cases involving legislative and administrative decisions suggest that courts use a deferential standard when evaluating what constitutes a financial interest. For example, in *Kistle v. Randolph County*,<sup>6</sup> board members' ownership of property near the area in which a school site was located was considered insufficient to constitute conflict of interest. And in *City of Albermarle v. Security Bank and Trust*,<sup>7</sup> council members' direct ties to competing financial institutions did not require them to abstain from voting on a proposed condemnation of a portion of the bank's land. These holdings seem appropriate given the underlying obligation to vote as well as the usual judicial deference given to local government decisions in the absence of a clear abuse of discretion.

The following factors, based on case law and the statutes, may be useful in determining when a person may be excused from voting under the general voting statutes.

6. 233 N.C. 400 (1951).

7. 106 N.C. App. 75 (1993).

### Number of People Affected

The range of financial impact on board members can be thought of as a continuum based on the extent to which the effect is unique to the board member, on one end of the spectrum, or experienced by many or most citizens, on the other end. If the effect on the board member is the same as the effect on a significant number of citizens, then it is fair to allow the individual to vote. The board member is affected as part of a larger group of citizens, and the vote can serve to represent that group. This is perhaps the most important factor. Even a significant financial effect may not be disqualifying if it is one that is universally or widely experienced by citizens in the jurisdiction.

### Extent of the Financial Interest (Benefit or Detriment)

The general voting statutes refer to financial *interest*, not financial *benefit*, as some of the other statutes do. This means that a positive or a negative financial impact may be a basis for excusing a member from voting. An insignificant financial interest, however, whether positive or negative, is not enough to sway a person's vote and should not be used to avoid the duty to vote. Obviously, the significance of a financial interest must be considered in relation to the individual's particular situation, though it might be assessed based on what a reasonable person would do in that situation.

### Likelihood That the Financial Impact Will Actually Occur

Sometimes several actions in addition to the specific vote in question are needed for an alleged financial interest to materialize. For example, a person who is a real estate agent votes in favor of a loan which will facilitate a project that the real estate agency might have the opportunity to offer for sale. Without more to suggest that the sales opportunity will actually arise and be available to the board member, such a chain of events is probably too speculative to form a basis for being excused from voting.

## III. Conflicts of Interest in Contracting

Several state laws place limits on the ability of elected officials and public employees at the state and local government level<sup>8</sup> to derive personal benefit from contracts with the governmental units they serve. These laws reflect the public's need to ensure that contracting and other decisions are made in a neutral, objective way based on what is in the public interest and not in consideration of actual or potential benefit to the decision maker. However, these laws do not prohibit all activity that the public might consider improper. Instead, they identify particular activities that the legislature has identified as serious enough to constitute a criminal offense. Situations that are not illegal may nonetheless be inappropriate, so public officials should always consider the public perception of their actions in addition to the legal consequences.

### Contracts for Personal Benefit

A criminal statute, G.S. 14-234, prohibits a public officer (elected or appointed) or a public employee from deriving a direct benefit from any contract in which he or she is involved on behalf of the public agency he or she serves. The statute contains two additional prohibitions. Even if a public official or employee is not involved in making a

---

8. While the statutes discussed in this section apply to all state and local government officials and employees, certain senior-level state officials and employees are subject to specific standards of conduct under the State Government Ethics Act, G.S. Chapter 138A. This act does not generally apply to local government officials and employees unless they also serve in a state capacity, such as serving on a state board or commission covered under the act. Similarly, local government officials and employees are generally exempt from G.S. Chapter 120C, which regulates lobbying senior-level state officials and employees.



contract from which he or she will derive a direct benefit, the official or employee is prohibited from influencing or attempting to influence anyone in the agency who is involved in making the contract. In addition, all public officers and employees are prohibited from soliciting or receiving any gift, reward, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract, even if they do not derive a direct benefit under the contract. Violation of this statute is a Class 1 misdemeanor. Key definitions contained in the statute, along with several important exceptions, are discussed below.

As defined in the statute, a person “derives a direct benefit” from a contract if the person or *his or her spouse* (1) has more than a 10 percent interest in the company that is a party to the contract, (2) derives any income or commission directly from the contract, or (3) acquires property under the contract.<sup>9</sup> Note that while the prohibition includes a direct benefit to a spouse, it does not extend to other family members or friends, or to unmarried partners. If the employee or official or his or her spouse does not derive a direct benefit from it, a contract between a public agency and a family member, friend, or partner of a board member or employee does not violate the law. Another important aspect of the statutory definition is that it does not make illegal a contract with an entity in which a county or city official is an employee as long as no commission or other direct benefit is derived from the contract.

Since the definition of direct benefit includes the acquisition of property, board members and employees who are involved in the disposal of surplus property are prohibited from purchasing that surplus property from their unit of government. Elected and appointed officials (but not employees) may be able to do so if the unit falls within the “small jurisdiction exception” described below.

The law also specifies what it means to be involved in “making or administering” the contract, which is a necessary element in the statutory prohibition. Individuals who are *not* involved in making or administering contracts are not legally prohibited from contracting with their unit of government. Activity that triggers the prohibition includes participating in the development of specifications or contract terms, or preparation or award of the contract, as well as having the authority to make decisions about or interpret the contract.<sup>10</sup> Performing purely ministerial duties is not considered “making or administering” the contract.<sup>11</sup> The statute also makes clear that a person is involved in making the contract when the board or commission on which he or she serves takes action on the contract, even if the official does not participate. Simply being excused from voting on the contract does not absolve a person with a conflict of interest from potential criminal liability. If an exception (discussed below) applies, the interested party may be excused from voting and legally contract with the unit. However, unless an exception applies, simply being excused from voting does not eliminate a conflict under the statute.

As noted above, public officials or employees may legally benefit from a contract with the unit of government they serve as long as they are not involved in making or administering it. Thus, for example, employees who are not involved in disposing of surplus property may legally purchase items from the unit, and the unit may legally contract to acquire goods or services from employees whose county or city job does not involve them in making or administering the contract.

The broad prohibition in G.S. 14-234 is modified by several exceptions. In any case where an exception applies, a public officer who will derive a direct benefit is prohibited from deliberating or voting on the contract or from attempting to influence any other person who is involved in making or administering the contract.<sup>12</sup> Contracts with banks, savings and loan associations, and regulated public utilities are exempt from the limitations in the statute,<sup>13</sup> as are contracts for reimbursement for providing direct assistance under state or federal public assistance programs under certain conditions.<sup>14</sup> An officer or employee may, under another exception, convey property to the unit but only through

9. G.S. 14-234(a1)(4).

10. G.S. 14-234(a1)(2), (3).

11. G.S. 14-234(a1)(5).

12. G.S. 14-234(b1).

13. G.S. 14-234(b)(1).

14. G.S. 14-234(b)(4).



a condemnation proceeding initiated by the unit.<sup>15</sup> An exception in the law also authorizes a county or city to hire as an employee the spouse of a public officer (this exception does not apply to public employees).<sup>16</sup>

A final exception applies only in cities with a population of less than 15,000 and in counties with no incorporated municipality with a population of more than 15,000.<sup>17</sup> In these jurisdictions, governing board members as well as certain members of the social services, local health, or area mental health boards, of the board of directors of a public hospital, and of the local school board may lawfully contract with the units of government they serve, subject to several limitations contained in the exception. First, the contract may not exceed \$20,000 for medically related services and \$40,000 for other goods or services in any twelve-month period (note this requirement specifically applies to any twelve-month period, not necessarily a fiscal year). In addition, the exemption does not apply to any contract that is subject to the competitive bidding laws, which includes purchase and construction or repair contracts with an estimated cost of \$30,000 or more. Contracts made under this exception must be approved by special resolution of the governing board in open session. The statute imposes additional public notice and reporting requirements for these contracts and prohibits the interested board member from participating in the development of or voting on the contract. A contract entered into under the “small jurisdiction” exception that does not comply with all the procedural requirements applicable to this exception violates the statute.

Contracts entered into in violation of G.S. 14-234 violate public policy and are not enforceable. There is no authority to pay for or otherwise perform a contract that violates the statute unless the contract is required to protect the public health or welfare and limited continuation is approved by the Local Government Commission.<sup>18</sup> Prosecutions under the statute are not common (although some have occurred), but situations in which board members or public officials stand to benefit from contracts involving public funds often make headlines.

## Gifts and Favors

Another criminal statute, G.S. 133-32, is designed to prevent the use of gifts and favors to influence the award and administration of public contracts. The statute makes it a Class 1 misdemeanor for a current contractor, a contractor who has performed under a contract with a public agency within the past year, or a person who anticipates bidding on a contract in the future to give any gift or favor to public officials and employees who have responsibility for preparing, awarding, or overseeing contracts, including inspecting construction projects. The statute also makes it a Class 1 misdemeanor for those officials to receive the gift or favor.

The statute does not define gift or favor. A reasonable interpretation is that the prohibition applies to anything of value acquired or received without fair compensation unless it is covered by a statutory exception. These exceptions include advertising items or souvenirs of nominal value, honoraria for participating in meetings, and meals at banquets. Inexpensive pens, mugs, and calendars bearing the name of the donor firm clearly fall within the exception for advertising items and souvenirs. Gifts of a television set, use of a beach cottage, or tickets to a professional sports event probably are prohibited. Although meals at banquets are allowed, free meals offered by contractors under other circumstances, such as lunch, should be refused. Some local governments have adopted local policies establishing a dollar limit for gifts that may be accepted; however, a gift allowed under a local policy must still be refused if it violates state law.

The statute also allows public officials and employees to accept customary gifts or favors from friends and relatives as long as the existing relationship, rather than the desire to do business with the unit, is the motivation for the gift. Finally, the statute specifically does not prohibit contractors from making donations to professional organizations to defray meeting expenses, nor does it prohibit public officials who are members of those organizations from partici-

---

15. G.S. 14-234(b)(2). The statute specifically authorizes the conveyance to be undertaken under a consent judgment, that is, without a trial, if approved by the court.

16. G.S. 14-234(b)(3).

17. G.S. 14-234(d1). Population figures must be based on the most recent federal decennial census.

18. G.S. 14-234(f).

pating in meetings that are supported by such donations and are open to all members (for example, sponsorship of a conference event that is open to all conference attendees).

It is important to distinguish between gifts to individuals and gifts to the government entity itself. A contractor may legally donate goods and services to the local government for use by the unit. For example, a local business can legally donate products to the unit for its own use or for the unit to raffle to employees for an employee appreciation event. Gifts or favors delivered directly to individuals for their personal use should be returned or, in some cases, may be distributed among employees such that each person's benefit is nominal. The latter approach is common for gifts of food brought to a department by a vendor. Public officials should inform contractors and vendors about the existence of the gifts-and-favors statute and about any local rules in effect within the unit addressing this issue.

## Misuse of Confidential Information

G.S. 14-234.1 makes it a Class 1 misdemeanor for any state or local government officer or employee to use confidential information for personal gain, to acquire a pecuniary benefit in anticipation of his or her own official action, or to help another person acquire a pecuniary benefit from such actions. Confidential information is any non-public information that the officer or employee has learned in the course of performing his or her official duties.

## IV. Conflicts of Interest for Specific Categories of Officials and Public Employees

In addition to the statutes discussed above that apply to all local officials and employees, specific conflict of interest prohibitions apply to certain groups of officials and employees, including those discussed briefly below.

