Public Utilities Fees FY 2018 – 2019

FEE ADOPTION: This document hereby amends the Public Utilities Fee schedule to adopt the System Development Fees for the County of Franklin for the Fiscal Year beginning July 1, 2018 and ending June 30, 2019.

Public Utilities Fees

FEES		
Security Deposit	$	100.00
Security Deposit (without SS#)	$	150.00
Administrative Fee	$	50.00
Late Fee	$	7.50
Delinquent Fee	$	35.00
Bill Arrangement Fee	$	5.00
NSF Fee/Returned Check Fee	$	25.00
On-Line Convenience Fee	$	2.50
Seasonal Use Fee	$	35.00
Hydrant Meter Deposit	$	750.00
Tampering Fee	$	250.00
Tampering Fee (2nd occurrence)	$	500.00
Tampering Fee (3rd occurrence)	$	1,000.00
Meter Calibration/Test Fee	$	40.00
Meter Set Fee		
3/4" & 1"	$	125.00
2" and larger		Cost plus 15%
Water Tap Fee		
3/4 "	$	1,100.00
1"	$	1,300.00
2"		Cost plus 15%
Sewer Tap Fee		
4"	$	1,000.00
6" and greater		Cost plus 15%
Unit Privilege Fee (per unit)		
Water	$	175.00
Sewer	$	225.00
~~Acreage Fee (per unit)~~	-	
~~Water~~	~~$~~	~~150.00~~
~~Sewer~~	~~$~~	~~200.00~~
Not Ready Meter Install Fee	$	40.00
Pre-Treatment Administrative Fee	$	100.00
Plan Review Fee	$	200.00
Inspection Fees		

Water Lines per Linear Foot	$	0.50
Sewer Lines per Linear Foot	$	0.50
Other Utility Inspections	$	175.00
Hydrant Flow Test Fee	$	250.00
FOG Permit	$	10.00
~~Capacity Replacement Fee (residential)~~	~~-~~	
~~Water per Bedroom~~	~~$~~	~~350.00~~
~~Sewer per Bedroom~~	~~$~~	~~400.00~~
SYSTEM DEVELOPMENT FEE		
Water Only	***$ 150 + $350 (per bedroom)***	
Sewer Only	***$ 200 + $400 (per bedroom)***	
Water and Sewer	***$ 350 + $750 (per bedroom)***	
~~Capacity Replacement Fee~~ ***(non-res/commercial)***		
Usage for first 3 months will be averaged and then charged at current ~~capacity replacement~~ ***SYSTEM DEVELOPMENT FEE***		

FRANKLIN COUNTY BOARD OF COMMISSIONERS

ADOPTED THIS, THE 9th DAY OF JULY, 2018.

_____ _____

Cedric Jones, CHAIR **Date**

ATTEST:

_____ _____

Kristen G. King, CLERK TO THE BOARD **Date**

WRITTEN ANALYSIS SUPPORTING SYSTEM DEVELOPMENT FEES

for

FRANKLIN COUNTY PUBLIC UTILITIES

FRANKLIN COUNTY, NC

PREPARED BY:

LKC ENGINEERING, PLLC
140 Aqua Shed Court
Aberdeen, NC 28315
License # P-1095

This is a DRAFT version of the written analysis, available for public review per the requirements of HB436.

Please email all comments to:

michele@LKCengineering.com

Please use "Franklin County" in the subject line.

DRAFT

ADAM P. KIKER, P.E.

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1.0 EXECUTIVE SUMMARY

Recent legislation (North Carolina Session Law 2017-138, also known as House Bill 436) requires water and sewer utilities in North Carolina that charge a capacity fee to prepare a written analysis to justify the amount charged. Franklin County contracted with LKC Engineering to prepare the written analysis and satisfy the requirements of the new law.

The document herein provides a brief description of Franklin County's existing utilities, their current capacities, historical growth, system deficiencies, and planned improvements to support future development. Detailed calculations are provided for the recommended water and sewer System Development Fees (SDF), and underlying assumptions made during the calculation.

The results of the process recommend Franklin County modify the SDFs charged for both water and sewer as follows:

Table 1: Summary of Recommended SDFs

Utility	Current Charge (3BR House)	Proposed SDF	Percent Increase
Water	$1,200.00	$5,300.00	442%
Sewer	$1,400.00	$2,500.00	179%
Combined	**$2,600.00**	**$7,800.00**	**300%**

Maps and more detailed supporting documents are included in the Appendices.

2.0 DESCRIPTION OF EXISTING FRANKLIN COUNTY WATER AND SEWER SYSTEMS

Franklin County owns and operates both a water and sewer system to serve residences and businesses in the County. In addition, Franklin County owns the water and sewer systems internal to the Towns of Youngsville and Franklinton, both of which were acquired by the County in the last decade. In total the County serves approximately 6,000 residential water customers and approximately 3,000 sewer customers.

Franklin County borders Wake County to the north, and partly due to the proximity to Raleigh and the Research Triangle Park it has been a popular destination for residential and commercial development over the past two decades. Prior to the 2008 recession, building permit records indicate more than 600 new houses per year were being built in Franklin County. Similar records from 2017 indicate the development activities are again approaching the pre-recession rates.

Because of the historical growth in the County, the water and sewer systems have been able to finance most of the debt incurred by the system through the application of System Development Fees (currently called acreage fees and capacity fees). In the future, the County plans to finance 100% of growth-related infrastructure through the collection of water and sewer SDFs.

A single industrial customer, Novozymes, accounts for roughly half of both the water demand (approximately 1.1 mgd average day) and sewer flow (approximately 0.40 mgd average day) experienced by Franklin County.

2.1 Existing Water System

Franklin County currently receives its water supply from three different sources:

City of Henderson:	3.00 mgd
Town of Louisburg:	0.67 mgd
Franklinton WTP:	0.50 mgd
Total:	4.17 mgd

Franklin County owns and operates the Franklinton WTP. The other two sources are provided through bulk purchase agreements. The primary source of Franklin County's drinking water supply is the City of Henderson, accounting for approximately 2.0 mgd of water purchased each day on an annual basis.

