

Town of Pittsboro

Stormwater Program for New Development

DRAFT

June 29, 2012



TABLE OF CONTENTS

Introduction	3
Proposed Adoption Timeline and Effective Date.....	3
Other Stormwater Programs	4
Statement of Riparian Buffer Ordinance Compliance	4
State and Federal Entities Implementation	4
Area of Applicability.....	4
Minimum Qualifications of Stormwater Administrator.....	4
Maintenance/Inspection Program.....	5
Administrative Forms.....	5
Applicable Ordinances	5
Nutrient Loading Accounting Tool.....	6
Appendices of Supporting Information	7
Appendix A: Program Contacts and Professional Qualifications.....	7
Appendix B: Stormwater Map.....	8
Appendix C: Forms	9
Appendix D: Flood Damage Prevention Ordinance.....	15
Appendix E: Zoning Ordinance, Section 5-5 Watershed Overlay District Requirements.....	16
Appendix F: Riparian Buffer Protection Ordinance	17
Appendix G: Job Description of Town Engineer	18
Appendix H: Town of Pittsboro Jordan Stormwater Ordinance for New Development.....	19
Supplemental Information.....	20
Program Approval	20
Ordinance Changes	20
Land Use Planning	20
Appeals Process.....	20

INTRODUCTION

In accordance with the Jordan New Stormwater Rule [15A NCAC 2B .0265] the Town of Pittsboro is required to develop a local stormwater program to comply with the substantive requirements of the Rule. This document has been prepared by JEWELL Engineering Consultants on behalf of the Town to satisfy the requirements of the Rule and to provide the North Carolina Environmental Management Commission (EMC) with pertinent information regarding the Town's stormwater program. The following document was prepared with guidance from the Model Local Stormwater Program developed by the North Carolina Department of Environment and Natural Resources – Division of Water Quality (NCDENR).

PROPOSED ADOPTION TIMELINE AND EFFECTIVE DATE

The following schedule will be utilized by the Town of Pittsboro to adopt and implement the requirements of the Jordan New Stormwater Rule [15A NCAC 2B .0265]:

March 10, 2011: The Town of Pittsboro began informing non-DOT state/federal entities applying for local stormwater permits that they are subject to permitting by the NCDENR-DWQ under Rule 15A NCAC 02B .0271.

March 27, 2012: Jordan Stormwater Ordinance for New Development adopted by the Town Board of Commissioners and submitted to the NCDENR-DWQ for review and approval.

June 15, 2012: The Draft Town Stormwater Program submitted to the NCDENR-DWQ for review and approval.

September 12-13, 2012: EMC considers and approves Stormwater Program

October, 2012: The Final Jordan Stormwater Ordinance and Program approved by the Town Board of Commissioners

November 1, 2012: The Town Stormwater Program implementation begins.

August 2013 & Annually: The Town submits annual progress reports to the Commission.

OTHER STORMWATER PROGRAMS

The following is a list of existing stormwater regulations within the Town of Pittsboro's jurisdiction:

- Flood Damage Prevention Ordinance (Appendix D)
- Zoning Ordinance, Section 5-5 Watershed Overlay District Requirements (Appendix E)
- Riparian Buffer Protection Ordinance (Appendix F)

STATEMENT OF RIPARIAN BUFFER ORDINANCE COMPLIANCE

The Town of Pittsboro's Riparian Buffer Protection Ordinance was adopted on February 14th, 2011 following approval by the EMC. Section 7 Riparian Area Protection of the Ordinance defines buffers to be protected, exemptions to this protection, zones of the buffer and diffuse flow requirements. This section mirrors the buffer requirements described in 15A NCAC 02b .0267. Sections 9 and 10 of the ordinance provide the procedures and requirements for permitting, approvals, compliance and enforcement. The requirements of this Ordinance have been strictly adhered to by the Town since its adoption.

STATE AND FEDERAL ENTITIES IMPLEMENTATION

The Town of Pittsboro has elected not to enforce the requirements of the Jordan New Stormwater Rule 15A NCAC 2B .0265 on state and federal entities that do not have a Phase II NPDES stormwater permit.

AREA OF APPLICABILITY

The Town of Pittsboro retains planning jurisdiction over all private and publicly owned property within its Extra Territorial Jurisdiction (ETJ) and corporate limits. The Town's regulations and requirements for stormwater management will apply uniformly over the entire planning jurisdiction, except for those areas that are outside of the Jordan Lake Watershed. The pertinent areas are depicted on the Stormwater Map shown in Appendix B.

MINIMUM QUALIFICATIONS OF STORMWATER ADMINISTRATOR

The Town of Pittsboro is in the process of recruiting a Town Engineer. A primary responsibility of this position will be to serve as the Stormwater Administrator for the Town. This position will be tasked with implementing the Stormwater Program, reviewing stormwater management plans and permit applications, issuing approvals, inspecting BMPs and enforcing compliance. Some of the preferred qualifications for the position are a bachelor's degree in Civil Engineering, registration in the State of North Carolina as a Professional Engineer and significant experience in stormwater program management. The individual will also be required to become certified

by the North Carolina Cooperative Extension Service to review and approve stormwater management plans and to inspect BMPs. A detailed job description is provided in Appendix G.

MAINTENANCE/INSPECTION PROGRAM

The following items address the Town of Pittsboro's intentions regarding routine maintenance and inspections of the BMPs required by the Jordan New Stormwater Rule [15A NCAC 2B .0265]:

- Per Section 4 of the Town's Jordan Stormwater Ordinance for New Development (Appendix H), it shall be the responsibility of the owner of each engineered stormwater control to ensure proper operation and maintenance of said controls. The Town will require submission of an annual inspection report from a qualified individual (see Subsection 401-B of the Ordinance in Appendix H for detailed qualifications) for each device.
- Per Section 4, Subsection 403 of the Town's Jordan Stormwater Ordinance for New Development (Appendix H), routine and random inspections may be conducted by the Town on any reasonable basis. At a minimum, the Town will review all records for and perform site inspections of all permitted projects once every five years.
- Per Section 4, Subsection 404 of the Town's Jordan Stormwater Ordinance for New Development (Appendix H), the Town may, at its discretion, require the submittal of a performance security to ensure that engineered stormwater controls are maintained by the owner.
- The Town will develop and routinely update a database of all engineered stormwater controls installed.

ADMINISTRATIVE FORMS

The Town of Pittsboro will utilize the following forms during the permitting and compliance process:

- Stormwater Permit Application (Appendix C1)
- Sample Permit (Appendix C2)
- As-Built Submittal Form w/ BMP Certification Statements (Appendix C3)
- Operation and Maintenance Agreements for BMPs (Appendix C4)
- Access Easement Document (Appendix C5)
- Conservation Easement Document (Appendix C6)

APPLICABLE ORDINANCES

The following Town of Pittsboro ordinances (with applicable sections denoted) will be required to implement the Jordan New Stormwater Rule [15A NCAC 2B .0265]:

- **THE JORDAN STORMWATER ORDINANCE FOR NEW DEVELOPMENT (APPENDIX H)**
 - Section 1: General Provisions
 - Section 2: Administration and Procedures
 - Section 3: Standards
 - Section 4: Maintenance
 - Section 5: Enforcement and Violations
 - Section 6: Definitions
- **THE RIPARIAN BUFFER PROTECTION ORDINANCE (APPENDIX F)**
 - Section 1. Authority
 - Section 2. Purpose and Intent
 - Section 3. Title
 - Section 4. Jurisdiction
 - Section 5. Applicability
 - Section 6. Relation to Other Ordinances
 - Section 7. Riparian Area Protection within the Jordan Reservoir Watershed
 - Section 8. Potential Uses and Associated Requirements
 - Section 9. Permits Procedures, Requirements, and Approvals
 - Section 10. Compliance and Enforcement
 - Section 11. Severability
 - Section 12. Effective Date
 - Section 13. Revisions to this Ordinance
 - Section 14. Definitions
- **THE FLOOD DAMAGE PREVENTION ORDINANCE (APPENDIX D)**
 - Article 1. Statutory Authorization, Findings of Fact, Purpose and Objectives
 - Article 2. Definitions
 - Article 3. General Provisions
 - Article 4. Administration
 - Article 5. Legal Status Provisions
- **THE ZONING ORDINANCE**
 - Article V. District Regulations
 - Section 5.5 Watershed Overlay District (Appendix E)

NUTRIENT LOADING ACCOUNTING TOOL

The Town of Pittsboro will utilize the Jordan/Falls Nutrient Load Accounting Tool developed by the NCDENR-DWQ ([http://portal.ncdenr.org/c/document_library/get_file?uuid=b06ea474-
ea37-457f-a15c-e8a3ea9a5127&groupId=38364](http://portal.ncdenr.org/c/document_library/get_file?uuid=b06ea474-
ea37-457f-a15c-e8a3ea9a5127&groupId=38364)) as the basis for accounting for nutrient loading and BMP implementation to meet the requirements of the Jordan New Development Stormwater Rule [15A NCAC 2B .0265].

APPENDICES OF SUPPORTING INFORMATION

APPENDIX A: PROGRAM CONTACTS AND PROFESSIONAL QUALIFICATIONS

William G. Terry
Town Manager
Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 ext. 22
Fax: (919) 542-7109
Email: wgterry@pittsboronc.gov

Mr. Terry graduated from Carleton College in 1970 with a degree in Government and International Relations and he received a Master of Public Administration degree from North Carolina State University in 1998. From 1971 to 1991 he served as a combat engineer officer and logistics officer in the U.S. Marine Corps. Upon retirement from the Marine Corps he went to work for the Town of Chapel Hill as the Internal Services Superintendent, responsible for managing the Town's automotive fleet and building maintenance programs. He worked with the Triangle Clean Cities Coalition since its inception and served as the Chair of the Triangle Clean Cities Coalition Executive Committee from July 1, 2003 to June 30, 2004. He accepted the position of Town Manager in Pittsboro on October 1, 2007.

Stuart Bass
Planning Director/Interim Stormwater Administrator Pending Hire of Town Engineer
Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 ext. 34
Fax: (919) 542-7109
swbass@pittsboronc.gov

Stuart W. Bass is a professional planner with over 25 years of experience. He has a Masters Degree in Regional Planning, is a North Carolina Certified Zoning Official, is a Certified Planner as determined by the American Institute of Certified Planners, and has experience and familiarity with local government requirements and state regulatory programs.

DRAFT



Vicinity Map



Legend

- Stream
- Roads
- Jordan Lake Basins
- ETJ
- Corporate Limits
- Floodplain

Future Land Use Designations

- Conservation
- Downtown Mixed Use
- Industrial
- Low Density Residential
- Med. Density Residential
- Office & Institutional
- Park
- Planned Mixed Use
- Thoroughfare Business
- Traditional Neighborhood

Hydraulic Unit Code:
03030002060020

Hydraulic Unit Code:
03030002060030

Hydraulic Unit Code:
03030002060050

Jordan Lake

Town of Pittsboro, NC

**Stormwater Program
Jurisdictional Boundaries**

Created by: WTT
Checked by: CDJ
Date: 5/4/2012



DRAFT

Application For Stormwater Discharge Permit

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

SUBMITTAL REQUIREMENTS

- **Plan Sets:** 2 copies (Folded)
 - *Must include all items indicated in the Design Manual and the submittal checklist*
- **Stormwater Management Report:** 2 copies (Bound)
 - *Include a digital (.pdf) copy on the submittal CD*
- **Application Fee:** See current fee schedule
 - *Note: Stormwater applications approved with the site plan/preliminary subdivision may be subject to an additional modification fee if changes to the design are required during construction*

PROJECT DESCRIPTION

Development Name: [Click here to enter text](#)

Location: [Click here to enter text](#)

Chatham County PIN: [Click here to enter text](#) Parcel ID: [Click here to enter text](#)

Total acres: [Click here to enter text](#)

APPLICANT/DEVELOPER

Name: [Click here to enter text](#) Phone: [Click here to enter text](#)

Company : [Click here to enter text](#)

Address: [Click here to enter text](#)

Email: [Click here to enter text](#)

PROPERTY OWNER (If different from Applicant)

Name: [Click here to enter text](#) Phone: [Click here to enter text](#)

Address: [Click here to enter text](#)

Email: [Click here to enter text](#)

DESIGNER (Must be a NC Engineer/Surveyor/Soil Scientist/Landscape Architect)

Name: [Click here to enter text](#) Phone: [Click here to enter text](#)

Company: [Click here to enter text](#)

Address: [Click here to enter text](#)

Email: [Click here to enter text](#)

Application For Stormwater Discharge Permit

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

PERMIT INFORMATION:

Specify whether project is (check one):

- New
 Modification

If this application is being submitted as the result of a **modification** to an existing permit, list the existing permit number , its issue date (if known) , and the status of construction:

- Not Started
 Partially Completed*
 Completed*

**provide a designer's certification*

Specify the type of project (check one):

- Commercial/Industrial (Including Multi-Family)
 Residential
 Other

Additional Project Requirements (check applicable blanks; information on required State permits can be obtained by contacting the NCDENR Help Desk at 1-877-623-6748):

- NCDENR Sedimentation/Erosion Control: ___ acres of Disturbed Area
 NCDENR Dam Safety Permit
 Town of Pittsboro Buffer Disturbance Authorization Certificate
 Town of Pittsboro Floodplain Development Permit
 Receiving Stream Classification
 404/401 Permit: Proposed Impacts

If any of these permits have already been acquired please provide copies of the approvals with the submittal

Party responsible for the ongoing maintenance of the stormwater system

- Applicant/Developer
 Lessee (Attach copy of lease agreement)
 Future property owner (Attach copy of sales agreement)

PROJECT INFORMATION:

In the space provided below, briefly summarize how the stormwater runoff will be treated.

Click here to enter text

Application For Stormwater Discharge Permit

Town of Pittsboro
 635 East Street Pittsboro, NC 27312
 Phone: (919) 542-4621 Fax: (919) 542-7109

Complete the following information for each drainage area. If there are more than four drainage areas in the project, attach an additional sheet with the information for each area provided in the same format as below.

Basin Information	Pre	Post	Net
On-site Drainage Area (sf)	-	-	-
Off-site Drainage Area (sf)	-	-	-
Total Drainage Area (sf)	-	-	-

On-site Impervious Area* Information	Pre	Post	Net
Buildings (sf)	-	-	-
Streets (sf)	-	-	-
Parking (sf)	-	-	-
Sidewalks (sf)	-	-	-
Other (sf)	-	-	-
Future Phases (sf)	-	-	-
Total BUA (sf)	-	-	-

* Impervious area is defined as the built upon area (BUA) including, but not limited to, buildings, roads, parking areas, sidewalks, gravel areas, etc.

BMP SPECIFIC SUPPLEMENT FORMS

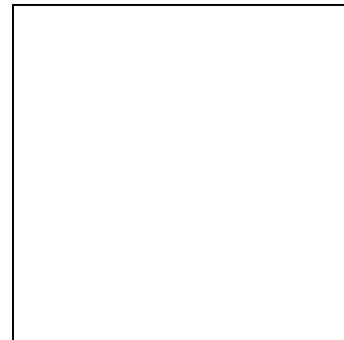
The applicable NC DENR stormwater management permit supplement forms must be submitted for each BMP specified for this project. The latest versions of the forms can be downloaded from <http://portal.ncdenr.org/web/wq/ws/su/bmp-manual>.

DESIGNER'S CERTIFICATION

I, *Insert name of person listed in Contact Information*, certify that the information included on this permit application form is, to the best of my knowledge correct, and that the proposed project complies with the requirements of the applicable stormwater rules required by the Town of Pittsboro.

