COMMITTEE AGENDA TOPICS

I. **Subject:** **Revision to Post Construction Controls Ordinance**
Action: A motion was approved to forward staff's recommendation to the full Council, passed 3 – 2 (Howard, Burgess, Dulin – for and Peacock, Carter – against)

COMMITTEE INFORMATION

Present: Edwin Peacock, Nancy Carter, Jason Burgess, Andy Dulin and David Howard
Time: 4:20 p.m. to 5:05 p.m.

ATTACHMENTS

1. Agenda Package
2. PCCO Presentation

DISCUSSION HIGHLIGHTS

Committee Discussion:

Committee Chair Edwin Peacock welcomed everyone to the meeting and asked those around the table to introduce themselves. He then turned the meeting over to Assistant City Manager Julie Burch.

I. Revision to Post Construction Controls Ordinance

Ms. Burch said the Committee is asked to reconsider the removal of natural area requirements from the Post Construction Controls Ordinance (PCCO) as the Council referred this back to Committee. Staff is ready to do an extremely brief presentation to kind of kick start this or we can just talk through it.

Burgess: First of all, I want to apologize to everybody here because I don't think we would be here if it wasn't for that emergency I had last meeting. I think I have a pretty good understanding of what the issue is. I'm happy to listen to another presentation or happy to vote.

Carter: There is a proposal for decision tonight about the text amendment to the Tree Ordinance affecting single family residences on the Zoning agenda and I'm wondering

are we really compiling an assault on the Tree Ordinance? I have a real concern.
Peacock: Which item again?

Carter: It is Item 19.

Peacock: For decision or a hearing?

Carter: It is for a decision tonight.

Karen Weatherly: This has to do with 2195(c) where there is a zoning of R-3 or R-8, about 5 feet for a side yard, however it can be reduced under the current ordinance to 3 feet. This is to remove that for safety issues so that Fire and Police can come through. There was an incentive before to have the trees saved so you would reduce it to 3 feet and now this is going to take that out so it can stay at 5 feet. It is really not about tree save as much as it is about keeping it at 5 feet so Fire and Police can get through.

Mr. Blackwell then reviewed the "Proposed Revision to Post Construction Controls Ordinance (Natural Area)" presentation (copy attached). Mr. Blackwell discussed the reasoning behind staff's recommendation to remove the natural area requirement in PCCO and also reviewed the impacted areas. He then asked if he could answer any questions.

Howard: (Referencing the map on slide 4) In those areas that are red, how much of the property do they have to develop before the Tree Ordinance would become the more restrictive ordinance? So, what happens if it is a 4-acre site you just did in the transit corridor?

Blackwell: If it is a 4-acre site and he said I'm developing the whole thing, the Tree Ordinance would be more protective and he would be subject to the Tree Ordinance. However, if on that 4-acre site he was only developing less than .24%, the .24% or less would be impervious, either parking or building, then the PCCO would say you have to have a 25% tree save, but he showed developing over half of the site, then the Tree Ordinance would be the more protective ordinance.

Howard: If I build less than a quarter of an acre then the PCCO is the more prohibitive ordinance?

Blackwell: Correct.

Howard: If I do more than that?

Hammock: If you go between 24% and 50% developed, there is a marginal difference, 17.5% of trees, medium density, where the Tree Ordinance would require 10%. The PCCO is still more stringent in that case, which is what the slide shows.

Burgess: Let me make sure I understand this. The definition of low and medium density

is how many units per acre?

Blackwell: No, not number of units, it is what percentage of the site they will be covering, developed with impervious like parking or building.

Burgess: Low density is less than 24% impervious, medium density is 24% to 50%, and high density is above 50%.

Blackwell: Which is why we when we talked about this before, what I described is, somebody who is developing only .24% of the site, the whole rest of the site is bare unless it is going to be undeveloped otherwise or his density wouldn't be that low. We don't tend to have a problem with trees because there are usually a lot of trees on the sites anyway, which is why we end up in the wedges with such high tree cover because that area is undeveloped. By definition that much of your site is not developed so that is why we feel there is not that much impact on tree canopy, it is regulating something that is often not touched anyway.

Hammock: This map shows approximately 10,000 acres of low density and medium density single family residential property.

Blackwell: It is assumed that they are all developing at that low density. We looked at the last year we were busy and we pulled 11 subdivisions and only one subdivision developed at that low density. Most of this would probably develop at a higher density anyway, but if they did develop at that low density some portion of these would have that higher requirement.