### Building Inspectors

Both city and county building inspectors are prohibited from having a financial interest in or being employed by a business that furnishes labor, materials, or appliances for building construction or repair within the city or county jurisdiction. All employees of city and county inspection departments, including individuals working under contract with those departments, are prohibited from engaging in any work that is inconsistent with their public duties. In addition to these general prohibitions, the statute requires a city or county to find a conflict of interest if the employee (including individuals working under contract with an inspection department) has a financial or business interest in the project being inspected or has a close relationship with or has previously worked within the past two years for the project's owner, developer, contractor, or manager.<sup>19</sup>

### Project Designers

Architects and engineers performing work on public construction projects are prohibited from specifying any materials, equipment, or other items manufactured, sold, or distributed by a company in which the project designer has a financial interest.<sup>20</sup> Project designers are prohibited also from allowing manufacturers to draw specifications for public

19. G.S. 153A-355 (counties) and G.S. 160A-415 (cities).

20. G.S. 133-1.

construction projects.<sup>21</sup> A violation of these restrictions is punishable as a Class 3 misdemeanor; violators lose their licenses for one year and a pay a fine of up to five hundred dollars (\$500).<sup>22</sup>

## Public Hospital Officials and Employees

Boards of directors and employees of public hospitals and hospital authorities and their spouses are prohibited from acquiring a direct or indirect interest in any hospital facility, property planned to be included within a hospital facility, or a contract or proposed contract for materials or services provided to a hospital facility. Limited exceptions to this prohibition apply; a contract entered into in violation of these prohibitions is void and unenforceable.<sup>23</sup>

## Local Management Entity (LME) Board Members

Local management entity (LME) board members cannot contract with their LME for the delivery of mental health, developmental disabilities, and substance abuse services while serving on the board (and are not eligible for board service so long as such a contract is in effect).<sup>24</sup> Nor can an individual who is a registered lobbyist serve on an LME board.

## Housing Authorities

Commissioners and employees of a housing authority, or of a city or county when acting as a housing authority, are prohibited from having or acquiring any direct or indirect interest in any housing project, property included or planned to be included in any project, or a contract or proposed contract for materials or services to be furnished or used in connection with any housing project.<sup>25</sup>

## V. Conflicts of Interest Applicable to Federal Grant Funds

The Grants Management Common Rule (GMCR) is a set of federal regulations that generally apply to the management of federal grant funds and include both specific procurement requirements as well as conflict of interest prohibitions that differ in some ways from state law. Grantees and subgrantees are required to adopt a written code of conduct that (1) addresses real and apparent conflicts of interest, (2) imposes prohibitions against accepting gifts and favors from vendors and contractors, and (3) establishes disciplinary actions for violations. In addition, the GMCR prohibits real or apparent financial or other interests in a contract funded with federal funds by officers, employees, and agents of grantees and subgrantees as well as their spouses, immediate family members, partners, and soon-to-be-employers. Finally, the GMCR prohibits all officers, employees, and agents of grantees and subgrantees from accepting gifts or favors from current or future contractors. A violation of these prohibitions can result in disciplinary action and loss of federal funding. Local governments should consult with the federal granting agency to ensure full compliance with the GMCR or any other federal regulations applicable to federal grant funds.

---

21. G.S. 133-2.

22. G.S. 133-4.

23. G.S. 131E-14.2 (public hospitals) and G.S. 131E-21 (hospital authorities).

24. G.S. 122C-118.1(b).

25. G.S. 157-7.

## Additional Resources

Bell, A. Fleming, II. *Ethics, Conflicts, and Offices: A Guide for Local Officials*. 2nd ed. Chapel Hill: UNC School of Government, 2010.

\_\_\_\_\_. *A Model Code of Ethics for North Carolina Local Elected Officials*. Chapel Hill: UNC School of Government, 2010.

Bluestein, Frayda S. *A Legal Guide to Purchasing and Contracting for North Carolina Local Governments*. 2nd ed. with supplement. Chapel Hill: UNC School of Government, 2007.

Ethics for Local Government Officials, UNC School of Government webpage, [www.sog.unc.edu/programs/ethics](http://www.sog.unc.edu/programs/ethics).

“Ethics & Conflicts.” *Coates’ Canons: NC Local Government Law Blog*, [canons.sog.unc.edu/?cat=5](http://canons.sog.unc.edu/?cat=5).

Houston, Norma R. “State Government Ethics and Lobbying Laws: What Does and Does Not Apply to Local Governments.” *Local Government Law Bulletin* No. 135 (Mar. 2014).

## About the Authors

Frayda S. Bluestein is a School of Government faculty member specializing in local government law. Norma R. Houston is a faculty member of the School of Government and a fellow of the Parr Center for Ethics at UNC Chapel Hill.

## Your Essential Local Government Resource

*County and Municipal Government in North Carolina* provides a comprehensive look at the foundations, legal authority, organization, and administration of the state's counties and cities. Chapters are written by School of Government faculty and other experts in North Carolina local government.

## Your Resource, Your Format

The complete reference book is available in PDF electronic format, and individual chapters are available for purchase at [www.sog.unc.edu/pubs/cmgs](http://www.sog.unc.edu/pubs/cmgs).

## Stay Current with School of Government Blogs

Faculty members write for a number of School of Government blogs, providing timely updates on emerging issues. The **Coates' Canons: NC Local Government Law** blog disseminates information about a broad range of legal issues affecting local governments and other public agencies in North Carolina. Subscribers receive timely updates on legislation, court cases, and other developments affecting local government law in North Carolina that keep readers up to date between supplements and new editions of this book. Subscribe today at [canons.sog.unc.edu](http://canons.sog.unc.edu).

## Training for Local Government Officials

*Municipal and County Administration* is a comprehensive course designed for city and county officials whose responsibilities require an understanding of local government functions beyond individual areas of specialization.

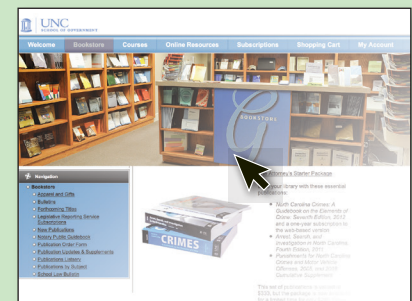
Held in alternating years, the *Essentials of County Government* and *Essentials of Municipal Government* courses provide newly elected officials, veteran elected officials, managers, and boards a two-day orientation in finance, roles and responsibilities, and the function of their agencies in local government.

The *Public Executive Leadership Academy* provides city and county managers, their assistants, and key department heads the opportunity to learn more about themselves as leaders and to gain skills to lead and manage change in their communities.

For more information on these course offerings, visit [www.sog.unc.edu/courses](http://www.sog.unc.edu/courses).

## About the School of Government

The School of Government at the University of North Carolina at Chapel Hill is the largest university-based local government teaching, advising, and research organization in the United States. Its mission is to improve the lives of North Carolinians by engaging in practical scholarship that helps public officials and citizens understand and improve state and local government.



### Contact the bookstore:

[sales@sog.unc.edu](mailto:sales@sog.unc.edu) or 919.966.4119

### Check for updates to publications:

[www.sog.unc.edu/pubs/updates](http://www.sog.unc.edu/pubs/updates)

### Order online:

[www.sog.unc.edu/pubs](http://www.sog.unc.edu/pubs)



UNC School of Government



@uncsog

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Additional SRF Loan

**AGENDA INFORMATION:**

**Item Number:** X  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

The Town received a letter from the State Water Infrastructure Authority (SWIA) regarding the approval of the Subaqueous Sanitary Sewer Replacement (SASS) Project as eligible to receive a total funding increase of \$7,000,000 from the Clean Water State Revolving Fund (SRF) loan. The loan is repayable at 0.00% interest and there is a loan fee of 2% that will be invoiced after bids have been received. The Town previously received an SRF loan for the SASS project in the amount of \$12,500,000 with a 0.00% interest and a loan term of 30 years. In order to accept the additional loan, the Town will need to submit various forms including a resolution adopted by Council. A contact from DEQ, Logan Kluttz, is in the process of determining how to best proceed with extending the additional loan from a term of 20 years to 30 years, and where or not the term should be extending before or after the Town's acceptance.

**ATTACHMENTS:**

Letter of Intent to Fund from SWIA; Draft Resolution Accepting Additional SRF Loan



NORTH CAROLINA  
Environmental Quality

ROY COOPER

Governor

ELIZABETH S. BISER

Secretary

SHADI ESKAF

Director

August 18, 2023

Mr. Hank Perkins, Town Manager  
Town of Lake Lure  
PO Box 255  
Lake Lure, North Carolina 28746

Subject: **REVISED** Letter of Intent to Fund  
Town of Lake Lure  
Subaqueous Sanitary Sewer Replacement  
Phase 3  
April 2023 Application Cycle  
Project No(s): CS370489-05; SRP-W-ARP-  
0077

Dear Mr. Perkins:

The Division of Water Infrastructure (Division) has reviewed your application, and the State Water Infrastructure Authority (SWIA) has approved your project as eligible to receive a total funding increase \$7,000,000 from the following funding:

Clean Water State Revolving Fund (SRF) loan of up to \$7,000,000 repayable at 0.00% interest. A loan fee of 2% will be invoiced after bids have been received.

The total funding amount for this project is now \$27,580,261 with \$19,580,261 SRF loan and \$8,000,000 American Rescue Plan earmark grant.

Please note that this intent to fund is contingent on approval of the loan through the Local Government Commission and on meeting the milestone below:

**The Division will make no reimbursements of ARP funds after December 31, 2026.**

Upon detailed review of the project during the funding process, it may be determined that portions of your project are not eligible for funding and the total funding amount may be reduced. Additionally, changes in the scope or priority points awarded – based on additional information that becomes apparent during project review – may also result in changes to the total funding amount and loan terms.





Mr. Hank Perkins, Town Manager

August 18, 2023

Page 2 of 3

### Engineering Services Procurement

All projects must comply with North Carolina General Statute 143-64.31, Article 3D Procurement of Architectural, Engineering, and Surveying Services. Projects cannot be exempted from qualification-based selection of these services under N.C.G.S. 143-64.32. Any services provided that were not selected in compliance with federal requirements will be ineligible for reimbursement.

### Requirements of Local Government Units Designated as Distressed

Additional information is required to be submitted in the Engineering Report for all distressed systems, regardless of funding source, to demonstrate how the project moves the local government unit towards viability. Guidance on these requirements can be found on the Division's website on the "I Have Funding" page under the Engineering Report section. For questions about these additional requirements, please contact Syon Chand at (919) 707-9010 or at syon.chand@deq.nc.gov.

Local government units designated as "distressed" under §159G-45(b) must complete associated requirements of the statute by:

1. Conducting an asset assessment and rate study.
2. Participating in a training and educational program.
3. Developing a short-term and long-term action plan considering all of the following:
  - a. Infrastructure repair, maintenance, and management;
  - b. Continuing education of the governing board and system operating staff; and
  - c. Long-term financial management plan.

### Davis-Bacon Requirements and American Iron and Steel Provisions

Projects funded through the State Revolving Fund (SRF) programs must comply with Davis-Bacon wage requirements and American Iron and Steel provisions. You can find standard specifications covering these requirements on our website.

