



# Water Supply Watershed Protection – Density Averaging

*June 2020*



# *Water Supply Watershed Protection Density Averaging – Order of Presentation*

- I. Regulatory Basis**
- II. Recommendations for Local Governments that want to implement density averaging**
- III. Questions and Answers**

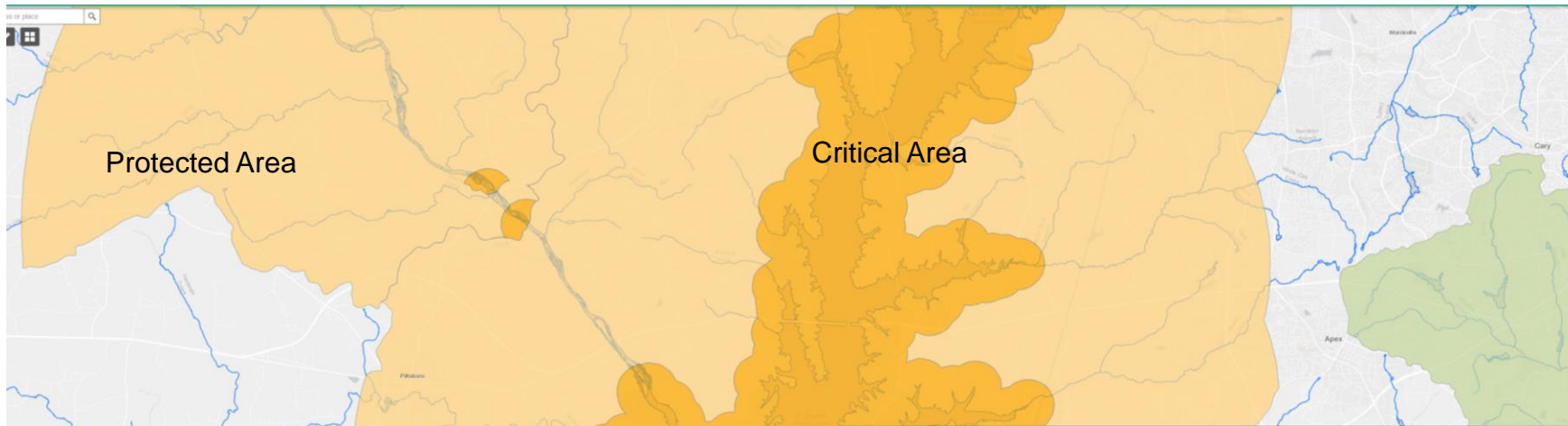
# *I. Regulatory Basis*

- **NC General Statute 143-214.5 (d2), Items (1)-(8)**
- [https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter\\_143/gs\\_143-214.5.html](https://www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_143/gs_143-214.5.html)
- **Please note that the following are the minimum requirements needed to implement density averaging.**

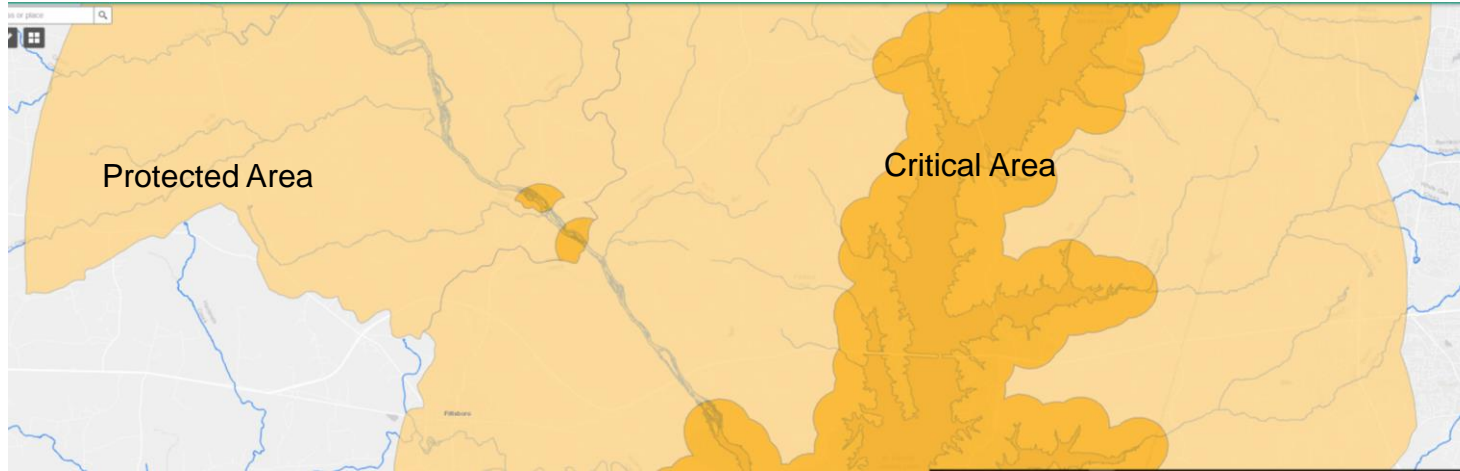


# *I. NC General Statute 143-214.5 (d2)*

Local governments may allow applicants to average development density on up to two noncontiguous properties if all eight of the conditions described on the following slides are met.