Between August 2015 and July 2017, the County system used a daily average of 2.25 mgd systemwide. The average residential water customer in Franklin County consumes 135 gallons per day. By applying a typical industry peaking factor, and accounting for water lost in the system, a water capacity per residential customer of 250 gal/day is used in this report. (This also maintains continuity with the sewer flow allocation per residential customer discussed below.)

Growth projections for Franklin County indicate that at the 20-year planning horizon used in this report Franklin County will need an additional 2.0 mgd of water capacity. Therefore, the additional water supply for the system and the additional infrastructure to transmit and distribute water are anticipated to add an additional 2.0 mgd of capacity to the system.

2.2 Existing Sewer System

Franklin County owns and operates a wastewater collection system that serves primarily the southeastern portion of the county in and around the Towns of Youngsville and Franklinton. Wastewater is treated at the County-owned 3.0-mgd Wastewater Treatment Plant (WWTP), which discharges into Cedar Creek (Tar River Basin). The current average daily flow at the plant is approximately 1.1 mgd, leaving ample room for system growth before an expansion is necessary.

The County has two primary gravity sewer outfalls, the Cedar Creek Outfall and Ray's Creek Outfall that provide service to the area. However, due to the sporadic nature of residential growth and corresponding sewer demand, the County also owns and operates 27 sewer lift stations.

In August of 2008 Franklin County was granted a Flow Reduction in accordance with 15A NCAC 02T .0114(f), giving them permission to allocate 250 gallons per day per residential unit for sewer capacity. Hence this figure is used in the SDF calculation for sewer.

2.3 Existing Fees Charged for Subdivision of Land

Currently Franklin County charges two different fees when land is subdivided for residential purpose: Acreage fee and Capacity fee.

Acreage fees are $150/lot for water, $200/lot for sewer. 25% of the acreage fees are collected upon subdivision approval, and the remaining 75% at plat recordation.

Capacity fees are $350/bedroom for water, $400/bedroom for sewer. The capacity fees are collected individually when a building permit is issued.

The table below shows the current fees for a three-bedroom house:

Table 2: Current Fees Charged for Three-Bedroom House

Fee	Water	Sewer
Acreage Fee	$150.00	$200.00
Capacity Fee	$1,050.00	$1,200.00
Total	**$1,200.00**	**$1,400.00**

3.0 METHODOLOGY AND HOUSE BILL 436 REQUIREMENTS

With the adoption of House Bill 436, Franklin County, along with all local governments that own water and sewer utilities, was given direct authority to charge a development fee for those systems. A copy of the bill is included in the Appendices.

According to the new law, a qualified professional must calculate the development fee based on a written analysis, using general accepted engineering and planning practices. A qualified professional is defined as "a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems."

LKC is a professional engineering and landscape architecture firm that specializes in governmental utility planning, design, and construction. Our firm has worked in Franklin County since its inception in 2012, and our design professionals have over 40 years of collective experience with Franklin County's water and sewer utility systems.

3.1 Summary of Prescribed Methodology for Calculating SDFs

System development fees for water and wastewater must be based on the same level of service provided to existing developments in the service area. There are three general methods for calculating development fees. The method of choice can vary based on the timing of infrastructure construction (past or future).

Each method has advantages and disadvantages in a given situation, and the methods can be used simultaneously for different cost components. Reduced to its simplest terms, the process of calculating development fees involves two main steps: (1) determining the cost of development-related capital improvements, and (2) allocating those costs equitably to various types of development. In practice, however, the calculation of development fees can be complicated due to many variables involved in defining the relationship between development and the need for facilities within the designated service area.

The three basic methods for calculating SDFs are described below:

- The Buy-In Method is used in instances when a community has existing water or sewer assets with available capacity for use by future customers. This methodology is based on the rationale that new development is repaying the community for its share of the remaining unused capacity.

- The Incremental Cost Method is based on the value or cost to expand the existing system's capacity to serve future customers. This method is typically used when the existing system has limited or no capacity to serve new development and new or incremental facilities are necessary for the system to continue to grow.

- The Combined Approach is based on a blended value of both the existing and expanded system's capacity. This method is typically used where some capacity is available in parts of the existing system, but new or incremental capacity must be built in other parts to service new development.

3.2 Fundamental Formula for Calculation

The most basic approach for calculating SDFs is as follows:

1. Assign a cost for the system's capacity, either by evaluating the past cost of existing infrastructure, or through a capital improvement plan for future infrastructure.
2. Assign a capacity for the infrastructure.
3. Calculate a cost per unit capacity by dividing #1 by #2 above.

The result of the calculation can then be applied to new residential lots by establishing an Equivalent Residential Unit (ERU) based on historical usage. It can also be applied to commercial growth by applying the cost per unit capacity to the requested capacity of the new customer.

3.3 Credit Evaluation

Regardless of the methodology used, a consideration of credits is integral to the development of a legally defensible SDF that conforms to House Bill 436. There are two types of credits that should be addressed in SDF studies and ordinances.

The first is a revenue credit to avoid possible double-payment situations, which could occur if a portion of the rate payer revenue is used to finance debt for capital projects. House Bill 436 requires consideration of this issue to prevent payment of SDF's for future infrastructure, then payment for the same infrastructure through by revenue collected from rate payers that connect to the infrastructure. Such a credit is integrated into the SDF calculation, reducing the SDF if necessary.

Since Franklin County plans to finance 100% of future infrastructure supporting system growth through the collection of SDFs and does not plan to utilize rate payer revenues for such debt payments, the application of a revenue credit does not apply to the Incremental Cost method for this report.

The second credit to consider is a site-specific credit or developer reimbursement for dedication of land or construction of system improvements outside the necessary scope of the development. This type of credit is addressed in the administration and implementation of the SDF program and is typically handled on a case-by-case basis. As such it is not part of the calculation in this report.

3.4 Other Items of Importance in HB436

Some other items of importance in the recent House Bill are highlighted below:

1. The bill requires the utility to not only evaluate a fee per equivalent residential unit, but also a method for calculating the cost for other various categories of demand, such as commercial and industrial customers.