### Build America, Buy America Act (BABA)

SRF-funded projects may be required to comply with the Federal Build America, Buy America Act (BABA). The Build America, Buy America Act (BABA) requires that iron, steel, manufactured products, and construction materials used in infrastructure projects are produced in the United States. You can find additional information at the following link:

<https://www.epa.gov/cwsrf/build-america-buy-america-baba>

### Approval of Debt by Local Government Commission

Projects funded with a Division of Water Infrastructure (Division) loan component must receive approval from the Local Government Commission (LGC). Final approval of debt must be coordinated directly with the LGC after construction bids are received. Materials must be emailed to [srf@nctreasurer.com](mailto:srf@nctreasurer.com)



Mr. Hank Perkins, Town Manager

August 18, 2023

Page 3 of 3

Joint Legislative Committee on Local Government Notification Requirements

In accordance with G.S. 120-157.2, local government units with projects that require debt to be issued greater than \$1,000,000 **must** submit a letter to Committee Chairs, Committee Assistant, and the Fiscal Research Division of the General Assembly at least 45 days prior to presentation before the Local Government Commission. You are responsible for submitting that letter and providing a copy to the Division.

Extended Term Loan

Projects that qualify for a targeted interest rate and demonstrate in the Engineering Report a weighted average design life for the major components of the project greater than 20 years are eligible for an extended loan term up to the calculated weighted average design life, but not to exceed 30 years. Request an extended term by contacting your project manager and provide the necessary calculation (see design life workbook here <https://deq.nc.gov/about/divisions/water-infrastructure/i-have-funding/engineering-reportenvironmental-information>).

Upon receipt of your letter of intent to fund, please fill out the attached Federal ID & Unique Entity ID (UEI) form and email it to Pam Whitley at [pam.whitley@deq.nc.gov](mailto:pam.whitley@deq.nc.gov). If you choose to decline this funding, the Authorized Representative as declared in the application must directly contact the Division project manager via email or letter on the applicant's letterhead.

If you have any questions, please contact Logan Kluttz at [logan.kluttz@deq.nc.gov](mailto:logan.kluttz@deq.nc.gov) or by phone at (919) 618-6064.

Sincerely,

DocuSigned by:  


6300A872077B4C5...  
Shadi Eskaf, Director

Division of Water Infrastructure, NCDEQ

EC: Heather Miller, PE, LaBella Associates (via email)  
Logan Kluttz (via email)  
Syon Chand (via email)  
SRF (COM\_LOIF) (Agreement ID 2000039264)

**DRAFT RESOLUTION NO.**

**RESOLUTION BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE  
ACCEPTING A STATE REVOLVING LOAN OFFER OF \$7 MILLION**

**WHEREAS**, The North Carolina Clean Water Revolving Loan and Grant Act of 1987 has authorized the making of loans and grants to aid eligible unites of government in financing the cost of construction of wastewater treatment works, wastewater collection systems, and water supply systems, water conservation projects; and

**WHEREAS**, The North Carolina Department of Environmental Quality has offered a State Revolving Loan in the amount of \$7 million for the subaqueous sanitary sewer replacement and wastewater collection system improvements; and

**WHEREAS**, The Town of Lake Lure intends to construct said project in accordance with approved plans and specifications;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF LAKE LURE:**

That The Town of Lake Lure does hereby accept the State Revolving Loan offer of \$7 million.

That the Town of Lake Lure does hereby give assurance to the North Carolina Department of Environmental Quality that all items specified in the loan offer, Section II – Assurances will be adhered to.

That the Town Manager of the Town of Lake Lure, and successors so titled, is hereby authorized and directed to furnish such information as the appropriate State agency may request in connection with such application or the project; to make the assurances as contained above; and to execute such other documents as may be required in connection with the application.

The Town of Lake Lure has substantially complied or will substantially comply with all Federal, State and local laws, rules, regulations, and ordinances applicable to the project and to the Federal and State grants and loans pertaining thereto.

This Resolution shall be effective upon its adoption.

Adopted this the \_\_\_\_\_ day of \_\_\_\_\_, 2023, at the Town Hall of Lake Lure, North Carolina.

ATTEST:

\_\_\_\_\_  
Olivia Stewman  
Town Clerk

\_\_\_\_\_  
Carol C. Pritchett  
Mayor

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Off-Season Beach Hours Request from Lake Lure Tours

**AGENDA INFORMATION:**

**Item Number:** XI  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

For the past two years, Lake Lure Tours (LLT) has requested changes to the off-season beach schedule. The changes were approved by Council both years. Lake Lure Tours is operating in accordance with the latest Concession Agreement terms at this time, but has submitted the following request for the 2023 off-season beach schedule:

1. The beach remain closed from the day following Labor Day Weekend until and through the day following commencement of lake drawdown.
2. The beach be re-opened the day following commencement of drawdown for complimentary, unsupervised, “no swimming” public access until the day following commencement of lake refilling or until the lake is returned to full pond, whichever comes first.
3. At the day of commencement of refilling, the beach then be re-closed until re-opened by LLT for the year’s season, beginning Memorial Day Weekend.

Town staff requests Council input regarding off-season beach hours and the 2023 request from Lake Lure Tours.

**ATTACHMENTS:**

2023 Request from LLT

**Lake Lure Tours, Inc.  
P.O. Box 10043  
Fleming Island, FL 32006**

Lake Lure Town Manager  
Lake Lure Town Council  
Lake Lure Mayor

September 21, 2023

As requested of and approved by Council over the past two years, Lake Lure Tours, Inc. (LLT) respectfully requests a change in the Beach Concession Agreement regarding closing and opening the beach to unsupervised public access.

Our rationale for this requested change is two-fold: One, a safety issue focused upon persons choosing to swim in a full pond at the beach during warm weather (in violation of signage at the beach prohibiting swimming without lifeguards present); and, Two, freeing the Lake Lure Police Department's officers to concentrate on duties other than policing the beach.

Hence, we request that Lake Lure Town Council approve an amendment to the post-season, opening / closing caveats of LLT's Concession Agreement to affect the following:

1. The beach remain closed from the day following Labor Day Weekend until and through the day following commencement of lake drawdown.
2. The beach be re-opened the day following commencement of drawdown for complimentary, unsupervised, "no swimming" public access until the day following commencement of lake refilling or until the lake is returned to full pond, whichever comes first.
3. At the day of commencement of refilling, the beach then be re-closed until re-opened by LLT for the year's season, beginning Memorial Day Weekend.

Should there be questions regarding this request, please feel free to contact Sonya Ledford, General Manager, LLT at 828-395-7230 or me, at 828-625-2019.

Respectfully,  
LAKE LURE TOURS, INC.

  
George Wittmer

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Review Proposals for the Lease of the Former ABC Store

**AGENDA INFORMATION:**

**Item Number:** XII  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

Town Council will continue review of proposals for the lease of the former ABC Store building located at 2654 Memorial Highway.

**ATTACHMENTS:**

Revised Proposal from Lake Lure Tours; Revised Proposal from John Venuto

**LAKE LURE TOURS, INC**  
P.O. BOX 10043  
FLEMING ISLAND, FL 32006

September 14, 2023

**A PROPOSAL for the use of the  
FORMER ABC STORE and contiguous TOWN PROPERTY  
addressed as 2654 Memorial Highway and 2662 Memorial Hwy, Lake Lure, NC  
also known as Rutherford County Parcel #1616937 and Parcel #1616938**

Whereas the Town of Lake Lure is interested in receiving proposals for a second-party's operation and use of the former ABC Store and property; and whereas Lake Lure Tours, Inc. has interest in leasing 2654 Memorial Highway, Rutherford County GIS PIN # 0632878422 / Parcel #1616937 and 2662 Memorial Highway, Rutherford County GIS PIN # 0632876300 / Parcel #1616938, we are pleased to present the following property-use plan and use-value proposal.

**The General Proposal**

Continuously since 2007, Lake Lure Tours, Inc. (herein LLT) has been and remains a financially-sound, mutually-beneficial Concession Agreement partner with the Town of Lake Lure (herein 'the Town'). Hence, in order to further LLT's commitments to and positive fiduciary relationship with the Town, as well as to expand our core business, LLT proposes to re-use the main former ABC Store building (Parcel #1616937), along with a shared-with-the-public use and a kiosk presence at the non-motorized watercraft launch site; to grade and install gravel parking from non-motorized launch ramp to northern terminus of the property; to take responsibility for and rehabilitate Town-owned site improvements, including four of six Town-owned watercraft slips; and to provide the preservation and management of Pool Creek Park "Green Space" (these latter four being portions of PIN #1616938).

**Former ABC Store Building**

LLT's proposed use (by LLT and/or a responsible teaming partner) of the approximately 3,000-square-foot, former ABC Store building and its immediately-adjacent 11 parking spaces (Parcel #1616937) is to remodel as needed, stock, promote, and operate an open-to-the-public retail business operated as an "outdoors store" -- catering to tourists and residents in supplying a wide variety of "outdoors" and related products and supplies including gear, accessories, and related "outdoor" products, targeting recreation and tourism in the form of fishing, hiking & climbing, camping, and lake enjoyment activities.

### **Non-Motorized Watercraft Launch Center**

LLT proposes to stock and manage (out-of-doors) at the current non-motorized launch site (located on Parcel #1616938), various non-motorized watercraft for rentals and sales. The proposed public non-motorized watercraft operation adjacent to the current launch ramp would be stocked by LLT with canoes, kayaks, and stand-up paddleboards (including paddles and required life jackets) additional to and/or currently in LLT's rental inventory. Commercial non-motorized permitting of all rental watercraft would remain responsibility of LLT. Information, rentals, and Q/A available to the public from LLT staff at LLT's non-motorized launch ramp area kiosk. In order to create a "non-motorized center of activity," LLT aims to expand the operation at the no-fee, public, non-motorized launch ramp facility and provide additional parking for users northward from the launch ramp at both sides of the road .

### **Pool Creek Park "Green Space"**

In preservation and maintenance of the Pool Creek Park "Green Space" (parcel # 1616938) LLT shall be responsible for groundskeeping (grass mowing, weed control, storm waste collection and removal); the Green Space user's waste collection / disposal; maintenance of the "Green Space" security fencing and gate accesses; maintaining or addition of directional and identification signage – with no physical changes to the current green growth and general park-like appearance of the space. Vehicle traffic shall be prohibited within the "Green Space" (other than Town or LLT maintenance vehicles).

The "Park / Green Space" will be open to public use year-round; and the current, incidental, "picnic" and "dog walking" use of the space shall be open to the public on a daily, first-come-first-served basis. Unless due to reasons of LLPD security or capacity use by others, entry and exit gating of the Pool Creek Park "Green Space" shall remain unlocked, with the "Green Space" readily accessible to public foot traffic.

Additionally, and under LLT's husbandry, preservation, and coordination, the Park / "Green Space" shall be available by advanced reservation to non-profit, public, private, and for-profit groups for special events and gatherings, such as LL Classical Academy Student Appreciation event; special Church events; Rutherford County B.A. R.N. Farmers' Market; larger- scale Family Re-Unions , Weddings, Corporate Retreats, and the like – similar to the current uses of Morse Park, the Gazebo, Town Center's Keeter Field, and from time to time, the beach at Lake Lure. LLT shall encourage public and private use of the Pool Creek Park "Green Space," and LLT's encouragement of and cooperation with such group users shall not be unreasonably withheld.

### **Current and Additional Parking Area Use**

Both paved and gravel , sign-marked parking of the parcels shall remain reserved for patrons and users of parcel s #1616937 & #1616938 operations -- excepting Sunday mornings until 10 a.m. (when Chimney Rock Baptist Church's "lakeside services" are held). Otherwise, any-time vehicle parking for

non-motorized watercraft launchers; information seekers at LLT's information kiosk, overflow store parking, and users of Pool Creek Park "Green Space" shall have exclusive use of site parking.

