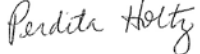


## MEMORANDUM

**Date:** August 28, 2014

**To:** Carrboro Board of Aldermen

**From:** Perdita Holtz, AICP, Orange County Planning Department 

**Subject:** Additional Information about Proposed Amendments to Joint Planning Land Use and Agreement Regarding Agricultural Support Enterprises in the Rural Buffer

---

At the request of Town planning staff and in response to alderperson comments, additional information is being provided to address comments pertaining to the “intensity” of uses and about certain uses proposed as part of the Agricultural Support Enterprises (ASE) proposal.

### **Conditional Zoning**

As was stated during various meetings and in the June 6, 2014 memorandum to the Board of Aldermen, the potential uses proposed to be added to the County’s Unified Development Ordinance (UDO) that seem to be causing the most concern would be permitted in the Rural Buffer only through the conditional zoning process. This process requires public notifications and a public hearing and allows proposed development to be considered on a case-by-case, site specific basis with public input.

The conditional zoning process is legislative in nature (as opposed to quasi-judicial, which is the process used for Special Use Permits). Legislative decisions allow a local government to have more leeway in approving or denying an application and do not require sworn expert testimony, normally administered by an attorney. While both legislative and quasi-judicial processes have pros and cons (which tend to depend on a person’s perspective), the requirement for expert testimony can be a deterrent to both applicants and persons who want to voice concern or opinions about a proposal because of the cost involved in hiring attorneys and expert witnesses. Additionally, the quasi-judicial process allows little discretion among decision makers because if the standards of the ordinance are met, it is very difficult to legally deny an application.

### **Use Intensity**

The ASE proposal was developed with the intention of using a new conditional zoning district (ASE-CZ) as the review/approval process for most of the ASE uses. This decision was made because there is a general acknowledgement that a hypothetical use in the middle of 50 acres may have no impact on surrounding properties while the same use on the edge of a 5 acre parcel could significantly impact neighboring properties. The ability to consider proposals on a case-by-case, site specific basis through the conditional

zoning process is an important component of the ASE program both within the Rural Buffer and for areas outside of the Rural Buffer.

The relative expected “intensity” of uses is somewhat reflected in the permitting process a specific use must go through. It is helpful to keep in mind that some uses can be permitted in more than one way, depending on the method chosen by the applicant. It is also helpful to keep in mind that the ASE-CZ zoning district must include all uses that can be applied for as part of an ASE-CZ application (some applications may include multiple uses).

Bona Fide Farming Activities	Small Scale Rural Ventures	Medium Scale Rural Ventures & Services/Processing in Commercial Zoning Districts	Larger Scale Rural Ventures and Services/Processing Outside of Commercial Zoning Districts
Exempt from zoning regulations	Permitted Outright (with standards)	Either Permitted Outright (with standards) in Commercial or Industrial districts OR Special Use Permit (Class A or B, depending on use) OR rezoning to conditional use district (ASE-CZ)	Either Permitted Outright (with standards) in Commercial or Industrial districts OR Special Use Permit (Class A or B, depending on use) OR rezoning to conditional use district (ASE-CZ)

The perceived intensity of a use is dependent not only on the actual use occurring but also on factors such as size and scale. This is why some uses have standards pertaining to details such as maximum building size limits, limits on hours of operation, and minimum lot size requirements. For uses that do not have such standards enumerated, the conditional zoning process allows for limits to be placed on operations on a case-by-case basis.

Lastly, other development requirements in the UDO have the effect of limiting or mitigating intensity. For example, impervious surface limits (administered on a watershed basis) affect use intensity in the County’s planning jurisdiction. Buffer (both stream and land use [e.g., perimeter]) and tree protection requirements are also in place to mitigate impacts of development. The Rural Buffer contains portions of two watersheds: University Lake and Jordan Lake (which has “protected” and “unprotected” areas) (see attached watershed map).

The County's UDO allows a maximum impervious surface of 6% in the University Lake watershed (with a sliding scale, based on lot size, in effect for parcels that existed prior to 4/2/90; the sliding scale actually requires less impervious surface for lots larger than 5 acres – a 5% impervious surface ratio applies to lots larger than 6 acres in size if the lot existed prior to 4/2/90). To illustrate, a 6% impervious surface limit on a 5 acre parcel equates to a maximum of 13,068 square feet of allowable impervious surface (building footprints, parking areas, and driveways). The Jordan Lake (protected) watershed has an impervious surface limit of 24%.