2. The planning horizon for the written analysis must be not less than 10 years and not more than 20 years.

3. The written analysis must sit on public notice for not less than 45 days to solicit feedback, after which the governing body must hold a public hearing prior to adoption.

4. Costs of preparing and updating the written analysis may be included in the incremental cost method.

5. A local government may pledge SDF revenue as security for the payment of debt service on a bond, note, or other obligation.

6. For new development involving the subdivision of land, the SDF shall be collected either at the time of plat recordation, or when the water or sewer service for the subdivided property is committed by the local government.

7. For all other new development, the SDF shall be collected at the time of application for connection to the water or sewer utility.

4.0 SYSTEM DEVELOPMENT FEES – WATER SYSTEM

Because Franklin County has very little, if any, water supply capacity remaining currently, the Incremental Cost method is appropriate for the water system SDF. The Incremental Cost method develops capital improvements necessary to support future development, assigns a capacity to those improvements, then uses a resulting cost per gallon to calculate the SDF.

4.1 Water System Capital Improvements

The water system capital improvements focus in three primary areas: additional supply, additional elevated storage, and new water transmission mains in strategic areas.

4.1.1 Future Water Supply

The most pressing issue for Franklin County's utilities currently is its water supply. The County is mostly located in the Tar River Basin, and throughout most of Franklin County the available withdrawal from the Tar River is not sufficient to easily supply a water treatment facility. Franklin County is currently undertaking a study to evaluate several different options for future water supply, and while that study is not yet complete, it is sufficiently complete to assign an estimated capital cost for an additional 2.0 mgd of water supply at $30,400,000.

4.1.2 Future Elevated Storage

Franklin County is expected to need two new elevated storage tanks to support continued system development over the next twenty years. The new tanks will reduce difficulties with transmitting higher capacities of water through the system, and will allow the county to support the robust fire flow necessary in higher density residential

and commercial developments. A 1,000,000-gallon elevated tank will be needed along NC-56 east of Franklinton, and a 500,000-gallon elevated tank needed to the east side of Youngsville.

4.1.3 Future Water Transmission

New 12" and 8" water lines are necessary in popular development areas where the County currently has gaps with either no water line at all, or only smaller diameter water lines (6" and smaller). Five different water line extension projects are listed as improvements necessary in the next 20 years.

4.1.4 Summary

A list of the proposed capital improvements and the estimated cost of each are shown in the table below:

Table 3: Water System Capital Improvements

	Project	Capital Cost	% Eligible for SDF	Eligible Cost for SDF
1.	12" WM - Lane Store Road	$1,620,000	100%	$1,620,000
2.	12" WM - Cedar Creek Road	$1,965,000	100%	$1,965,000
3.	8" WM - Hill Road	$461,000	100%	$461,000
4.	12" WM - Holden Road	$735,000	100%	$735,000
5.	12" WM - Peach Orchard Road	$2,940,000	100%	$2,940,000
6.	0.5 MG Tank east of Youngsville	$1,700,000	100%	$1,700,000
7.	1.0 MG Tank east of Franklinton	$2,800,000	100%	$2,800,000
8.	Future Water Supply (2.0 mgd)	$30,400,000	100%	$30,400,000
Total Future Capacity Development Value				**$42,621,000**

4.2 Calculation of Water SDF

The water SDF calculation uses the Incremental Cost method. The above capital costs will support an additional water system capacity of 2.0 mgd, hence that is the capacity used in the SDF calculation:

Table 4: Water SDF Calculation

Total Future Capacity Development Value	$42,621,000
Additional Capacity from Future Infrastructure (gallon/day)	2,000,000
Water System Development Fee per gallon/day	$21.31
Water Capacity per Residential Unit (gallon/day)	250
Water System Development Fee per Residential Unit	**$5,300.00**

4.3 Assumptions in the Water SDF Calculation

Underlying assumptions made during the water SDF calculation are discussed below:

1. The estimated cost for future water supply assumes one of the alternatives currently under evaluation can be implemented. This assumption is sound for now; however, if the implemented alternative ends up being substantially different from the capital cost used in this report, Franklin County should promptly update this report and the water SDF's to reflect the cost of the implemented alternative. This cost may also need to be updated based on the final capital cost after the new water supply is completed.

2. The elevated tanks and the proposed water transmission lines used in the calculation assume the development activity in Franklin County will continue in the same regions as it has for the last decade. This is a safe assumption given that this is the area without zoning restrictions (like Water Supply Watershed), and it is the area with the easiest access to existing water and sewer utilities.

   If over the next 5-10 years the development shifts to another part of Franklin County, this report may need to be amended to reflect different capital improvements. For example, the Department of Transportation is beginning construction on the widening of US401. Upon completion, US401 will be a four-lane, divided highway from Raleigh into Franklin County. If the new highway shifts the development focus into this region, the County will need to invest in water infrastructure to serve that area, and the cost of that infrastructure may need to be recovered through SDFs.

5.0 SYSTEM DEVELOPMENT FEES – SEWER SYSTEM

The sewer SDF calculation is slightly different than the water calculation because there is capacity available in the existing sewer infrastructure. The Buy-In Method is used to capture the existing capacity, and the Incremental Cost Method for future sewer

infrastructure. The sewer SDF is calculated using a weighted average of the resulting per capacity costs from the two methods.

5.1 Capacity of Existing Sewer Infrastructure

There are four items that account for the existing sewer system capacity. The first is the 3.0-mgd wastewater treatment plant. A replacement value of $12.00 per gal/day is used for the plant, totaling $36,000,000. Half of the plant's treatment units are relatively new (built in 2004) and are in good shape. The other half, and the solids handling unit, have surpassed their useful life with basically zero salvage value. Hence, the treatment plant is assigned a 30% estimated remaining life.

The Ray's Creek Outfall consists of 11,300 feet of 24" and 21" gravity sewer outfall that follows Ray's Creek southward to Hill Road. This outfall drains the southern part of the County's collection system, terminating at the treatment plant. It was constructed in the late 2000's and is assumed to have a 50-year useful life, with 80% remaining.