Hammock: That 10,000 acres you see there in red, the PCCO would effectively apply to about 1,050 acres of the 10,000 and that is where we get the .4% of the city would fall under that extra protection area.

Howard: Back to the rezoning issue that Ms. Weatherly explained, right now if you save extra trees on your property you can reduce your side yards between houses to 3 feet. That is something that we are dealing with anyway because we don't want the 3 feet. We want more space between houses. You can't save more trees and then make your houses closer together. I think that is what I'm reading in that.

Carter: The trees are the incentive and it really doesn't really matter if you put that 3 feet in there.

Howard: I don't mean this the wrong way but REBIC would be more against this than the environmental people because they want to get the houses closer together. We are actually saying we want the lots to be a little wider.

Burgess: Or the houses to be smaller so you can get between them.

Carter: How much of that land space is in an area where streams and water are polluted?

Blackwell: All of our streams are impaired.
Carter: How many of those streams are water sources for our citizens?
Hammock: There is small portion of the far left corner of the city that drains to the city's water supply. It is a very small portion of the city, maybe 5% or less.

Carter: How much of the water that flows to South Carolina from us, in other words as it flows south, how much of that provides their water source from the polluted streams?

Hammock: About 50% of the white area (referencing the map) drains directly into South Carolina. About 23% of the white area drains west into Lake Wylie before going into South Carolina.

Carter: So Lake Wylie is a source of water for who?

Hammock: For some folks in South Carolina, that is right. So ultimately about 77% of the water in Charlotte goes into South Carolina. I think the Yadkin eventually makes it way to South Carolina.

Carter: What I'm angling for is water sources and the river is a main source for South Carolina. We've already been in Supreme Court in one case for water and the prediction at the NLC is that there will be increasing suits over the water supply and water quality. I'm really concerned about how we treat our streams. I'm really concerned that perhaps that tie between tree canopy and our streams is not as graphic. I lost one battle so this is looking simply at tree canopy, saving it in those darken areas and those darkened areas are the ones that are under question.

Blackwell: They would have the potential to have the lower density levels.

Carter: I'm looking at an area where those streams are less polluted than the ones toward the center. You say these areas are possibly 10,000 acres, correct?

Hammock: 10,000 acres or so in red, but by removing the natural requirement it will only affect about 1,000 acres.

Carter: It would be .4% of 1,050?

Hammock: It would be .4% of the City ETJ. 1,000 acres is about .4% of the 380 miles of the city.

Carter: So, it would be 4-acres of trees gone?

Blackwell: Assuming that everybody removed every tree that they could, that wasn't protected by the ordinance. Again, our experience in the wedges is that our canopy is in the range of 60%. Typically, these areas without that regulation are getting more than the canopy they mandate be protected. That is why it is difficult to say they would be lost

because in these wedges, as you will recall from our tree canopy study we are normally running 60% or better canopy. Residential areas tend to have high tree canopy just because move in, they've got a house and they plant trees so we could regulate and make certain that they don't get those trees, but we are not sure there is a significant increment by us mandating it compared to what we are getting anyway.

Burgess: I think her question is if you are going from 25% to 10% then that is 15% difference so how many trees are we talking about? We are talking about 15 percentage points of 1,050, so multiply 1,050 by .15.

Hammock: I think we figured out the other day that there is about 600 acres and the difference between the PCCO and the Tree Ordinance is 15% and you apply that to 10,000 acres, you get about 600 acres of trees, worst case scenario.

Carter: You are saying that we could lose 600 acres of trees? Those were acres that did not have the incentive and now since we are spreading incentives everywhere they can develop however.

Dulin: I make a motion that the Committee vote affirmative, yes, to the revision of the Post Construction Control Ordinance, hereby taking out a small portion and making things simpler and more efficient and knowing that the Tree Ordinance that we just passed will cover these issues.

Burgess: Seconded the motion.

Howard: Chairman, I would like to understand where you are on this. I explained where I was so is there any input that you could give us how you feel about it?

Peacock: My input is that my vote remains where I was before. I'm not changing anything that I've previously changed.

Burgess: I know there were stakeholders that were involved in this PCCO and there were also many stakeholders involved in the Tree Ordinance and the Tree Ordinance is designed to take care of trees and the PCCO is designed for water runoff. Staff has told us that the trees covered does not help the runoff so for me it seems that even though the PCCO is more protective of trees, it wasn't the job of PCCO to take care of trees, that is the Tree Ordinance so that is why it is somewhat simple for me.