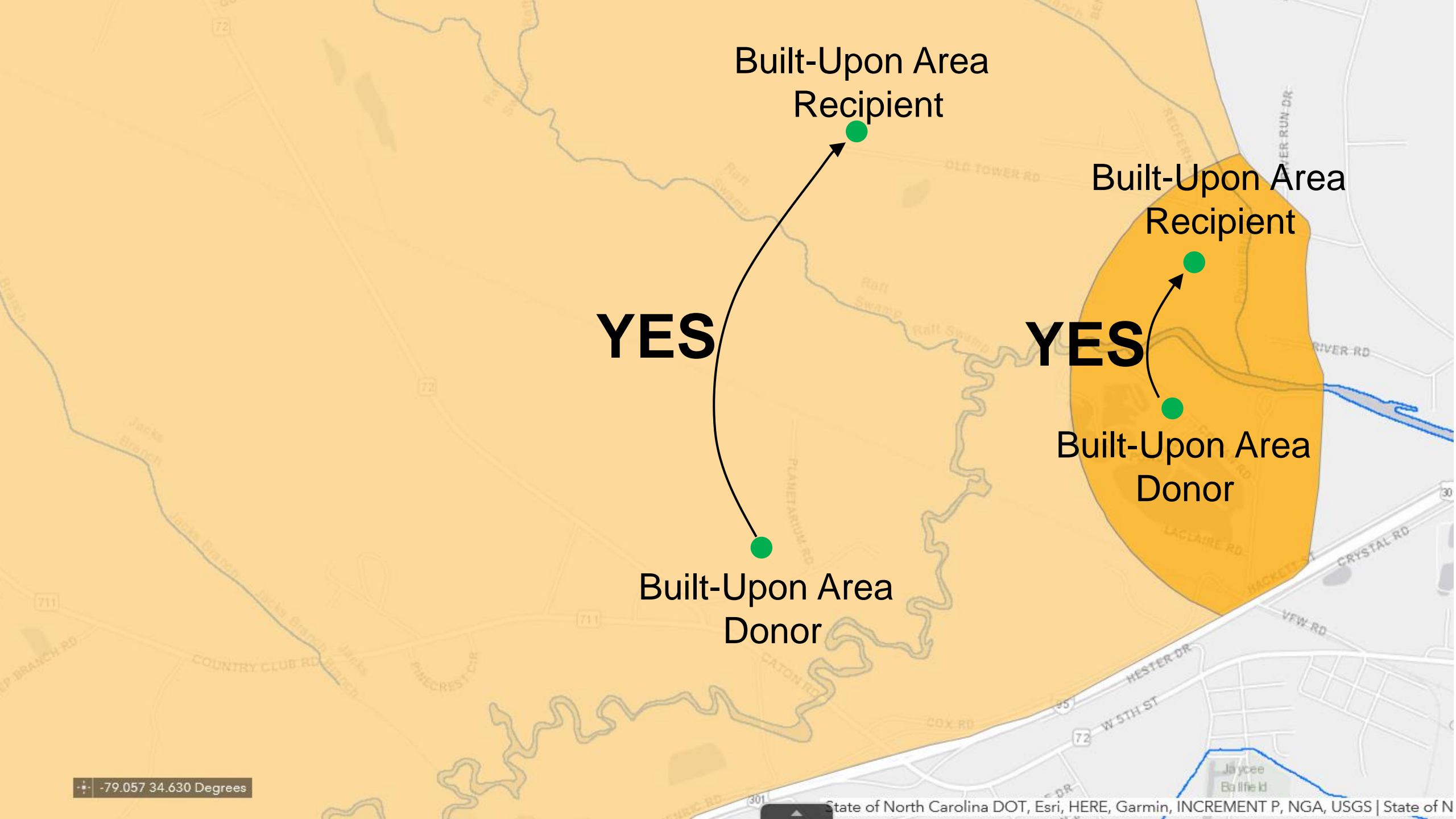
# *I. NC General Statute 143-214.5 (d2)(1)*



- Properties must be within the same water supply watershed
- If only one property is in critical area, it must be the donating lot.
- If both properties are in critical area, either can donate.