The Cedar Creek Outfall consists of 27,600 feet of 24", 18", and 15" gravity sewer that follows Cedar Creek and a tributary upstream from the treatment plant, providing service to the west side of US1. The Franklinton and Youngsville regional pump stations also discharge to this outfall. It was constructed in the early 2000's and is assumed to have a 50-year useful life, with 75% remaining.

The last part of the existing sewer system included in this calculation is the Franklinton and Youngsville Regional Pump Stations. These stations serve the entire respective towns, and both stations are currently under construction being completely replaced. Therefore, both stations have 100% useful life remaining.

Below is a summary of the Buy-In Method calculation:

Table 5: Buy-In Method Calculation for Existing Capacity

	System Component	Estimated Total Replacement Value	Estimated Remaining Life (%)	Depreciated Value	% Eligible for SDF	Eligible Value for SDF
1.	WWTP	$36,000,000	30%	$10,800,000	100%	$10,800,000
2.	Rays Creek Outfall	$2,065,000	80%	$1,652,000	100%	$1,652,000
3.	Cedar Creek Outfall	$4,245,000	75%	$3,183,750	100%	$3,183,750
4.	Franklinton and Youngsville Regional PS's	$1,900,000	100%	$1,900,000	100%	$1,900,000
	Total Capacity Development Value					$17,535,750
	Credit (Outstanding Debt Principal)					-$2,358,961
	Adjusted Value for Existing Capacity					$15,176,789

5.2 Sewer System Capital Improvements

The proposed capital projects to support continued growth in the sewer system consist of an expansion to the WWTP, the replacement of an existing force main with a large line, and three gravity sewer extensions.

5.2.1 WWTP Expansion

The existing WWTP has a capacity of 3.0 mgd, and currently treats an average daily flow of approximately 1.1 mgd. Regulations require that construction be underway when the tributary flow reaches 90% of the plant capacity, meaning there is approximately 1.6 mgd of available capacity remaining in the plant. Growth projections indicate the plant expansion will need to be implemented in year 2036, which is inside the planning horizon for this report and as such the cost is included in the SDF calculation.

5.2.2 Youngsville Force Main Replacement

The existing 6" force main leaving the Youngsville regional pump station is a bottleneck for the system in that area. This line needs to be upsized to a 10" pipe to support continued growth in the more popular area of the County for residential development. The force main replacement would consist of approximately 11,000 feet of 10" force main. Since some of the flow in the new force main would be from existing customers, only 70% of this project cost is eligible for inclusion in the SDF calculation.

5.2.3 Richland Creek Outfall

The Richland Creek Outfall would extend gravity along Richland Creek northward from the County line, providing sewer service to several large, undeveloped tracks. A pump station would be constructed near the county line, with a force main extending northward terminating at the Hill Road outfall. Because this outfall would eliminate two existing pump stations, 66% of the project cost is eligible for inclusion in the SDF calculation.

5.2.4 Brandy Creek Outfall

The Brandy Creek Outfall would connect to the Cedar Creek Outfall and extend upstream Brandy Creek past Hicks Road. The sewer line would go around the lake in the Hidden Lakes community, providing sewer service to several large, undeveloped tracts. This outfall would be 100% for new development, hence the entire cost is included in the calculation.

5.2.5 Ray's Creek Outfall Extension

This project features a two-pronged extension to the upstream terminus of the existing Ray's Creek Outfall, following the drainage basin to serve undeveloped acreage. It is 100% eligible for inclusion in the SDF calculation.

5.2.6 Summary

The table below summarizes the proposed capital improvements:

Table 6: Incremental Cost Method for Future Sewer Infrastructure

No.	Project	Capital Cost	% Eligible for SDF	Eligible Cost for SDF
1.	Youngsville FM Replacement (10")	$980,000	70%	$686,000
2.	Richland Creek Outfall (18" and 12")	$9,682,000	66%	$6,390,120
3.	Brandy Creek Outfall (18" and 12")	$3,187,000	100%	$3,187,000
4.	Ray's Creek Outfall Extension (12")	$1,875,000	100%	$1,875,000
5.	WWTP Expansion to 4.5 mgd	$18,000,000	100%	$18,000,000
Total Future Capacity Development Value				$30,138,120

5.3 Calculation of Sewer SDF

Since the sewer SDF calculation uses both the Buy-In and Incremental Cost methods, the SDF is derived by calculating the weighted average between the two methods, as follows:

Table 7: Sewer SDF Calculation

Capacity Item	Value for SDF Calculation	System Capacity (gpd)
Existing Infrastructure	$15,176,789	3,000,000
Future Infrastructure	$30,138,120	1,500,000
Totals	$45,314,909	4,500,000
Unit Value of Combined Capacity (weighted)	$10.07	
Sewer Flow per Residential Unit	250 gallons/day	
Sewer System Development Fee per Residential Unit	**$2,500.00**	

5.4 Assumptions in the Sewer SDF Calculation

Underlying assumptions made in the sewer SDF calculation are discussed below:

1. The growth model for sewer customers used in this report is a 6.5% annual growth rate. This calculation adds roughly 200 new sewer customers per year in the early years, and by year 20 calculates over 500 new sewer customers per year. This growth rate trends similar to the last five years of system growth, and it predicts the need for a WWTP expansion at year 2036. If over the next several years a different

growth rate is observed, especially if it drops substantially, a similar recalculation may result in the WWTP expansion occurring outside the 20-year planning horizon required by HB436. In that case it is recommended the written analysis be amended, and the sewer SDF modified.

2. Similar to the water SDF assumption #2, the future capital improvements used in the sewer SDF calculation assume development will occur in the areas between Franklinton and Youngsville where it is popular currently. If the region of focus shifts to a different area, the assumed capital improvements may need to be revisited, possibly adding additional capital projects, and deleting others.

