

**STATE OF NORTH CAROLINA**

**AGREEMENT**

**COUNTY OF ROCKINGHAM**

This Agreement is entered into and effective this \_\_\_\_ day of July, 2015, between the City of Eden, a North Carolina municipal corporation (“City of Eden” or “City”), and Duke Energy Carolinas, LLC (“Duke”), a North Carolina limited liability company (the “Parties”).

**ARTICLE 1  
RECITALS**

1.1 On February 2, 2014, Duke experienced a release of coal combustion residuals (“coal ash”) from a surface impoundment located upon the premises of its Dan River Facility in Rockingham County, PN 141506 (the “Dan River Facility”).

1.2 On August 20, 2014, the North Carolina General Assembly enacted the Coal Ash Management Act (“Act”). Among other things, the Act required Duke to remove all coal ash from the Dan River surface impoundment no later than August 1, 2019 for safe storage in a permitted landfill or for beneficial use as allowed by the Act.

1.3 On July 29, 2014, Duke entered into an option to purchase two tracts, one of which adjoins its Dan River Facility, for the construction of a landfill in which a portion of the Dan River Facility’s coal ash could be stored. These tracts were owned by Hopkins, LLC and generally described as Hopkins West, PN 110532 (approximately 217 acres) and Hopkins East, PN 110587 (approximately 208 acres) (referred to individually as “Hopkins West” and “Hopkins East” and collectively as the “Hopkins Tracts”). Both tracts lie within the City of Eden’s extraterritorial jurisdiction. On June 4, 2015, after exercising its option, Duke purchased the Hopkins Tracts.

1.4 Prior to January 15, 2015, the City of Eden Zoning Ordinance prohibited landfills within its zoning jurisdiction. On January 15, 2015, the City of Eden amended its zoning ordinance to allow landfills as a permitted use in a new Industrial 3 zoning district subject to satisfactory approval of a special use permit. Applicants for a coal ash landfill were also required to submit (a) an Economic Impact Mitigation Plan if the proposed landfill site was located in an area designated as an employment center in the City’s Land Development Plan, and (b) a Neighborhood Revitalization Plan if the site adjoined a neighborhood that met certain indicia related to poverty and poor physical condition of homes.

1.5 Duke contests and the City defends the validity of the January 15, 2015 Zoning Ordinance amendments under the provisions of the Act related to local zoning ordinances.

1.6 The City of Eden, upon due consideration and discussion of its City Council, believes that it can further amend its zoning ordinance to enable the construction of a coal ash landfill on the premises of Duke’s Dan River Facility near the existing basins, which further amendment could serve its citizens in a manner that is equal to or better than the results to be achieved through certain sections of the January 15 zoning ordinance amendments.

1.7 Duke does not wish to compromise the City of Eden's efforts to attract jobs and new industries. The City of Eden does not wish to impede the safe and expeditious removal and storage of coal ash from Duke's Dan River facility. Both Parties (a) wish to avoid costly, timely, and unnecessary litigation; (b) prefer to construct a landfill remote from residential areas as feasible; and (c) desire to protect the cooperative spirit within which Duke and the City have worked for over six decades. To achieve these ends, the Parties agree as follows:

## ARTICLE 2 AGREEMENT

2.1 The Parties agree that the foregoing Recitals do not constitute representations, undertakings, or agreements on their part, but are included only for general reference purposes and context.

2.2 Duke shall utilize the Hopkins Tracts for, among other lawful uses, the following:

(a) ingress and egress to and from, and the transport of coal ash from, the Dan River Facility; and

(b) with respect to Hopkins West, the temporary storage of coal ash, but only in the portion of such parcel south of a line drawn from the eastern terminus of the right-of-way of Rosewood Drive extending east to the southwest corner of a parcel owned by Wil-Brook Eden LLC, PN 709000126118 (deed recorded at Book 1291, Page 1246 of the Rockingham County Registry), and only for a period commencing upon the execution of this Agreement and continuing until August 1, 2019, or such later deadline as may be established by the State of North Carolina for the closure of the existing coal ash impoundments at the Dan River Facility; the portion of Hopkins West within which Duke may temporarily store coal ash, including temporary placement of coal ash in rail cars awaiting transport to a permanent storage facility outside the City of Eden, is marked and depicted on Exhibit A attached to this Agreement. For the purposes of this Agreement, "storage" shall be as defined in N.C. Gen. Stat. § 130A-290(a)(41) and shall be limited to and controlled by the Permit to Construct and Permit to Operate issued to Duke by NCDENR.