*Please see following slides for examples.*





Built-Up Area Recipient

Built-Up Area Recipient

**YES**

**YES**

Built-Up Area Donor

Built-Up Area Donor

-79.057 34.630 Degrees



Built-Upon Area Donor ●

**NO**

Built-Upon Area Recipient ●

Built-Upon Area Recipient ●

**YES**

Built-Upon Area Donor ●

-79.057 34.630 Degrees

## *I. NC General Statute 143-214.5 (d2)(2)*

- Participating properties' overall density average must meet applicable density or stormwater control requirements under 15A NCAC 02B .0200s and .0624.
- For example, average of two parcels in WSIV watershed following low density option CANNOT exceed 24 percent built-upon area.

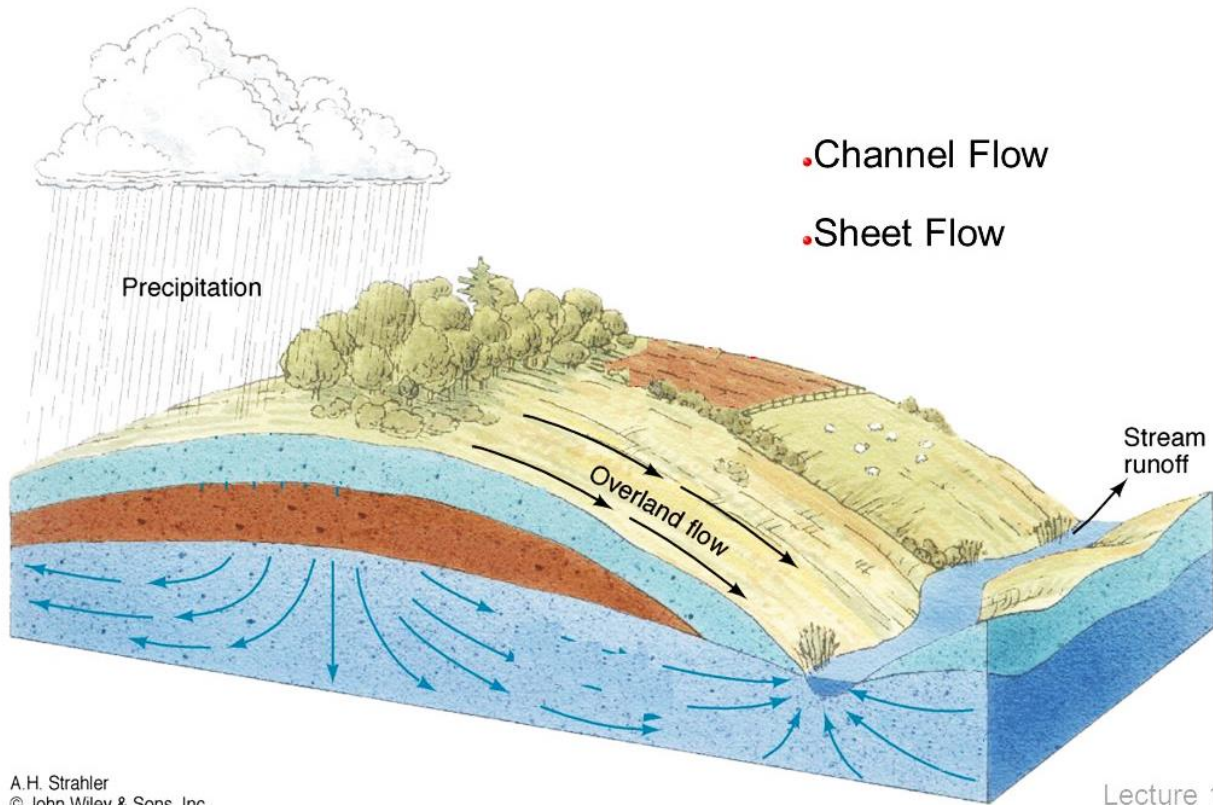


# *I. NC General Statute 143-214.5 (d2)(3)*



Buffers on both participating properties must meet minimum water supply watershed protection requirements.

# I. NC General Statute 143-214.5 (d2)(4)



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Lecture 12  
III.A.

Built-upon areas must be designed and located to do the following:

- Minimize stormwater runoff impact to receiving waters
- Minimize concentrated stormwater flow
- Maximize use of sheet flow and flow length through vegetated areas

## *I. NC General Statute 143-214.5 (d2)(5) and (7)*

To the maximum extent practicable ....

- Concentrated development areas should be in uplands away from surface waters and drainageways
- Development permitted under density averaging and meeting applicable **low density** requirements shall transport stormwater runoff by vegetated conveyances.

# *I. NC General Statute 143-214.5 (d2)(6)*



There are two requirements for the portions of properties that will remain undeveloped:

1. It must remain in a vegetated or natural state in perpetuity.
2. A metes and bounds description and irrevocable limits on use must be recorded.