In terms of land use buffer requirements, an ASE-CZ district located next to a parcel zoned RB (Rural Buffer) would be required to provide a Type "D" buffer which is a 50-foot buffer along the perimeter of the parcel with four options for tree/vegetation requirements. Some uses require a larger buffer as part of the use-specific standards. A 30-foot vegetated buffer is required along roadways.

The County's stream buffer requirements are based on the slope of the property and the type of groundcover (grass vs. woods). Stream buffers are measured from the edge of floodplain (if one has been delineated) or stream bank (e.g., not the centerline of the stream). Minimum required stream buffer widths range from 65- to 80-feet (on each side of the stream, 130- to 160-feet total), depending on slope calculations. The requirements also contain some nuances in the University Lake watershed that often result in much wider minimum stream buffer widths.

### **Additional Information on Certain Uses**

County staff was asked to provide additional information on certain proposed ASE-CZ uses. Particulars about the request were communicated during a staff meeting and information below pertains only to the additional requested information. It should also be noted that during the decade+ long development of the ASE program, there was sentiment among the rural/farming community that property owners should be able to apply for uses and go through the review process rather than be told certain uses simply are not allowed under any circumstances. Sentiment along these lines is partially due to the idea that there may be areas throughout the county where a use can be appropriately accommodated and there should be a process (conditional zoning) by which a specific site can be evaluated.

### ***Agricultural Processing Facility***

An agricultural processing facility could potentially have several activities (see definition of the use). An example of this type of use in Orange County (although within the Town of Hillsborough's planning jurisdiction) is the Piedmont Food & Ag Processing Center (PFAP). The PFAP is a food business incubator that enables entrepreneurs in the food industry – from farmers to restaurateurs – to produce value-added foods and farm products for wholesale and retail markets. The PFAP is a joint project of Alamance, Chatham, Durham, and Orange Counties, with Orange County acting as the fiscal agent

during the establishment phase, as well as the home location of the center. PFAP is in the process of transitioning to a Non-Profit 501(c)(3).

The concern about this use seems to be the potential size and scale. Since this use would be allowed in the Rural Buffer only with an ASE-CZ conditional zoning district, these types of details would be considered during the conditional zoning process. If the desire is for limits to be included in the use-specific standards, standards can be suggested that would be applicable to the Rural Buffer.

### ***Agricultural Service Uses***

This has been an existing use category in the UDO for at least 2 decades. It has served as a “catch-all” for the types of uses described in the definition. It is included as a potential use in the ASE-CZ primarily to accommodate any potential applications that may be made for properties that already contain an agricultural service use (e.g., adding additional uses to a property) and to continue to be used as a “catch-all” for uses that fit the definition.

This type of use would be allowed in the Rural Buffer only through the ASE-CZ conditional zoning process where conditions can be applied during the review process if necessary. If there is a desire for use-specific standards that would apply only to ASE-CZ application in the Rural Buffer, such standards can be added.

### ***Cold Storage Facility***

The concern regarding this potential use is unclear. A cold storage warehouse is a necessary part of food production and all farms have some method of storing products in a cooler or refrigerator. It is being suggested as a stand-alone use because there may be interest in providing a cold storage facility to farmers in a centralized location. Additionally, it needs to be listed as a potential use in the ASE-CZ to accommodate any projects with multiple uses.

This type of use would be allowed in the Rural Buffer only through the ASE-CZ conditional zoning process where conditions can be applied during the review process if necessary. If there is a desire for use-specific standards that would apply only to ASE-CZ application in the Rural Buffer, such standards can be added.

### ***Farm Equipment Rental, Sales & Service***

This type of use has historically been accommodated in rural and semi-rural areas since it directly serves the farming community and minimizes the distance farmers must travel to obtain these types of services.

This use would be allowed in the Rural Buffer only through the ASE-CZ conditional zoning process where conditions can be applied during the review process if necessary. If there is a desire for use-specific standards that would apply only to ASE-CZ application in the Rural Buffer, such standards can be added.

### ***Non-Farm Use of Farm Equipment***

There seems to be confusion about what this use is. It is the use of farming equipment for commercial (non-farming) purposes. Examples include operating a grading service or a landscaping service using the farm equipment that is normally used for bona fide farming purposes. The definition's intent is to show that any equipment being used in this manner is normally used on a bona fide farm.

### ***Rural Guest Establishment: Country Inn***

It is unclear what the concern about this use is. This use is a bed-and-breakfast type of business that has between 4 and 24 rooms and can also contain a restaurant that has no more than 60 seats. If the concern is the size or scale, other limits can be suggested that would be applicable to the Rural Buffer.