From approximately even with the front of the little chapel and even with the northwest corner of the former ABC building, LLT shall grade-to-level and install packed gravel (inside any trout buffer boundary) on both sides of the current gravel roadway, northward to the present cul-de-sac at the northern end of parcel #1616938 (ending at LLPD boat slips). This additional parking shall have parking bumpers and signage appropriate to its use.

### **Proposed Financials**

Two town-owned parcels (the former ABC site parcel #1616937 and parcel 1616938 and its site improvements) shall be rented to LLT by the Town of Lake Lure at the rate of \$60,000/year, payable at the rate of \$5,000 monthly to Town of Lake Lure by LLT.

Additionally, any and all revenue earned by LLT at these parcels (excepting the \$5,000/mth base rent and excluding gross retail sales by the outdoor store operation), including non-motorized watercraft rentals or sales, motorized watercraft rent fees (if any at the site), boat slip use or any other rents payable to LLT from the property or its improvements, shall be subject to a 15% Concession Agreement fee to be paid by LLT to the Town, monthly.

### **Term of Lease & Concession Agreement**

A reasonable term of lease and applicability of Concession Agreement revenue to the Town could track the term of the Current Concession Agreement between the Town and LLT.

This proposal is intended (1) to assist the Town in obtaining the highest and best use of Town-owned property; (2) to expand LLT's services to the residents and tourists of Lake Lure; (3) to preserve and invigorate Town Center's attractiveness and vitality; and (4) to enlarge LLT's commitment to a quality partnership with the Town of Lake Lure.

Respectfully,  
LAKE LURE TOURS, INC.

  
George Wittmer



Town of Lake Lure Proposal  
2654 Memorial Hwy  
Parcel 1616937  
Adjusted  
The Cove at Lake Lure  
John Venuto  
239-850-8456

#### Objective

To secure property listed above for successful 80 seat full-service restaurant commercial development

Open 7 days a week

#### Business Terms

- 3-year contract
- Two 1-year options
- Rent \$3,00 month
- 10% concessions Quarterly Distributions of NET profit

#### Town will provide.

- Floor Plan
- Permits for Build out
- Contactors Build out
- Plumbing Design and build out
- Commercial Septic tank/Grease trap
- Kitchen 14 ft Hood approx. \$21,000
- 20 parking spaces included
- Gas line installation
- Electric installation
- Backside lighting and Landscaping for outdoor seating
- Front lighting
- Signage in front space
- Indoor lighting
- Walk-in cooler/Freezer
- Building taxes
- Required to handle all building and landscape maintenance

#### Restaurant will provide

- Restaurant will provide all specs for build out including, Electric, Plumbing, Hood, Grease trap, Floor design
- Restaurant concept
- Kitchen equipment
- Furniture, Fixtures and Equipment

- **Liquor License**
- **Restaurant will be required to maintain property and Equipment**
- **Business will provide all Licenses and insurances**
- **Business will be required to manage all routine maintenance**

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Taking Action at Work Session Meetings

**AGENDA INFORMATION:**

**Item Number:** XIII  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

Town Council will discuss whether or not to begin taking action at work session meetings. If Council desires to do so, staff recommends including actions taken on the regular meeting agendas.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Public Works Laydown Area

**AGENDA INFORMATION:**

**Item Number:** XIV  
**Department:** Public Services  
**Contact:** Michael Dydula, Project Manager  
**Presenter:** Michael Dydula, Project Manager

**BRIEF SUMMARY:**

Project Manager Michael Dydula will lead discussions regarding the future public works laydown area.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Lake Level for Reservoir Drain Installation

**AGENDA INFORMATION:**

**Item Number:** XV  
**Department:** Project Management  
**Contact:** Michael Dydula, Project Manager  
**Presenter:** Michael Dydula, Project Manager

**BRIEF SUMMARY:**

Project Manager Michael Dydula will lead discussion regarding lake levels related to the Reservoir Drain Installation.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Change Order Procedures

**AGENDA INFORMATION:**

**Item Number:** XVI  
**Department:** Project Management  
**Contact:** Michael Dydula, Project Manager  
**Presenter:** Michael Dydula, Project Manager

**BRIEF SUMMARY:**

With various infrastructure projects underway, the Town can expect occasional change orders. Town staff is requesting input on how policies related to change orders. Specifically, staff would like Council to discuss a threshold amount for approving change orders versus allowing designated staff to approve them.

**LAKE LURE TOWN COUNCIL**  
**AGENDA ITEM REQUEST FORM**  
**Meeting Date: September 27, 2023**

**SUBJECT:** Discuss Policies Relating to Subaqueous Sanitary Sewer System (SASS) Installation

**AGENDA INFORMATION:**

**Item Number:** XVII  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

Following the recent meeting with the residents of Sunset Cove, it was determined that there are various questions that will likely continue to occur throughout the Subaqueous Sanitary Sewer System (SASS) installation. Staff is recommending discussions regarding policies as it relates to the SASS installation. Common questions that may need to be addressed through policies include boat removals during drawdowns, lateral install costs, and the potential for an assessment resolution.

Prior to disbanding, the Utility Advisory Board (UAB) had crafted a sewer policy, sewer policy framework presentation, and communications materials which may be helpful regarding certain policies.

**ATTACHMENTS:**

UAB Sewer Policy Framework PowerPoint; UAB Framework for Sewer Policy Memo; Council Minutes Approving Framework for Sewer Policy; UAB Recommended Communications Plan for SASS Project; Town Council Meeting Minutes Discussing the Recommended Communications Plan for SASS Project

# *Sewer Policy Framework*

Lake Lure, NC





# *Structure of Presentation*

1. Property Sewer Connections Situations
2. Fee Schedule – Estimated, Proposed, Current
3. Incentives – Why Not
4. Questions
4. **General Sewer Policies – For Information Only**
5. **Definitions – For Information Only**

# Individual Property Owner Connections – Proposed Explanation to Citizens of how the GLS will impact their personal situation

## **1. Lake Lure Existing Customers:**

- a. Pay current sewer use fees.
- b. Pay connection fee to connect the private service line to the GLS connection point after it becomes available.
- c. Property Owner and Town will identify a preferred location of the standard lateral - GLS connection point and subsequent utility maintenance easement. Town has the authority and discretion to determine location if no agreement is reached.
- d. Property Owner and Town will sign a Hold Harmless Agreement regarding Boathouse support modifications if required by the final design.
- e. Property Owner may exercise the Custom Public lateral option, subject to Town approval.
- f. Property Owner responsible to realign individual existing service line to the utility easement within 6 months of initial system operability unless there exists a community organization and sewer subsystem that services multiple private systems.

# *Individual Property Owner Connections – Proposed Explanation to Citizens of how the GLS will impact their personal situation*

## **1. Lake Lure New Customers:**

- a. Pays one-time sewer development fee when GLS connection point becomes available, and the system is operational.
- b. Pays sewer use fees when connected to a GLS connection point.
- c. Pays connection fee to connect the private service line to the GLS connection point after it becomes available.
- d. Property Owner and Town will identify a preferred location of the standard lateral - GLS connection point and subsequent utility maintenance easement. Town has the authority and discretion to determine location if no agreement is reached.
- e. Property Owner and Town will sign a Hold Harmless Agreement regarding Boathouse support modifications if required by the final design.
- f. Property Owner responsible to sever current independent sewer system and construct new service line to the utility easement within 6 months of initial system operability unless there exists a community organization that assumes service for the non-existing customer.

# Individual Property Owner Connections – Proposed Explanation to Citizens of how the GLS will impact their personal situation

## 1. Community Sub-system:

- a. Community organization responsible for the construction and maintenance of the sewer sub-system.

Construction and maintenance of the sub-system is subject to Town and oversight and must be maintained to prevent foreign infiltration to the system. Must have a 24 hour, 365 day on call service number recorded with the Town of Lake Lure and provide documentation of an annual inspection. At the subsystem's expense.

- b. Individual property owners within the subsystem pay current Sewer user fees.

- c. Community Subsystem is subject to one connection fee to connect the sub-system to the GLS connection point after it becomes available.

- d. Community organization and Town will identify a preferred location of the standard lateral and GLS connection point within a utility maintenance easement. Town has the authority and discretion to determine GLS connection location if no agreement is reached.

- e. Community organization responsible to realign subsystem main line to the GLS connection point within 6 months of initial system operability.

# Individual Property Owner Connections – Proposed Explanation to Citizens of how the GLS will impact their personal situation

## **1. Willing Tier 2 and Tier 3 Customers:**

- a. Property Owner is responsible to secure necessary easements and pay for the installation of a special service line and pump assist stations as required.
- b. Property Owner is responsible to sever current independent sewer system and construct new service line to an available GLS connection point any-time before or after initial system operability.
- c. Pays one-time sewer development fee when connected to GLS.
- d. Pays sewer user fees monthly after GLS connection.
- e. Pays connection fee to connect the private service line to the GLS connection point.

→

## *Fees – Revenue Source for the Construction, Operation, Maintenance of Sustainable GLS*

- GLS Connection Fee \$1500 (Engineer's Estimate)
- Custom Public Lateral Fee \$3750 (Engineer's Estimate)
- Sewer Development Fee \$200 per 100/sq ft home size based on recorded square footage in Rutherford County property records. (Proposal from UAB)
- Sewer User Fee \$90/ month (Current Approved Town Fee)
- Availability Fee \$ 90/ month Same schedule as sewer use fee. (Proposal from UAB)
- Illegal Connection Fees Double GLS connection fee, Maximum of 2 yrs. of Sewer User Fees or prorated length of sewer connection whichever is less and the Sewer Development Fee. (Proposal from UAB)
  
- Fees to be reviewed and approved annually utilizing current town of Lake Lure Procedures.

## *WHY NOT Financial Incentives, such as waived fees, to Individual Property Owners to join GLS*

1. Extra Administrative cost of procedures documenting eligibility for incentive, and transparency of decision process will increase project cost.
2. Removes important project funding stream for a project where source of funds is still uncertain.
3. Incentives that are not equitably applied across the tiers of customers will lead to “grey area” debates that may increase resistance and influence the outcome of future litigation.
4. The GLS system will increase property values and piece of mind infrastructure for all Lake Lure citizens.
5. Environmental factors, increased development around the lake, and increased use of the lake by property owners makes the construction and connection to the GLS necessary and desirable without incentives that may weaken the financial health of the project.
6. Most equitable and defensible incentive is to keep the sewer rates as low as possible and competitive with other NC communities.

# Questions



## General Sewer Policies – Basis for Implementation of a Lake Lure Sewer System meeting current and future town needs.

- The Town of Lake Lure requires all Tier 1 property owners, both existing and non-existing customers, and Tier 2 existing customers to connect to the GLS, when a GLS connection point is available at their property line, and within 6 months after initial system operability.
- Tier 1 property owners with on lot system will be required to sever connections to existing on lot systems, redirect new service lines to a GLS connection point by a licensed and permitted plumber, and connect to the available GLS within 6 months of initial system operability.
- Property owners with illegal connections will be required to sever existing connections, redirect new service lines to a GLS connection point by a licensed and permitted plumber, connect to the available GLS and are subject to the Illegal Connection Penalty Fees.
- New certified septic systems installed after 1 January 2020 on properties that do not have access to a GLS connection point will not be subject to sewer development or availability fees until 1 January 2035. This constitutes up to a fifteen-year grandfathering of those systems. It is recommended that these properties install ready service lines to an anticipated GLS connection point during new construction.