(c) with respect to Hopkins West, the removal of soil and fill dirt incidental and ancillary to, and for use in, the construction, operation, and closure of a coal ash landfill on the premises of the Dan River Facility;

(d) with respect to Hopkins East, and only after the expiration or termination of the three-year period referenced in paragraph 2.5 hereafter, the removal of soil and fill dirt incidental and ancillary to, and for use in, the construction, operation, and closure of a coal ash landfill on the premises of the Dan River Facility; it is provided, however, that if soil and fill dirt have been removed from Hopkins East, Duke shall, with reasonable dispatch and before DENR certifies or otherwise

confirms completion of the closure of the coal ash landfill Duke plans to construct at the Dan River Facility, restore Hopkins East to a state that is functionally equivalent, including compaction, to the state of such parcel that exists upon the execution of this Agreement; the parties acknowledge that functional equivalency can exist notwithstanding changes in the grades of such parcel and the extent of its vegetation.

Duke agrees that it has not acquired and will not claim any vested right to use the Hopkins Tracts for the permanent storage of coal ash, that it has no right to use Hopkins East for the temporary storage of coal ash, and that its rights to use Hopkins West for the temporary storage of coal ash are limited as provided in this Agreement.

2.3 The City agrees, after a public hearing, to consider amending its Zoning Ordinance to allow landfills for the disposal of coal ash to be constructed as a matter of right in the I-2 zoning district if the landfill is constructed on the same zoning tract as the facility from which the coal ash originates (the "Amendment") and, if it does so, to repeal provisions of the Zoning Ordinance that are inconsistent with the provisions of the Amendment. The City also agrees to consider amending its Zoning Ordinance or taking such other action as may be required to allow Duke to use Hopkins West for the temporary storage of coal ash as provided in this Agreement.

2.4 If, after public hearing and consideration, the City decides not to approve the Amendment and allow Duke to use Hopkins West for the temporary storage of coal ash as provided in this Agreement, this Agreement shall become null and void and the Parties shall have no obligations hereunder.

2.5 If, after public hearing and consideration, the City votes to amend its ordinance as described in paragraph 2.3 with language satisfactory to Duke, which vote is not required by this Agreement, then Duke shall grant the City for a period of three (3) years an option to purchase Hopkins East at a price of \$1,500,000.00. During such three (3)-year period, Duke may market Hopkins East, and if it receives an offer to purchase Hopkins East during such period, it shall provide the City written notice thereof. For a period of ninety (90) days following delivery of such notice to the City, the City shall have the right to purchase Hopkins East for a price of \$1,500,000.00. If the City does not exercise this option and purchase Hopkins East during the ninety (90)-day period, its option and right to purchase Hopkins East shall terminate. At its sole election, the City may at any time terminate its rights under this paragraph 2.5 by delivering written notice to Duke.

2.6 In the event the City purchases Hopkins East from Duke, Duke shall provide to the City copies of all legal (other than documents, communications, or items subject to the attorney-client privilege) and engineering and other site data, in electronic or other reasonable form related to and including, but not limited to, title, soil borings, topography, boundary survey, and any other information collected as part of its due diligence precedent to acquisition of Hopkins East (collectively, the "Data"). The City shall have the right to use the Data as it sees fit in seeking an appropriate use of Hopkins East. Duke makes no representations or warranties of any nature with respect to the Data provided to the City under this paragraph 2.6.

2.7 To the extent permissible, Duke agrees actively to support and endorse any request made by the City of Eden for funds made available for “community service” as part of a settlement agreement between Duke and the United States, to enable the City to purchase Hopkins East for economic development. The undertaking in this paragraph 2.7 shall not require the expenditure of funds by Duke other than is customary in its routine operations.