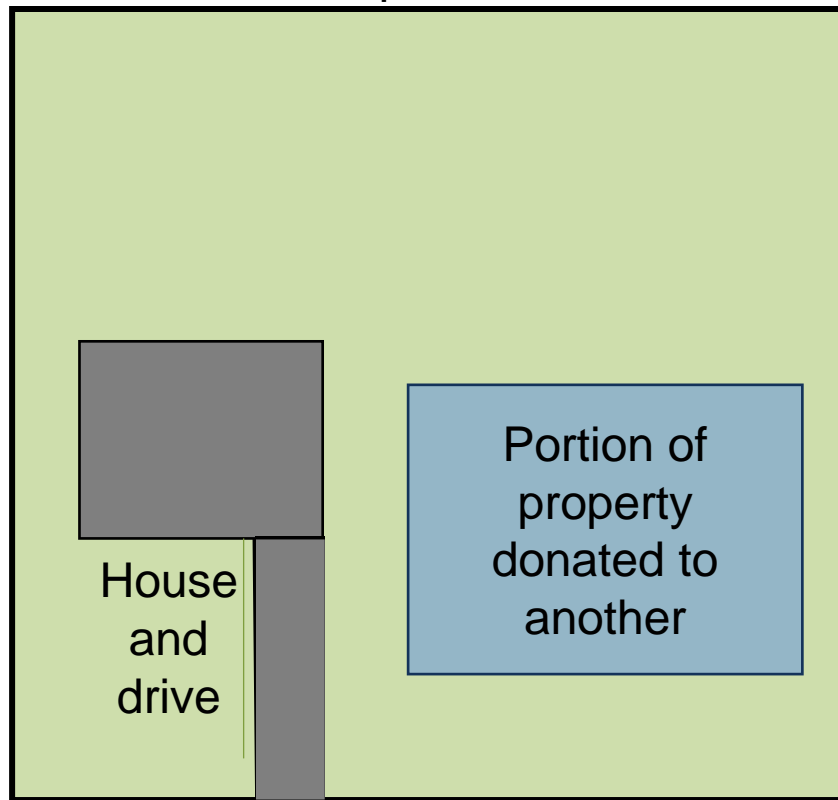
## *I. NC General Statute 143-214.5 (d2)(6)*

Properties (or portions of) that will remain undeveloped must either be:

- Managed by a homeowners' association as a common area,
- Conveyed to the local government as a park or greenway,
- Placed under permanent conservation or farmland preservation easement, or
- Have long-term compliance handled by a local government through deed restrictions and electronic permitting mechanism.

# What is a Metes and Bounds Description?

Entire property with house, driveway and donated portion identified.



- Boundaries or limits of a tract of land as described by reference to compass directions and distances between points on the land.
- For example, portion of property denoted by blue square must be accurately described in metes and bounds

# *I. NC General Statute 143-214.5 (d2)(8)*

Local Watershed Review Board or Board of Adjustment shall issue special use (or other) permit or certificate to ensure both properties considered together meet standards of watershed ordinance and potential owners have record of how watershed regulations applied to properties



## *II. Recommendations for Local Government Ordinances*

Local government ordinances should:

- Define how density averaging will be documented and tracked to ensure all requirements for both donor and recipient parcels are publicly recorded and are irrevocable in perpetuity.
- Provide standard enforcement protocols for parcel owners that violate conditions of special permit/certificate issued for density averaging.
- Include all of the conditions of NCGS 143-214.5(d2). Note that local government ordinances may be more stringent than statute.