## General Sewer Policies – Basis for Implementation of a Lake Lure Sewer System meeting current and future town needs.

- **Certified community sewer subsystems** under a single responsible party **may connect as a single entity to a GLS** connection point but will be billed as individual property owners. These community subsystems are subject to inspection and new customers to the subsystem must be authorized by the town.
- Individual property owners on a community subsystem may elect (at their own expense) to disconnect from the subsystem and reconnect to the GLS as an existing customer.
- **Existing multiple service line connections outside of the utility maintenance easement are not authorized and must be separated and reconstructed as single service lines before connection to the GLS.**
  - Exception: Multiple property owners with interconnected service lines **may elect to organize under a single legal entity** to be treated as a community subsystem.
  - Exception: **Tier 2 existing customers with multiple service lines may remain interconnected and assigned to temporary GLS connection point as an interim measure** if no direct access to the lake is available. Preexisting interconnected lines are subject to Town inspection before and after connection.

*General Sewer Policies – Basis for Implementation of a Lake Lure Sewer System meeting current and future town needs.*

- A Sewer Lateral Line will generally extend into a designated utility maintenance easement but may extend to individual property easement if a joint property easement is not established or to the adjacent shoreline (990.5 MSL) if no easement has been granted by subject property owners. Presence of a GLS connection point within 100 feet of any property line constitutes system availability.
- Survey and recording fees for the easement are town or development project responsibility and expense.

# Definitions – Foundation for Public Understanding and Legal Implementation

- SASS – Subaqueous Sewer System – Original gravity public sewer system constructed in 1927 located within Lake Lure that includes the Sewer Main and Sewer Lateral Lines.
- GLS – Gravity Lift System – Newly constructed Lake Lure public sewer system located within the lake that includes the Sewer Main, Sewer Lateral Lines, Waterborne Manholes and Pump Stations. This system will replace the lake’s original SASS. .
- Community Sub-system – A multiparty sewer subsystem, managed by a private or public community organization, that **operates an independent sewer system governed by North Carolina Statute 162A-14**. These sub-systems may be connected as a single entity to the GLS and are subject to town inspection and oversight. **The Rumbling Bald Resort, Chimney Rock State Park, Chimney Rock Village, and other geographically distinct lake Lure neighborhoods may operate a community sub-system.**
- Sewer Main – GLS sewer line installed within the lake and along the lake perimeter within the backshore area that includes manholes and pump stations installed in series.
- Public Sewer Lateral Line – Sewer line within the lake that extends from the Sewer main to the GLS connection point (stub-out).
  - Standard Public Lateral Lines extend to adjacent property boundaries can accommodate **two properties**.
  - Custom Public Sewer Lateral Lines extend to any shoreline location and **may be installed at the discretion of the Town (no associated fee) or individual property owner, subject to custom public lateral fee**. May be shared by two property owners.

# Definitions – Foundation for Public Understanding and Legal Implementation

- Private Sewer Service Line – **Property owner's private sewer line** that extends from home to the GLS connection point within the utility maintenance easement and subject to property owner funded design, installation, and maintenance.
- GLS connection point – a sewer stub-out that connects the property owner's private sewer service line to the sewer lateral line. **GLS connection point is available when within 100 feet of any improved property within the town limits with a structure that generates wastewater.**
- Utility Maintenance Easement – Approximately a 10 ft. by 10 ft. property easement located between adjoining lakefront properties that **serves to maintain and service a GLS connection point.**
- Hold Harmless Agreement – With the Town of Lake Lure for Property owners where the sewer main will be going under their boathouse **permitting the town and/or it is Sewer Contractor to do boathouse structural support alterations to accommodate the Sewer Main.**
- Initial System Operability (ISO) – **Town designated date and time when a phase of GLS becomes operational capable of receiving sewer effluent.** This is the same date that the GLS becomes available to non-existing customers that have access to a GLS connection point.

# Definitions – Foundation for Public Understanding and Legal Implementation

- Tier 1 property – Lake Lure property with lakefront access. Tier 1 properties include both existing and non-existing customers.
- Tier 2 property – Lake Lure property near lake access that are capable of gravity drain to a GLS connection point. Tier 2 properties include both existing and non-existing customers and may be connected to a temporary GLS connection point (i.e., SASS manhole servicing the property) until a permanent subsystem is established.
- Tier 3 property - Lake Lure property near lake access that, due to terrain or physical barriers, requires a pump to assist effluent flow to a GLS connection point. Tier 3 existing customers may be assigned and connected to a temporary GLS connection point if no direct access to the lake is available.
- Existing customer – Property owners connected to the SASS and paying monthly sewer use fees at the time of connection to the GLS.
- Non-Existing Customer – Property owners with independent property-based sanitation systems that are not paying sewer use fees and do not have a GLS connection point available.
- New Customer- A former non-existing customer who connects to the available GLS and commences payment of sewer use fees.
- Willing Customer – A Tier 2 or Tier 3 customer without the availability of a GLS connection point but arranges for the special installation of a private service line to an existing or anticipated GLS connection point. This circumstance may arise when a property has an independent property-based system in imminent failure or when a property owner desires to improve structures that are limited by the current sewer system.

# Definitions – Foundation for Public Understanding and Legal Implementation

- Available Customer – Non-existing customer with an available GLS connection point but does not connect within 6 months of initial operability. Available customers are subject to availability fees.
- GLS Connection Fee – Fee for all non-existing sewer customers to physically connect a Service Line to a GLS connection point within the utility maintenance easement.
- Sewer Development Fee – Fee for all non-existing customers to pay for new infrastructure that affords GLS access to non-existing customers. This fee is authorized by NC State Statute 162A-200 Article 8 to pay for new sewer infrastructure to customers who never contributed to existing infrastructure.
- Availability Fee – Monthly fee for all non-existing customers that have direct access to a GLS connection point but are not physically connected. This monthly fee commences 6 months after initial system operability. Residential properties will be billed for each wastewater producing structure on the property as defined in the Rutherford County Property records.
- Sewer User Fees – Monthly fee billed to all customers. Residential properties will be billed for each wastewater producing structure on the property as defined in the Rutherford County Property records.
- Illegal Connection – A non-existing customer that is found to be physically connected to the SASS, either known or unknown to the property owner.

# Definitions – Foundation for Public Understanding and Legal Implementation

- Multiservice Residential Property – A property with **more than one wastewater producing structure** typically each **having a separate electric power meter**. This includes garage apartments and other accessory buildings on the same lot. Sewer service lines from multiple structures on a single property may be combined into one service line and a single GLS connection point.
- Illegal Connection Fee – A **Penalty Fee to be charged a Property owner who has an illegal connection**. Property owner bears burden of proof for the length of ownership related to the connection.



## Framework for Sewer Policy Memo

### Definitions:

- SASS – Subaqueous Sewer System – Original gravity public sewer system constructed in 1927 located within Lake Lure that includes the Sewer Main and Sewer Lateral Lines.
- GLS – Gravity Lift System – Newly constructed Lake Lure public sewer system located within the lake that includes the Sewer Main, Sewer Lateral Lines, Waterborne Manholes and Pump Stations. This system will replace the lake’s original SASS.
- Community Sub-system – A multiparty sewer subsystem, managed by a private or public community organization, that operates an independent sewer system governed by North Carolina Statute 162A-14. These sub-systems may be connected as a single entity to the GLS and are subject to town inspection and oversight. The Rumbling Bald Resort, Chimney Rock State Park, Chimney Rock Village, and other geographically distinct lake Lure neighborhoods may operate a community sub-system.
- Sewer Main – GLS sewer line installed within the lake and along the lake perimeter within the backshore area that includes manholes and pump stations installed in series.
- Public Sewer Lateral Line – Sewer line within the lake that extends from the Sewer main to the GLS connection point (stub-out).
  - Standard Public Lateral Lines extend to adjacent property boundaries can accommodate two properties.
  - Custom Public Sewer Lateral Lines extend to any shoreline location and may be installed at the discretion of the Town (no associated fee) or individual property owner, subject to custom public lateral fee. May be shared by two property owners.
- Private Sewer Service Line – Property owner’s private sewer line that extends from home to the GLS connection point within the utility maintenance easement and subject to property owner funded design, installation, and maintenance.
- GLS connection point – a sewer stub-out that connects the property owner’s private sewer service line to the sewer lateral line. GLS connection point is available when within 100 feet of any improved property within the town limits with a structure that generates wastewater.
- Utility Maintenance Easement – Approximately a 10 ft. by 10 ft. property easement located between adjoining lakefront properties that serves to maintain and service a GLS connection point.
- Hold Harmless Agreement – With the Town of Lake Lure for Property owners where the sewer main will be going under their boathouse permitting the town and/or it is Sewer Contractor to do boathouse structural support alterations to accommodate the Sewer Main.
- Initial System Operability (ISO) – Town designated date and time when a phase of GLS becomes operational capable of receiving sewer effluent. This is the same date that the GLS becomes available to non-existing customers that have access to a GLS connection point.

- Tier 1 property – Lake Lure property with lakefront access. Tier 1 properties include both existing and non-existing customers.
- Tier 2 property – Lake Lure property near lake access that are capable of gravity drain to a GLS connection point. Tier 2 properties include both existing and non-existing customers and may be connected to a temporary GLS connection point (i.e., SASS manhole servicing the property) until a permanent subsystem is established.
- Tier 3 property - Lake Lure property near lake access that, due to terrain or physical barriers, requires a pump to assist effluent flow to a GLS connection point. Tier 3 existing customers may be assigned and connected to a temporary GLS connection point if no direct access to the lake is available.
- Existing customer – Property owners connected to the SASS and paying monthly sewer use fees at the time of connection to the GLS.
- Non-Existing Customer – Property owners with independent property-based sanitation systems that are not paying sewer use fees and do not have a GLS connection point available.
- New Customer- A former non-existing customer who connects to the available GLS and commences payment of sewer use fees.
- Willing Customer – A Tier 2 or Tier 3 customer without the availability of a GLS connection point but arranges for the special installation of a private service line to an existing or anticipated GLS connection point. This circumstance may arise when a property has an independent property-based system in imminent failure or when a property owner desires to improve structures that are limited by the current sewer system.
- Available Customer – Non-existing customer with an available GLS connection point but does not connect within 6 months of initial operability. Available customers are subject to availability fees.
- GLS Connection Fee – Fee for all non-existing sewer customers to physically connect a Service Line to a GLS connection point within the utility maintenance easement.
- Sewer Development Fee – Fee for all non-existing customers to pay for new infrastructure that affords GLS access to non-existing customers. This fee is authorized by NC State Statute 162A-200 Article 8 to pay for new sewer infrastructure to customers who never contributed to existing infrastructure.
- Availability Fee – Monthly fee for all non-existing customers that have direct access to a GLS connection point but are not physically connected. This monthly fee commences 6 months after initial system operability. Residential properties will be billed for each wastewater producing structure on the property as defined in the Rutherford County Property records.
- Sewer User Fees – Monthly fee billed to all customers. Residential properties will be billed for each wastewater producing structure on the property as defined in the Rutherford County Property records.
- Illegal Connection – A non-existing customer that is found to be physically connected to the SASS, either known or unknown to the property owner.

- Multiservice Residential Property – A property with more than one wastewater producing structure typically each having a separate electric power meter. This includes garage apartments and other accessory buildings on the same lot. Sewer service lines from multiple structures on a single property may be combined into one service line and a single GLS connection point.
- Illegal Connection Fee – A Penalty Fee to be charged a Property owner who has an illegal connection. Property owner bears burden of proof for the length of ownership related to the connection.