6.0 SUMMARY

The table below summarizes the recommendations of this report:

Table 8: Summary of Recommended SDFs

Utility	Current Charge (3BR House)	Proposed SDF	Percent Increase
Water	$1,200.00	$5,300.00	442%
Sewer	$1,400.00	$2,500.00	179%
Combined	**$2,600.00**	**$7,800.00**	**300%**

An important part of any modification to the current SDFs is the timing of the collection. Based on Franklin County staff feedback, the plan for fee collection is as follows:

Collected at subdivision approval: 25% of the combined SDF
Collected at plat recordation: 75% of the combined SDF

Because development in Franklin County is dynamic and ongoing, consideration must be given to lots that are already approved, under construction, or recorded but not yet pulled a building permit. The new SDF fee will also implement the following policy:

- Any subdivided lot that is part of a subdivision approved prior to July 1, 2018, and the lot ownership has changed from the entity that obtained the subdivision to a different ownership prior to August 1, 2018 shall pay the per bedroom capacity fee under the old fee structure. Payment must be made in full at the time of building permit application.

- Any subdivided lot that is part of a subdivision approved prior to July 1, 2018, and the lot ownership has not changed from the entity that obtained the

subdivision as of August 1, 2018 shall pay the new SDF fee, net any amount of acreage fee already paid per lot. Payment must be made in full at the time of building permit application.

APPENDIX A

HOUSE BILL 436

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-138
HOUSE BILL 436

AN ACT TO PROVIDE FOR UNIFORM AUTHORITY TO IMPLEMENT SYSTEM DEVELOPMENT FEES FOR PUBLIC WATER AND SEWER SYSTEMS IN NORTH CAROLINA AND TO CLARIFY THE APPLICABLE STATUTE OF LIMITATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 162A of the General Statutes is amended by adding a new Article to read:

"Article 8.
"System Development Fees.

"**§ 162A-200. Short title.**

This Article shall be known and may be cited as the "Public Water and Sewer System Development Fee Act."

"**§ 162A-201. Definitions.**

The following definitions apply in this Article:

(1) Capital improvement. – A planned facility or expansion of capacity of an existing facility other than a capital rehabilitation project necessitated by and attributable to new development.

(2) Capital rehabilitation project. – Any repair, maintenance, modernization, upgrade, update, replacement, or correction of deficiencies of a facility, including any expansion or other undertaking to increase the preexisting level of service for existing development.

(3) Existing development. – Land subdivisions, structures, and land uses in existence at the start of the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee.

(4) Facility. – A water supply, treatment, storage, or distribution facility, or a wastewater collection, treatment, or disposal facility, including for reuse or reclamation of water, owned or operated, or to be owned or operated, by a local governmental unit and land associated with such facility.

(5) Local governmental unit. – Any political subdivision of the State that owns or operates a facility, including those owned or operated pursuant to local act of the General Assembly or pursuant to Part 2 of Article 2 of Chapter 130A, Article 15 of Chapter 153A, Article 16 of Chapter 160A, or Articles 1, 4, 5, 5A, or 6 of Chapter 162A of the General Statutes.

(6) New development. – Any of the following occurring after the date a local government begins the written analysis process required by G.S. 162A-205, no more than one year prior to the adoption of a system development fee, which increases the capacity necessary to serve that development:

a. The subdivision of land.

b. The construction, reconstruction, redevelopment, conversion, structural alteration, relocation, or enlargement of any structure which increases the number of service units.

c. Any use or extension of the use of land which increases the number of service units.

(7) Service. – Water or sewer service, or water and sewer service, provided by a local governmental unit.

(8) Service unit. – A unit of measure, typically an equivalent residential unit, calculated in accordance with generally accepted engineering or planning standards.

(9) System development fee. – A charge or assessment for service imposed with respect to new development to fund costs of capital improvements necessitated by and attributable to such new development, to recoup costs of existing facilities which serve such new development, or a combination of those costs, as provided in this Article. The term includes amortized charges, lump-sum charges, and any other fee that functions as described by this definition regardless of terminology. The term does not include any of the following:

a. A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development.

b. Tap or hookup charges for the purpose of reimbursing the local governmental unit for the actual cost of connecting the service unit to the system.

c. Availability charges.

d. Dedication of capital improvements on-site, adjacent, or ancillary to a development absent a written agreement providing for credit or reimbursement to the developer pursuant to G.S. 153A-280, 153A-451, 160A-320, 160A-499 or Part 3A of Article 18, Chapter 153A or Part 3D of Article 19, Chapter 160A of the General Statutes.

e. Reimbursement to the local governmental unit for its expenses in constructing or providing for water or sewer utility capital improvements adjacent or ancillary to the development if the owner or developer has agreed to be financially responsible for such expenses; however, such reimbursement shall be credited to any system development fee charged as set forth in G.S. 162A-207(c).

(10) System development fee analysis. – An analysis meeting the requirements of G.S. 162A-205.

"**§ 162A-202. Reserved.**

"**§ 162A-203. Authorization of system development fee.**

(a) A local governmental unit may adopt a system development fee for water or sewer service only in accordance with the conditions and limitations of this Article.

(b) A system development fee adopted by a local governmental unit under any lawful authority other than this Article and in effect on October 1, 2017, shall be conformed to the requirements of this Article not later than July 1, 2018.

"**§ 162A-204. Reserved.**

"**§ 162A-205. Supporting analysis.**

A system development fee shall be calculated based on a written analysis, which may constitute or be included in a capital improvements plan, that:

(1) Is prepared by a financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.

(2) Documents in reasonable detail the facts and data used in the analysis and their sufficiency and reliability.

(3) Employs generally accepted accounting, engineering, and planning methodologies, including the buy-in, incremental cost or marginal cost, and combined cost methods for each service, setting forth appropriate analysis as to the consideration and selection of a method appropriate to the circumstances and adapted as necessary to satisfy all requirements of this Article.

(4) Documents and demonstrates the reliable application of the methodologies to the facts and data, including all reasoning, analysis, and interim calculations underlying each identifiable component of the system development fee and the aggregate thereof.

(5) Identifies all assumptions and limiting conditions affecting the analysis and demonstrates that they do not materially undermine the reliability of conclusions reached.

(6) Calculates a final system development fee per service unit of new development and includes an equivalency or conversion table for use in determining the fees applicable for various categories of demand.

(7) Covers a planning horizon of not less than 10 years nor more than 20 years.