2.8 In the event the City adopts the zoning ordinance amendment described in paragraph 2.3, and if such amendment is acceptable to Duke, if the validity of the amendment is challenged in legal proceedings by any party, then Duke agrees to take reasonable and appropriate steps to join as a party to the proceedings, the City agrees to consent to such intervention and defend the lawsuit in coordination with Duke, and Duke agrees to reimburse the City of Eden for its reasonable attorneys’ fees incurred defending the ordinance amendment.

2.9 Upon inquiry from Duke, and as evidenced by the letter attached hereto as Exhibit B, the City, through its Zoning Administrator, has interpreted City of Eden Zoning Ordinance Section 11.24(p)(1) (Mining, Extractions and Quarries) to apply only to mining, extraction and quarrying as a primary use. The City further interprets this ordinance section (a) not to apply to the removal of soil incidental to the construction and operation of a landfill, and (b) not to require the issuance of a special use permit for such removal and use, which the City determines do not constitute the act of mining, extracting, or quarrying. The Zoning Administrator also determined that if the City’s Zoning Ordinance is amended as referenced in paragraph 2.3, the removal of soil incident to the construction and operation of a coal ash landfill at the Dan River Facility will be a lawful and allowed general use on the Hopkins Tracts. This interpretation by the Zoning Administrator is made and effective as of the date of the execution of this Agreement and is intended to be a final, binding, written decision pursuant to N.C. Gen. Stat. § 160A-388.

2.10 Duke agrees as follows regarding removal of soil from Hopkins East and Hopkins West for the construction and operation of a landfill at the Dan River Facility: (a) no soil may be removed from areas within 100 feet of property used or zoned for residential purposes or from the front, rear or side yard setback areas of I-2 property; and (b) no soil may be removed from flood hazard areas.

### **ARTICLE 3 MISCELLANEOUS PROVISIONS**

3.1 Duke agrees that if the City of Eden enacts the Amendment described in paragraph 2.3 with language satisfactory to Duke, which Amendment is entirely within the city’s legislative discretion and which Duke agrees is not required to be made by this Agreement, and takes the other actions described in paragraphs 2.3 and 2.9 with respect to Duke’s temporary storage of coal ash on Hopkins West and its removal of soil and fill dirt from the Hopkins Tracts, then Duke shall perform as described in paragraphs 2.5 through 2.8. In the event the City of Eden adopts such an amendment, the City of Eden shall take no other action that impedes or prohibits the construction and operation of a coal ash landfill in accordance with applicable State and Federal law or laws referenced in paragraph 3.5 upon the premises of Duke’s Dan River Facility and, incident thereto, its excavation and removal of soil and fill dirt from the Hopkins Tracts for

use with respect to such construction and operation and its temporary storage of coal ash as provided herein on Hopkins West.

3.2 In the event the City of Eden amends its zoning ordinances as provided in paragraph 2.3 and Duke is allowed to develop a coal ash landfill on the premises of its Dan River Facility utilizing, as provided herein, soil and fill dirt from the Hopkins Tracts, Duke agrees not to challenge any provisions of the zoning amendments first adopted January 15, 2015. Agreement not to challenge the zoning amendments shall not constitute agreement by Duke that the provisions related to coal ash landfills comply with the provisions of the Coal Ash Management Act or are otherwise lawful.

3.3 Duke agrees that the fees applicable to all citizens applying for building permits shall also apply to Duke to the extent locally-issued permits are required for the construction of a coal ash landfill. Those fees, which amounts may be increased or decreased over time, are listed in Exhibit C attached hereto.

3.4 The Parties agree that the actions described in this Agreement are reasonable and in the public interest and that each party has taken steps that best serve the citizens of Eden, and any public statements by either Party will reflect that understanding.