Signature: _____

Date: _____



SEAL

Application For Stormwater Discharge Permit

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

APPLICANT/DEVELOPER CERTIFICATION

I, Insert name of person listed in Contact Information, certify that I own this property, or have obtained proper authorization from the owner of the property identified in this permit application, and that the project will be constructed in conformance with the approved plans, and that the required deed restrictions and protective covenants will be recorded. If applicable, a copy of the lease agreement or pending property sales contract has been provided with the submittal, which indicates the party responsible for the operation and maintenance of the stormwater BMP.

As the legal property owner or duly authorized agent, I acknowledge, understand, and agree by my signature below, to accept responsibility for compliance with the Stormwater Permit. I understand that the operation of a stormwater BMP without a valid permit is a violation of NC General Statute 143-215.1 and may result in appropriate enforcement action including the assessment of civil penalties of up to \$25,000 per day, pursuant to NCGS 143-215.6.

Signature: _____ Date: _____

I, _____, a Notary Public for the State of _____,

County of _____, do hereby certify that _____

personally appeared before me this day and acknowledge the due execution of the application for a stormwater permit.

WITNESS my Hand and Official Seal, this the ____ day of _____, 20____.

NOTARY PUBLIC

(Seal)

My Commission Expires: _____

Application For Stormwater Discharge Permit

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

PROPERTY OWNER AGENT AUTHORIZATION

Complete this section only if you wish to designate authority to another individual and/or firm so that they may provide information on your behalf for this project.

I, Insert name of person listed in Contact Information, certify that I own the property identified in this permit application, and thus give permission to Insert name of person listed in Contact Information with Insert name of company listed in Contact Information to develop the project as currently proposed. A copy of the lease agreement or pending property sales contract has been provided with the submittal, which indicates the party responsible for the operation and maintenance of the stormwater BMP.

As the legal property owner I acknowledge, understand, and agree by my signature below, that if my designated agent, Insert name of person listed in Contact Information, dissolves their company and/or cancels or defaults on their lease agreement, or pending sale, responsibility for compliance with the Pittsboro Stormwater permit reverts back to me, the property owner. As the property owner, it is my responsibility to notify Pittsboro immediately and submit a completed Name/Ownership Change Form within 30 days; otherwise I will be operating a stormwater treatment facility without a valid permit. I understand that the operation of a stormwater treatment facility without a valid permit is a violation of NC General Statute 143-215.1 and may result in appropriate enforcement action including the assessment of civil penalties of up to \$25,000 per day, pursuant to NCGS 143-215.6. Furthermore, I understand that I have ultimate responsibility to ensure that the project is constructed in conformance with the approved plans, and that the required deed restrictions and protective covenants are recorded.

Signature: _____

Date: _____

I, _____, a Notary Public for the State of _____,

County of _____, do hereby certify that _____

personally appeared before me this day and acknowledge the due execution of the application for a stormwater permit.

WITNESS my Hand and Official Seal, this the ____ day of _____, 20____.

NOTARY PUBLIC

(Seal)

My Commission Expires: _____

DRAFT

Permit to Discharge Stormwater

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

Approval Date:	<u>Click here to choose a date</u>		
Town Project Number:	<u>Click here to enter text</u>	Project Name:	<u>Click here to enter text</u>
Owner(s)/Applicant(s):	<u>Click here to enter text</u>		
Property Location:	<u>Click here to enter text</u>		
Parcel Id Number(s):	<u>Click here to enter text</u>		
Development Type:	<u>Click here to enter text</u>		
Total Project Acreage:	<u>Click here to enter text</u>		
Built Upon Area (Square-Foot) :	<u> - </u>	(Acres):	<u> - </u> (%): <u> - </u>
Type and number of BMPs: (attach BMP Summary Sheets)	<u>Click here to enter text</u>		

1. **APPROVAL:** Having reviewed the application and all supporting materials, the Stormwater Administrator has determined that the application for the above referenced project is complete, and the design of the proposed development meets the requirements of the Town of Pittsboro Jordan Stormwater Ordinance for New Development. Therefore, pursuant to the Town of Pittsboro’s Stormwater Program, and applicable State of North Carolina regulations, the Town of Pittsboro hereby approves the project for development, subject to the conditions imposed below.
2. **CONDITIONS:** The above referenced project site and land used is hereby approved and subject to all applicable provisions of the Town of Pittsboro Jordan Stormwater Ordinance for New Development, Town of Pittsboro Riparian Buffer Protection Ordinance, Town of Pittsboro Flood Damage Prevention Ordinance, Town of Pittsboro Zoning Ordinance and North Carolina Department of Environment and Natural Resources (DENR) Division of Water Quality (DWQ) Stormwater Best Management Practices Manual, Sections 3 and 4 of this permit, and the following condition(s) which the Stormwater Administrator finds necessary for the proposed development to meet the intent of the ordinance:
 - a. An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one (1) year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant’s vested rights. If, after one (1) year the permitted activity has not begun nor a valid building permit secured, this permit shall expire.
 - b. All land purchases and transfers necessary to secure the property for development shall be completed prior to recordation of this permit.
 - c. The development of the tract shall proceed in conformity to all plans, design features, and restrictions submitted as part of the stormwater permit application and kept on file except that the Stormwater Administrator may approve *minor* changes to such plans as required by field conditions.
 - d. The petitioner shall complete all required stormwater improvements and receive approval from the Town for such improvements prior to the release of any certificates of occupancy.

Permit to Discharge Stormwater

Town of Pittsboro

635 East Street Pittsboro, NC 27312

Phone: (919) 542-4621 Fax: (919) 542-7109

- e. The petitioner shall submit any Floodplain Development Permit Applications and receive approval from the Pittsboro Planning Department prior to any land disturbance or filling of land located within those regulated areas.
 - f. The petitioner shall submit a Sedimentation and Erosion Control Plan Application and receive approval from NCDENR prior to any land disturbance or filling of land.
 - g. All easements necessary to construct, operate and maintain the engineered stormwater controls shall be recorded prior to recordation of this permit.
 - h. All performance securities for installation and maintenance (if required) shall be submitted prior to recordation of this permit.
 - i. All operation and maintenance agreements shall be executed and submitted prior to recordation of this permit.
 - j. A final inspection shall be made and as-built information shall be approved prior to the granting of a certificate of occupancy.
3. **VESTED RIGHTS.** Approval of this permit confers upon the property the right to develop with the type and intensity of use only as such relates to the requirements of the Town of Pittsboro's Jordan Stormwater Ordinance for New Development and in the manner as herein described and as shown on the approved plans, and individual BMP Design Summary sheets attached hereto. Development of the property, however, shall be subject to any and all future amendments to this ordinance which do not affect such type and intensity of use and shall proceed in full compliance with all other applicable local, state and federal regulations. The approval of this permit shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state and federal authorities.
4. **DEED RESTRICTION-PROTECTIVE COVENANT.** The following italicized deed restrictions and protective covenants shall be recorded for all subdivisions, outparcels, and future development prior to the sale of any lot.
- a. *Development of subject property is required to be in accordance with the Town of Pittsboro's Jordan Stormwater Ordinance for New Development. The recording of this document establishes an enforceable restriction of property usage that runs with the land to ensure that future development and/or redevelopment shall maintain the site in a manner consistent with applicable law and the approved project plans. Any alterations to the site shall not be permitted without review and approval by the Town of Pittsboro.*
5. **SEVERABILITY.** Invalidation of any one or more of the conditions set forth herein shall not adversely affect the balance of said conditions, which shall remain in full force and effect.

Signature: _____ Date: _____
Stormwater Administrator

Permit to Discharge Stormwater

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

I, *Insert name of person listed in Contact Information*, owner(s) or authorized agent in control of the subject property, do hereby acknowledge receipt of this Stormwater Permit and agree to the conditions stated within. I further acknowledge that no work may be done pursuant to this permit except in accordance with all of the conditions and requirements listed and that these conditions and requirements shall be binding upon me and my successors in interest and shall run with the land in perpetuity.

ATTEST:

[Owner/Agent Signature]

[Owner/Agent Print Name & Position]

I, _____, a Notary Public, do hereby certify that _____ personally appeared before me this day and acknowledged that [he/she/they] [is/are] the owner(s) or authorized agent of the above referenced property.

WITNESS my Hand and Official Seal, this the ____ day of _____, 20____.

NOTARY PUBLIC (Seal)

My Commission Expires: _____

Note:

This page shall be signed by the responsible party in the presence of a Notary Public to acknowledge receipt and acceptance of the terms of the permit. The document shall then be recorded with the Chatham County Registrar of Deeds, and returned to the Town of Pittsboro to complete the authorization(s) it encompasses. Failure to record does not alter or extend the effective date and/or timeline(s) noted in conditions 2(a) above.

Mail after recording to: Town of Pittsboro
 Stormwater Administrator
 P.O. Box 759
 Pittsboro, NC 27312

DRAFT

Application For Stormwater BMP As-Built Acceptance

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

SUBMITTAL REQUIREMENTS

- **Completed Forms & Documentation:** 2 copies
 - *Application Form, Signed & Sealed by certifying professionals, completed submittal checklist, and associated documentation*
- **Plan Sets:** 2 copies (Folded)
 - *Must include strike-through updates of all items on the approved Construction Drawing plan sheet*
- **Stormwater Management Report:** 2 copies (Bound)
 - *Must include strike-through updates of all items in the report approved with the Construction Drawings*
 - *Include a digital (.pdf) copy on the submittal CD*
- **Application Fee:** See current fee schedule

PROJECT DESCRIPTION

Development Name: *Click here to enter text*

Location: *Click here to enter text*

Chatham County PIN: *Click here to enter text* Parcel ID: *Click here to enter text*

Total acres: *Click here to enter text*

Stormwater Permit Number: *Click here to enter text*

BMP ID(s) *Click here to enter text*

APPLICANT/DEVELOPER

Name: *Click here to enter text* Phone: *Click here to enter text*

Company : *Click here to enter text*

Address: *Click here to enter text*

Email: *Click here to enter text*

PROPERTY OWNER (If different from Applicant)

Name: *Click here to enter text* Phone: *Click here to enter text*

Address: *Click here to enter text*

Email: *Click here to enter text*

DESIGNER (Must be a NC Engineer/Surveyor/Soil Scientist/Landscape Architect)

Name: *Click here to enter text* Phone: *Click here to enter text*

Company: *Click here to enter text*

Address: *Click here to enter text*

Email: *Click here to enter text*

Application For Stormwater BMP As-Built Acceptance

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

Complete the following checklist to ensure all applicable items are included with the submittal.

Description (provide one copy of each item)	Provided	N/A	Reviewer*
Plan Set with updated survey & constructed facility data**	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Updated Stormwater Report with constructed data***	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Geotechnical Certification and associated Field Inspection Reports	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Shallow High Water determination	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Soil Media Mix testing and gradation certification	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Copy of Recorded BMP Operation & Maintenance Agreement	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Confirmation of Maintenance Security	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Copy of the Approved Stormwater Permit	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Copy(s) of approved revisions	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>
Application Fee: Amount =	<input type="checkbox"/>	<input type="checkbox"/>	<i>Initial</i>

*For Office Use Only

**Design info shall be stricken, survey points shown, and design storm elevations shown as contours in the plan view of the facility

***Design info shall be stricken

Complete the following information for each BMP identified. If there are more than three BMPS in the project simply attach additional sheets.

BMP Information	BMP ID		BMP ID		BMP ID	
	Approved*	As-Built	Approved*	As-Built	Approved*	As-Built
BMP Type	-	-	-	-	-	-
Total Drainage Area (sf)	-	-	-	-	-	-
On-site Drainage Area (sf)	-	-	-	-	-	-
Off-site Drainage Area (sf)	-	-	-	-	-	-
Impervious Area (sf)	-	-	-	-	-	-
% Impervious Area (total)	-	-	-	-	-	-
1" Water Quality Volume (cf)	-	-	-	-	-	-
1" WQV Elevation (ft)	-	-	-	-	-	-
1" WQV Drawdown (days)	-	-	-	-	-	-
1-Yr Storm Runoff Rate (cfs)	-	-	-	-	-	-
1-Yr Storm Runoff Elev. (ft)	-	-	-	-	-	-
10-Yr Storm Runoff Rate (cfs)	-	-	-	-	-	-
10-Yr Storm Runoff Elev. (ft)	-	-	-	-	-	-
100-Yr Storm Runoff Rate (cfs)	-	-	-	-	-	-
100-Yr Storm Runoff Elev. (ft)	-	-	-	-	-	-
100-Yr Freeboard (ft)	-	-	-	-	-	-

*Provide information from the approved Stormwater Management Report, including any revisions. Any variations from this must be noted and brought to the attention of the Stormwater Administrator prior to submittal

Application For Stormwater BMP As-Built Acceptance

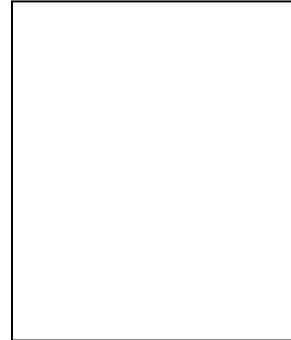
Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

DESIGNER'S CERTIFICATION

I, Insert name of person listed in Contact Information, certify that the information included on this As-built Acceptance application form is, to the best of my knowledge, correct and that the project has been constructed in conformance with the approved plans and that the proposed project complies with the requirements of the applicable stormwater rules required by the Town of Pittsboro.

Signature: _____

Date: _____



SEAL

Application For Stormwater BMP As-Built Acceptance

Town of Pittsboro
635 East Street Pittsboro, NC 27312
Phone: (919) 542-4621 Fax: (919) 542-7109

SURVEYOR INFORMATION (if different from Designer)

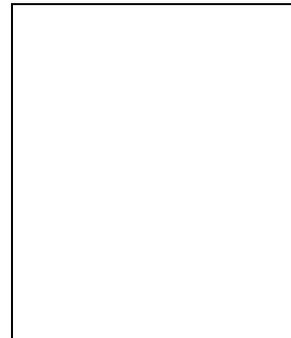
Surveyor's Name:	<u>Click here to enter text</u>				
Surveying Firm:	<u>Click here to enter text</u>				
Mailing Address:	<u>Click here to enter text</u>				
City:	<u>Click here to enter text</u>	State:	<u>Enter State</u>	Zip:	<u>Enter Zip</u>
Phone:	<u>Click here to enter text</u>	Fax:	<u>Click here to enter text</u>		
Email:	<u>Click here to enter text</u>				

SURVEYOR'S CERTIFICATION

I, Insert name of person listed in Contact Information, certify that the information included with this application form is, to the best of my knowledge, correct and complies with the requirements of the applicable stormwater rules required by the Town of Pittsboro.

Signature: _____

Date: _____



SEAL

C4: Operation and Maintenance Agreements for BMPs

The Town of Pittsboro will utilize operation and maintenance agreements found in the latest version of the NCDENR-DWQ Stormwater BMP Manual (<http://portal.ncdenr.org/web/wq/ws/su/bmp%E2%80%90manual>).

DRAFT

DRAFT

Prepared by: Paul S. Messick, Jr., Pittsboro, NC 27312

Return to:

STATE OF NORTH CAROLINA

EASEMENT

COUNTY OF CHATHAM

THIS EASEMENT, made and entered into this ____ day of _____, 201_, by and between _____, a resident of Chatham County, North Carolina (“_____”), collectively (“Grantors”); and the **TOWN OF PITTSBORO**, a North Carolina municipal corporation (“Grantee”);

W I T N E S S E T H:

WHEREAS, _____ is the owner of _____, containing _____ acres, more or less, more particularly described on the plat recorded in Plat Slide _____ of the Chatham County Registry (collectively the “Property”), and Grantor has agreed to grant to Grantee, the Easement hereinafter described; and

NOW, THEREFORE, for a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby gives, grants, bargains, sells and conveys unto the Grantee, its successors and assigns, the permanent right, privilege and easement for purposes of ingress, egress, and regress over and under the following described premises located in Center Township, Chatham County, North Carolina, (the “Easement Premises”) more particularly described as follows:

INSERT DESCRIPTION

TO HAVE AND TO HOLD said rights and easements to the said Grantee and its successors in title forever. Grantor hereby releases the Grantee from all claims for damages arising out of or in connection with the right of way and easements herein granted and its past, present and future use thereof by the Grantee, its successors and assigns for all purposes authorized by law. It is understood that the grant and other provisions of this easement shall constitute a covenant running with the land for the benefit of the Town of Pittsboro, its successors and assigns.