Howard: I'm struggling a little bit because I'd like to send back a stronger message to Council. I think a lot of what happened the other night was because it was not strong. I have a concern that this is kind of coming off as, if you vote for this you are against trees and the environment in some kind of way. That bothers me a lot because I don't think that is the case whatsoever. It does concern me that we are talking about losing anything. I hear in a city of our size, two trees is a lot of trees and I get that from my colleagues. I still don't know how I want to vote.

Peacock: I'll echo your sentiments on that. Staff, I don't know if I were to redo this all over again, I don't know where everything became about Item 1 and 2, it seems like we had very little discussion about Item 3 and 4. Council member Cooksey did make the point on that the other evening and he actually went through a series of questions where he asked you Jeb, what would happen to the variance process and how it would go through storm water as well as the Tree Advisory Committee. I can't recall exactly what his point was, but he was really arguing to the fact that very similar to what staff has argued, that this should really be treated like Item 3 and 4. I don't know where in the process, and I guess probably we have to go back to June, to where we had such immediate reactions and we had a 9-0 vote from the Tree Advisory Committee to be so opposed to this. Do you all have any comments to that as to why Tree Advisory Committee would be so against this? I think this is what drew the Mayor to be a little perplexed by the fact that we have these two citizen's advisory groups and immediately reacting as if this has been something that has been a diabolic scheme of some type. I've said multiple times that this has not been driven by one project or one development scenario and in fact, we've had very little commentary, if any, from REBIC, all the way to the point of that public hearing.

Hammock: I did meet with Tree Advisory in June and the Tree Advisory Commission spent very little time discussing this. There were no handouts and very little discussion. The discussion centered around us reducing tree save from 25% to 10% and that is bad and that was the end of it. The meeting ended and there was a 9-0 vote.

Peacock: When they boil it down to something being that simple what would have been your answer to the Tree Advisory Commission that would have persuaded them to maybe think through it, possibly the way that we are hearing about today? This is the reason why this is an imperfect process, primarily because what we are talking about is very small minor components to this that were a byproduct of the stakeholders committee. We know that the stakeholders committee left a lot of angst and those that served on it primarily because it took so long and it actually led to a referral to Restructuring Government to see how we can improve stakeholder's process. We got lots of vocal comments about improving that so I think if anything I'm hearing a reaction from maybe the Tree Advisory like you are getting is that we can't believe you are actually bringing this up and wanting to change it so soon. There has to be some type of motive or we have to be able to attribute it to something. I don't know if you all spoke to the counter of that. That is really going to what Mr. Howard is saying. He is saying he sees the streamlining here, Dr. Burgess sees that, Cooksey sees that as well. I think what put the Mayor at the halts was why did it come out of committee 2-2 and why is the Citizens' Advisory Committee both voting against this.

Burgess: I don't know the makeup of the Tree Advisory Committee but what do you think they are going to say? They don't have all sides looking at it. They are trying to save trees so what would you choose if you were them? Is that really representative of what is really best for the community?

Peacock: At the same point, Dr. Burgess, we've got point 3 and point 4 which are

looking out for trees, which are also technical in their nature.

Hammock: One actually protects trees and #3 I think required buffers which protects trees along creeks. The fourth change was clerical.

Howard: On the part that they said reducing trees is a bad thing, really we are just reducing them in red areas, we are not reducing it overall?

Hammock: The red areas on the map I showed earlier are the areas that are potentially affected by the change, meaning that those folks would actually have to cut down a lot of trees and turn that forested area into a field.

Howard: We will still have tree save, they just don't have enough. They don't have an open space requirement. Right now you have tree save and the additional open space requirement, so we are not reducing tree save across the city.

Hammock: We are just reducing the natural area requirement in low density developments.

Carter: If you look at the areas that are going to be impacted, these are again areas that have economic development challenges, they are some of the distressed areas and I am concerned that once again we are going to reduce a quality of life component when we take out even 60 acres of trees. Sixty acres of trees is really impressive. That is the minimum impact, 600 is the maximum.

Blackwell: Most residentially zoned areas have a generous tree canopy without us regulating it. If you recall the tree study, our wedges are 60%. We don't regulate that, but people plant trees where they live.

Carter: I can show you acreage on the east side that has been clear-cut and I can show you a lot of them. I can show you where the impact will be.