3.5 This Agreement does not limit the statutory rights and powers of the City to act in its governmental, legislative or regulatory capacity including, but not limited to, actions to protect the health, safety and welfare of its citizens or to enforce zoning laws or provisions of the Eden City Code, the State Building Code, or the ordinances related to flood control, stormwater, or water supply watersheds listed on Exhibit D attached hereto. With the exception of the Amendment, the City shall adopt no ordinance, rule, or regulation subsequent to the date of this Agreement or take any other action which shall affect, or in any way limit, the ability of Duke to construct and operate a coal ash landfill on the premises of its Dan River Facility, to utilize fill dirt or soil from the Hopkins Tracts incident thereto, or to temporarily store coal ash on Hopkins West as provided herein. The City agrees that if the preceding sentence is challenged by a future City Council or third party, or if a future City Council takes any action inconsistent with such sentence, such challenge or such action will be directly contrary to the spirit and intent of this Agreement and, at the election of Duke, the option referenced in the foregoing paragraph 2.5 shall become null and void. This Agreement shall not be construed to grant the City any powers or authority to oversee the operations or management of a coal ash landfill or to enforce permits issued by the Department of Environment and Natural Resources.

3.6 The Parties intend this Agreement to supersede all previous agreements and to be the final expression of their obligations with respect the subject matter, both written and oral.

3.7 This Agreement may not be amended except upon approval by the Parties in writing and only after approval on the City's behalf by the City Council.

3.8 This Agreement constitutes the entire agreement of the parties and there are no other agreements express or implied.

3.9 If any provision of this Agreement is determined to be invalid or inoperable by a state or federal court, the remaining provisions of this Agreement shall continue to be valid and binding.

3.10 Any notice or demand permitted or required under this Agreement shall be in writing and delivered by reasonable means. Each party shall make a diligent and good faith effort to determine the name of the person currently holding the position of notice. Notices shall be sent as follows:

If to the City: Wayne R. Tuggle, Sr., Mayor  
Eden City Hall  
308 E. Stadium Drive  
Eden, N.C 27288  
[wtuggle@edennc.us](mailto:wtuggle@edennc.us)

With a copy to: S. Bradley Corcoran, City Manager  
Eden City Hall  
308 E. Stadium Drive  
Eden, N.C 27288  
[bcorcoran@edennc.us](mailto:bcorcoran@edennc.us)

Erin B. Gilley, City Attorney  
Eden City Hall  
308 E. Stadium Drive  
Eden, N.C 27288  
[egilley@edennc.us](mailto:egilley@edennc.us)

Thomas E. Terrell, Jr.  
Smith Moore Leatherwood LLP  
300 N. Greene Street, Suite 1400  
Greensboro, N.C. 27401  
[tom.terrell@smithmoorelaw.com](mailto:tom.terrell@smithmoorelaw.com)

If to Duke: Davis Montgomery  
Government and Community Relations Manager  
Duke Energy  
2200 Fairfax Road  
Greensboro, NC 27407  
[Davis.Montgomery@duke-energy.com](mailto:Davis.Montgomery@duke-energy.com)

With a copy to: Daniel Kemp  
Associate General Counsel  
Duke Energy  
410 South Wilmington Street  
Raleigh NC 27601  
[daniel.kemp@duke-energy.com](mailto:daniel.kemp@duke-energy.com)

3.11 This Agreement shall be binding upon the Parties and their grantees, successors, and assigns.


IN WITNESS WHEREOF, the City of Eden and Duke Energy Carolinas, LLC execute this Agreement by their duly authorized officers on the day of execution as set forth above.