### **Fee Schedule: (Estimated or Current)**

GLS Connection Fee	\$1500
Custom Public Lateral Fee	\$3750
Sewer Development Fee	\$200 per 100/sq ft home size based on recorded square footage in Rutherford County property records.
Sewer User Fee	\$90/ month
Availability Fee	Same schedule as sewer use fee.
Illegal Connection Fees	Double GLS connection fee, Maximum of 2 yrs. of Sewer User Fees or prorated length of sewer connection whichever is less and the Sewer Development Fee.

### **General Sewer Policies:**

1. The Town of Lake Lure requires all Tier 1 property owners, both existing and non-existing customers, and Tier 2 existing customers to connect to the GLS, when a GLS connection point is available at their property line, and within 6 months after initial system operability.
2. Tier 1 property owners with on lot system will be required to sever connections to existing on lot systems, redirect new service lines to a GLS connection point by a licensed and permitted plumber, and connect to the available GLS within 6 months of initial system operability.
3. Property owners with illegal connections will be required to sever existing connections, redirect new service lines to a GLS connection point by a licensed and permitted plumber, connect to the available GLS and are subject to the Illegal Connection Penalty Fees.
4. New certified septic systems installed after 1 January 2020 on properties that do not have access to a GLS connection point will not be subject to sewer development or availability fees until 1 January 2035. This constitutes up to a fifteen-year grandfathering of those systems. It is recommended that these properties install ready service lines to an anticipated GLS connection point during new construction.

5. Certified community sewer subsystems under a single responsible party may connect as a single entity to a GLS connection point but will be billed as individual property owners. These community subsystems are subject to inspection and new customers to the subsystem must be authorized by the town.
6. Individual property owners on a community subsystem may elect (at their own expense) to disconnect from the sub-system and reconnect to the GLS as an existing customer.
7. Existing multiple service line connections outside of the utility maintenance easement are not authorized and must be separated and reconstructed as single service lines before connection to the GLS.
  - a. Exception: Multiple property owners with interconnected service lines may elect to organize under a single legal entity to be treated as a community subsystem.
  - b. Exception: Tier 2 existing customers with multiple service lines may remain interconnected and assigned to temporary GLS connection point **as an interim measure** if no direct access to the lake is available. Preexisting interconnected lines are subject to Town inspection before and after connection.
8. A Sewer Lateral Line will generally extend into a designated utility maintenance easement but may extend to individual property easement if a joint property easement is not established or to the adjacent shoreline (990.5 MSL) if no easement has been granted by subject property owners. Presence of a GLS connection point within 100 feet of any property line constitutes system availability.
9. Survey and recording fees for the easement are town or development project responsibility and expense.

#### **Property Sewer Connection Situations:**

1. **Lake Lure Existing Customers:**
  - a. Pay current sewer use fees.
  - b. Pay connection fee to connect the private service line to the GLS connection point after it becomes available.
  - c. Property Owner and Town will identify a preferred location of the standard lateral - GLS connection point and subsequent utility maintenance easement. Town has the authority and discretion to determine location if no agreement is reached.
  - d. Property Owner and Town will sign a Hold Harmless Agreement regarding Boathouse support modifications if required by the final design.
  - e. Property Owner may exercise the Custom Public lateral option, subject to Town approval.
  - f. Property Owner responsible to realign individual existing service line to the utility easement within 6 months of initial system operability unless there exists a community organization and sewer subsystem that services multiple private systems.

**2. Lake Lure New Customers:**

- a. Pays one-time sewer development fee when GLS connection point becomes available and the system is operational.
- b. Pays sewer use fees when connected to a GLS connection point.
- c. Pays connection fee to connect the private service line to the GLS connection point after it becomes available.
- d. Property Owner and Town will identify a preferred location of the standard lateral - GLS connection point and subsequent utility maintenance easement. Town has the authority and discretion to determine location if no agreement is reached.
- e. Property Owner and Town will sign a Hold Harmless Agreement regarding Boathouse support modifications if required by the final design.
- f. Property Owner responsible to sever current independent sewer system and construct new service line to the utility easement within 6 months of initial system operability unless there exists a community organization that assumes service for the non-existing customer.

**3. Lake Lure Available Customers:**

- a. Pays one-time sewer development fee when GLS connection point becomes available and the system is operational.
- b. Pays availability fees 6 months after a GLS connection point becomes available.
- c. Pays connection fee to connect the private service line to the GLS connection point.
- d. Property Owner and Town will identify a preferred location of the standard lateral - GLS connection point and subsequent utility maintenance easement. Town has the authority and discretion to determine location if no agreement is reached.
- e. Property Owner and Town will sign a Hold Harmless Agreement regarding Boathouse support modifications if required by the final design.
- f. Property Owner responsible to sever current independent sewer system and construct new service line to the utility easement unless there exists a community organization that assumes service for the non-existing customer.

**4. Community Sub-system:**

- a. Community organization responsible for the construction and maintenance of the sewer sub-system. Construction and maintenance of the sub-system is subject to Town and oversight and must be maintained to prevent foreign infiltration to the system. Must have a 24 hour, 365 day on call service number recorded with the Town of Lake Lure and provide documentation of an annual inspection. At the subsystem's expense.

- b. Individual property owners within the subsystem pay current Sewer user fees.
- c. Community Subsystem is subject to one connection fee to connect the subsystem to the GLS connection point after it becomes available.
- d. Community organization and Town will identify a preferred location of the standard lateral and GLS connection point within a utility maintenance easement. Town has the authority and discretion to determine GLS connection location if no agreement is reached.
- e. Community organization responsible to realign subsystem main line to the GLS connection point within 6 months of initial system operability.

**5. Willing Tier 2 and Tier 3 Customers:**

- a. Property Owner is responsible to secure necessary easements and pay for the installation of a special service line and pump assist stations as required.
- b. Property Owner is responsible to sever current independent sewer system and construct new service line to an available GLS connection point any-time before or after initial system operability.
- c. Pays one-time sewer development fee when connected to GLS.
- d. Pays sewer user fees monthly after GLS connection.
- e. Pays connection fee to connect the private service line to the GLS connection point.

**X. UNFINISHED BUSINESS:**

There were no unfinished business items to discuss.

**XI. NEW BUSINESS:**

**A. LABELLA ENGINEERING TASK ORDER NO. 8 – WWTP DIGESTER PROJECT AND BUDGET AMENDMENT #305 – WWTP DIGESTER**

Council discussed LaBella Engineering Task Order No. 8 for the Waste Water Treatment Plant (WWTP) project. Mr. Baldwin explained the need to try and find a way to replace or modify the digester to reduce the expensive operating costs of hauling away wet sludge. He stated the proposal in the packet can be withdrawn or is obsolete at this point based on a newly determined approach.

Maurice (Reese) Walsh, LaBella Associates, explained that rehabilitation of the digester with a steel tank would be less costly than a replacement. He noted that as long as the size of the tank is not increasing or the process is not changing, there are no permitting requirements. He agreed to withdraw his previous proposal as he does not feel this is the best route for the Town to take at this time. Mr. Baldwin stated that he feels they have found a much better and less expensive solution and will wait for their next proposal.

**XI. NEW BUSINESS:**

**B. SEWER POLICY RECOMMENDATION FROM THE UTILITY ADVISORY BOARD**

The proposed sewer policy was developed by the Utility Advisory Board to help implement the new sewer collection system replacement project currently underway.

Commissioner DiOrio made a motion to accept the Sewer Policy recommended by the Utility Advisory Board. Commissioner John Kilby seconded and the motion carried 4-0.

**XI. NEW BUSINESS:**

**C. TOWN OF LAKE LURE-RUTHERFORD COUNTY SEWER AGREEMENT DISCUSSION**

Council discussed the Sewer Agreement with Rutherford County. Mr. Baldwin explained that Rutherford County and the Town of Lake Lure entered into a sewer agreement on May 5, 1970 which allowed the Town to collect and treat sewage for Rutherford County. At present,

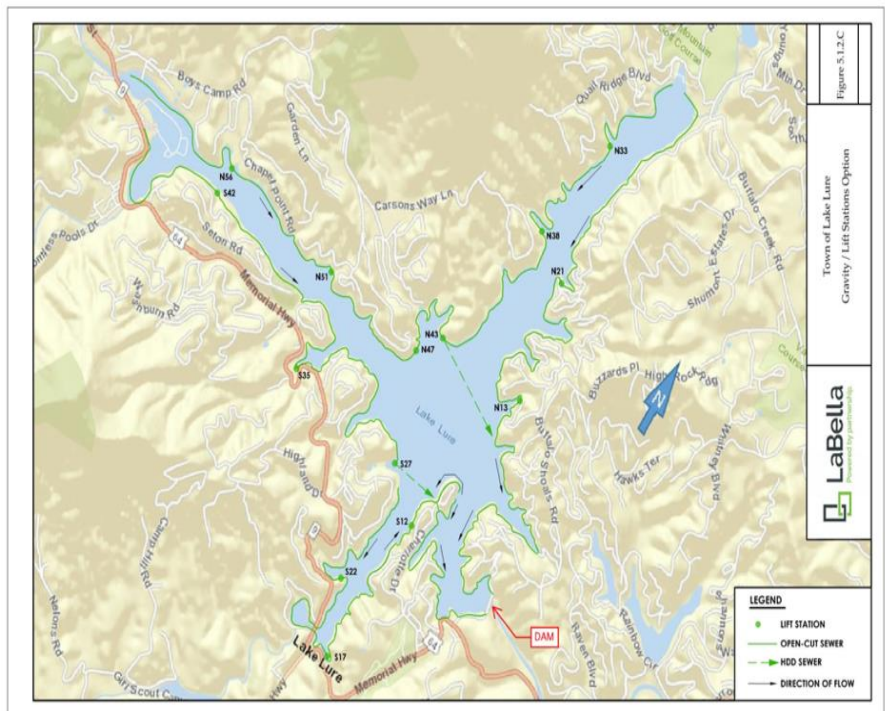
Dear Property Owner,

We are writing to update you on the Town of Lake Lure's progress with the sewer system and wastewater treatment plant replacement and renovation. We are making progress with this important project and want to keep you informed and involved with every phase of our work. **You are receiving this letter because your property is in Phase 1 of this project. Construction is anticipated to commence in the fall of 2023. Your participation and input are critical to the Town's success.**

As you may know, Lake Lure's 1927 sewer system utilizes a series of pipes that are submerged beneath the lake. The iron pipes, concrete manholes, and older septic systems are deteriorating and must be replaced to protect our pristine lake. The Town is embarking upon a phased rehabilitation and replacement approach that maintains sewer service while improving system performance. The design and implementation of the new state-of-the-art engineering solution is challenging because the new system remains in the lake. Specifically, the new collection system will be installed in the backshore, which is the land exposed during lake drawdown periods.

The Town is working closely with several divisions within the NC Department of Environmental Quality. We have hired Labella Associates, a firm specializing in wastewater infrastructure, to implement a sequential engineering solution that leverages modern sewage collection and treatment technology. In February 2020, LaBella developed and analyzed several alternative engineering solutions. These solutions were presented for public review during the July 2020 Community Forums.

The Lake Lure Town Council selected a solution that utilizes the backshore area. A gravity lift system will be installed using a combination of gravity sewer lines and pumping manholes to provide sewer access around the perimeter of the lake. Lake Lure's new eco-friendly sewer system will minimize the property disruption while enhancing performance through an environmentally sensitive system. We are pleased that this new system has the lowest environmental, economic and social cost of all the alternatives considered. This project will eliminate system issues and prevent failures that could occur if we did not take immediate action.