### ***Microbrewery with Major Events & Winery Major Events***

The concern about these uses seems to be the potential number of event attendees (more than 150 people). Keeping in mind that events with more than 150 people at one time can occur no more frequently than 12 times per year, that some large weddings can have more guests than this, and that an upper limit can be added as a condition as part of the conditional zoning process, if there is concern that no conclusive upper limit is included in the use-specific standards, a limit can be suggested that would be applicable to the Rural Buffer.

### ***Storage of Goods, Outdoor***

Some outdoor storage of goods is normally considered an accessory use to many uses. It is included as a stand-alone category in the ASE-CZ to accommodate any multi-use applications that include a significant amount of outdoor storage (an amount that would exceed the usual and customary amount considered an accessory use). Evaluation and mitigation of any impacts would occur during the conditional zoning review process.

### ***Veterinary Hospitals***

In the ASE-CZ zoning district, there is a clear use-specific standard that this use is intended primarily for large animal (e.g., farm animals) facilities. Having a veterinary hospital available for farm animals would appear to be a largely rural activity. If there are concerns about allowing this type of use in the Rural Buffer because the use-specific standards do not address a specific concern, additional standards can be suggested that would be applicable to the Rural Buffer.

### ***Veterinary Clinic***

There is a clear use-specific standard that this use is intended primarily for large animal (e.g., farm animals) facilities in most areas of the county. Language can be added that would make a clear that concept also applies to the Rural Buffer. Having a veterinary clinic that serves primarily large animals would appear to be a largely rural activity. If there are concerns about allowing this type of use in the Rural Buffer because the use-specific standards do not address a specific concern, additional standards can be suggested that would be applicable to the Rural Buffer.

### ***Guest Ranch***

The concern about guest ranches appears to be related to capacity. One of the current standards requires a minimum lot size of 25 acres and this use can be permitted only through the conditional zoning process. Additional standards can be suggested that would be applicable to the Rural Buffer.

### ***Assembly Facility (both > and < 300 Occupants)***

Assembly facility refers to an assembly of people, not a manufacturing facility. This type of use has existed in the County's regulations since the County adopted zoning. There is not a definition of the use but conclusions can be drawn as to what it is not since other assembly-type uses are specifically listed in the UDO. It is not a church, camp/retreat center, or club/lodge (social/fraternal/union). This use type serves as a "catch-all" for facilities that are not defined elsewhere in the UDO. It is included as a potential ASE-CZ use so that it may continue to serve as a "catch-all". It should be noted that churches and clubs/lodges are currently permitted outright in the Rural Buffer while camps/retreat centers are permitted with a Class B special use permit.

### ***Master Planned Development Conditional Zoning District***

The MPD-CZ (Master Planned Development) zoning district is not applicable to the Rural Buffer. It is applicable only to "Transition" land use categories and Rural Community Nodes, as defined and shown in the County's Comprehensive Plan.

### **Limiting ASE Uses Only to Bona Fide Farms**

The Town's attorney has suggested that it would be possible to limit ASE uses only to bona fide farms. Taking this tact might be problematic because bona fide farms currently enjoy Present Use Value (PUV) taxation and the addition of an ASE use to a bona fide farm will likely result in PUV taxation being lost for the portion of a farm that contains the use. This is because ASE uses are not considered bona fide farming activities (if they were, they would be exempt from zoning regulations). It is likely that portions of farms

that contain an ASE use will be subdivided from the bona fide farm so that the farmed portion of the property can continue in the PUV taxation program.

If there were a requirement that ASE uses could be located only on bona fide farms, the new parcel that would contain the ASE use would no longer be located on a bona fide farm and so it would be out of compliance with the ordinance (e.g. it would be made a non-conforming use).

Additionally, some of the ASE uses pertain to providing a “rural infrastructure” and a farmer may or may not be the proprietor of the business. Examples of these “rural infrastructure” uses are Farm Equipment Rental, Sales, and Service; Farm Supply Store; Feed Mill; Veterinary Hospitals; and Veterinary Clinics.

To conclude, the conditional zoning process was proposed as the optimal way to review proposed ASE uses because the process allows meaningful public participation and allows proposed projects to be considered on a case-by-case basis with the opportunity to apply mutually agreed-upon conditions that would mitigate concerns/impacts to an approval. The legislative nature of conditional zoning allows for more discretion among decision makers (elected officials) than the quasi-judicial special use permit process. I will attend the Board of Aldermen work session on September 9<sup>th</sup> to address any questions the Aldermen have.