Grantor does covenant that he is vested of the premises in fee and has the right to convey the same in fee simple; that Grantor has done nothing to impair such title as Grantor received, and Grantor will warrant and defend the title to the premises against the lawful claims of all persons claiming by, under or through Grantor. This conveyance is subject to all easements, restrictions, rights of way and other matters of record in the Chatham County Registry.

IN WITNESS WHEREOF, the Grantor has caused this Easement to be executed under seal the day and year first above written.

_____(SEAL)

**STATE OF NORTH CAROLINA
COUNTY OF CHATHAM**

I, the undersigned Notary Public of the County or City of _____ and State aforesaid, certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing instrument for the purposes therein expressed.

WITNESS my hand and Notarial stamp or seal this ____ day of _____, 201_.

Notary Public

Notary's Printed or Typed Name

My Commission Expires:_____

(Affix Seal)

DRAFT

NORTH CAROLINA
CHATHAM COUNTY

LOW MAINTENANCE CONSERVATION
EASEMENT

THIS LOW MAINTENANCE CONSERVATION EASEMENT ("Conservation Easement") made and entered into this _____ day of _____ 2012, by and between _____ with an address at _____ (whether one or more, "Grantor"), and the TOWN OF PITTSBORO, a North Carolina municipal corporation with an address of P.O. Box 759, Pittsboro, North Carolina 27312 ("Grantee").

RECITALS AND CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of certain real estate containing approximately _____ acres located in Chatham County, North Carolina, more particularly described in Exhibit A, attached hereto and by this reference incorporated herein (the "Property"); and

B. The Property is located in the Jordan Lake Watershed, which has been designated nutrient sensitive by the North Carolina Division of Water Quality and the North Carolina Environmental Management Commission; and

C. The Property is part of an approved development project known as _____ (____ total acres), which designates a required permanent conservation easement to ensure that nutrient reduction occurs within the development project in a manner consistent with the requirements of the _____ in the Town of Pittsboro Stormwater Ordinance and the Jordan Lake Stormwater Requirements of the Jordan Water Supply Nutrient Sensitive Waters Management Strategy (15A NCAC 2B .0262) ; and

D. The Property possess natural, environmental and scenic values which Grantor intends to conserve and maintain by the continuation of land use patterns approved at the time of this development; and

E. Grantor as owner of the Property intends the property to be maintained in perpetuity, such that it maintains its nutrient removal properties intended by the approved development plan; and

F. Grantor agrees to operate and maintain the Property in such a manner as to not increase the amount of nitrogen and phosphorus discharged in the stormwater runoff from the site.

NOW, THEREFORE Grantor, for valuable consideration paid by Grantee, the receipt of which is hereby acknowledged, has and by these presents, does hereby unconditionally and irrevocably grant, bargain, sell, and convey to Grantee a perpetual Low Maintenance Conservation Easement of the nature, character, and extent hereinafter set forth in, over, under, through and across the Property, as described in Exhibit A attached hereto, together with the right of ingress to and egress from the Property over the adjoining property of Grantor, including the right with regard to said easement to preserve and protect the conservation values thereof as described herein.

ARTICLE I - PURPOSE

It is the purpose of this Low Maintenance Conservation Easement to assure that the Property is managed in a manner that prevents any use of the Property which will impair or interfere with the nutrient removal properties of the Property and will be retained forever in an open vegetative condition as shown on the approved plans.

ARTICLE II - DURATION OF EASEMENT

This Low Maintenance Conservation Easement shall be perpetual and runs with the land, and is enforceable by Grantee against Grantor, his, her, its, or their representatives, successors, heirs, assigns, lessees, agents, and licensees.

ARTICLE III - PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purpose of this Low Maintenance Conservation Easement is prohibited. The Property shall be maintained in an open vegetative condition in the form and state shown on the approved plan and restricted from any development or other use that would impair or interfere with the nutrient removal purpose of this easement set forth above. Any alterations of the property must be approved by the Grantee in writing.

The Grantor shall not undertake any action including the application of fertilizer, pesticides or herbicides that may increase the nitrogen and/or phosphorus contained in the stormwater runoff from the Property. The Grantor shall not mow, cultivate or otherwise prevent or impair the continuance of the Property as woodland, or prevent or impair natural succession of the Property to a woodland state.

All rights reserved by Grantor are reserved for Grantor, Grantor's representatives, successors, heirs and assigns and are considered to be consistent with the conservation purpose of this easement, and, unless specifically stated otherwise herein, require no prior notification to or approval by Grantee.

Notwithstanding the foregoing, Grantor and Grantee shall have no right to agree to any activity that would result in the termination of this Conservation Easement. Without limiting the generality of the foregoing, the following activities and uses by Grantor, Grantee, or any other person are expressly prohibited or restricted:

A. Industrial and Commercial Use. Industrial and commercial activities of any type or kind and any right of access or passage for such purposes are prohibited.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, farming, grazing, horticultural and animal husbandry operations are prohibited.

C. Construction of Buildings and Use. There shall be no constructing or placing of any residence, building, mobile home, asphalt or concrete pavement, antenna or any other temporary or permanent structure or facility on, above, or under the Property.

D. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or incidental to any conservation management activities otherwise permitted in this Conservation Easement.

E. Wetlands and Water Quality. There shall be no pollution or alteration of water bodies and no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property or into any surface waters, or cause soil degradation or erosion; in addition, there shall be no diking, dredging, alteration, draining, filling or removal of wetlands, except for activities to restore natural hydrology or wetlands enhancement as permitted by state and any other appropriate authorities.

F. Dumping. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the property is prohibited.

G. Conveyance and Subdivision. The Property shall not be subdivided, partitioned, or conveyed except in its current configuration as an entity.

H. Other Activities or Use. Any use or activity not expressly permitted in Article IV of this Conservation Easement is prohibited.

ARTICLE IV – PERMITTED ACTIVITIES

The following activities or uses on the Property are not inconsistent with the purpose of this Conservation Easement and are reserved to Grantor:

A. Fencing. The Property may be fenced, provided the same can be accomplished without cutting or removing trees, or disturbing the natural features of the land.

B. Hunting, Fishing, and Recreational Activities. Hunting, fishing, and recreational activities may be conducted on the Property provided the same are conducted in conformity with all applicable laws, rules, and regulations governing the same, and provided further, that there shall be no surface alteration or other development of the Property in connection therewith. Motorized vehicles are not permitted.

C. Public Utilities. Public utility easements may be granted and facilities, including, without limitation, lines, wires, cables, pipes, meters, pumps, and lift stations may be placed on the Property, subject to prior written approval of the Grantee. Disruption to the nutrient removal properties of the Property must be minimized and restricted to essential needs.

ARTICLE V - ENFORCEMENT & REMEDIES

A. Grantee's Remedies. If Grantee determines that Grantor is in violation of any of the terms of this Conservation Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee, or, if the circumstances are such that the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or, if having commenced actions to cure the violation, fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in any court of competent jurisdiction to enforce the terms of this Low Maintenance Conservation Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of any term of this Low Maintenance Conservation Easement or for injury to any conservation values protected by this easement, including damages for the loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Property, with Grantees best efforts to give notice to Grantor, Grantee may pursue its remedies under this paragraph without waiting for the period provided for cure to expire.

Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, as well as specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

B. Right of Entry: Grantee, its employees and agents, shall have the right to enter the Property (including the concomitant right to cross the adjoining property of Grantor, including Grantor's successors, heirs, assigns, lessees, agents, and licensees) at any reasonable time for the purpose of preparing baseline documentation with respect to the Property and for inspecting the Property to determine whether Grantor is complying with the terms, conditions, and restrictions of this Low Maintenance Conservation Easement.

C. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the term of this Conservation Easement, shall be paid by Grantor. This, however, shall not include the cost of inspection.

D. Grantee's Discretion. Enforcement of the terms of this Conservation Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights hereunder shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantee's rights hereunder. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

E. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property or to persons resulting from such causes.

ARTICLE VI - MISCELLANEOUS

A. Subsequent Transfers. Grantor shall incorporate the terms of this Conservation Easement in any deed or other legal instrument by which Grantor transfers any interest in the Property, including, without limitation, any liens or leasehold interest. Grantor further agrees to

give written notice to Grantee of the proposed transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

B. Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

C. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

D. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed denied unless, within thirty (30) days after receipt of notice, a written notice of approval and the reason therefore has been mailed to the party requesting consent.

E. Amendments. Grantor and Grantee are free to jointly amend this Low Maintenance Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purpose of this easement, affects the perpetual duration of this easement (except as provided below), or the status of Grantee under any applicable law. In the event of repeal of the basinwide nutrient reduction requirements for the Tar-Pamlico River and a subsequent absence of state and county regulation requiring nutrient reduction, the Grantee may, at its discretion and upon request by the Grantor, amend the duration of this Low Maintenance Conservation Easement. Such amendment(s) shall be effective upon recording in the public records of Chatham County, North Carolina.

F. Costs and Liabilities. Grantor shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including, without limitation, the payment of all taxes and assessments levied on or assessed against the Property by any competent authority and the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by, Grantor or anyone claiming under Grantor.

TO HAVE AND TO HOLD the Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor have executed this Conservation Easement, each having adopted the type written word ("SEAL") as their personal/corporate seal, as of the day and year first written above.

GRANTOR:

_____ (SEAL)

By: _____

Name:

Title:

STATE OF _____

COUNTY OF _____

I, a Notary Public of _____ County and State aforesaid, certify that _____

personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this ____ day of _____, 2012.

My Commission Expires: _____

Name: _____

Notary Public

STATE OF NORTH CAROLINA

COUNTY OF _____

I, a Notary Public of _____ County and the State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he is _____ of _____, a corporation, and that he , as _____ being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal or stamp, this the _____ day of _____, 2012.

My Commission Expires: _____

Name: _____

Notary Public

EXHIBIT A

CONSERVATION EASEMENT

DESCRIPTION

DRAFT

CHAPTER 10
FLOOD DAMAGE PREVENTION ORDINANCE

- I Statutory Authorization
- II Definitions
- III General Provisions
- IV Administration
- V Provisions for Flood Reduction
- VI Legal Status Provision

TABLE OF CONTENTS
FLOOD DAMAGE PREVENTION ORDINANCE
Non-Coastal Regular Phase

ARTICLE 1

Section A.	Statutory Authorization
Section B.	Findings of Fact
Section C.	Statement of Purpose
Section D.	Objectives

ARTICLE 2 **DEFINITIONS**

ARTICLE 3 **GENERAL PROVISIONS**

Section A.	Lands to Which This Ordinance Applies
Section B.	Basis for Establishing the Areas of Special Flood Hazard
Section C.	Establishment of Development Permit
Section D.	Compliance
Section E.	Abrogation and Greater Restriction
Section F.	Interpretation
Section G.	Warning and Disclaimer
Section H.	Penalties for Violation

ARTICLE 4 **ADMINISTRATION**

Section A.	Designation of Administrator
Section B.	Construction Within Floodways, Non-encroachment areas and Floodplains restricted
Section C.	Special Provisions for Subdivisions
Section D.	Duties and Responsibilities of the Floodplain Administrator
Section E.	Corrective Procedures
Section F.	Variance Procedures

ARTICLE 5 **LEGAL STATUS PROVISIONS**

Section A.	Effect on Rights and Liabilities Under Existing Flood Damage Prevention Ordinance
Section B.	Effect upon Outstanding Floodplain Development
Section C.	Effective Date
Section D.	Adoption Certification

FLOOD DAMAGE PREVENTION ORDINANCE

ARTICLE 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

SECTION A. STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Board of Commissioners of the Town of Pittsboro, North Carolina does hereby ordain as follows:

SECTION B. FINDINGS OF FACT.

1. The flood prone areas of Pittsboro are subject to periodic inundation which may result in the loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

SECTION C. STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety and the general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

1. restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
2. require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
3. control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;
4. control filling, grading, dredging and all other development that may increase erosion or flood damage; and
5. prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES.

The objectives of this ordinance are:

1. to protect human life and health;

2. to minimize the expenditure of public money for costly flood control projects;
3. to minimize the need for rescue and relief efforts associated with flooding which are generally undertaken at the public expense;
4. to minimize prolonged business losses and interruption;
5. to minimize losses to public facilities and utilities such as water and gas mains, electric, telephone, cable and sewer lines, streets and bridges located in flood prone areas;
6. to help maintain a stable tax base by providing for the sound use and development of flood prone areas;
7. to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2. DEFINITIONS.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

“Accessory Structure (Appurtenant Structure)” means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms or in agricultural districts and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Appeal” means a request for a review of the floodplain administrator’s interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO on the Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Basement” means any area of a building having its floor subgrade on all sides.

“Base Flood” means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

“Disposal” as defined in NCGS 130A-290(a)(6) means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of it may enter the environment, be emitted into the air or discharged into any waters, including groundwater.

“Elevated Building” means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, pilings or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain which may impede or alter the flow capacity of a floodplain.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads) was completed before the effective date of the floodplain management regulations adopted by Pittsboro.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) the overflow of inland waters; and/or
- (2) the unusual and rapid accumulation of runoff of surface waters from an source.

“Flood Boundary and Floodway Map (FBFM)” means an official map issued by the Federal Emergency Management Agency on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map issued by the Federal Emergency Management Agency on which both the Special Flood Hazard Area and the risk premium zones applicable to Pittsboro are delineated.

“Flood Insurance Study (FIS)” means an examination, evaluation and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones and other flood data issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Floodplain” or “Flood Prone Area” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, floodplain management regulations, and open space plans.

"Floodplain Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.

" Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order for discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Freeboard" means the height added to the Base Flood Elevation (BFE) to account for watershed development as well as limitations of the engineering methodologies for the determination of flood elevations. The freeboard plus the Base Flood Elevation establishes the "Regulatory Flood Protection Elevation".

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

"Hazardous Waste Management Facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

- (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- (b) certified or preliminary determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
- (d) certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program".

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservations Act of 1966 as amended in 1980.

"Lowest Adjacent Grade (LAG)" means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building. For Zones A and AO, use the natural grade prior to construction.

"Lowest Floor" means the subfloor, top of slab or grade of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable on one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreation vehicle".

"Manufactured Home Park or Subdivision" means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

"Market Value" means the building value, excluding the land value and that of any accessory structures or other improvements on the lot, established by independent certified appraisal, replacement cost depreciated by age of building and quality of construction (Actual Cash Value), or adjusted tax assessed values.

"Mean Sea Level" means, for purpose of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the original version of this ordinance and includes any subsequent improvements to such structures.

"Nonconforming Building or Development" means any legally existing building or development which fails to comply with the current provisions of this ordinance.

"Non-Encroachment Area" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

"Post-FIRM" means construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area.

"Pre-FIRM" means construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational Vehicle (RV)" means a vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;

- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) not designed for use as a permanent primary dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use.

"Reference Level" is the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within Special Flood Hazard Areas designated as Zone A1, A30, AE, A, A99 or AO, the reference level is the top of the lowest attendant utility including ductwork, whichever is lower.

"Regulatory Flood Protection Elevation" means the elevation, in relation to mean sea level, which the reference level of all structures and other development located within Special Flood Areas must be protected. Where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. Where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

"Remedy a Violation" means to bring the structure or other development into compliance with State and Community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to. Formed by, or resembling a river (including tributaries), stream, brook, etc.

"Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a) (35).

"Solid Waste Disposal Site" as defined in NCGS 130A-290(a)(36) means any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any year as determined in Article 3, Section B of this ordinance.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactures home. Or a gas or liquid storage tank that is principally above ground. For floodplain management purposes, principally above ground means that at least 51% of the actual cash value of the structure is above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damage condition would exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood related damage sustained by a structure on two separate occasions during a ten year period for which the cost of repairs at the time of such flood event, on the average, equals or exceeds twenty five percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
- (b) any alteration of a historic structure provided that the alteration will not preclude the structure a continued designation as a historic structure.

"Variance" is a grant of relief from the requirements of this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which water flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water Surface Elevation (WSE)" means the height, in relation to mean sea level (existing grade in case of Zone AO), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3. GENERAL PROVISIONS.

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJ) of the Town of Pittsboro.

SECTION B. BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps as the Flood Insurance Rate Map (s) (FIRM) and /or the Flood Boundary Floodway Map(s)(FHBM), for the Town of Pittsboro dated February 2, 2007, which, with

accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this ordinance. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes, but is not limited to:

- (1) detailed flood data generated as a requirement of Article 4, Section C(11&12) of this Ordinance;
- (2) preliminary FIRMs where more stringent than the effective FIRM; or
- (3) post-disaster Flood Recovery Maps.

SECTION C. ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Article 3, Section B.

SECTION D. COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

SECTION E. ABROGATION AND GREATER RESTRICTIONS.

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION F. INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

- (a) considered as minimum requirements;
- (b) liberally construed in favor of the governing body; and
- (c) deemed neither to limit nor repeal any other powers granted under State statutes.

SECTION G. WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by protection by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Pittsboro or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

SECTION H. PENALTIES FOR VIOLATION

Violation of the provision of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Pittsboro from taking such other lawful action as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION.

SECTION A. DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator is hereby appointed to administer and implement the provisions of this ordinance. The Administrator shall be designated by the Town Manager.

SECTION B. CONSTRUCTION WITHIN FLOODWAYS, NON-ENCROACHMENT AREAS AND FLOODPLAINS RESTRICTED.

(a) No Building, zoning, Special Use or Conditional Use Permit may be issued for any development within a floodway, non-encroachment area or the Special Flood Hazard Area (100 year floodplain). Notwithstanding the foregoing, development may be authorized within the floodplain where either: (1) a valid permit was issued prior to the effective date of this section; or (2) where an existing lot of record is rendered undevelopable due to the prohibition of new development within the floodplain. In situations where development is allowed, the property shall be developed in such a way that has the least impact possible on the floodplain, e.g., a structure shall encroach into the floodplain only to the extent that it must in order to meet setbacks. Any encroachment into the floodplain shall be built at least two (2) feet above BFE. In addition, no permit shall be issued for any development within a floodplain until the permit-issuing authority has reviewed the plans for any such development to assure that:

- (1) The proposed development is consistent with the need to minimize flood damage;
- (2) All public utilities and facilities such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
- (3) Adequate drainage is provided to minimize or reduce exposure to flood hazards;
- (4) All necessary permits have been received from those agencies from which approval is required by federal or state law;
- (5) With respect to mobile homes or mobile home parks that are non-conforming because they are located within a floodplain; mobile homes may be relocated in such parks only if they comply with the provisions of Subsection (e);
- (6) One residential accessory structure shall be allowed within the floodplain provided it is firmly anchored to prevent flotation;
- (7) Anchoring of any accessory building may be done by bolting the building to a concrete slab or by means of over-the-top ties providing a minimum of two ties are used with adequate force to secure the building;
- (8) The proposed structures are designed or modified and adequately anchored to prevent flotation, collapse or lateral motion;
- (9) The structures are constructed with materials and utility equipment resistant to flood damage;

- (10) The structures are constructed by methods and practices that minimize flood damage;
 - (11) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during the conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, dishwashers, etc.), water heaters and electrical outlets/ switches;
 - (12) Openings below flood level are required for elevated structures;
 - (13) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance. A structure or tank for chemical or fuel storage incidental to an allowed use or water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to this ordinance.
- (b) No building may be constructed and no substantial improvement of an existing building may occur within any floodway or non-encroachment area.
- (c) No new residential building may be constructed and no substantial improvement of a residential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated to two (2) feet above BFE.
- (d) No new residential building may be constructed and no substantial improvement of a non-residential building may take place within any floodplain unless the lowest floor (including basement) of the building or improvement is elevated or floodproofed to or above the base flood level. Where floodproofing is used in lieu of elevation, a registered professional engineer or architect shall certify that any new construction or substantial improvement has been designed to withstand the flood depths, pressure, velocities, impact, and uplift forces associated with the base flood at the location of the building and that the walls below the base flood level are substantially impermeable to the passage of water.
- (e) Notwithstanding any other provision of this ordinance, no mobile home may be located or relocated within that portion of the floodplain outside the floodway or non-encroachment area unless the following criteria are met:
1. Ground anchors for tie downs are provided.
 2. The following tie down requirements are met:
 - (i) Over the top ties are required at each of the four corners of the mobile home, with one additional tie per side at an intermediate location for mobile homes less than 50 feet long; two additional ties per side are required for mobile homes more than 50 feet long;
 - (ii) Frame ties are required in addition to over-the-top ties;
 - (iii) All components of the anchoring must be capable of carrying a force of 4800 pounds.
 3. Lots or pads are elevated on compacted fill or by any other method approved by the administrator so that the lowest habitable floor of the mobile home is two feet above the base flood level. However, no new fill may be added to comply with this section.
 4. Load-bearing foundation supports such as piers or pilings must be placed on stable soil or concrete footings no more than ten (10) feet apart, and if the support height is greater than 72 inches, the support must contain steel reinforcement.

(f) No fill dirt may be added within any floodway, non-encroachment area or floodplain.

(g) The fully enclosed area of new construction and substantially improved structures which is below the lowest floor:

1. shall not be designed or used for human habitation but shall only be used for the parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior area of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
2. shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
3. shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. To meet this requirement, the openings must either be certified by a registered professional engineer or architect or meet or exceed the following minimum design criteria:
 - (i) There shall be a minimum of two flood openings on different sides of each enclosed area subject to flooding.
 - (ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - (iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit.
 - (iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade.
 - (v) Flood openings may be equipped with screens, louvers or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status is considered an enclosure and requires flood openings as outlined above.

(h) Recreational vehicles shall either:

1. be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions; or
2. meet all the requirements for new construction.

(i) Additions/Improvements.

1. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements are in combination with any interior modifications to the existing structure are:
 - (i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

2. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall comply only the addition to comply with the standards for new construction.
3. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
4. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition(s) must comply with the standards for new construction.

SECTION C. SPECIAL PROVISIONS FOR SUBDIVISIONS.

(a) An applicant for a Minor Subdivision or for Final Plat approval for a Major Subdivision shall be informed by the Administrator of the use and construction restrictions contained in this ordinance if any portion of the land to be subdivided lies within a floodway, non-encroachment area or floodplain.

(b) Final Plat approval for any subdivision containing land that lies with a floodway, non-encroachment area or floodplain shall not be given unless the plat shows the boundary of the floodway, non-encroachment area or floodplain and contains in clearly discernable print the following statement: "Use of land within a floodway, non-encroachment area or floodplain is substantially restricted by Chapter 10 of the Codified Ordinances of the Town of Pittsboro and relevant section of the State of North Carolina Building Code."

(c) Subject to the following, approval of a Minor Subdivision or Final Plat approval for a Major Subdivision may not be granted if:

1. The land to be subdivided lies within a zone where residential uses are permissible and it reasonably appears that the subdivision is designed to create residential building lots, and
2. Any portion of one or more of the proposed lots lies within a floodway, non-encroachment area or floodplain, and
3. It reasonably appears that one or more lots described in Subdivisions (1) and (2) of this subsection could not practicably be used as a residential building site because of the restrictions set forth in this Ordinance.

The foregoing provision shall not apply if the developer demonstrates to the reasonable satisfaction of the approving authority that the proposed lots are not intended for sale as residential building lots.

(d) In areas with floodplains without established Base Flood Elevations (BFE), all subdivisions, manufactured home parks and other development proposals shall provide BFE data if the development is greater than five(5) acres or has more than fifty (50) lots or manufactured home sites. Such BFE data shall be adopted by reference to be utilized in implementing this ordinance.

SECTION D. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

The floodplain administrator shall perform, but not be limited to, the following duties:

- (1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Area to assure that the requirements of this ordinance have been satisfied.
- (2) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required that copies of such permits be provided and maintained on file with the floodplain development permit.
- (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments into floodways and non-encroachment area unless the certification and flood hazard reduction provisions of this ordinance are met.
- (6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with this ordinance.
- (7) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with this ordinance.
- (8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with this ordinance.
- (10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance.
- (11) When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section B, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Article 5, Section D(2)(b), in order to administer the provisions of this ordinance.
- (12) When Base Flood Elevation (BFLE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section B, obtain, review and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
- (13) When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.
- (14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
- (15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purpose of inspection or other enforcement action.
- (16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The specific work to be

- stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
- (17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
 - (18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his inspections department shall have a right; upon presentation of paper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
 - (19) Follow through with corrective procedures of Article 4, Section D.
 - (20) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and/or other official flood maps/studies adopted under Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by State and/or FEMA. Notify State and FEMA of mapping needs.

SECTION D. CORRECTIVE PROCEDURES

- (1) **Violations to be Corrected:** When the floodplain administrator finds violations applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.
- (2) **Action in Event of Failure to Take Corrective Action:** If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) that the building or property is in violation of the Flood Damage Prevention Ordinance;
 - (b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - (c) that following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
- (3) **Order To Take Corrective Action:** If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days, nor more than 180 days. Where the floodplain administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.
- (4) **Appeal:** Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final.

The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

- (5) **Failure to Comply with Order:** If the owner of a building or property fails to comply with an order of the governing body following an appeal, he or she shall be guilty of a misdemeanor and shall be punished at the discretion of the court

SECTION E. VARIANCE PROCEDURES:

- (1) The Board of Adjustments as established by the Town of Pittsboro, hereinafter referred as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.
- (2) Any person aggrieved by the decision of the appeal board to the Court, as provided in Chapter 7 A of the North Carolina General statutes.
- (3) Variances may be issued for:
 - (a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (b) functionally dependant facilities if determined to meet the definition as stated in Article 2 of this ordinance.
 - (c) any other type of development provided it meets requirements stated in this ordinance.
- (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (a) the danger that materials may be swept onto other lands to the injury of others;
 - (b) the danger to life and property due to flooding or erosion damage;
 - (c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) the importance of the services provided by the proposed facility to the community;
 - (e) the necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependant facility, where applicable;
 - (f) the availability of alternative locations, not subject and anticipated development;
 - (g) the compatibility of the proposed use with existing and anticipated development;
 - (h) the relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) the expected heights, velocity, duration, rate of rise, and sediment transport of the effects of wave action, if applicable, expected at the site; and
 - (k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. A written report addressing each of the above factors shall be submitted with the application for a variance.
6. Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

7. Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
8. **Conditions for Variances:**
 - (a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - (b) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (c) Variances shall only be issued upon:
 - i) a showing of good and sufficient cause;
 - ii) a determination that failure to grant the variance would result in exceptional hardship; and
 - iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, caused fraud on or victimization of the public, or conflict with existing local laws or ordinance.
 - (d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
 - (e) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
9. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.
 - (a) The use serves a critical need in the community.
 - (b) No feasible locations exist for the use outside the Special Flood Hazard Area.
 - (c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.
 - (d) The use complies with all other applicable federal, State and local laws.
 - (e) The Town of Pittsboro has notified the Secretary of the North Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

ARTICLE 5. LEGAL STATUS PROVISIONS.

SECTION A. EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted on , 2007 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. All provisions of the flood damage prevention ordinance of the Town of Pittsboro enacted on , 2007, as amended, which are not reenacted herein are repealed.

SECTION B. EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

SECTION C. EFFECTIVE DATE.

This ordinance shall become effective upon adoption.

SECTION D. ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the Board of Commissioners of Pittsboro, North Carolina, on the _____ day of _____, 2007.

WITNESS my hand and the official seal of _____, this the _____ day of _____, 2007.

DRAFT

than five (5) feet from any property line. Other accessory buildings may be permitted in the front yard under special conditions. See Section 5.3.3.1 of detailed regulations for Special Use Permit for accessory buildings in front yard. Approved 01/23/89.

NOTE 13 "The Area, Yard and Height Requirements in Mixed Use Planned Developments shall conform to Standards set forth in the project Master Plan approved by the Town". 11/25/02

Note 14. Determining Density or "Yield"

Applicants shall have the option of estimating the legally permitted density on the basis of minimum dimensions corresponding to the general zoning district within the provisions of this ordinance, Section 5.4, Table of Area, Yard, and Height; or preparing a "yield plan" within the provisions of the Subdivision Regulations Subsection 6.1, Standards for Subdivision.

Prior to calculating density the applicant shall deduct 10% of the buildable land for right of way dedication and all unbuildable land from the total parcel acreage to produce the "Adjusted Tract Acreage" on which density shall be calculated.

For sites not required to connect to the public sewage treatment facility, soil suitability for individual septic systems shall be demonstrated.

5.5 WATERSHED OVERLAY DISTRICT REQUIREMENTS

5.5.1 General Requirements

- a. The provisions of this section shall apply only to new development activities which require an erosion and sedimentation control plan in accordance with the rules established the North Carolina Sedimentation Control Commission.
- b. No structure or land use shall be allowed within the watershed overlay districts which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials, the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

5.5.2 WSIV-CA Supplemental Standards.

- a. Density. Single-family residential uses shall not exceed a maximum density of two dwelling units per acre, as defined on a project by project basis. No single-family residential lot shall be less than 20,000 square feet in area unless located within an approved cluster development in accordance with Section 5.5.5. All other types of residential development shall comply with the built-upon area requirements of Section 5.5.2.b.

Where public water and/or public sewer service is not available, a greater lot area may be required by the Chatham County Health Department.

- b. Built-Upon Area. All residential development, other than single-family development, and all nonresidential development shall be allowed a 24% built-upon area. For purposes of calculation built-upon-area, total project area shall include acreage in the tract on which the project is to be developed.
- c. Permitted Uses. Uses allowed in the underlying general zoning district or another applicable overlay district are permitted within the WSIV-CA except for the following:
 - (1) new sludge application sites;
 - (2) new landfills;
 - (3) the storage or treatment of hazardous material unless a spill containment plan is implemented.

5.5.3 WSIV-PA Supplemental Standards

- a. Density. Single-family residential uses shall not exceed a maximum density of two dwelling units per acre or three dwelling unit per acre for projects without a curb and gutter system, as defined on a project by project basis. No single-family residential lot area shall be less than 20,000 square feet or 14,500 square feet for projects without a curb and gutter street system, unless located within an approved cluster development in accordance with Section 5.5.5. All other types of residential development shall comply with the built-upon area requirements of Section 5.5.3.b.
Where public water and/or public sewer service is not available, a greater lot area may be required by the Chatham County Health Department.
- b. Built-Upon Area. All residential development, other than single-family development, and all nonresidential development shall be allowed a 24% built-upon area or 36% built-upon area for projects without a curb and gutter street system. For purposes of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- c. Permitted Uses. Uses allowed in the underlying general zoning district or another applicable overlay district are permitted within the WSIV-PA except for the following:
 - (1) The storage and treatment of hazardous material unless a spill containment plan is implemented.

5.5.4 Best Management Practices

- a. Agricultural uses, if allowed in the underlying general zoning district, are subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 (Public Law 101-624). Animal operations greater than 100 animal units shall employ by July 1, 1994 Best Management Practices as recommended by the Soil and Water Conservation Commission.
- b. Forestry operations, if allowed in the underlying general zoning district, are subject to the provisions of the Forest Practice Guidelines Related to Water Quality (15 ANCAC II.0101.0209).