This project has included rehabilitation of the existing manholes which took place in the 2021-2022 Lake Drawdown. The manhole rehabilitation lowered the lake infiltration, extending the life of the existing manholes; improved the wastewater treatment process; and allowed for new connections to the system. Phase 1 of the sewer system rehabilitation will begin near the dam and will continue along the northern and southern shoreline as illustrated in the attached map. The new system is a long-term solution which allows the Town to efficiently carry out operations and maintenance of the system year-round.

Your renovation options and property values will significantly increase with the new system in place. Property owners will have the option of adding additional bedroom and bathroom facilities once the project is complete and will provide service to areas not current served. Once the system becomes available and operational to you, you will be billed a monthly sewer fee whether you decide to connect to the sewer system or not, in accordance with NC state law, and afforded the opportunity to tie into the system.

We need your help to move forward. All lakefront property owners and some near-shore residents – currently on or off the Town system – will be required to tie into the new system. We must understand your current sanitation configuration to determine the best tie-in location (stub-out) and the most efficient connection solution. The following information is enclosed for your information and to secure your registration.

- A. Detailed Overview of Lake Lure’s Eco-friendly Sewer System**
- B. Get On Board - Phase One Registration (Please complete and return by 3/1/23)**
- C. Map of Lake Lure’s Phase One Sewer System Replacement and Renovation Project**

Lake Lure’s normal lake elevation is 990.5 above mean sea level (MSL). The Town owns the Lake and the Town’s property extends to 995 above MSL. The Town will be working within these limits to construct the new sewer system around the shoreline connection points.

We will be holding a series of neighborhood meetings and a Town representative will personally discuss this information further and answer any questions you may have. You will be contacted regarding the dates and times for these meetings. We are pleased to be moving forward with this critical infrastructure project which will positively impact everyone’s property values and increase options for future building expansion.

Sincerely,

Lake Lure Town Council  
Carol Pritchett, Mayor  
David DiOrio, Mayor Pro Tem  
Patrick Bryant, Commissioner  
Scott Doster, Commissioner  
Jim Proctor, Commissioner



## **Lake Lure Sewer System Replacement and Renovation Overview and Update**

The Town of Lake Lure is progressing with the sewer system and wastewater treatment plant replacement and renovation project. The following document provides a detailed overview of the current plans.

- A. Background:** Currently, Lake Lure's 1927 gravity fed subaqueous (under lake) sewer system (SASS) collects and conveys sewage within submerged pipes. This is a one-of-a-kind sewer system; the only one of its kind in NC. In fact, there are only a handful of systems in the country.
- B. Problem:** The SASS conveys wastewater to a pump station behind the Dam which pumps the wastewater to the treatment plant. Both the pump station and the treatment plant are plagued with significant lake water infiltration and outdated equipment. The lake water infiltration puts the pump station at risk of a sewer spill. This forces the wastewater treatment plant to use a chemical process which would otherwise be unnecessary. Additionally, the cast iron pipes that make up the SASS are approaching 100 years old and have reached their service life.
- C. Solution:** A phased rehabilitation and eventual system replacement approach is underway to maintain sewage service while improving system performance. The design and implementation of the new state-of-the-art engineering solution is challenging because it remains in the lake. Specifically, the new collection system will be installed in the backshore, which is the land exposed during lake drawdown periods. Construction on Phase 1 of this multi-phase approach is slated to begin in 2023.
- D. Oversight and Collaboration:** The Town is working closely with the various NC Department of Environmental Quality Divisions, including the Division of Water Resources, Division of Water Infrastructure, and has hired Labella Associates, a firm specializing in wastewater infrastructure, to implement a sequential engineering solution that leverages modern sewage collection and treatment technology. In February 2020, LaBella developed and analyzed twelve alternative engineering solutions that have been reviewed before a final option was selected.
- E. Community Engagement:** The Lake Lure Town Council held three Community Forums on 7/28/20 to share the background and these plans with citizens. If you missed these forums:
- You may view a recording of the meeting at the following link: <https://www.youtube.com/watch?v=kNkNHFE72AA>
  - You may download the presentation materials and attendee booklets at this link: [https://www.townoflakelure.com/sites/default/files/fileattachments/community/page/3427/072820\\_lake\\_lure\\_community\\_forum\\_participant\\_booklet.pdf](https://www.townoflakelure.com/sites/default/files/fileattachments/community/page/3427/072820_lake_lure_community_forum_participant_booklet.pdf)
  - You may review the Frequently Asked Questions and Answers at this link: [https://www.townoflakelure.com/sites/default/files/fileattachments/community/page/3427/072820\\_lake\\_lure\\_community\\_forum\\_faqs.pdf](https://www.townoflakelure.com/sites/default/files/fileattachments/community/page/3427/072820_lake_lure_community_forum_faqs.pdf)
- F. Benefits of the Plan:** The Lake Lure Town Council selected a solution that utilizes the backshore area to install a gravity lift system that uses a combination of gravity sewer lines and pumping manholes to provide sewer access around the perimeter of the lake. Lake Lure's new eco-friendly sewer system will minimize the property disruption while allowing property owners to

maintain and enhance property values by providing a sound new system that protects the environment. The proposed system will eliminate system issues and prevent failures that could occur if we did not take action. This system has the lowest environmental, economic, and social cost of all the alternatives considered.

The perimeter system will be installed around the lake perimeter, and will utilize high performance and long life components that include:

- High-density polyethylene (HDPE) sewer lines
- HDPE manholes with concrete encasement
- HDPE pump stations with concrete encasement HDPE laterals

This renovation is a long term solution which will provide service to areas not easily served currently. It will simplify the connection effort, providing access to a gravity sewer for each property on the lake. The Town will be able to carry out operations and maintain the system year-round. Your renovation/rebuild options will significantly increase with the new system in place and property owners will have the option of making additions once the project is complete.

**G. Wastewater Treatment Plant:** Renovations to the wastewater treatment plant will be included in Phase 1 that will improve its operation until the eventual rehabilitation and conversion to a biological process capable of meeting the current water quality standards.

**H. Manholes:** The plan included the rehabilitation of the existing manholes which was completed during the 2021-2022 lake drawdown. This rehabilitation reduced lake infiltration, extended the life of the existing manholes, improved the wastewater treatment process, and allow for new connections to the system. Phase 1 will begin near the Dam and will continue along the northern and southern shoreline as illustrated in the map on Attachment C.

**I. Sewer Access Valve/Reservoir Drain:** The long-term solutions include a sewer access valve. The sewer access valve or reservoir drain will give much needed capabilities and will allow for the ability to lower the lake below the spill way. The new sewer access valve/reservoir drain is an important component of Phase 1 that will greatly aid in the construction of the new collection system, and is also an important component of the emergency response plan in the event of a catastrophic collection system or an imminent dam failure. The engineering design for the sewer access valve/reservoir drain has been completed and we are in the process of ordering the valve/drain.

**J. 2023-2024 Lake Drawdown:** In June 2022, Town Council will finalize plans for the 2023-2024 Lake Drawdown next drawdown period to support this important project. The sewer access valve will be installed as soon as it arrives and this will allow the lake will be lowered approximately 20' for the construction period which has yet to be scheduled. We will communicate the next drawdown period as soon as these plans are finalized.

**K. Get On Board To Secure Your Future:** We need your help to move forward. Please complete The registration form in Attachment B and send it to **GLS Property Owner Registration, PO Box 255, Lake Lure, NC 28746** or drop it off at **Town Hall at 2948 Memorial Highway, Lake Lure, NC 28746**. We will be contacting property owners personally to discuss how this process will work once we have received your registration form.

Here's How You Can Get On Board - Property Owner Registration

1. Please provide your contact information here:

Name: \_\_\_\_\_

Mailing address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_ Email address: \_\_\_\_\_

Preferred method of communication (circle): Mail \_\_\_ Phone \_\_\_ Email

2. Describe your existing sewer/septic system:

Sewer Gravity Pipe to Town Manhole: \_\_\_\_

Independent Septic (no Town connect): \_\_\_\_

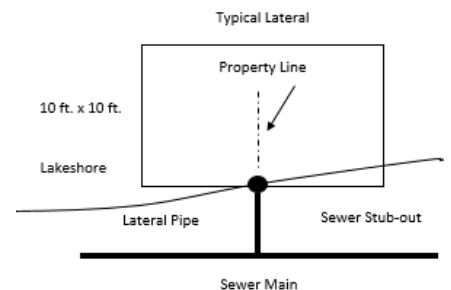
Hybrid System (i.e. Septic with grey water only pumped to manhole): \_\_\_\_

Lift Station (grinder pump) to manhole: \_\_\_\_

Community Shared System: \_\_\_\_

Other: \_\_\_\_\_

- When was your sewer line/septic installed?  
\_\_\_\_\_
- When was your system permitted, if applicable?  
\_\_\_\_\_
- When was your system last inspected?  
\_\_\_\_\_



5. Describe any applicable legal or informal arrangements related to your sewer/septic system that exist with adjacent neighbors.

\_\_\_\_\_  
\_\_\_\_\_

6. Note that all properties will be provided access for connection and billed the monthly sewer fee once it becomes available whether you decide to connect to the sewer system or not. Do you have any questions regarding this requirement? \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Add additional sheets as necessary.

Please complete and return to the Town using the enclosed postage paid envelope by 3/1/23.

NOTE: Once your registration form has been received, you will be contacted regarding the next steps in the process.

## V. BUDGET DISCUSSIONS

Finance Director Sam Karr explained between the May 9<sup>th</sup> budget meetings and now, data from David Hill pay studies for Police and Fire have been solidified and included in the proposed FY 22-23 Budget. Assistant Finance Director Stephen Ford provided Council with a worksheet detailing the changes made. Members of Council questioned if the 5% Cost of Living Adjustment (COLA) is included in the updated figures for Police and Fire. Director Karr confirmed that the COLA is accounted for in the updated numbers.

Director Karr also noted that the cost of renting the Arcade Building area for the Community Development Department will cost \$1,500 a month and the budget has been updated to reflect this cost.

Council did not express any setbacks in regard to the update proposed budget numbers.

## VI. PERSONNEL POLICIES

Interim Manager Olivia Stewman explained that comp time and take home vehicles were discussed at the May 9<sup>th</sup> budget meeting. Stewman noted that she had since worked on improving policies and that she will review the presented drafts with Mr. Hank Perkins when he begins his tenure as Town Manager.

Stewman presented Council with a draft of an amending overtime and comp time policy that allows a 40 hour maximum buildup of comp time before any hours worked over are converted into either overtime pay or sick leave time. Stewman noted that there may be issues in regard to converting hours worked over to sick leave time due to the setup of the North Carolina retirement system, but she agreed to look into this option further.

Stewman also explained there were minimal changes to the take home vehicle policy because the policy is adequate, but it has not been correctly abided by in the past. Stewman noted that there is certain criteria an employee must meet in order to be eligible for a take home vehicle. Commissioner DiOrio asked that Stewman obtain written justification from department heads for why each employee with a take home vehicle is eligible per the policy. Stewman agreed.

## VII. COMMUNICATIONS PLAN FOR THE SEWER REPLACEMENT PROJECT

Commissioner Doster thanked the Utility Advisory Board and Communications Director Laura Krejci for their work in creating the Communications Plan for the Sewer Replacement Project.