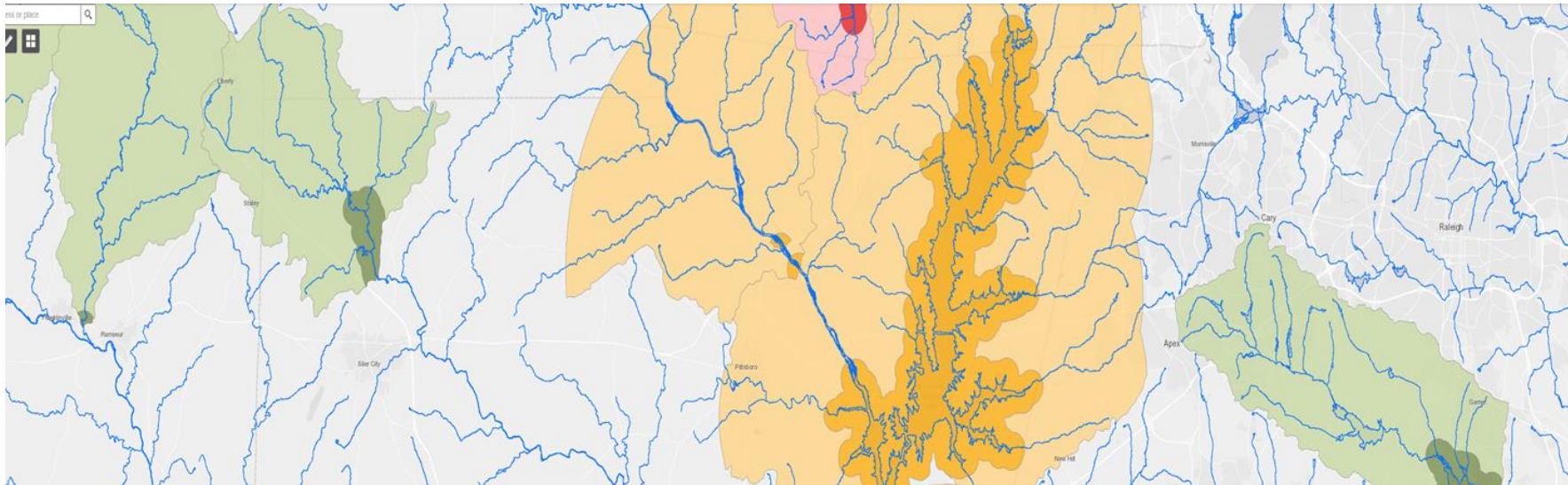
In addition, local governments should accurately track all averaging among different properties.





# *Q1: Can any one property exceed the density maximum within the critical area?*

- **Yes.** If both properties are located within the critical area, the receiving property will exceed the density maximum, but the donating property will be less than density maximum.
- Note that the property in the protected area may not donate to a property in the critical area. In this case, only the property in the protected area will exceed the density maximum.



## *Q2: Can one property donate to more than one property?*

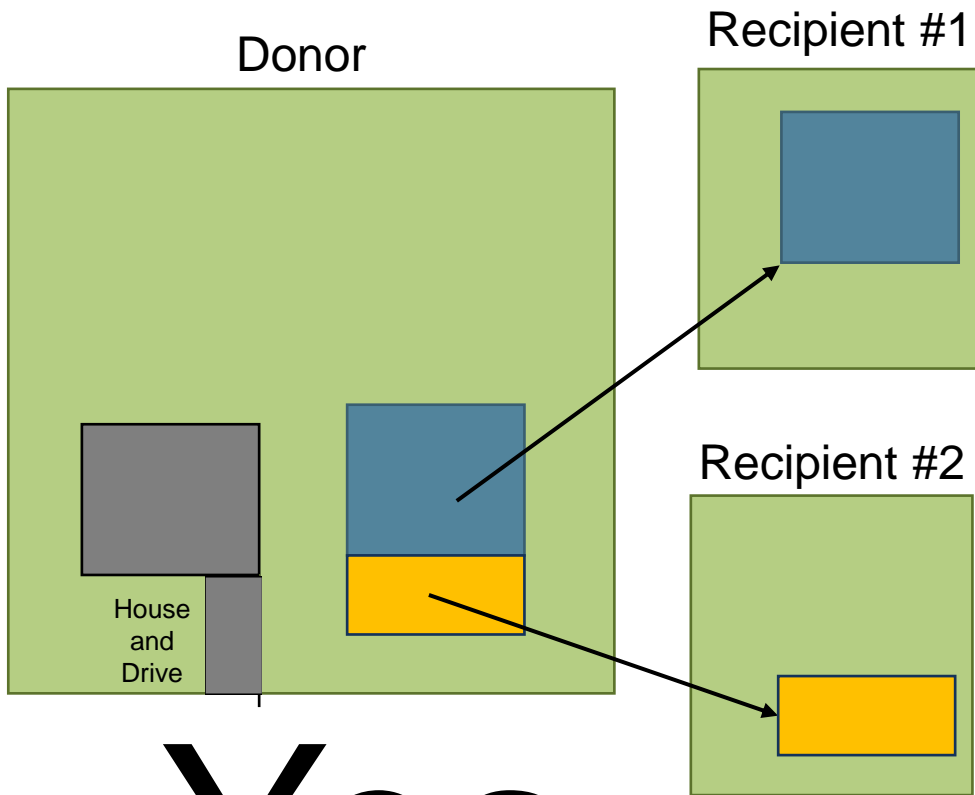
Yes, as long as:

- Each donated portion is separate and each portion is donated to only ONE recipient,
- The deed of the donating property depicts the metes and bounds of all vegetated areas that have been donated and has marked them as built upon area (built-upon area) in addition to the actual built-upon area such as the house, driveway, patio, etc.), and
- The total of the actual (pavement, roof, etc.) and the donated built-upon area(s) cannot exceed the maximum built-upon area for the donating lot.