- c. The construction of new roads and bridges and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ best management practices to minimize water quality impacts. To the extent practicable, the construction of new roads in the WSIV-CA overlay districts should be avoided. The N.C. Department of Transportation shall use best management practices as outlined in their document entitled, "Best Management Practices for the Protection of Surface Waters."

5.5.5 Cluster Developments

Cluster development is allowed in all WSIV-CA and WSIV-PA overlay districts provided that the following conditions are met:

- a. Minimum lot sizes may be reduced for single-family cluster development projects, however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in Section 5.5.2a. and Section 5.5.3a. Built-upon area requirements of the project shall not exceed that allowed in Section 5.5.2b and Section 5.5.3b.
- b. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- c. The remainder of the tract not built upon shall remain in a vegetated or natural state. Where the development has an incorporated homeowners or property owners association, the title of the reserved open space area shall be conveyed to the association for management. Where a property association is not incorporated, a maintenance agreement shall be filed in conjunction with the property deeds.
- d. The proposed cluster development will be served by public water and sewer facilities.

5.5.6 Buffer Areas

- a. A minimum one hundred foot vegetative buffer is required for all new development activities that utilize the high density development option authorized by Section 5.5.10; otherwise, a minimum thirty foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial stream bank or shoreline stabilization is permitted.
- b. Agricultural activities in a WSIV-CA overlay district shall maintain a minimum ten foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps.
- c. No new development is allowed in the buffer except for water-dependent structures and public projects such as road crossings and greenways where no practicable alternative exists. These activities should minimize build upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

5.5.7 Existing Development

- a. Existing development, as defined in Article XII, Section 1, is not subject to the provisions of the watershed overlay district requirements. Redevelopment of and expansion to existing development is allowed as provided for herein.
- b. Redevelopment of existing development is allowed if the rebuilding activity does not result in a net increase in built-upon area or if the redevelopment activity includes equal or greater stormwater control than the previous development. However, existing single-family residential development may be redeveloped without any restrictions.
- c. Expansions to uses and structures classified as existing development must meet the requirements of this section provided, however, that the built-upon area of the existing development is not required to be included in the density calculation. However, existing single-family residential development may be expanded without any restrictions.

5.5.8 Exceptions

A pre-existing, deeded lot owned by an individual prior to the effective date of the provisions of this Section, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this Section. However, this exemption is not applicable to multiple contiguous lots under single ownership. The recombination of existing nonconforming lots in single ownership shall be required pursuant to Article VIII, Section 2.

5.5.9 Variances

- a. Minor variances, as defined in Article XII, Section 1, to the provisions of this Section may be approved by the Board of Adjustment pursuant to the procedures outlined in Articles XI. The Zoning Enforcement Officer shall keep a record of all such minor variances and shall submit, on an annual basis, the record to the Supervisor of the Classification and Standards Groups, Water Quality Section, N.C. Division of Environmental Management. The record shall include a description of each project receiving a variance and the reasons for granting the variance.
- b. Major variances, as defined in Article XII, Section 1, shall be reviewed by the Board of Adjustment pursuant to the procedures outlined in Article XI and a recommendation prepared for submission to the N.C. Environmental Management Commission (EMC). The record of a major variance review shall include the following items.
 - (1) the variance application;
 - (2) the hearing notices,
 - (3) the evidence presented;
 - (4) motions, offers of proof, objections to evidence, and rulings on them,
 - (5) proposed findings and exceptions;
 - (6) the Board's recommendation, including all conditions proposed to be added to the permit.

- c. Upon receiving the record of major variance review from the Board of Adjustment, the EMC shall review the variance request, prepare a final decision on the request, and forward its decision to the Board of Adjustment. If the EMC approves the variance as proposed, the Board of Adjustment shall prepare a final decision, granting the proposed variance. If the EMC approves the variance with conditions and stipulations, the Board of Adjustment shall prepare a final decision, including such conditions and stipulations, granting the proposed variance. If the EMC denies the variance request, the Board of Adjustment shall prepare a final decision denying the variance.

5.5.10 High Density Development Option

Upon approval by the Board of Commissioners, a high density option may be authorized provided that the requirements of this subsection are met.

- a. Within the WSIVP-PA overlay district, new development may exceed the density and built-upon area standards set forth in Section 5.5.3a and 5.5.3b provided that (i) engineered stormwater controls are used to control runoff from the first inch of rainfall and (ii) that the built-upon area does not exceed 70%.
- b. The engineered stormwater controls required in subsection (a) shall be designed in accordance with section 5.5.11.
- c. Financial assurance for the purpose of maintenance, repairs, or construction of stormwater control structures shall be provided pursuant to Section 5.5.12.
- d. Stormwater control structures shall be maintained and inspected in accordance with the provisions of Section 5.5.13.
- e. An occupancy permit shall not be issued for any building within the permitted development until the Board of Commissioners has approved the stormwater control structure.
- f. All site plans for development proposing to utilize the high density option must be reviewed and approved by the Board of Commissioners.
- g. The high density option authorized by this subsection shall not be applicable to properties located within a WSIV-CA overlay district.

5.5.11 Stormwater Control Structures

- a. Development located within WSIVP-PA overlay districts that have been approved for the high density development option authorized in Section 5.5.10 shall comply with the requirements of this subsection.
- b. All stormwater control structures shall be designed by either a North Carolina registered professional engineer or landscape architect, to the extent that the General Statutes, Chapter 89A, allow. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape

architects, to the extent that the General Statutes, Chapter 89A allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89(C)-3(7).

- c. All stormwater controls shall use wet detention ponds as a primary treatment system. Wet detention ponds shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:
 - (1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one inch rainfall from the site above the permanent pool;
 - (2) The design runoff storage volume shall be above the permanent pool;
 - (3) The discharge rate from these systems following the one inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days.
 - (4) The mean permanent pool depth shall be a minimum of three feet;
 - (5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
 - (6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow-through the filter for a 10-year, 24 hour storm with a 10-year, 1-hour intensity with a slope of five percent or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.
- d. In addition to the vegetative filters required in subsection c.(6), all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in section 5.5.11.c.
- e. A description of the area containing the stormwater control structure shall be prepared and filed, consistent with Section 5.5.13.i. and 5.5.12.j., as a separate deed with the Chatham County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.
- f. Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage build-upon area for one site, it shall not be used to compute the build-upon area for any other site or area.

5.5.12 Financial Security for Stormwater Control Structures.

- a. All new stormwater control structures authorized in Section 5.5.10 shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.
- b. Financial assurance shall be in the form of the following:
 - (1) Surety Performance Bond or other security. The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the Town of Pittsboro or placed in escrow with a financial institution designated as an official depository of the Town of Pittsboro. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the Zoning Enforcement Officer and approved by the Board of Commissioners. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation, fill etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.
 - (2) Cash or Equivalent Security Deposited After the Release of the Performance Bond. Consistent with Section 5.5.13.k.(1), the permit applicant shall deposit with the Town of Pittsboro either cash or other instrument approved by the Board of Commissioners that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under Section 5.5.13.a. The amount shall be computed by estimating the maintenance cost for twenty-five years and multiplying this amount by two fifths or 0.4.
- c. Consistent with Section 5.5.10, the permit applicant shall enter into a binding operation and maintenance agreement between the Town of Pittsboro and all interests in the development. Said agreement shall require the owning entity to maintain, repair and, if necessary reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The operation and maintenance agreement shall be filed with the Chatham County Register of Deeds by the Zoning Enforcement Officer.
- d. Default under the performance bond or other security. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as spelled out in the performance bond or other security, the Board of Commissioners may obtain and use all or any portion of the funds necessary to complete the improvements based on an

engineering estimate. The Board of Commissioners shall return any funds not spent in completing the improvements to the owning entity.

- e. Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and maintenance agreement, the Board of Commissioners shall obtain and use all or any portion of cash security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the operation and maintenance agreement. The Board of Commissioners shall not return any of the deposited cash funds.

5.5.13 Maintenance and Inspection of Stormwater Control Structures

- a. An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure authorized in Section 5.5.10, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the operation and maintenance agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- b. Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with an easement or access to the stormwater control structure.
- c. Except for general landscaping and grounds management, the owning entity shall notify the Zoning Enforcement Officer prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Zoning Enforcement Officer shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements. The Zoning Enforcement Officer may consult with an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A allow) designated by the Board of Commissioners.
- d. Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Board of Commissioners. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect (to the extent that the General Statutes, Chapter 89A allow) and submitted to and reviewed by the Zoning Enforcement Officer prior to consideration by the Board of Commissioners.
 - (1) If the Board of Commissioners approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Zoning Enforcement Officer.

- (2) If the Board of Commissioners disapproves the changes, the proposal may be revised and resubmitted to the Board of Commissioners as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- e. If the Board of Commissioners finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Chatham County Register of Deeds, the office of the Zoning Enforcement Officer and the owning entity.
- f. Processing and inspection fees shall be submitted in the form of a check or money order made payable to the Town of Pittsboro. Applications shall be returned if not accompanied by the required fee.
- g. A permit and inspection fee schedule, as approved by the Pittsboro Board of Commissioners shall be posted in the office of the Zoning Enforcement Officer.
- h. Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with subsection (c), except in the case when a similar fee has been paid within the last 60 days.
- i. The stormwater control structure shall be inspected by the Zoning Enforcement Officer, after the owning entity notifies the Zoning Enforcement Officer that all work has been completed. At this inspection, the owning entity shall provide:
 - (1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the Chatham County Register of Deeds.
 - (2) A certification sealed by an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A, allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.
- j. The Zoning Enforcement Officer shall present the materials submitted by the developer and the inspection report and recommendations to the Board of Commissioners at its next regularly scheduled meeting.
 - (1) If the Board of Commissioners approves the inspection report and accepts the certification, deed and easements, the Board shall file the deed and easements with the Chatham County Register of Deeds, release up to seventy-five percent of the value of the performance bond or other security and issue an occupancy permit for the stormwater control structure.
 - (2) If deficiencies are found, the Board of Commissioners shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the Board of Commissioners.
- k. No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Board of Commissioners to release the remaining value of the performance bond or other security. Upon receipt of said

petition, the Zoning Enforcement Officer shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Zoning Enforcement Officer shall present the petition, inspection report and recommendation, to the Board of Commissioners.

- (1) If the Board of Commissioners approves the report and accepts the petition, the developer shall deposit with the Board of Commissioners a cash amount equal to that described in Section 5.5.12b(2) after which, the Board of Commissioners shall release the performance bond or other security.
- (2) If the Board of Commissioners does not accept the report and rejects the petition, the Board of Commissioners shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release the performance bond or other security.

- l. All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.
- m. In the event the Zoning Enforcement Officer discovers the need for corrective action or improvements, the Zoning Enforcement Officer shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Zoning Enforcement Office shall inspect and approve the completed improvements. The Zoning Enforcement Officer may consult with an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A. allow) designated by the Board of Commissioners.

5.6 Mixed Use Planned Development District

5.6.1 General

This Section establishes the procedures and standards for review of the Town's Mixed Use Planned Development zone districts:

5.6.2 General Applicability

Before any development shall be designed as a Mixed Use Planned Development zone district, it shall receive approval pursuant to the terms of this Section.

5.6.3 Minimum Land Area

A Mixed Use Planned Development District (MUPD) zone district designation may only be applied to lands that comprise a minimum of twenty-five (25) acres in area.

5.6.4 Unified Ownership or Control

DRAFT

Riparian Buffer Protection Ordinance

Town of Pittsboro, North Carolina

Adopted February 14, 2011

TABLE OF CONTENTS

Section 1. Authority 2

Section 2. Purpose and Intent..... 2

Section 3. Title 2

Section 4. Jurisdiction..... 2

Section 5. Applicability..... 2

Section 6. Relation to Other Ordinances..... 2

Section 7. Riparian Area Protection within the Jordan Reservoir Watershed..... 3

 A. Buffers Protected 3

 B. Exemption Based on On-site Determination..... 4

 C. Exemption when Existing Uses are Present and Ongoing..... 4

 D. Zones of the Riparian Buffer 5

 E. Diffuse Flow Requirements 6

Section 8. Potential Uses and Associated Requirements 6

 A. Approval for New Development..... 6

 B. Table of Uses..... 7

 C. Requirements for Categories of Uses 20

Section 9. Permits Procedures, Requirements, and Approvals 21

 A. Determination of No Practical Alternatives / Request for Authorization Certificate..... 21

 B. Variances..... 22

 C. Mitigation..... 23

Section 10. Compliance and Enforcement..... 28

 A. Site Inspections 28

 B. Civil Penalties 29

 C. Criminal Penalties 30

 D. Injunctive Relief..... 30

Section 11. Severability 31

Section 12. Effective Date 31

Section 13. Revisions to this Ordinance 31

Section 14. Definitions..... 31

Section 1. Authority

This Ordinance is adopted pursuant to the authority vested in the Town of Pittsboro by the Session Laws and the General Statutes of North Carolina, particularly Session Law 2009-216 (House Bill 239), Session Law 2009-484 (Senate Bill 838), N.C Gen. Stat §153A-121, 153A-140, Chapter 153A, Article 18, N.C. Gen. Stat §160A-174, 160A-193, Chapter 160A, Article 19, and any special legislation enacted by the General Assembly for the Town of Pittsboro.

Section 2. Purpose and Intent

The purposes of the Town of Pittsboro in adopting the following Ordinance are to protect and preserve existing riparian buffers throughout the Jordan Watershed as generally described in Rule 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope), in order to maintain their nutrient removal and stream protection functions. Additionally this Ordinance will help protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed, and provide additional watershed protection and preserve existing riparian buffers throughout Pittsboro's planning jurisdiction.

Buffers adjacent to streams provide multiple environmental protection and resource management benefits. Forested buffers enhance and protect the natural ecology of stream systems, as well as water quality through bank stabilization, shading, and nutrient removal. They also help to minimize flood damage in flood prone areas. Well-vegetated streamside riparian areas help to remove nitrogen and prevent sediment and sediment-bound pollutants such as phosphorous from reaching the streams.

Section 3. Title

This Ordinance shall be known as the *Town of Pittsboro Riparian Buffer Protection*.

Section 4. Jurisdiction

This Ordinance shall be applied to all land in the planning jurisdiction of the Town of Pittsboro.

Section 5. Applicability

This Ordinance applies to all landowners and other persons conducting activities in the area described in Section 4, with the exception of activities conducted under the authority of the State, the United States, multiple jurisdictions, or local units of government, and forest harvesting and agricultural activities. The NC Division of Water Quality shall administer the requirements of Rule 15A NCAC 02B .0267 and .0268 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers and Mitigation of Existing Riparian Buffers, respectively) for these activities.

Section 6. Relation to Other Ordinances

The requirements of this Ordinance shall supersede all locally implemented buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. If the provisions of this ordinance otherwise conflict with the provisions of any other validly enforceable ordinance(s) or laws, the most stringent provisions shall control. This Ordinance is not intended to

interfere with, abrogate, or annul any other ordinance, rule, regulation, or other provision of law.