Howard: I think what this map shows more than anything is where there is vacant land. It is just saying south Charlotte is being developed. I'm just telling you how I interpret the map. If you go out in the county there is much less dense land.

Chairman Peacock asked for the vote to be taken on the motion. Motion passed 3-2 with Burgess, Dulin, Howard – for and Peacock and Carter – against.

Peacock: Council member Cannon and I had a brief conversation with the Mayor on Saturday and tonight we need an 11-0 vote in order to put it on the agenda.

Burch: Our understanding was that we would put the Committee's recommendation on the November 14 Business Agenda.

Peacock: So that is after the election, Council on its way out, so if the Mayor were to

veto at that meeting?

Burch: If he were to veto on the 14th it would come back on November 21st Zoning meeting, your next scheduled meeting. **

Peacock: I just wanted the Committee to hear how that would work.
Dulin: Why don't we just vote on it tonight?

Peacock: That is what I was saying. There is the possibility that we, as a body, could put it on the agenda and we can talk with the Mayor before the Zoning Meeting tonight.

Chairman Peacock adjourned the meeting at 5:05 p.m.

*** There is no November 21 Zoning meeting. November Zoning business will be combined with the regular agenda of November 14.*

Environment Committee

Monday, October 17, 2011 at 4:15 p.m.
Charlotte-Mecklenburg Government Center
Room 280

Committee Members:	Edwin Peacock, Chair Nancy Carter, Vice Chair Jason Burgess Andy Dulin David Howard
Staff Resources:	Julie Burch

AGENDA

I. <u>Revision to Post Construction Controls Ordinance</u>
Staff Resources: Jeb Blackwell & Daryl Hammock

On October 10, the City Council referred the proposed revision regarding "removal of natural area" from the PCCO language to the Environment Committee for reconsideration and recommendation.
<u>Attached:</u> 1. Summary of staff recommendation

Distribution:	Mayor/City Council Mac McCarley	Curt Walton, City Manager Stephanie Kelly	Leadership Team Environmental Cabinet

Follow-up to October 10, 2011 Council meeting on Revisions to the Post Construction Controls Ordinance (PCCO) – Natural Area referral back to Committee

E&PM Staff: Jeb Blackwell, Daryl Hammock

At the October 10 Council business meeting, staff's request to remove natural area requirements from the PCCO was referred back to the Environment Committee. The goal of staff's recommended revision is to streamline and simplify regulation of trees while not having a detrimental effect on trees or water quality.

Municipalities are Federally-required to enact a Post Construction Controls Ordinance (PCCO), whose purpose is to minimize the effects paved surfaces have on stream/lake water quality. The goal of the Tree Ordinance is to protect and grow the tree canopy.

Recommendation: Remove Language in PCCO regarding Natural Area

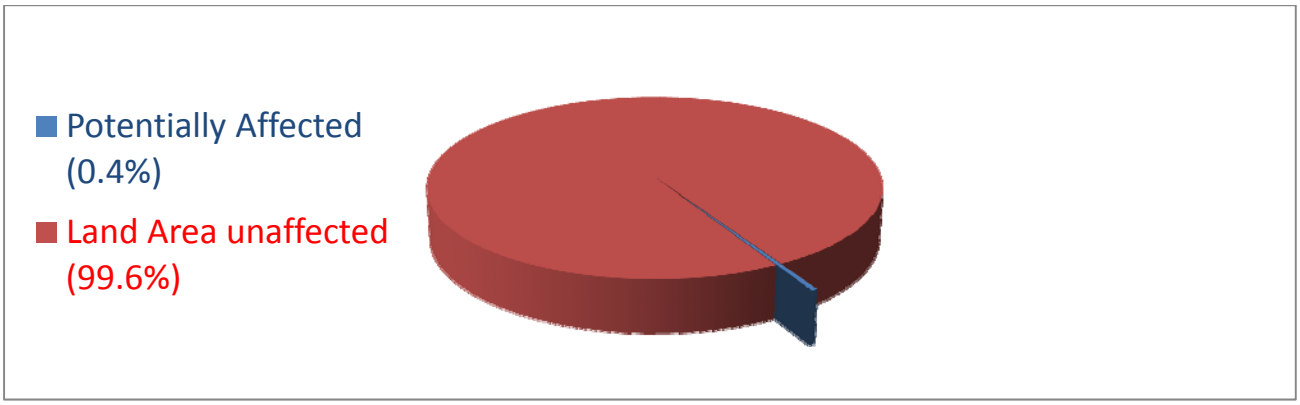
During the tree ordinance stakeholder process, City staff informed the stakeholder committee that the natural area requirements in PCCO would need to be relooked at sometime in the future. Staff proposes to remove language related to natural area requirements (tree protection) from the PCCO to:

- Streamline the administration of tree requirements.
- Eliminate duplicative and conflicting requirements, including the possibility of a variance hearing by two Committees.