City of Eden

By: \_\_\_\_\_  
Wayne R. Tuggle, Sr. Mayor

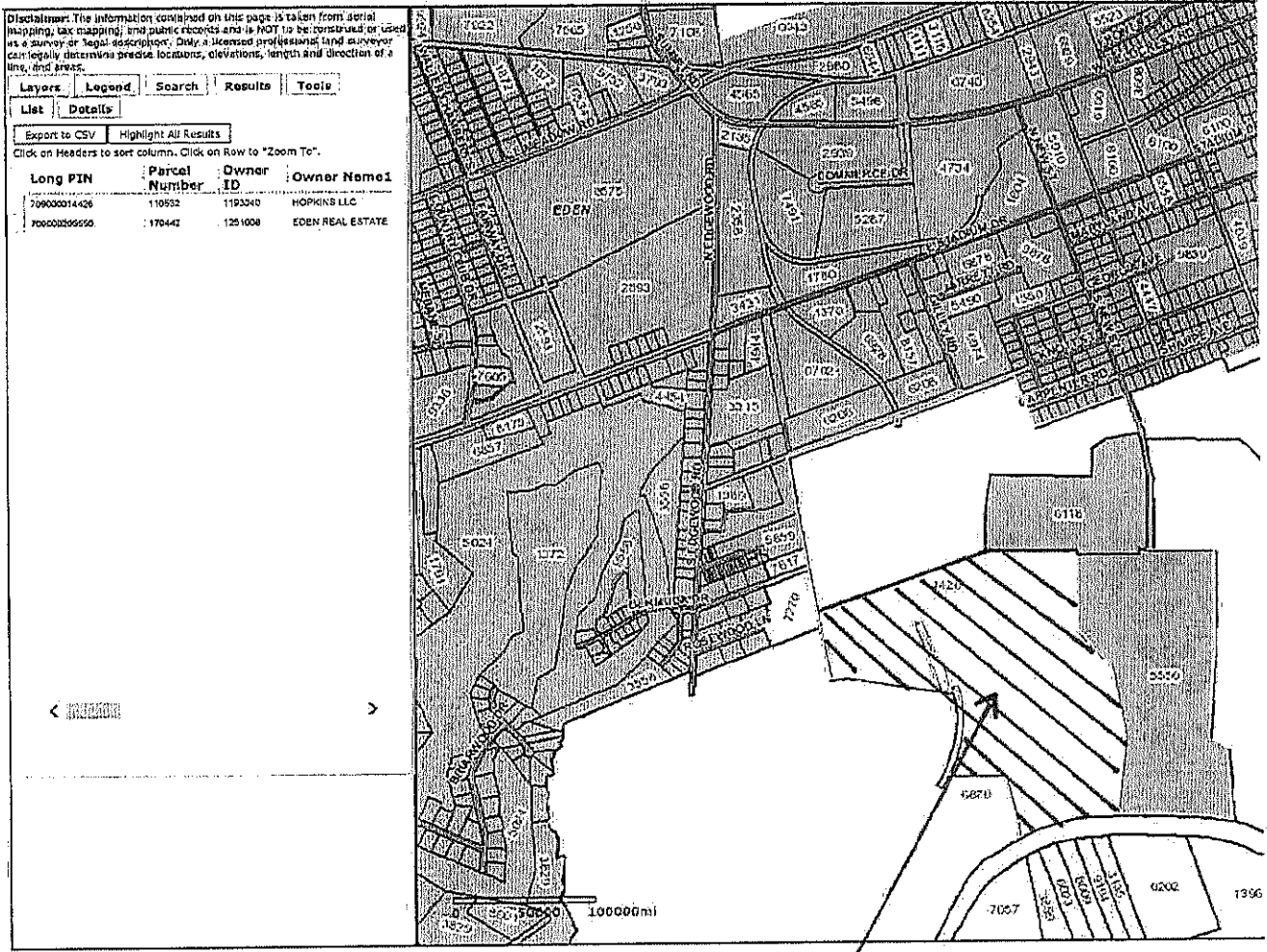
\_\_\_\_\_  
Date

Duke Energy Carolinas, LLC

*Advised* By:   
\_\_\_\_\_  
Paul R. Newton  
State President – North Carolina

*7/15/15*  
\_\_\_\_\_  
Date

Exhibit A



Area within which Duke may temporarily store coal ash



Exhibit B to Agreement between the  
City of Eden and Duke Energy Carolinas, LLC



# Planning and Inspections Department

P. O. Box 70, 308 E Stadium Drive, Eden NC 27289-0070/Telephone 336-623-2110/Fax 336-623-4057

July 15, 2015

Mr. Davis Montgomery, District Manager  
Duke Energy Carolinas  
2500 Fairfax Road  
Greensboro, NC 27407

Re: Zoning Confirmation for Parcel Number 110532 (known as Hopkins West),  
Parcel Number 110587 (known as Hopkins East) and Parcel Number  
141506 (known as the Duke Energy Eden Plant site).