Commissioner Doster explained that the plan has been in the works for a while, but has been recently updated in the wake of determining that the Town has access up to the 995 level and that easements are no longer needed.



Commissioner Doster expressed that the intent is to send out the plan and attachments to property owners located in Phase I and allow opportunities to speak with property owners and allow them to ask questions.

Commissioner DiOrio mentioned laterals every two lots and the possibility sending maps with the plan. Council members and Town Attorney William Morgan were in agreement.

Mayor Pritchett asked if there is plans to share information with all homeowners rather than only those located in Phase I of the project. It was recommended that Laura share the information on the website, so it will be accessible to all homeowners, but only mail out information to those in each phase being conducted.

Commissioner DiOrio recommended adding "subject to change" on segments of the plan and attachments. Commissioner DiOrio also noted that on Attachment B, the 10 x 10 should be removed but display the 995 section.

There was consensus that, with the recommended changes, all members of Council are in favor for the Communications Plan. Commissioner Doster stated that he will bring changes to Utility Advisory Board at the next meeting and finalize the document.

#### VIII. UTILITY ADVISORY BOARD DISCUSSION

Commissioner Doster explained that the Utility Advisory Board will have a significantly increased responsibility now that the Town Manager and Project Manager will be on-board soon. Commissioner Doster suggested that moving forward the two staff members work with Council on issues that the UAB has worked on in the past. It was discussed that the Utility Advisory Board may no longer be needed.

Commissioner Proctor asked if the UAB should be kept as a board until the Project Manager is on-boarded. Commissioner Doster expressed support for this option and indicated that the Board may still be able to meet as needed.

Commissioner DiOrio explained that there are good members on the Board who would be beneficial on other advisory boards.

Commissioner DiOrio explained that when construction starts, communication will increase and information will change, which will be hard for UAB members to keep up with. Commissioner DiOrio noted that the board could still be included in the communication aspect.

Consensus was to dissolve the Utility Advisory Board when the Project Manager is on-boarded with the Town.

#### IX. ORDINANCE AMENDMENTS PER SENATE BILL 300

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Project Manager Updates

**AGENDA INFORMATION:**

**Item Number:** XVIII  
**Department:** Public Services  
**Contact:** Dean Lindsey, Public Services Director  
**Presenter:** Dean Lindsey, Public Services Director

**BRIEF SUMMARY:**

Town staff has been in contact with PANGAEA regarding the need for an extension of services to the Waste Water Treatment Plant (WWTP) and a temporary trailer that will be located on the property for Morgan Corporation. There would be a one-time extension fee of \$3,000. In exchange, PANGAEA is proposing an additional five years to their agreement term, which would extend the agreement term until 2032. Staff would like to ask for additional sites to be serviced, but will not be discussed with PANGAEA until a later date.

**ATTACHMENTS:**

Second Amendment to PANGAEA Services Agreement

## SECOND AMENDMENT TO PANGAEA SERVICES AGREEMENT

THIS SECOND AMENDMENT TO PANGAEA SERVICES AGREEMENT (this "Second Amendment") is made and entered into as of the 15<sup>th</sup> day of April, 2022 (the "Second Amendment Effective Date"), by and between the Town of Lake Lure (the "Town"), and e-Polk, Inc. d/b/a PANGAEA Internet, a North Carolina nonprofit corporation, having its principle place of business at 75 South Trade Street, Suite C, PO Box 340, Tryon, North Carolina 28782 ("PANGAEA").

WHEREAS, the Town and PANGAEA entered into that certain PANGAEA Services Agreement dated as of April 15, 2016 (the "Services Agreement"), and certain First Amendment to PANGAEA Services Agreement dated as of October 19, 2016 (the "First Amendment"), whereby (i) PANGAEA agreed to provide certain rights and services (the "PANGAEA Services") to the Town in connection with certain PANGAEA Fiber running from the Lake Lure Town Hall building, including the Police Department (the "Town Hall Building") to the Lake Lure Fire Department, the Lake Lure Dam House, the Lake Lure Water Tower, and the Lake Lure Public Works facility (collectively, the "Town Fibers"), and (ii) the Town granted PANGAEA an exclusive license and right to use certain "Licensed Areas" (including, but not limited to, the Town Hall Building) to house and maintain PANGAEA equipment (an "Exclusive Equipment License"); and

WHEREAS, the Town and PANGAEA now desire to further amend certain provisions of the Services Agreement (as amended by the First Amendment) to provide that: (i) PANGAEA will increase the level of bandwidth provided to the Town under the Services Agreement; (ii) PANGAEA will install PANGAEA Fiber and provide internet bandwidth service to the former Lake Lure Golf Course clubhouse; (iii) upon the written request of the Town, PANGAEA will install and connect PANGAEA Fiber running from the Town Hall Building to 2654 Memorial Highway, Lake Lure; (iv) in order to serve more Lake Lure residents and businesses with high speed internet, the Town will grant PANGAEA an Exclusive Equipment License and the right to use certain additional Licensed Areas; (v) the term of the Services Agreement will be extended for a period of five (5) years (beginning on the Second Amendment Effect Date), followed by automatic one (1) year renewal terms thereafter; and (vi) PANGAEA will no longer maintain or support the free public Wi-Fi network, which equipment has reached technology end-of-life.

NOW THEREFORE, for good and valuable consideration, including the mutual promises, covenants and conditions hereinafter set forth, the parties hereto agree as follows:

**1. Amendments to Services Agreement.** The parties agree that the Services Agreement is hereby amended as follows:

1.1 Amendment to Section 1. The parties hereto hereby amend Section 1 of the Services Agreement by deleting Section 1 in its entirety and replacing it with the following new Section 1:

**1. PANGAEA Services.**

(a) PANGAEA Services. During the Term of this Agreement (as defined in Section 6(a)), PANGAEA will grant the following rights and provide the following services to the Town (collectively, the "PANGAEA Services"): (i) the license and right to use the Town Fibers; (ii) the mutual right to use the Patch Panel with PANGAEA; (iii) high-speed internet and bandwidth access service with minimum bandwidth capacities of 100 MB Download and 100 MB Upload to the Town Hall and the LLGC Clubhouse (as defined in Section 1(b) below) at no charge and in accordance with the standards described in the PANGAEA Service Level Agreement then in effect (the "PANGAEA SLA"); and (iv) maintenance and repair of the Town Fibers and the Patch Panel in accordance with the standards described in the PANGAEA SLA.



(b) LLGC Clubhouse Fiber. PANGAEA will (at no charge to the Town) install PANGAEA Fiber to the Lake Lure Golf Course clubhouse located at 658 Memorial Highway, Lake Lure (the "LLGC Clubhouse Fiber") and provide 100 MB Download and 100 MB Upload internet bandwidth.

(c) Optional Fiber. Upon the written request of the Town, PANGAEA will (at no charge to the Town) connect one (1) strand of PANGAEA Fiber running from the Town Hall Building to 2654 Memorial Highway, Lake Lure (the "Optional Fiber"). Upon installation, the Optional Fiber will be deemed to be part of the "Town Fibers," and PANGAEA will provide the Town with the license and right to use the Optional Fiber in accordance with Section 1(a) of this Agreement.

1.2 Amendment to Section 2. The parties hereto hereby amend the Services Agreement by adding an additional subsection 2(c) and Section 2(d) to Section 2 as follows:

(c) Storage Closet Space. The Town hereby grants PANGAEA an Exclusive Equipment License and right to use fifty percent (50%) of the total area of that certain storage/equipment closet located at the end of the Town Council table in the large Town Hall Building meeting room (the "Storage Closet Space"), and the Storage Closet Space shall be deemed to be an additional "Licensed Area" as defined in Section 2(a). PANGAEA agrees to pay the costs for the electrical work required to add the Storage Closet Space to the Town Hall Building's generator, and the Town hereby agrees to provide power to the Storage Closet Space for PANGAEA's use during the Term.

(d) PD Equipment Room Rack. In the event that PANGAEA installs the Optional Fiber as provided under Section 1(c) of this Agreement, upon such installation: (i) the Town shall be deemed to have granted PANGAEA an Exclusive Equipment License and right to use one (1) additional full size equipment rack (provided by PANGAEA) in the Police Department equipment room located in the Town Hall Building (the "PD Equipment Room Rack"); (ii) the PD Equipment Room Rack shall be deemed to be an additional "Licensed Area" as defined in Section 2(a); and (iii) the Town shall provide power and generator backup to the PD Equipment Room Space for PANGAEA's use during the Term.

1.3 Amendment to Section 6(a). The parties hereto amend Section 6(a) of the Services Agreement to extend the Term for a period of five (5) years from April 15, 2022, with automatic one (1) year renewal terms thereafter, by deleting Section 6(a) of the Services Agreement in its entirety, and replacing it with the following new Section 6(a):

(a) Term. The term of this Agreement (the "Term"), originally running from April 15, 2016 and extended through April 15, 2022, shall be extended for an additional period of five (5) years and continue in full force and effect through and until April 15, 2027 (the "Extended Term"), and shall be renewed thereafter for additional one (1) year terms (each a "Renewal Term"), for up to a total of five (5) Renewal Terms; provided that: (i) either party shall have the right to terminate this Agreement, with or without cause, at the end of the Extended Term or any subsequent Renewal Term, by providing written notice of termination to the other party at least thirty (30) days prior to the expiration of such Extended Term or Renewal Term; and (ii) either party shall have the right to terminate this Agreement for Cause as provided for in Section 6(c) below.

2. Limited Amendment. All terms and conditions of the Services Agreement, the First Amendment, and other agreements of the parties that are not expressly modified by this Second Amendment remain in full force and effect.

3. Miscellaneous.

3.1. Entire Agreement; Amendment; Governing Law. This Second Amendment, and the Services Agreement and First Amendment as amended hereby, constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes any and all prior and

contemporaneous agreements and understandings between the parties with respect thereto. The internal laws of the State of North Carolina (regardless of conflict of laws principles) shall govern all issues concerning the construction, validity and interpretation of this Second Amendment.

3.2 Counterparts. This Second Amendment may be executed in any number of counterparts, some of which may have signature pages differing as to form, each of which shall be enforceable against the parties actually executing such counterparts and all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed by its duly authorized representative as of the day and year first above written.

**E-POLK, INC. d/b/a PANGAEA**

By: Ron Walters  
Name: Ron Walters  
Title: Executive Director

**TOWN OF LAKE LURE**

By: Olivia Stewman  
Name: Olivia Stewman  
Title: Interim Town manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

San @ Yan  
**Finance Officer, Town of Lake Lure**

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Project Manager Updates

**AGENDA INFORMATION:**

**Item Number:** XIX  
**Department:** Project Management  
**Contact:** Mike Dydula, Project Manager  
**Presenter:** Mike Dydula, Project Manager

**BRIEF SUMMARY:**

Project Manager Mike Dydula will provide Council with an update in regard to ongoing major projects.

**LAKE LURE TOWN COUNCIL  
AGENDA ITEM REQUEST FORM  
Meeting Date: September 27, 2023**

**SUBJECT:** Town Manager Updates

**AGENDA INFORMATION:**

**Item Number:** XX  
**Department:** Administration  
**Contact:** Hank Perkins, Town Manager  
**Presenter:** Hank Perkins, Town Manager

**BRIEF SUMMARY:**

Town Manager Hank Perkins will provide Council with any updates that are not included on the meeting agenda. Council will also have the opportunity to ask any questions.

**XXI**

**ADJOURNMENT**