Based on item-by-item comparison of PCCO natural area requirements and the Tree Ordinance (TO) protection requirements, staff concluded in most cases the TO is more protective of trees than the PCCO. There are two cases where the PCCO may be more restrictive of trees, one of which is in low density subdivisions.

A concern cited during the comment process about the removal of natural area requirements is a reduction of tree protection from 25% to 10% in single family subdivisions. While this would occur, the effect on the tree canopy is minimal since the PCCO requirement for 25% tree save is rarely invoked. Based on development plan approvals for 2007 and built-upon-area data derived from a sample of built-out subdivisions, staff estimates the impact of the natural area upon low density single family subdivisions results in an additional natural area of only 0.4 acres for every 100 acres developed.

The chart below shows treed land *potentially* affected by a removal of the natural area requirement.



Note that the 25% natural area (tree save) requirement only applies to developments that are *already* at least 76% grass and trees. These types of low density development patterns are not prevalent in Charlotte, and the 25% requirement does little to improve environmental protection on these sites.

The Role of Trees in the Post Construction Controls Ordinance

The Tree Ordinance provides a tree protection mechanism and is part of the zoning ordinance. The zoning ordinance is the best place to stipulate land use decisions, including how much of a site must remain treed.

In protecting water quality, it is important to note how trees do, and do not, impact watershed health. When a site develops with impervious area, runoff is directed into stormwater detention and filtration devices. The portion of the site covered with trees or grass does not generate excess runoff to be collected and cleaned by these devices, thereby reducing the size and cost of stormwater controls. However trees do not provide direct stormwater control through filtering, detaining or reducing runoff from paved surfaces. No runoff control devices in the local design manual use trees to achieve ordinance objectives. Trees are not an effective or economical way to address runoff challenges. The PCCO addresses problems caused by runoff and the removal of a Natural Area requirement will not impact water quality.

True Water Quality Protection Remains Unchanged

Trees along creeks will continue to be regulated by the PCCO, and do provide important water quality benefits to the stream corridor, including shade, stream habitat, dense roots that help hold the banks and controlling runoff velocity to prevent scour.

Values Balanced

Community Value	**Effect of Removing Natural Area Requirement**
Environmental Protection	This change will not have a measureable impact on the environment or tree canopy
Flexibility and Predictability	Streamlines the process
Deliver services that provide value and are competitive in cost and value	Will reduce staff time and cost

Citizen Committee Input

<u>Stormwater Advisory Committee</u>

At their August 18 2011 meeting, SWAC voted 5-2 *against* removal of natural area requirements from the PCCO. Primary concern raised was that this change could have a negative effect on tree canopy. Interest was voiced for a consolidation of both sets of rules under the Tree Ordinance that would streamline the process while addressing concerns over tree canopy.

<u>Tree Advisory Committee</u>

The Charlotte Tree Advisory Commission (CTAC) has also voted unanimously to oppose the removal of natural area requirements from the PCCO.

CHARLOTTE

ENGINEERING & PROPERTY MANAGEMENT

Proposed Revision to Post Construction Controls Ordinance (Natural Area)

Environment Committee

October 17, 2011

Removal of Natural Area Requirements from PCCO

Staff proposes to remove language related to Natural Area from the PCCO because:

- Streamline the administration of tree save requirements
- Eliminate duplicative and conflicting requirements, including the possibility of a variance hearing by two Committees
- Trees in stream buffers are still protected