(8) Is adopted by resolution or ordinance of the local governmental unit in accordance with G.S. 162A-209.

"**§ 162A-206. Reserved.**

"**§ 162A-207. Minimum requirements.**

(a) Maximum. – A system development fee shall not exceed that calculated based on the system development fee analysis.

(b) Revenue Credit. – In applying the incremental cost or marginal cost, or the combined cost, method to calculate a system development fee with respect to water or sewer capital improvements, the system development fee analysis must include as part of that methodology a credit against the projected aggregate cost of water or sewer capital improvements. That credit shall be determined based upon generally accepted calculations and shall reflect a deduction of either the outstanding debt principal or the present value of projected water and sewer revenues received by the local governmental unit for the capital improvements necessitated by and attributable to such new development, anticipated over the course of the planning horizon. In no case shall the credit be less than twenty-five percent (25%) of the aggregate cost of capital improvements.

(c) Construction or Contributions Credit. – In calculating the system development fee with respect to new development, the local governmental unit shall credit the value of costs in excess of the development's proportionate share of connecting facilities required to be oversized for use of others outside of the development. No credit shall be applied, however, for water or sewer capital improvements on-site or to connect new development to water or sewer facilities.

"**§ 162A-208. Reserved.**

"**§ 162A-209. Adoption and periodic review.**

(a) For not less than 45 days prior to considering the adoption of a system development fee analysis, the local governmental unit shall post the analysis on its Web site and solicit and furnish a means to submit written comments, which shall be considered by the preparer of the analysis for possible modifications or revisions.

(b) After expiration of the period for posting, the governing body of the local governmental unit shall conduct a public hearing prior to considering adoption of the analysis with any modifications or revisions.

(c) The local governmental unit shall publish the system development fee in its annual budget or rate plan or ordinance. The local governmental unit shall update the system development fee analysis at least every five years.

"**§ 162A-210. Reserved.**

"**§ 162A-211. Use and administration of revenue.**

(a) Revenue from system development fees calculated using the incremental cost method or marginal cost method, exclusively or as part of the combined cost method, shall be expended only to pay:

(1) Costs of constructing capital improvements including, and limited to, any of the following:

a. Construction contract prices.

b. Surveying and engineering fees.

c. Land acquisition cost.

d. Principal and interest on bonds, notes, or other obligations issued by or on behalf of the local governmental unit to finance any costs for an item listed in sub-subdivisions a. through c. of this subdivision.

(2) Professional fees incurred by the local governmental unit for preparation of the system development fee analysis.

(3) If no capital improvements are planned for construction within five years or the foregoing costs are otherwise paid or provided for, then principal and interest on bonds, notes, or other obligations issued by or on behalf of a local governmental unit to finance the construction or acquisition of existing capital improvements.

(b) Revenue from system development fees calculated using the buy-in method may be expended for previously completed capital improvements for which capacity exists and for capital rehabilitation projects. The basis for the buy-in calculation for previously completed capital improvements shall be determined by using a generally accepted method of valuing the actual or replacement costs of the capital improvement for which the buy-in fee is being collected less depreciation, debt credits, grants, and other generally accepted valuation adjustments.

(c) A local governmental unit may pledge a system development fee as security for the payment of debt service on a bond, note, or other obligation subject to compliance with the foregoing limitations.

(d) System development fee revenues shall be accounted for by means of a capital reserve fund established pursuant to Part 2 of Article 3 of Chapter 159 of the General Statutes and limited as to expenditure of funds in accordance with this section.

"**§ 162A-212. Reserved.**

"**§ 162A-213. Time for collection of system development fees.**

For new development involving the subdivision of land, the system development fee shall be collected by a local governmental unit either at the time of plat recordation or when water or sewer service for the subdivision or other development is committed by the local governmental unit. For all other new development, the local governmental unit shall collect the system development fee at the time of application for connection of the individual unit of development to the service or facilities.

"**§ 162A-214. Reserved.**

"**§ 162A-215. Narrow construction.**

Notwithstanding G.S. 153A-4 and G.S. 160A-4, in any judicial action interpreting this Article, all powers conferred by this Article shall be narrowly construed to ensure that system development fees do not unduly burden new development."

SECTION 2. G.S. 130A-64 reads as rewritten:

"**§ 130A-64. Service charges and rates.**

(a) A sanitary district board shall apply service charges and rates based upon the exact benefits derived. These service charges and rates shall be sufficient to provide funds for the maintenance, adequate depreciation and operation of the work of the district. If reasonable, the service charges and rates may include an amount sufficient to pay the principal and interest maturing on the outstanding bonds and, to the extent not otherwise provided for, bond anticipation notes of the district. Any surplus from operating revenues shall be set aside as a separate fund to be applied to the payment of interest on or to the retirement of bonds or bond anticipation notes. The sanitary district board may modify and adjust these service charges and rates.

(b) The district board may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes."

SECTION 3. G.S. 153A-277 reads as rewritten:

"**§ 153A-277. Authority to fix and enforce rates.**

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished or to be furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county. A county may include a fee relating to subsurface discharge wastewater management systems and services on the property tax bill for the real property where the system for which the fee is imposed is located.

…

(a2) A county may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes.

…."

SECTION 4.(a) G.S. 160A-314 reads as rewritten:

"**§ 160A-314. Authority to fix and enforce rates.**

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished or to be furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

…

(e) A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes."

SECTION 4.(b) G.S. 160A-317 is amended by adding a new subsection to read:

"(a4) System Development Fees. – A city may require system development fees only in accordance with Article 8 of Chapter 162A of the General Statutes."

SECTION 5.(a) G.S. 162A-6(a) is amended by adding a new subdivision to read:

"(9a) To impose and require system development fees only in accordance with Article 8 of this Chapter."

SECTION 5.(b) G.S. 162A-9 is amended by adding a new subsection to read:

"(a5) An authority may require system development fees only in accordance with Article 8 of this Chapter."

SECTION 6.(a) G.S. 162A-36(a) is amended by adding a new subdivision to read:

"(8a) To impose and require system development fees only in accordance with Article 8 of this Chapter."