Section 7. Riparian Area Protection

A. Buffers Protected

The following minimum criteria shall be used for identifying regulated buffers:

1. This Ordinance shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Section 7.(E) upon, 50-foot wide riparian buffers directly adjacent to surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.
2. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
3. For the purpose of this Ordinance, only one of the following types of maps shall be used for purposes of identifying a water body subject to the requirements of this ordinance:
 - a. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture.
 - b. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).
 - c. A map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission. Prior to approving a map under this Item, the Commission shall provide a 30-day public notice and opportunity for comment. Alternative maps approved by the Commission shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of Section 7. (C) of this Ordinance.
4. Where the identification, classification, or specific origination point of a stream regulated under this Item is in question, upon request of the NC Division of Water Quality or another party, the Town of Pittsboro shall make an on-site determination. A Town of Pittsboro representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall establish that point using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams*, available at http://h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf or from the NC Division of Water Quality - 401 Oversight Express Permitting Unit, or its successor. The Town of Pittsboro may accept the results of a site assessment made by another party who meets these criteria. Any disputes over on-site determinations made according to this Item shall be referred to the

Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B, unless the area in dispute lies outside the Jordan Reservoir Watershed. In such instance, the determination shall be made by the Town of Pittsboro.

5. Riparian buffers protected by this Ordinance shall be measured pursuant to Section 7. (D) of this Ordinance.
6. Parties subject to this Ordinance shall abide by all State rules and laws regarding waters of the state including but not limited to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
7. No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Ordinance.

B. Exemption Based on On-site Determination

When a landowner or other affected party including the Division believes that the maps have inaccurately depicted surface waters, he or she shall consult the Town of Pittsboro. Upon request, a Town of Pittsboro representative who has successfully completed the Division of Water Quality's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make an on-site determination. The Town of Pittsboro may also accept the results of site assessments made by other parties who have successfully completed such training. Any disputes over on-site determinations shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to these buffer requirements if a site evaluation reveals any of the following cases:

1. Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. (A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.)
2. Ephemeral streams.
3. The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.
4. Ditches or other man-made water conveyances, other than modified natural streams.

C. Exemption when Existing Uses are Present and Ongoing

This Ordinance shall not apply to uses that are existing and ongoing; however, this Ordinance shall apply at the time an existing, ongoing use is changed to

another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

1. It was present within the riparian buffer as of the effective date of this Ordinance and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer occupied by the footprint of the existing use is exempt from this Ordinance. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of this Ordinance, and existing diffuse flow is maintained. Grading and revegetating Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.
2. Projects or proposed development that are determined by the Town of Pittsboro to meet at least one of the following criteria:
 - a. Project requires a 401 Certification/404 Permit and these were issued prior to the effective date this Ordinance, and prior to the effective date of this Ordinance.
 - b. Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of this Ordinance;
 - c. Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of this Ordinance; or
 - d. Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Town of Pittsboro prior to the effective date of this Ordinance.

D. Zones of the Riparian Buffer

The protected riparian buffer shall have two zones as follows:

1. Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 8. (B) of this Ordinance. The location of Zone One shall be as follows:
 - a. For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank.
 - b. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
2. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 8. (B) of this Ordinance. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water.

E. Diffuse Flow Requirements

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing vegetation as follows:

1. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian buffer;
2. Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies; and
3. As set out in Sections 7.(D) and 8.(B) of this Ordinance, The Zones of the Riparian Buffer and Table of Uses respectively, no new stormwater conveyances are allowed through the buffers except for those specified in the Table of Uses, Section 8.(B) of this Ordinance, addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.

Section 8. Potential Uses and Associated Requirements

A. Approval for New Development

The Town of Pittsboro shall issue an approval for new development only if the development application proposes to avoid impacts to riparian buffers defined in Section 7. (A) of this Ordinance, or where the application proposes to impact such buffers, it demonstrates that the applicant has done the following, as applicable:

1. Determined the activity is exempt from requirements of this Ordinance;
2. Received an Authorization Certificate from the Division pursuant to Section 9.A of this Ordinance;

3. For uses designated as Allowable with Mitigation in the Table of Uses in Section 8.(B), received approval of mitigation plan pursuant to Section 9.(C) of this Ordinance; and
4. Received a variance pursuant to Section 9. (B).

B. Table of Uses

The following chart sets out potential new uses within the buffer, or outside the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact the buffer, unless a variance is granted pursuant to Section 9. (C) of this Ordinance, Variances. The requirements for each category are given in Section 8. (C) of this Section following the Table of Uses.

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <ul style="list-style-type: none"> • Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the riparian buffer • Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer 	X	X	
<p>Airport facilities:</p> <ul style="list-style-type: none"> • Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer • Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)¹ 		X X	X
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the buffer.	X		

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8. (C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Dam maintenance activities: <ul style="list-style-type: none"> • Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3 • Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8. (C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> • New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies. • Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations. • New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed. 	<p>X</p>	<p>X</p> <p>X</p>	<p>X</p>

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8. (C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Historic preservation	X		
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Sections 7.(D) and 7.(E) of this Ordinance are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Sections 7.(D) and 7.(E) of this Ordinance are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 	X	X	X
Playground equipment: <ul style="list-style-type: none"> • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	X	X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8. (C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Ponds created by impounding streams and not used as stormwater BMPs: <ul style="list-style-type: none"> • New ponds provided that a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is NOT established adjacent to the pond 		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance.			X
Railroad crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer 	X	X	X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8. (C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact 		X	X
Stormwater BMPs: <ul style="list-style-type: none"> • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One 		X	X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Section 9.(C)(7) of this Ordinance: <ul style="list-style-type: none"> • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance • Associated with culvert installation or bridge construction or replacement. 	X	X X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Utility, electric, aerial, other than perpendicular crossings ⁵ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One^{2,3} 		X	X
Utility, electric, underground, perpendicular crossings ^{3,4,5} : <ul style="list-style-type: none"> • Disturb less than or equal to 40 linear feet of riparian buffer • Disturb greater than 40 linear feet of riparian buffer 	X	X	
Utility, electric, underground, other than perpendicular crossings ⁴ : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 	X X		
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Ordinance ^{3,5} : <input type="checkbox"/> <ul style="list-style-type: none"> • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of riparian buffer 	X	X X	X X

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Utility, non-electric, other than perpendicular crossings ^{4,5} : <ul style="list-style-type: none"> • Impacts in Zone Two • Impacts in Zone One¹ 		X	X
Vegetation management: <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Mowing or harvesting of plant products in Zone Two • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank. • Removal of individual trees which are dead, diseased or damaged. • Removal of poison ivy • Removal of invasive exotic vegetation as defined in: <i>Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</i> 	X X X X X X X X		
<ul style="list-style-type: none"> • Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet. 		X	
<ul style="list-style-type: none"> • Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers. 		X	

* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
Water supply reservoirs: <ul style="list-style-type: none"> • New reservoirs where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is established adjacent to the reservoir • New reservoirs where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is not established adjacent to the reservoir 		X	X
Water wells <ul style="list-style-type: none"> • Single family residential water wells • All other water wells 	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: <ul style="list-style-type: none"> • Wetland, stream and buffer restoration that requires NC Division of Water Quality approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require Division of Water Quality approval for the use of a 401 Water Quality Certification 	X	X	
Wildlife passage structures		X	

¹Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Sections 7.(D) and 7.(E)

²Provided that, in Zone One, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Town of Pittsboro, as defined in Section 9.(A).

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.

- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

³Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Town of Pittsboro completes a no practical alternative evaluation as defined in Section 9.(A).

⁴Provided that, in Zone One, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Town of Pittsboro, as defined in Section 9.(A).

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

⁵Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

C. Requirements for Categories of Uses

Uses designated in Section 8.(B) of this Section as exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following requirements:

1. Exempt.

Uses designated as exempt are permissible without authorization by the Town of Pittsboro provided that they adhere to the limitations of the activity as defined in Section 8.(B) of this Section, the Table of Uses. In addition, exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.

2. Allowable.

Uses designated as allowable may proceed provided that there are no practical alternatives to the requested use pursuant to Section 9.(A) of this Section. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the Town of Pittsboro.

3. Allowable with Mitigation.

Uses designated as allowable with mitigation may proceed provided that there are no practical alternatives to the requested use pursuant to Section 9.(A) of this Section and an appropriate mitigation strategy has

been approved pursuant to Section 9.(C). These uses require written authorization from the Town of Pittsboro.

Section 9. Permits Procedures, Requirements, and Approvals

A. Determination of No Practical Alternatives / Request for Authorization Certificate

1. Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a “no practical alternatives” determination to the Town of Pittsboro. The applicant shall certify that the project meets all the following criteria for finding “no practical alternatives”:
 - a. The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - b. The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 - c. Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
2. The applicant shall also submit at least the following information in support of their assertion of “no practical alternatives”:
 - a. The name, address and phone number of the applicant;
 - b. The nature of the activity to be conducted by the applicant;
 - c. The location of the activity, including the jurisdiction;
 - d. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 - e. An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
 - f. Plans for any best management practices proposed to be used to control the impacts associated with the activity.
3. Within 60 days of a submission that addresses Section 9.(A)(2) , the Town of Pittsboro shall review the entire project and make a finding of fact as to whether the criteria in Section 9.(A)(1) of this Section have been met. A finding of “no practical alternatives” shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of “no practical alternatives” and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:
 - a. The applicant agrees, in writing, to a longer period;
 - b. The Town of Pittsboro determines that the applicant has failed to furnish requested information necessary to the Town of Pittsboro decision;
 - c. The final decision is to be made pursuant to a public hearing; or

- d. The applicant refuses access to its records or premises for the purpose of gathering information necessary to the Town of Pittsboro's decision.
4. The Town of Pittsboro may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Ordinance.
5. Any appeals of determinations regarding Authorization Certificates shall be referred to the Director of the Division of Water Quality, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

B. Variances

1. Requirements for Variances.

Persons who wish to undertake prohibited uses may pursue a variance. The Town of Pittsboro may grant minor variances. For major variances, the Town of Pittsboro shall prepare preliminary findings and submit them to the Division of Water Quality, 4 01 Oversight Express Permitting Unit, or its successor for approval by the Environmental Management Commission. The variance request procedure shall be as follows:

- a. For any variance request, the Town of Pittsboro shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
 - i. If the applicant complies with the provisions of this Ordinance, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Town of Pittsboro shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that shall make reasonable use of the property possible;
 - ii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
 - iii. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;
 - iv. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
 - v. The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and
 - vi. The hardship is rare or unique to the applicant's property.

- b. The variance is in harmony with the general purpose and intent of the State’s riparian buffer protection requirements and this Ordinance and preserves its spirit; and
- c. In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

2. Minor Variances

A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 9.(A)(1) through Section 9.(A)(3) by the Town of Pittsboro pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Town of Pittsboro may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the Town of Pittsboro shall be made in writing to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor. The Director’s decision is subject to review as provided in G.S. 150B Articles 3 and 4.

3. Major Variances

A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If Town of Pittsboro has determined that a major variance request meets the requirements in Section 9.(B)(1)) through 8.(C)(3), then it shall prepare a preliminary finding and submit it to the NC Environmental Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor, for approval. Within 90 days after receipt by the Town of Pittsboro, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.

C. Mitigation

- 1. This item shall apply to persons who wish to impact a riparian buffer when one of the following applies:
 - d. A person has received an Authorization Certificate pursuant to Section 9.(A) of this Ordinance for a proposed use that is designated as “allowable with mitigation;” or
 - e. A person has received a variance pursuant to Section 9.(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.
- 2. Issuance of the Mitigation Approval
The Town of Pittsboro shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.
- 3. Options for Meeting the Mitigation Requirement

The mitigation requirement may be met through one of the following options:

- a. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 (Jordan Water Supply Nutrient Strategy: Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program) contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at <http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html> or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in Rule 15A NCAC 02B .0273;
- b. Donation of real property or of an interest in real property pursuant to Section 9.(C)(6) of this Ordinance; or
- c. Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Section 9.(C)(7) of this Ordinance.

4. The Area of Mitigation

The Town of Pittsboro shall determine the required area of mitigation, which shall apply to all mitigation options identified in Section 9.(C)(3) of this Ordinance and as further specified in the requirements for each option set out in this Section, according to the following:

- a. The impacts in square feet to each zone of the riparian buffer shall be determined by the Town of Pittsboro by adding the following:
 - i. The area of the footprint of the use causing the impact to the riparian buffer;
 - ii. The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
 - iii. The area of any ongoing maintenance corridors within the riparian buffer associated with the use.
- b. The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Section 9.(4)(a) of this Ordinance to each zone of the riparian buffer:
 - i. Impacts to Zone One of the riparian buffer shall be multiplied by three;
 - ii. Impacts to Zone Two of the riparian buffer shall be multiplied by one and one-half; and
 - iii. Impacts to wetlands within Zones One and Two of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

5. The Location of Mitigation

For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as

close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated in Section 9.(C)(6)(c)(i) of this Ordinance. With respect to mitigation outside the Jordan watershed, the applicant may propose mitigation anywhere within the same subwatershed.

6. Donation of Property

Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

- a. The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0273. The value of the property interest shall be determined by an appraisal performed in accordance with Section 9. (C)(6)(d)(iv) of this Ordinance. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0273, the applicant shall pay the remaining balance due.
- b. The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
- c. Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:
 - i. In addition to the location requirements of Section 9. (C)(5) of this Ordinance, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* developed by NC Division of Water Quality pursuant to G.S. 143-214.10;
 - ii. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Section 9.(7)(d) of this Ordinance;
 - iii. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

- iv. The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Section 9.(C)(4) of this Ordinance;
 - v. Restoration shall not require removal of man-made structures or infrastructure;
 - vi. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - vii. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;
 - viii. The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
 - ix. The property shall not contain any hazardous substance or solid waste;
 - x. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;
 - xi. The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and
 - xii. The property shall not have any encumbrances or conditions on the transfer of the property interests.
- d. At the expense of the applicant or donor, the following information shall be submitted to the Town of Pittsboro with any proposal for donations or dedications of interest in real property:
- i. Documentation that the property meets the requirements laid out in Section 9.(C)(6)(c) of this Ordinance;
 - ii. US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
 - iii. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;

- iv. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
 - v. A title certificate.
7. Riparian Buffer Restoration or Enhancement
- Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:
- a. The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
 - i. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Section 9.(C)(4) of this Ordinance; or
 - ii. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Section 9.(C)(4) of this Ordinance;
 - b. The location of the riparian buffer restoration or enhancement shall comply with the requirements in Section 9.(C)(5) of this Ordinance;
 - c. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
 - d. Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;
 - e. The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of Section 9. (A) of this Ordinance. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Town of Pittsboro. The restoration or enhancement plan shall contain the following:
 - i. A map of the proposed restoration or enhancement site;
 - ii. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;
 - iii. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
 - iv. A fertilization plan; and

- v. A schedule for implementation;
- f. Within one year after the Town of Pittsboro has approved the restoration or enhancement plan, the applicant shall present proof to the Town of Pittsboro that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's and the Town of Pittsboro riparian buffer protection program;
- g. The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and
- h. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

Section 10. Compliance and Enforcement

A. Site Inspections

1. Agents, officials, or other qualified persons authorized by the Town of Pittsboro may periodically inspect riparian buffers to ensure compliance with this ordinance.
2. Notice of the right to inspect shall be included in the letter of approval of each variance and buffer authorization.
3. Authority to Enter Property and Conduct Investigations and Inspections

Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any property, public or private, for the purpose of investigating and inspecting the site of any riparian buffer. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town of Pittsboro, while that person is inspecting or attempting to inspect a riparian buffer nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. The Town of Pittsboro shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance.

4. Notice of Violation
 - a. If it is determined that a person has failed to comply with the requirements of this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule (4) j of the North Carolina Rules of Civil Procedure.

b. The notice shall specify the violation and inform the person of the actions that need to be taken to comply with this Ordinance, or rules or orders adopted pursuant to this Ordinance. The notice shall direct the person to correct the violation within a specified reasonable time. The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil and criminal penalties and other enforcement actions as provided in this Ordinance.

5. Power to Require Statements

The Town of Pittsboro shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

B. Civil Penalties

1. Assessment of Penalties

Any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance shall be subject to a civil penalty. A civil penalty for a violation may be assessed in an amount not to exceed ten thousand dollars (\$10,000) per day. If any violation for which a penalty may be assessed is continuous, a civil penalty may be assessed for each day of the violation in an amount not to exceed twenty-five thousand dollars (\$25,000) per day for as long as the violation occurs. Each day of a continuing violation shall constitute a separate violation under Section 10. (B)(1).