CITY OF CHARLOTTE

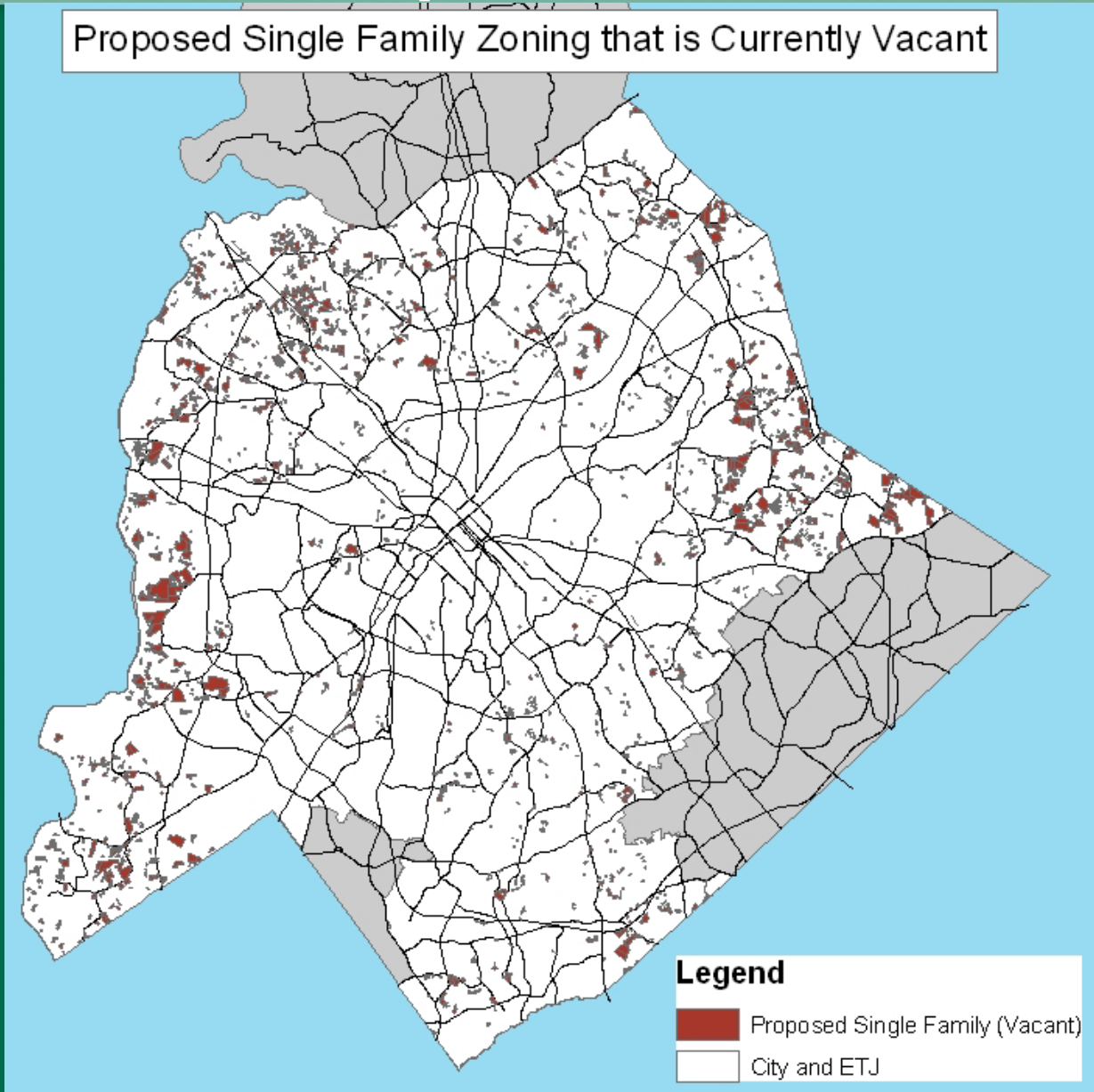
Removal of Natural Area Requirements from PCCO

Both ordinances provide similar protection, with PCCO providing little, if any extra protection for trees

Development Type	Governing Ordinance
Redevelopment, Commercial/Multi-family, Industrial, High Density Single Family, and the Distressed Business District	Tree Ordinance
Low and Medium Density Single Family (> 50% green space) and some site expansions	PCCO
Transit Station Areas (UMUD)	No tree save

CITY OF CHARLOTTE

Removal of Natural Area Requirements from PCCO



Balance of City Values and Goals

Community Value / Goal	Effect of Removing Natural Area Requirement
Environmental Protection	This change will not have a measureable impact on water quality or tree canopy
Flexibility and Predictability	This change streamlines the process
Deliver services that provide value and are competitive in cost and value.	Will reduce staff time and cost

Advisory Committee Votes – Natural Area

- The Storm Water Advisory Committee voted 5-2 against the removal of Natural Area from PCCO
- The Charlotte Tree Advisory Committee voted unanimously against the removal of Natural Area requirements from the PCCO.
- The Environment Committee voted 2-2 on September 26 on the removal of natural area requirements