*Please see next slides for examples.*



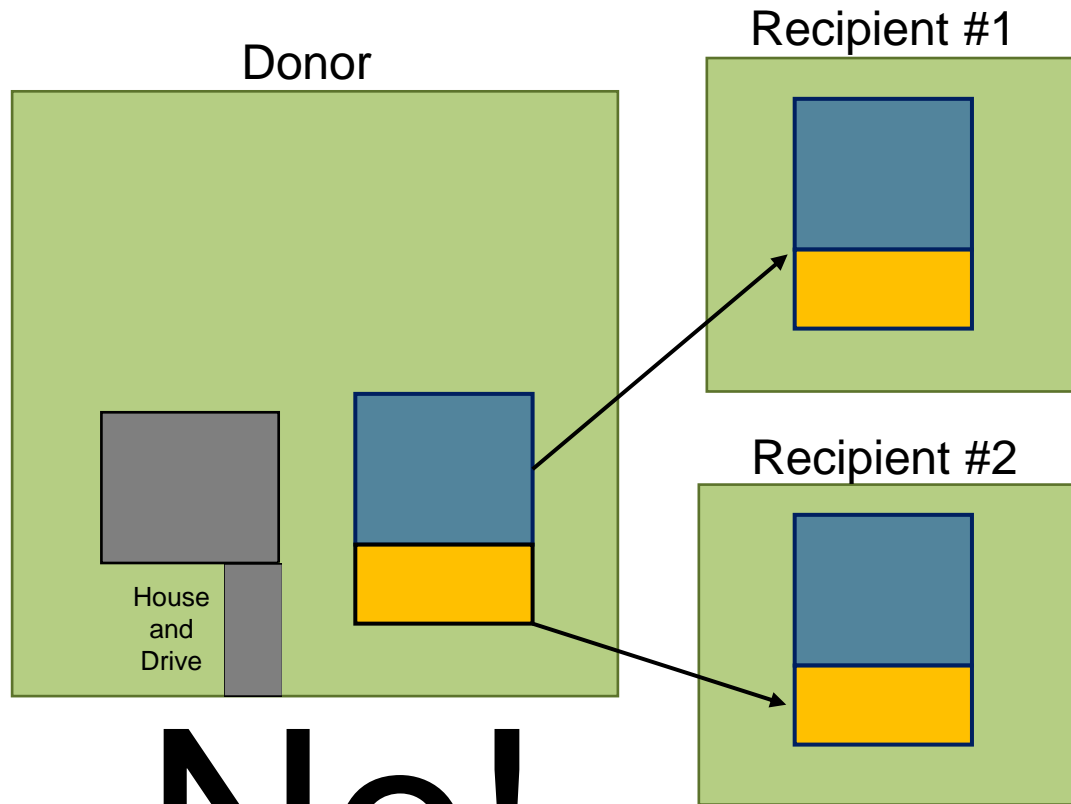
## Q2: Can one property donate to more than one property?



Yes

- Blue portion goes to recipient #1 who can exceed built-upon area by amount delineated in blue rectangle.
- Orange portion goes to recipient #2 who can exceed built-upon area by amount delineated in orange rectangle.
- Blue and Orange sections of donor are may not be built on or donated.

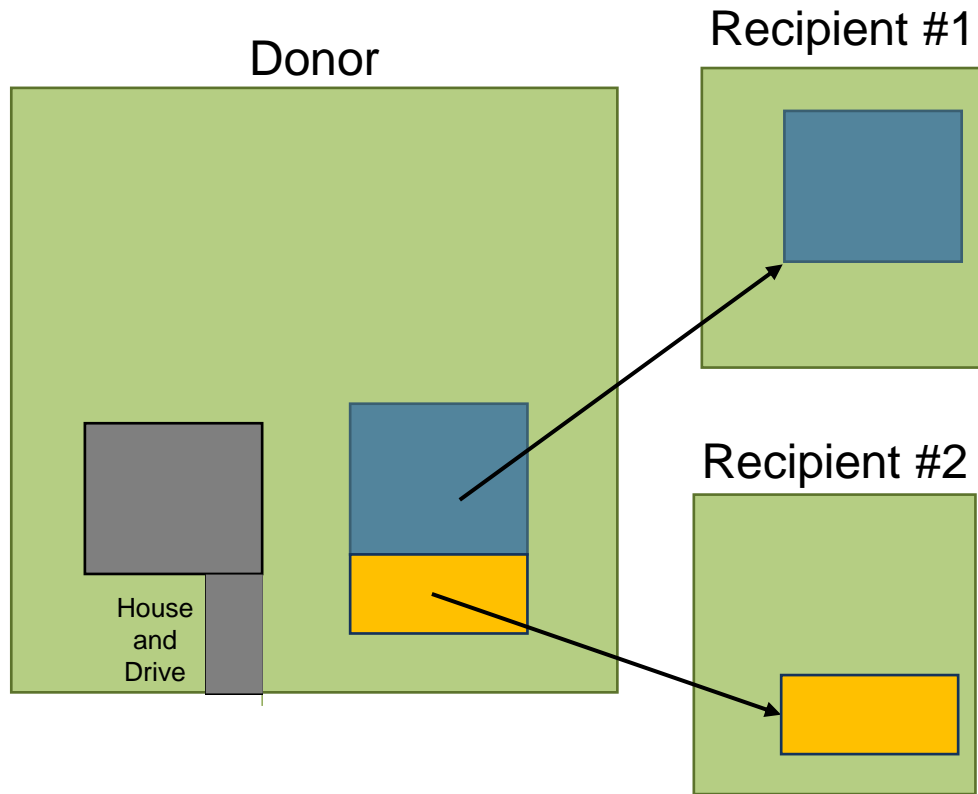
## Q2: Can one property donate to more than one property?