Dear Mr. Montgomery:


The above-described parcels are zoned Industrial-2 in the City of Eden's extraterritorial jurisdiction and are governed by the City of Eden Zoning Ordinance. I am confirming that certain activities are permitted to be undertaken on said parcels as follows, subject to the approval of the Zoning Amendment attached to this letter, to be considered by the Eden City Council:

- (a) Permanent Storage of Coal Combustion Residuals, but excluding any such material that was not generated on the site of a former coal fired utility plant located within the planning jurisdiction of the City of Eden, shall be allowed as a matter of right in the Industrial-2 zoning district. Such property shall be identified by its tax parcel number as of January 1, 2015. In this case, the tax parcel number is 141506. The storage shall be permitted by the State of North Carolina as a Coal Ash Landfill and shall be subject to all state and federal rules and regulations.
- (b) Removal of soil from Hopkins West or Hopkins East incidental to the construction and operation and closure of a coal ash landfill on the Duke Energy Eden Plant Site is considered accessory to the coal ash landfill on the Duke Energy Eden Plant Site and would therefore be allowed and shall not be considered or constitute mining, extractions and quarries as defined under the City of Eden Zoning Ordinance subject to approval of the Zoning Amendment. Because soil removal from Hopkins East and West is not considered to be mining, extractions and quarries, no special use permit application is necessary for this activity.
- (c) The temporary storage of Coal Combustion Residuals on Hopkins West, Parcel Number 110532, shall be permitted as a part of the construction process of the coal ash landfill on the Duke Energy Eden Plant Site and is accessory to the railroad operations undertaken on the site and is therefore allowed.
- (d) The Industrial-3 fees in the City of Eden Budget Ordinance are not applicable to the activities described above.
- (e) It is the interpretation of the Planning Department that the Duke Energy Eden Plant site is not subject to regulations affecting water supply watersheds, as illustrated by the attached Water Supply Watershed map.

Mr. Davis Montgomery  
July 15, 2015  
Page 2

Any land use activities within the planning jurisdiction of the City of Eden are subject to the Eden City Code and all regulations for the use of land approved and adopted by the Eden City Council, as interpreted in this letter.

Sincerely,



Kelly Kasten Stultz, AICP #013769  
Planning and Inspections Director  
and Watershed Administrator

KKS/dmm

Attachments:

City of Eden Planning Jurisdiction Watershed Map  
Watershed Protection Ordinance  
Proposed Zoning Amendment; File No. Z-15-02

AN ORDINANCE AMENDING THE ZONING  
ORDINANCE OF THE CITY OF EDEN

---

---

BE IT ORDAINED BY THE CITY COUNCIL of the City of Eden, North Carolina, that, after having fully complied with all legal requirements, including publication of notice of a public hearing and the holding of a public hearing relative thereto, Section 11.24(o)(1) I-2 Industrial District of the Zoning Ordinance of the City of Eden is hereby amended by adding the following Permitted Use:

Permanent Storage of Coal Combustion Residuals (but excluding any such material that was not generated on the site of a former coal fired utility plant located within the planning jurisdiction of the City of Eden. Such property will be identified by its tax parcel number as of January 1, 2015. The storage shall be permitted by the State of North Carolina as a Coal Ash Landfill and shall be subject to all such rules and regulations.)

APPROVED, ADOPTED AND EFFECTIVE, this 21st day of July, 2015.