SECTION 6.(b) G.S. 162A-49 reads as rewritten:

"**§ 162A-49. Rates and charges for services.**

(a) The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of land for the services furnished or to be furnished by any water system or sewerage system or both. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the water system or sewerage system or both, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the water system or the sewerage system or both, the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service.

(b) The district board may require system development fees only in accordance with Article 8 of this Chapter."

SECTION 7.(a) G.S. 162A-69 is amended by adding a new subdivision to read:

"(8a) To impose and require system development fees only in accordance with Article 8 of this Chapter."

SECTION 7.(b) G.S. 162A-72 reads as rewritten:

"**§ 162A-72. Rates and charges for services.**

(a) The district board may fix, and may revise from time to time, rents, rates, fees and other charges for the use of and for the services furnished or to be furnished by any sewerage system. Such rents, rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission, or other agency of the State or of any political subdivision. Any such rents, rates, fees and charges pledged to the payment of revenue bonds of the district shall be fixed and revised so that the revenues of the sewerage system, together with any other available funds, shall be sufficient at all times to pay the cost of maintaining, repairing and operating the sewerage system the revenues of which are pledged to the payment of such revenue bonds, including reserves for such purposes, and to pay the interest on and the principal of such revenue bonds as the same shall become due and payable and to provide reserves therefor. If any such rents, rates, fees and charges are pledged to the payment of any general obligation bonds issued under this Article, such rents, rates, fees and charges shall be fixed and revised so as to comply with the requirements of such pledge. The district board may provide methods for collection of such rents, rates, fees and charges and measures for enforcement of collection thereof, including penalties and the denial or discontinuance of service.

(b) The district board may require system development fees only in accordance with Article 8 of this Chapter."

SECTION 8. G.S. 162A-85.13 is amended by adding a new subsection to read:

"(a1) The district board may require system development fees only in accordance with Article 8 of this Chapter."

SECTION 9. G.S. 162A-88 reads as rewritten:

"**§ 162A-88. District is a municipal corporation.**

(a) The inhabitants of a county water and sewer district created pursuant to this Article are a body corporate and politic by the name specified by the board of commissioners. Under that name they are vested with all the property and rights of property belonging to the corporation; have perpetual succession; may sue and be sued; may contract and be contracted with; may acquire and hold any property, real and personal, devised, sold, or in any manner conveyed, dedicated to, or otherwise acquired by them, and from time to time may hold, invest, sell, or dispose of the same; may have a common seal and alter and renew it at will; may establish, revise and collect rates, fees or other charges and penalties for the use of or the services furnished or to be furnished by any sanitary sewer system, water system or sanitary sewer and water system of the district; and may exercise those powers conferred on them by this Article.

(b) The district board may require system development fees only in accordance with Article 8 of this Chapter."

SECTION 10.(a) G.S. 1-52(15) reads as rewritten:

"(15) For the recovery of taxes paid as provided in ~~G.S. 105-381.~~G.S. 105-381 or for the recovery of an unlawful fee, charge, or exaction collected by a county, municipality, or other unit of local government for water or sewer service or water and sewer service."

SECTION 10.(b) This section is to clarify and not alter G.S. 1-52.

SECTION 11. Sections 1 through 9 of this act become effective October 1, 2017, and apply to system development fees imposed on or after that date. Section 10 of this act, being a clarifying amendment, has retroactive effect and applies to claims accrued or pending prior to and after the date that section becomes law. Nothing in this act provides retroactive authority for any system development fee, or any similar fee for water or sewer services to be furnished, collected by a local governmental unit prior to October 1, 2017. The remainder of this act is effective when it becomes law and applies to claims accrued or pending prior to and after that date.

In the General Assembly read three times and ratified this the 29th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 4:13 p.m. this 20th day of July, 2017

APPENDIX B

SYSTEM MAPS

Franklin County
NORTH CAROLINA
A Research Triangle Region Community

FRANKLIN COUNTY
OVERALL WATER MAP

N
W E
S

Proposed 1,000,000 Gallon Tank

Proposed 12-inch Water Main
Lane Store Road

Proposed 12-inch Water Main
Cedar Creek Road

Proposed 12-inch Water Main
Peach Orchard Road

Proposed 8-inch Water Main
Hill Road

Proposed 500,000 Gallon Tank

Proposed 12-inch Water Main
Holden Road

GRANVILLE

FRANKLIN

WAKE

Legend

- Proposed Water Mains
- Proposed Tanks
- Existing Tanks
- Existing Water Mains
- Streams
- Railroad
- County Boundary