**No!**

- Blue and Orange built-upon area donations cannot go to BOTH recipient #1 AND recipient #2
- Blue and Orange built-upon area donations must go to EITHER recipient #1 OR recipient #2

## *Q2: Can one property donate to more than one property?*



On the donor property, the total area of the house/drive, the blue donation area, and the orange donation area may not exceed the maximum built-upon area allowed under the low density option in 15A NCAC 02B .0624.

## *Q3: Can one property receive donations from more than one property?*

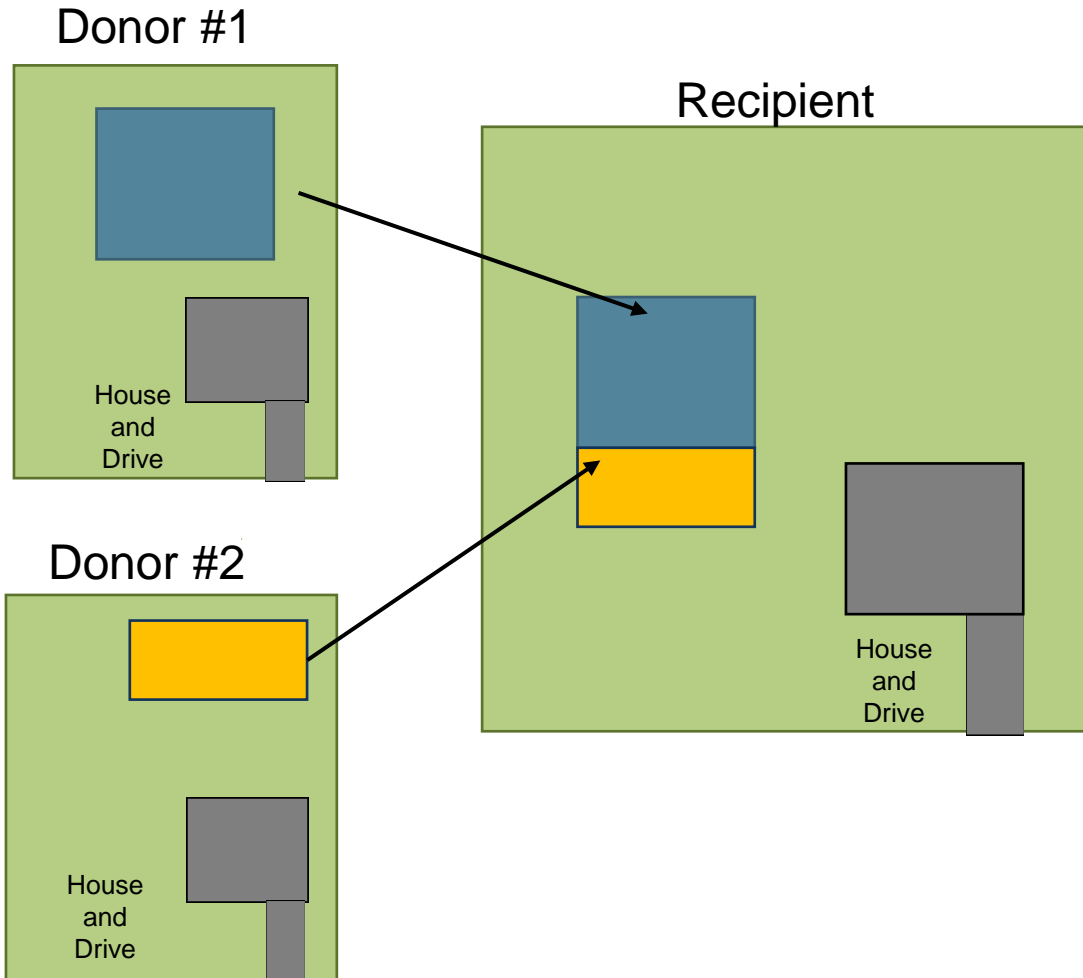
Yes, as long as:

- Each donated portion is separate,
- The deeds of the donating properties depict the metes and bounds of all vegetated areas that have been donated and have marked them as built-upon area in addition to any existing built-upon area such as the house, driveway, patio, etc.), and
- For each donating lot, the total of any existing (pavement, roof, etc.) built-upon area and the donated area cannot exceed the maximum built-upon area allowed under the low density option in 15A NCAC 02B .0624.