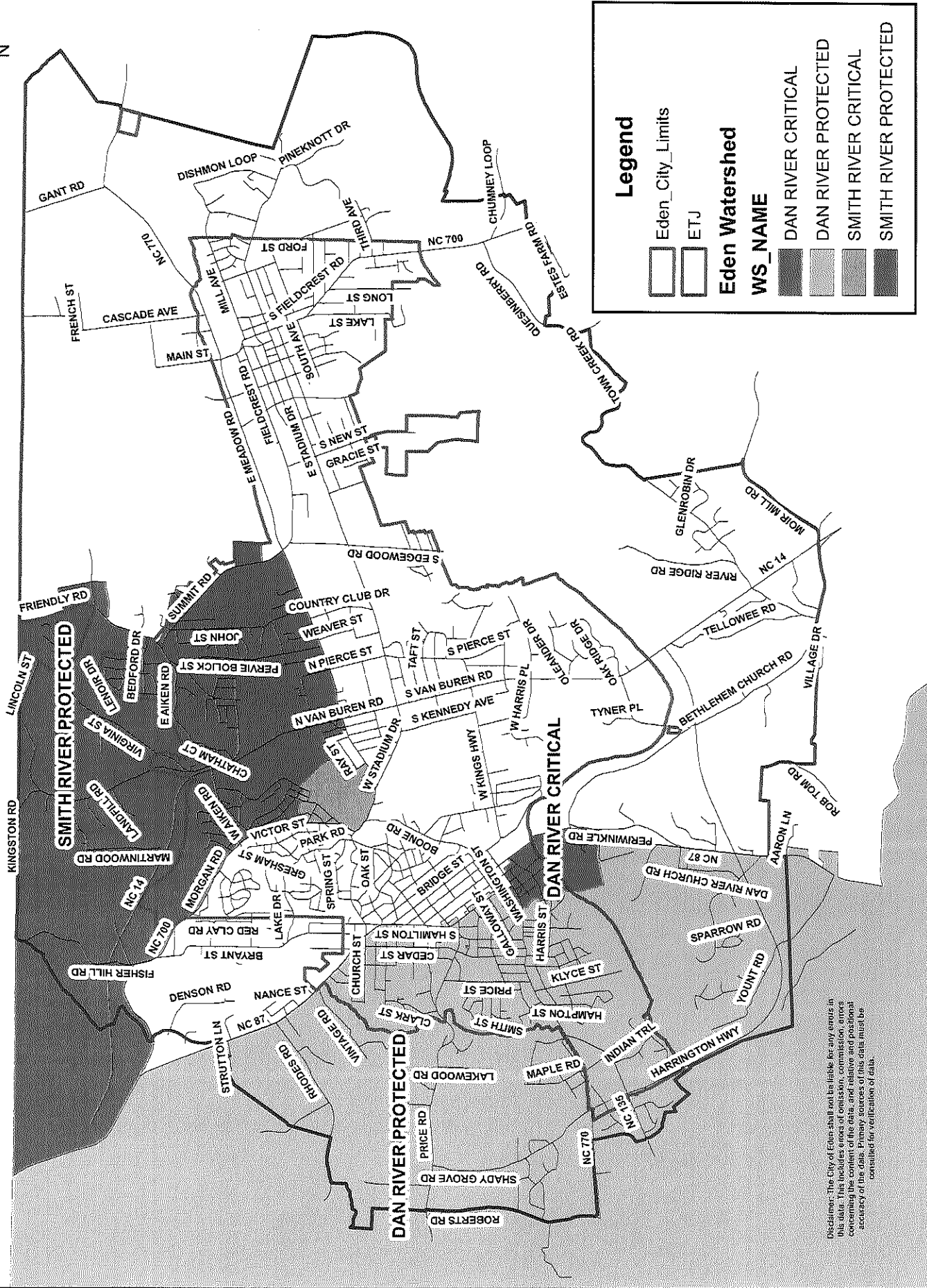
CITY OF EDEN

BY: \_\_\_\_\_  
Wayne R. Tuggle, Sr., Mayor

ATTEST:

\_\_\_\_\_  
Sheralene Thompson, CMC  
City Clerk

# City of Eden Planning Jurisdiction Watershed Map



Disclaimer: The City of Eden shall not be liable for any errors in this data. This includes errors of omission, commission, errors concerning the content of the data, and relative and positional accuracy of the data. Primary sources of this data must be consulted for verification of data.