2. Notice of Civil Penalty Assessment

The governing body of the Town of Pittsboro shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for a hearing.

3. Hearing

A hearing on the civil penalty shall be conducted by the Town of Pittsboro Board of Commissioners within 30 days after the date the written demand for the hearing is received by the Town of Pittsboro Board of Commissioners. The Board shall make its recommendation within 30 days after the date of the hearing.

4. Final Decision.

The Board shall issue a final decision on the civil penalty within 30 days of the recommended decision. A copy of the final decision shall be served on the violator by any means authorized under G.S. 1A-1, Rule 4.

5. Appeal of Final Decision.

Appeal from the final decision of the governing body shall be to the Superior Court of the county in which the violation occurred. Any appeal must be filed with thirty days of receipt of the final decision. A copy of the appeal must be served on the (City manager/County board/other appropriate person) by any means authorized under G.S. 1A-1, Rule 4.

6. Demand for Payment of Penalty

An assessment that is not contested is due when the violator is served with a notice of assessment. The civil penalty must be paid within 30 days or the assessment, if not appealed, or within 30 days after the conclusion of the administrative or judicial review of the assessment. If payment is not received within 30 days after demand for payment is made, the Town of Pittsboro may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due.

7. Use of Penalties

Civil penalties collected pursuant to this Ordinance shall be credited to the general fund of the Town of Pittsboro as nontax revenue.

C. Criminal Penalties

1. Any person who negligently violates any provision of this Ordinance or rule or order adopted pursuant to this Ordinance, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed fifteen thousand dollars (\$15,000) per day of violation, provided that such fine shall not exceed a cumulative total of two hundred thousand dollars (\$200,000) for each period of 30 days during which such a violation continues.
2. Any person who knowingly or willingly violates any provision of this Ordinance or rule or order adopted pursuant to this Ordinance, shall be guilty of a Class I felony which may include a fine not to exceed one hundred thousand dollars (\$100,000) per day of violation, provided that this fine shall not exceed a cumulative total of five hundred thousand dollars (\$500,000) for each period of 30 days during which such a violation continues.
3. Any person who knowingly violates any provision of this Ordinance or rule or order adopted pursuant to this Ordinance, shall be guilty of a Class C felony which may include a fine not to exceed two hundred fifty thousand dollars (\$250,000) per day of violation, provided that this fine shall not exceed a cumulative total one million dollars (\$1,000,000) for each period of 30 days during which such a violation continues.

D. Injunctive Relief

1. Civil Action in Superior Court

Whenever the governing body of the Town of Pittsboro has reasonable cause to believe that any person is violating or threatening to violate

this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the Town of Pittsboro for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Chatham County.

2. Order to Cease Violation

Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

E. Compliance with Requirements

Any person engaged in new activities as defined by this Ordinance who fails to meet the requirements of this Ordinance shall be deemed in violation of this Ordinance.

Section 11. Severability

If any one or more sections or portions thereof of this Ordinance are held to be invalid or unenforceable, all other sections and portions thereof shall nevertheless continue in full force and effect.

Section 12. Effective Date

This Ordinance will become effective upon approval by the NC Environmental Management Commission and adoption by the Pittsboro Board of Commissioners.

Section 13. Revisions to this Ordinance

The Town of Pittsboro shall review any revisions to this Riparian Buffer Protection Ordinance made by the Environmental Management Commission and, within 60 days of receipt of the recommended revisions, submit draft amendments to the Commission for its consideration and comments. Within 90 days after receipt of the Commissions' comments, the Town of Pittsboro will incorporate amendments into this ordinance.

Section 14. Definitions

For the purpose of this Ordinance, these terms shall be defined as follows:

- A. 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, and signage.
- B. 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements'

as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of ‘airport facilities’:

1. Satellite parking facilities;
 2. Retail and commercial development outside of the terminal area, such as rental car facilities; and
 3. Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of ‘airport facilities’.
- C. ‘Channel’ means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- D. ‘DBH’ means diameter at breast height of a tree measured at 4.5 feet above ground surface level.
- E. ‘Development’ means the same as defined in Rule 15A NCAC 2B .0202(23).
- F. ‘Ditch or canal’ means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.
- G. ‘Ephemeral stream’ means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

- H. 'Existing development' means development, other than that associated with agricultural or forest management activities, that meets one of the following criteria:
1. It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or
 2. It occurs after the compliance date set out in Sub-Item (4) (d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase in built-upon area.
- I. 'Greenway / Hiking Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.
- J. 'High Value Tree' means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.
- K. 'Intermittent stream' means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
- L. 'Jordan nutrient strategy' or 'Jordan water supply nutrient strategy' means the set of Rules 15A NCAC 2B .0262 through .0273 and .0311(p).
- M. 'Jordan Reservoir' means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan nutrient strategy in Rule 15A NCAC 2B .0262(4).
- N. 'Jordan watershed' means all lands and waters draining to B. Everett Jordan Reservoir.
- O. 'New Development' means any development project that does not meet the definition of existing development set out in this Ordinance. "Perennial stream" means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
- P. "Perennial waterbody" means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths

sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).

- Q. 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
- R. 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.
- S. "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- T. 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.
- U. "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters
- V. "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- W. 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures, or to maintain public traffic during construction.

DRAFT

DRAFT – FOR REVIEW AND COMMENT ONLY

JOB TITLE: Town Engineer

DEPARTMENT: Engineering, Town of Pittsboro

JOB SUMMARY: This position is responsible for assisting the Town Manager with all engineering issues, technical reviews of site plans and development applications, inspection of utility infrastructure construction projects, capital projects management, preparation of the annual Powell Bill Report, stormwater compliance issues and engineering designs on small municipal projects. The position reports to the Town Manager.

MAJOR DUTIES:

- Serves as the Town Stormwater Program Administrator for the administration of the Jordan Lake Watershed New Development Stormwater Ordinance for the Town of Pittsboro.
- Design a variety of small scale Public Works/Public Utilities projects using manual and computerized techniques, including sewer and drain installations, streets, parking lots and other projects as needed.
- Review the assessment by the Town Planning Department of access fees and capital recovery fees for connections to the Town's water and sewer systems.
- Coordinate and direct land survey work and preparation of utility easements, encroachment agreements and right-of-way acquisitions with the Planning Director and Town Attorney.
- For small capital projects, prepare project plans, specifications, and cost estimates; manage bid process; monitor expenses against budget; negotiate change orders subject to final approval of the Town Manager.
- For large capital project, serve as the Town's project manager and coordinate the activities of consulting architects and engineers.
- Assist the Planning Director and Finance Officer with preparation of the annual Capital Improvement Plan.
- Inspect the installation of streets, water, sewer and storm sewers constructed by developers prior to acceptance of these facilities by the Town.
- Review and comment on subdivision proposals to ensure compliance with applicable Town, state and federal laws, rules and regulations.
- Serve as the Town's representative on the Jordan Lake Partnership Technical Review Team.

DRAFT – FOR REVIEW AND COMMENT ONLY

- Participate in site plan review process and in reviewing new zoning regulations.
- Prepare other engineering reports, documents and records as required.
- Meet with applicants regarding submissions before the Planning Board and/or Board of Commissioners. Provide advice and consultation to applicants.
- Perform traffic engineering duties such as traffic engineering studies, periodic review and revision of Town traffic regulations for approval by Town and submission to state for required permits.
- Attend public hearings to present technical information and to respond to citizen inquiries, requests and complaints.
- Assist public and other Town department in resolution of engineering problems.
- Maintain knowledge of new federal, state and local regulations and mandates and assist in developing engineering-related alternative responses and solutions.
- Maintain current knowledge of profession through peer association, attendance at seminars, meetings, etc.
- Perform related engineering duties as assigned.
- Coordinates with the Finance Officer regarding all Letters of Credit, Performance Bonds and Payments Bonds issued to ensure performance of developers and contractors and monitors the progress of bonded projects.
- Advises the Mayor, Town Board of Commissioners, Town Manager, other Town staff on engineering matters.

KNOWLEDGE AND EXPERIENCE REQUIRED BY THE POSITION:

- Duties require knowledge equivalent to a Bachelors Degree in civil engineering.
- Registration as Professional Engineer in North Carolina is required.
- A basic understanding of the Council-Manager form of government as practiced in the State of North Carolina and the Town of Pittsboro.
- A basic understand of the purchasing and contracting laws in the State of North Carolina.
- Three to five years of experience in municipal engineering, preferably in North Carolina.

DRAFT – FOR REVIEW AND COMMENT ONLY

- Skill in personal computer software applications including word processing spread sheets, graphics and project management.
- Skill in oral and written communication.

SUPERVISORY CONTROLS: The Town Manager assigns work in terms of general program goals and objectives requiring the incumbent to exercise judgment in prioritizing and scheduling the work. The work is reviewed for the nature, timeliness and propriety of the final results.

GUIDELINES: Guidelines include the Town Comprehensive Plan, Town Code, Subdivision Regulations, Zoning Ordinance, Town purchasing policies and procedures and relevant state and Federal laws.

COMPLEXITY: Incumbent functions independently within scope of the Town's policies and procedures. Conducts technical reviews of engineering projects/plans and submits comments and recommendations approval of the Town Manager and Board of Commissioners. Coordinates technical plan reviews with the Planning Director. The work consists of related technical engineering duties, technical review of plans and specification on Town capital projects, technical inspections of developer installed street and utility infrastructure, and advising the Town Manager and elected officials on issues relating to civil/municipal engineering.

SCOPE AND EFFECT: The purpose of this assignment is to ensure that the Town of Pittsboro follows generally accepted engineering principles with respect to new development and is in compliance with storm water permits, Jordan Lake Rules, the purchasing and contracting laws of the State of North Carolina. Successful performance helps ensure compliance with all state issued permits for stormwater, water production and wastewater treatment and helps ensure that developer constructed infrastructure meets the engineering standards of the Town government.

PERSONAL CONTACTS: Contacts are typically with co-workers, other Town employees, architectural and engineering consulting firms, government and service agency representatives (particular emphasis on NC Department of Environment and Natural Resources), elected officials, and the general public.

PHYSICAL DEMANDS: Requires the ability to occasionally lift up to 50 pounds and the ability to walk significant distances over rough terrain while conducting construction site visits or inspections of storm waster infrastructure and/or natural streams.

WORK ENVIRONMENT: About 50% of the work is typically performed while sitting at a desk or table and about 50% of the work is conducted out of doors at various tasks such as street inspections and construction project site visits.

SUPERVISORY AND MANAGEMENT RESPONSIBILITY: This position does not supervise any Town staff; however, will supervise the activities of contract architectural and engineering consultants as needed.

MINIMUM QUALIFICATIONS:

DRAFT – FOR REVIEW AND COMMENT ONLY

- Knowledge and level of competency commonly associated with the completion of a Bachelors Degree in civil engineering.
- Registration as Professional Engineer in North Carolina is required.
- Experience sufficient to thoroughly understand the diverse objectives and functions of the work to be performed, usually interpreted to require three to five years of related experience in municipal engineering, preferably in North Carolina.
- Possession of or ability to readily obtain a valid driver’s license issued by the State of North Carolina.

CLASSIFICATION AND PAY (Effective January 1, 2012)

- Grade: 30
- Salary Range:

Hiring Rate -	\$54,638
Mid Point -	\$65,899
Maximum -	\$78,752

DRAFT

Town of Pittsboro

Jordan Stormwater Ordinance for New Development

Draft

–

March 27, 2012



Table of Contents

Town of Pittsboro 1

Jordan Stormwater Ordinance for New Development 1

Draft..... 1

–..... 1

March 15, 2012 1

SECTION 1: GENERAL PROVISIONS 6

xx-101 Title 6

xx-102 Authority..... 6

xx-103 Findings..... 6

xx-104 Purpose..... 6

xx-105 Applicability and Jurisdiction..... 7

 (A) **General**..... 7

 (B) **Exemptions** 7

 (C) **No Development or Redevelopment Until Compliance and Permit**..... 8

 (D) **Map**..... 8

xx-106 Interpretation 8

 (A) **Meaning and Intent**..... 8

 (B) **Text Controls in Event of Conflict** 8

 (C) **Authority for Interpretation** 9

 (D) **References to Statutes, Regulations, and Documents** 9

 (E) **Computation of Time**..... 9

 (F) **Delegation of Authority** 9

 (G) **Usage** 9

 (H) **Measurement and Computation**..... 10

xx-107 Design Manual..... 10

 (A) **Reference to Design Manual** 10

 (B) **Relationship of Design Manual to Other Laws and Regulations** 10

 (C) **Changes to Standards and Specifications** 11

 (D) **Adoption and / or Amendments to Local Design Manual**..... 11

xx-108 Relationship to Other Laws, Regulations and Private Agreements 11

 (A) **Conflict of Laws** 11

 (B) **Private Agreements**..... 11

<i>xx-109</i>	<i>Severability</i>	<i>11</i>
<i>xx-110</i>	<i>Effective Date and Transitional Provisions</i>	<i>12</i>
(A)	Effective Date	12
(B)	Final Approvals, Complete Applications	12
(C)	Violations Continue	12
	SECTION 2: ADMINISTRATION AND PROCEDURES	13
<i>xx-201</i>	<i>Review and Decision-Making Entities</i>	<i>13</i>
(A)	Stormwater Administrator	13
<i>xx-202</i>	<i>Review Procedures</i>	<i>13</i>
(A)	Permit Required; Must Apply for Permit	13
(B)	Effect of Permit	14
(C)	Authority to File Applications	14
(D)	Establishment of Application Requirements, Schedule, and Fees	14
(E)	Submittal of Complete Application	15
(F)	Review	15
<i>xx-203</i>	<i>Applications for Approval</i>	<i>16</i>
(A)	Concept Plan and Consultation Meeting	16
(B)	Stormwater Management Permit Application	17
(C)	As-Built Plans and Final Approval	17
(D)	Other Permits	17
<i>xx-204</i>	<i>Approvals</i>	<i>17</i>
(A)	Effect of Approval	17
(B)	Time Limit/Expiration	18
<i>xx-205</i>	<i>Appeals</i>	<i>18</i>
(A)	Right of Appeal	18
(B)	Filing of Appeal and Procedures	18
(C)	Review by Superior Court	18
	SECTION 3: STANDARDS	19
<i>xx-301</i>	<i>General Standards</i>	<i>19</i>
<i>xx-302</i>	<i>Nitrogen and Phosphorus loading</i>	<i>19</i>
<i>xx-303</i>	<i>Nitrogen and phosphorus standard is supplemental; TSS removal</i>	<i>19</i>
<i>xx-304</i>	<i>control and Treatment of Runoff Volume</i>	<i>19</i>
<i>xx-305</i>	<i>Partial offset of nutrient control requirements</i>	<i>19</i>