*Please see next slide for examples.*



# Q3: Can one property receive donations from more than one property?



On each donor property, the area of the house/drive, and the blue or orange donation area may not exceed the maximum built-upon area allowed under the low density option in 15A NCAC 02B .0624.



# *Water Supply Watershed Density Limits per 15A NCAC 02B .0624*



WS Classification	Location	Low Density built-upon area limit	High Density built-upon area limit
WS-I	Not applicable: Watershed shall remain undeveloped		
WS-II	Critical Area	6%	6-24%
	Balance of WS	12%	12-30%
WS-III	Critical Area	12%	12-30%
	Balance of WS	24%	24-50%
WS-IV	Critical Area	24%	24-50%
	Protected Area	24%	24-70%

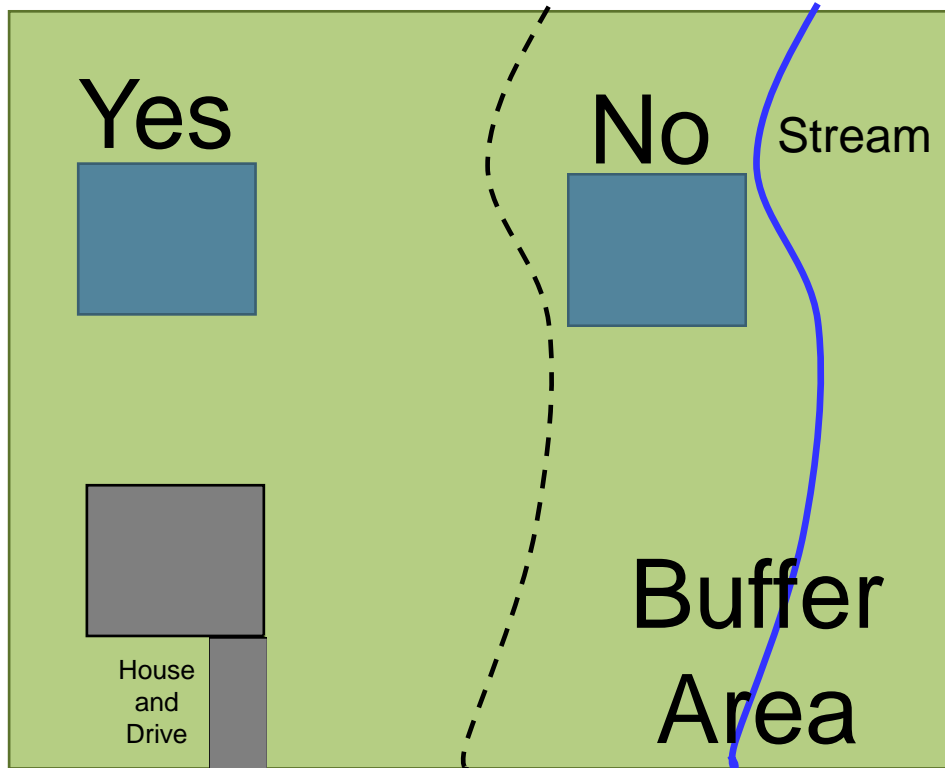




### *Q3: Can a developed property donate to another property?*

- **Yes**, as long as the donating property has not reached the maximum built-upon area (whether actual or donated) under low density allowed on its property and is willing to stay below its built-upon area limit including the donation in perpetuity.
- Please see NCDEQ-DEMLR – Stormwater Program memo on density averaging ....  
<https://files.nc.gov/ncdeq/Energy%20Mineral%20and%20Land%20Resources/Stormwater/WS-Density-Averaging-Memo-2018-02-20.pdf>

*Q4: Can a buffer, conservation easement, or other portion of property that is required to remain undeveloped be donated?*



**No.** Development is prohibited (or severely limited) on these areas, so they cannot be donated to a recipient property to be developed.

## *Q5: Can a property that is exempt from Water Supply Watershed Program rules donate to another property?*

- **No.** Because the property is exempt, it is not part of the WSWP program and does not have any built-upon area to donate to another property.
- **However,** if the “exempt” property agrees to abide by the density limits and other requirements of the WSWP program rules, a local ordinance could allow it to participate in density averaging.



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