0 0.5 1 2 3 Miles

LKC Engineering Landscape Architecture Planning

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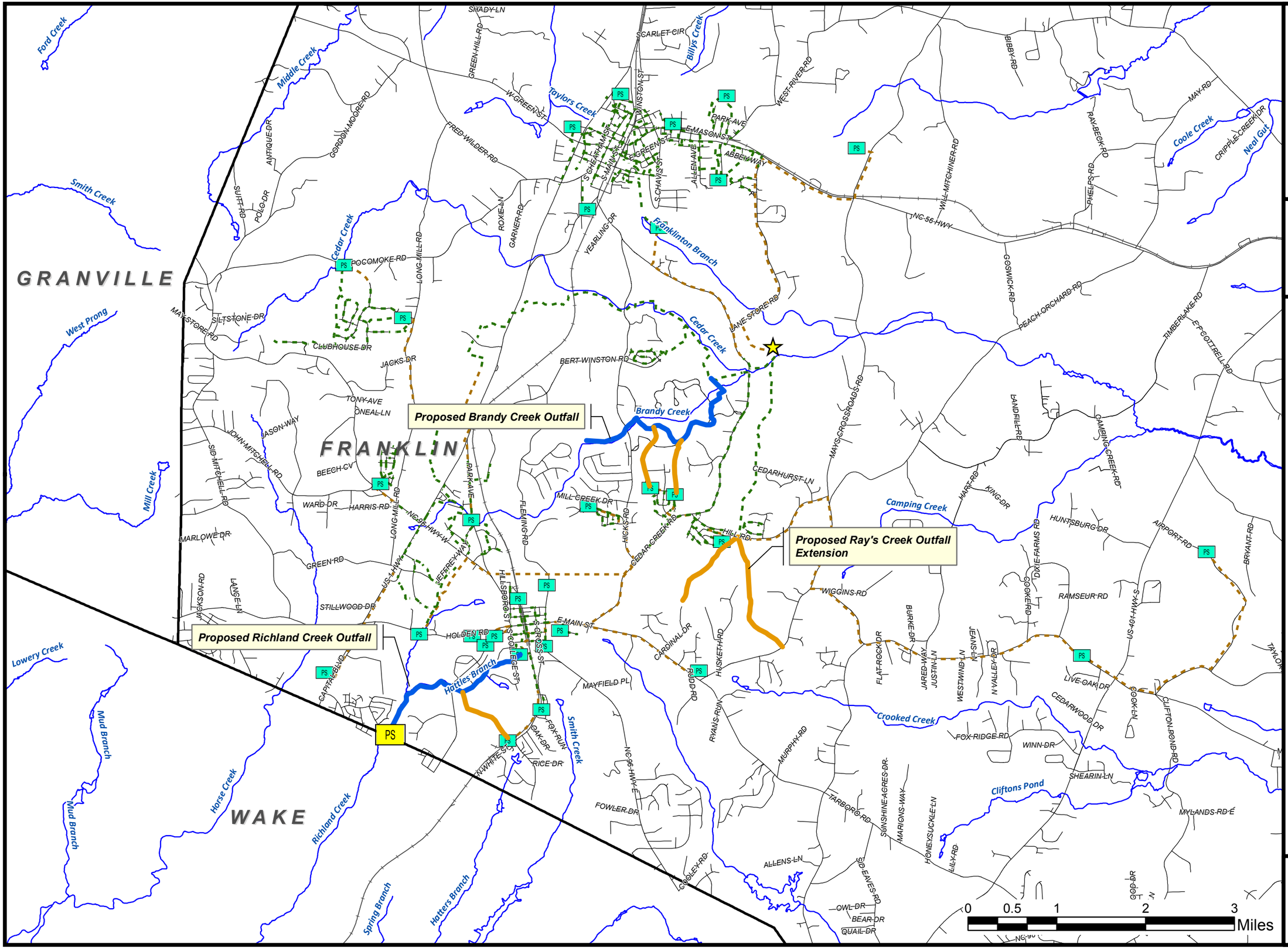

Franklin County
NORTH CAROLINA
A Research Triangle Region Community

FRANKLIN COUNTY OVERALL SEWER MAP

N
W
E
S

Legend

- WWTP
- Proposed Pump Station
- Existing Pump Stations
- Proposed 12-inch Gravity
- Proposed 18-inch Gravity
- Existing Gravity Sewer
- Existing Forcemain
- Streams

LKC Engineering Landscape Architecture Planning

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APPENDIX C

FLOW REDUCTION LETTER FROM AUGUST 2008

Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

August 19, 2008

J. Bryce Mendenhall, Utilities Director
Franklin County Public Utilities
1630 US Highway 1
Youngsville, NC 27596

Subject: Franklin County Public Utilities WWTP
Permit No. NC0069311
Adjusted Daily Sewage Flow Design Rate
Franklin County

Dear Mr. Mendenhall:

On June 11, 2008, the Division of Water Quality (Division) received your request for an adjustment to the daily sewage flow design rates. This adjustment would apply to all Franklin County Public Utilities permitted but not yet tributary connections and all future connections tributary to this facility (with the exception of permits whose flows are tributary to the collection systems of Franklinton and Youngsville) in accordance with 15A NCAC 02T .0114(f). A flow adjustment to 250 gallons per day per residential dwelling was requested. The Division's Raleigh Regional Office reviewed the information provided by you and additional information provided by your consultant to the Raleigh Regional Office dated June 26 and June 27, 2008.

In accordance with 15A NCAC 02T .0114(f)(2), the Raleigh Regional Office has evaluated all the submitted data and considered other factors including weather conditions during the data period of calendar year 2007, DMR monitoring data for this facility and an analysis of flow reduction data for other facilities comparable to the Franklin County WWTP and collection system. Based on the data submitted, the Division hereby approves the use by Franklin County Public Utilities for the collection system described in Permit No. WQCS00179, and the treatment plant described in Permit No. NC0069311, **an adjusted daily sewage design flow rate of 250 gallons per day per single-family dwelling, effective immediately.** This flow reduction shall be applicable to existing permits with flows not yet tributary to the Franklin County collection system and all future permits issued to Franklin County Public Utilities. This flow reduction **SHALL NOT APPLY** to sewer extension permits issued to or tributary to the collection systems of the towns of Youngsville and Franklinton in Franklin County.

In granting this flow reduction, please be advised that the Division will not reissue any outstanding permits made prior to this flow reduction request. If reissued permits are desired, a permit modification request with the appropriate fee must be submitted for each permit to be so modified. Flow allocation and tracking files maintained by the Raleigh Regional Office will be updated for any flow being shown as not yet tributary to the WWTP.

Future sewer extension applications should be made using the reduced flow amounts stated above. All other aspects of the permitting process remain unchanged, and all applications must be in compliance with the statutes, rules, regulations and minimum design criteria as certified by the owner and engineer. Without regard to this or any other flow reduction either requested or granted, **at no time shall the flow to this wastewater treatment facility exceed the limits defined in the NPDES permit for this facility, nor exceed the capacity of the sewers downstream of any new sewer extension or service connection.**

If you have any questions regarding this adjustment to the daily sewage flow design rates, or require any additional information, please contact Barry Herzberg at (919) 791-4249, or by electronic mail to barry.herzberg@ncmail.net.

Sincerely,

S. Daniel Smith

for Coleen H. Sullins, Director
Division of Water Quality

by S. Daniel Smith
Surface Water Quality Supervisor
Raleigh Regional Office

Cc: Franklin County Health Department

RRO SWP, BH

RRO, FCPU Files, NC0069311 & WQCS00179

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