<i>xx-306</i>	<i>Evaluation of Standards for Stormwater Control Measures.....</i>	<i>20</i>
(A)	Evaluation According to Contents of Design Manual	20
(B)	Determination of Adequacy; Presumptions and Alternatives	20
<i>xx-307</i>	<i>Dedication of BMPS, Facilities & Improvements</i>	<i>20</i>
<i>xx-308</i>	<i>Variances</i>	<i>20</i>
	SECTION 4: MAINTENANCE	22
<i>xx-401</i>	<i>General Standards for Maintenance</i>	<i>22</i>
(A)	Function of BMPs As Intended.....	22
(B)	Annual Maintenance Inspection and Report	22
<i>xx-402</i>	<i>Operation and Maintenance Agreement.....</i>	<i>22</i>
(A)	In General	22
(B)	Special Requirement for Homeowners’ and Other Associations	23
<i>xx-403</i>	<i>Inspection Program.....</i>	<i>24</i>
<i>xx-404</i>	<i>Performance Security for Installation and Maintenance</i>	<i>25</i>
(A)	May Be Required	25
(B)	Amount.....	25
(C)	Uses of Performance Security	25
<i>xx-405</i>	<i>Notice to owners</i>	<i>26</i>
(A)	Deed Recordation and Indications On Plat	26
(B)	Signage	26
<i>xx-406</i>	<i>Records of Installation and Maintenance Activities.....</i>	<i>26</i>
<i>xx-407</i>	<i>Nuisance</i>	<i>26</i>
<i>xx-408</i>	<i>Maintenance Easement.....</i>	<i>26</i>
	SECTION 5: ENFORCEMENT AND VIOLATIONS.....	28
<i>xx-501</i>	<i>General</i>	<i>28</i>
(A)	Authority to Enforce.....	28
(B)	Violation Unlawful.....	28
(C)	Each Day a Separate Offense.....	28
(D)	Responsible Persons/Entities.....	28
<i>xx-502</i>	<i>Remedies and Penalties</i>	<i>29</i>
(A)	Remedies	29
(B)	Civil Penalties	30
<i>xx-503</i>	<i>Procedures</i>	<i>30</i>

(A) Initiation/Complaint	30
(B) Inspection.....	30
(C) Notice of Violation and Order to Correct.....	30
(D) Extension of Time	30
(E) Enforcement After Time to Correct.....	31
(F) Emergency Enforcement	31
SECTION 6: DEFINITIONS.....	32
<i>xx-601 Terms Defined.....</i>	<i>32</i>
Built-upon area (BUA)	32
Department.....	32
Design Manual.....	32
Development	32
Division.....	32
Engineered stormwater control.....	33
Land disturbing activity	33
Larger common plan of development or sale	33
1-year, 24-hour storm	33
Outfall	33
Owner.....	33
Person.....	34
Redevelopment	34
Substantial progress.....	34

SECTION 1: GENERAL PROVISIONS

xx-101 TITLE

This ordinance shall be officially known as “The Jordan Watershed Stormwater Ordinance for New Development.” It is referred to herein as “this ordinance.”

xx-102 AUTHORITY

The Pittsboro Board of Commissioners is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Session Laws 2009-216, 2009-484; Chapter 153A-454; and Chapter 160A, §§ 174, 185, 459.

xx-103 FINDINGS

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the EMC has identified B. Everett Jordan reservoir, a water supply reservoir, as nutrient sensitive waters; has identified all or a portion of the reservoir as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules that have been amended and affirmed by the North Carolina General Assembly (the “Jordan Rules”) to reduce the average annual loads of nitrogen and phosphorus delivered to Jordan Reservoir from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction;

Therefore, the Pittsboro Board of Commissioners establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge for *development*.

xx-104 PURPOSE

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of nitrogen and phosphorus in stormwater runoff and nonpoint and point source pollution associated with new *development and redevelopment* in the watershed of B. Everett Jordan reservoir. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public

and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.

xx-105 APPLICABILITY AND JURISDICTION

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to this ordinance.

(B) Exemptions

Single family and duplex residential and recreational *development* and *redevelopment* that cumulatively disturbs less than one acre and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

Commercial, industrial, institutional, multifamily residential or local government *development* and *redevelopment* that cumulatively disturbs less than one-half acre and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

Development and *redevelopment* that disturbs less than the above thresholds are not exempt if such activities are part of a *larger common plan of development or sale* and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

Development that is exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

(C) No Development or Redevelopment Until Compliance and Permit

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* or *redevelopment* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(D) Map

The provisions of this ordinance shall apply within the Town planning jurisdiction (except those areas outside of the Jordan Lake watershed) as designated on the map titled "Jordan Watershed Stormwater Map of Pittsboro, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *engineered stormwater controls* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

xx-106 INTERPRETATION

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in Pittsboro's code of ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any *person* may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

(D) References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Pittsboro, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Pittsboro. References to days are calendar days unless otherwise stated.

(F) Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Town of Pittsboro may be carried out by his or her designee.

(G) Usage

(1) Mandatory and Discretionary Terms

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

(2) Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

xx-107 DESIGN MANUAL

(A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *engineered stormwater controls* and other practices for compliance with this ordinance.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Jordan Rules.

As used by the Town of Pittsboro, *Design Manual* shall refer to the most recent version of the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Water Quality (DWQ) Stormwater Best Management Practices Manual (BMP Manual). The Town also uses the following design documents, as appropriate:

1. The most recent version of the North Carolina Department of Transportation (NC DOT) Standard Specifications for Roads and Structures; and the most recent version of NC DOT Standard Drawings: http://www.ncdot.gov/doh/preconstruct/ps/std_draw/06english/08/default.html.
2. The most recent version of the Town of Pittsboro Utility Specifications: http://pittsboronc.gov/index.asp?Type=B_BASIC&SEC={FF5B2EDF-6CFB-4080-BF82-FEC091D9A5D8}&DE={B1C451A1-9BC7-4C9D-97FD-C04207DDB1FE}.

The Town of Pittsboro may from time to time issue additional design and policy guidance relating to stormwater management. Any conflicts between these information sources will be resolved at the direction of the Stormwater Administrator.

(B) Relationship of Design Manual to Other Laws and Regulations

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

(C) Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

(D) Adoption and / or Amendments to Local Design Manual

A local *Design Manual* may be adopted in the future. Such a local *Design Manual* may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the *Design Manual*, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested *persons* shall be provided.

xx-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) Private Agreements

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town of Pittsboro be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

xx-109 SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

xx-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) **Effective Date**

This Ordinance shall take effect on _____, 201____.

(B) **Final Approvals, Complete Applications**

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Pittsboro prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of stormwater.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of *development* or *redevelopment*, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
2. For any subsequent phase of *development* or *redevelopment*, sufficient detail so that implementation of the requirements of this ordinance to that phase of *development* would require a material change in that phase of the plan.

(C) **Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

xx-201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the Town of Pittsboro to administer and enforce this ordinance.

(2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Pittsboro Municipal Code and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Pittsboro Board of Commissioners on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Pittsboro Board of Commissioners, upon request.
- g. To designate appropriate other *person(s)* who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

xx-202 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(B) Effect of Permit

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *engineered stormwater controls* and elements of site design for stormwater management other than *engineered stormwater controls*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *engineered stormwater controls* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

(C) Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

(D) Establishment of Application Requirements, Schedule, and Fees

(1) Application Contents and Form

The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(2) Submission Schedule

The Stormwater Administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the Pittsboro Board of Commissioners. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) Permit Review Fees

The Stormwater Administrator shall establish permit review fees which shall be reviewed and approved by the Pittsboro Board of Commissioners. Review fees shall include policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy

of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(E) Submittal of Complete Application

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(F) Review

Within thirty (30) calendar days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator within thirty (30) calendar days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal

shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

xx-203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

(3) Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed *engineered stormwater controls*; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to

upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

(B) Stormwater Management Permit Application

The stormwater management permit application shall detail how *post-development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified, registered, North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section xx-202(D).

(C) As-Built Plans and Final Approval

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

No certificate of compliance or occupancy shall be issued without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Stormwater Administrator may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

xx-204 APPROVALS

(A) Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt

the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(B) Time Limit/Expiration

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

xx-205 APPEALS

(A) Right of Appeal

Any aggrieved *person* affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Commissioners within thirty (30) calendar days. Appeals of variance requests shall be made as provided in the section on Variances. In the case of requests for review of proposed civil penalties for violations of this ordinance, the Board of Commissioners shall make a final decision on the request for review within ninety (90) calendar days of receipt of the date the request for review is filed.

(B) Filing of Appeal and Procedures

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the Town of Pittsboro. The Stormwater Administrator shall transmit to the Board of Commissioners all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Board of Commissioners shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(C) Review by Superior Court

Every decision of the Board of Commissioners shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

(1) The decision of the Board of Commissioners is filed; or

(2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Town Clerk at the time of its hearing of the case.

SECTION 3: STANDARDS

xx-301 GENERAL STANDARDS

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

xx-302 NITROGEN AND PHOSPHORUS LOADING

- (a) Nitrogen and phosphorus loads contributed by the proposed new *development* shall not exceed the following unit-area mass loading rates: 3.8 and 1.43 pounds per acre per year for nitrogen and phosphorus, respectively.
- (b) Notwithstanding 15A NCAC 2B.104(q), *redevelopment* subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in *built-upon area* shall have the option of either meeting the loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the *existing development*: 8 percent and 5 percent reduction for nitrogen and phosphorus, respectively.
- (c) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the *approved accounting tool*.

xx-303 NITROGEN AND PHOSPHORUS STANDARD IS SUPPLEMENTAL; TSS REMOVAL

The nitrogen and phosphorus loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the *development*. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 2B.0267 and .0268.

All *stormwater systems* used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS).

xx-304 CONTROL AND TREATMENT OF RUNOFF VOLUME

Stormwater systems shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the *Design Manual*. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the *development* shall not contribute to degradation of waters of the State. At a minimum, the *development* shall not result in a net increase in peak flow leaving the site from pre-development conditions for the *one-year, 24-hour storm* event.

xx-305 PARTIAL OFFSET OF NUTRIENT CONTROL REQUIREMENTS

Development subject to this ordinance shall attain a maximum nitrogen loading rate on-site of six pounds per acre per year for single-family, detached and duplex residential development

and ten pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls otherwise imposed by this ordinance. A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the Town of Pittsboro, should such an offset option be implemented in the future. A developer may propose other offset measures to the Town of Pittsboro, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0273 (2) through (4) and 15A NCAC 02B .0240.

xx-306 EVALUATION OF STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All stormwater control measures, *stormwater systems* and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* and the *approved accounting tool* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

xx-307 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

The Town of Pittsboro may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. That being said, the Town is under no obligation to accept dedication of any such facility and will evaluate each dedication opportunity on a case by case basis. Acceptance may occur only when the Town, at its sole discretion, determines that it is in the best interests of the Town to accept dedication.

xx-308 VARIANCES

(A) Any *person* may petition the Town of Pittsboro for a variance granting permission to use the *person's* land in a manner otherwise prohibited by this ordinance. For all proposed *major*

and *minor variances* from the requirements of this ordinance, the local Board of Commissioners shall make findings of fact showing that:

- (1) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;
- (2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and
- (3) in granting the variance, the public safety and welfare have been assured and substantial justice has been done.

(B) In the case of a request for a *minor variance*, the Town of Pittsboro may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done. The Town of Pittsboro may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) The Town of Pittsboro may attach conditions to the *major or minor variance* approval that support the purpose of the Pittsboro Watershed Overlay District Requirements. If the variance request qualifies as a *major variance*, and the Town of Pittsboro decides in favor of granting the *major variance*, the Board shall then prepare a preliminary record of the hearing and submit it to the *EMC* for review and approval. If the *EMC* approves the *major variance* or approves with conditions or stipulations added, then the *EMC* shall prepare a decision which authorizes the Town of Pittsboro to issue a final decision which would include any conditions or stipulations added by the *EMC*. If the *EMC* denies the major variance, then the *EMC* shall prepare a decision to be sent to the Town of Pittsboro. The Town of Pittsboro shall prepare a final decision denying the major variance.

(D) Appeals from the local government decision on a *major or minor variance* request are made on certiorari to the local Superior Court. Appeals from the *EMC* decision on a *major variance* request are made on judicial review to Superior Court.

(E) On request of the Stormwater Administrator, any *person* who petitions the Town of Pittsboro for a variance under this ordinance shall provide notice to the affected local governments of the variance request as required under the Jordan Rule, 15A NCAC 2B.0104(r). For purposes of this notice requirement, “affected local governments” means any local governments that withdraw water from Lake Jordan or its tributaries downstream of the site of the proposed variance. If the proposed variance is in a Water Supply Watershed area classified as WS II, WS III or WS IV, “affected local governments” also includes any other local governments in the same water supply watershed as the proposed variance. The notice shall provide a reasonable period for comments and shall direct the comments to be sent to the Stormwater Administrator. The person petitioning for the variance shall supply proof of notification in accordance with this ordinance to the Stormwater Administrator.

SECTION 4: MAINTENANCE

xx-401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

The *owner* of each *engineered stormwater control* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *engineered stormwater control* was designed.

(B) Annual Maintenance Inspection and Report

The *person* responsible for maintenance of any *engineered stormwater control* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following *persons* performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or *person* certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *engineered stormwater control*;
- (3) A statement that an inspection was made of all *engineered stormwater controls*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *engineered stormwater controls* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

xx-402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *engineered stormwater control* pursuant to this ordinance, and prior to issuance of any permit for *development* requiring a *engineered stormwater control* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site,

portions of the site, and lots or parcels served by the *engineered stormwater control*. Until the transference of all property, sites, or lots served by the *engineered stormwater control*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *engineered stormwater control*, and shall state the terms, conditions, and schedule of maintenance for the *engineered stormwater control*. In addition, it shall grant to the Town of Pittsboro a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *engineered stormwater control*; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Pittsboro to assume responsibility for the *engineered stormwater control*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) Special Requirement for Homeowners' and Other Associations

For all *engineered stormwater controls* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *engineered stormwater controls*. If *engineered stormwater controls* are not performing adequately or as intended or are not properly maintained, the Town of Pittsboro, in its sole discretion, may remedy the situation, and in such instances the Town of Pittsboro shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *engineered stormwater controls*, provided that the Town of Pittsboro shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *engineered stormwater controls*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *engineered stormwater controls*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow

account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Pittsboro depending on the design and materials of the stormwater control and management facility.

(5) Granting to the Town of Pittsboro a right of entry to inspect, monitor, maintain, repair, and reconstruct *engineered stormwater controls*.

(6) Allowing the Town of Pittsboro to recover from the association and its members any and all costs the Town of Pittsboro expends to maintain or repair the *engineered stormwater controls* or to correct any operational deficiencies. Failure to pay the Town of Pittsboro all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Pittsboro shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the Town of Pittsboro to maintain or repair any *engineered stormwater controls*, and the Town of Pittsboro shall not be liable to any *person* for the condition or operation of *engineered stormwater controls*.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Pittsboro to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the Town of Pittsboro for any costs and injuries arising from or related to the engineered stormwater control, unless the Town of Pittsboro has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

xx-403 INSPECTION PROGRAM

Inspections and inspection programs by the Town of Pittsboro may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No *person* shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

(A) May Be Required

The Town of Pittsboro may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *engineered stormwater controls* are

(1) installed by the permit holder as required by the approved stormwater management plan, and/or

(2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) Uses of Performance Security

(1) Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *engineered stormwater control* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Pittsboro shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security

If the Town of Pittsboro takes action upon such failure by the applicant or *owner*, the Town of Pittsboro may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

xx-405 NOTICE TO OWNERS

(A) Deed Recordation and Indications On Plat

The applicable 1) operations and maintenance agreement and 2) conservation easement or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every *engineered stormwater control* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the 1) operations and maintenance agreement and 2) conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *engineered stormwater controls* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

xx-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The *owner* of each *engineered stormwater control* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

xx-407 NUISANCE

The *owner* of each stormwater BMP, whether *engineered stormwater control* or *non-engineered stormwater control*, shall maintain it so as not to create or result in a nuisance condition.

xx-408 MAINTENANCE EASEMENT

Every *engineered stormwater control* installed pursuant to this ordinance shall be made accessible from public Right of Way for adequate maintenance and repair by a maintenance easement.

The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes. Presence of an easement does not release the owner of the responsibility for maintenance.

DRAFT

SECTION 5: ENFORCEMENT AND VIOLATIONS

xx-501 GENERAL

(A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Pittsboro. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Pittsboro.

(B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

(C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.

(D) Responsible *Persons*/Entities

Any *person* who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, *engineered stormwater control*, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. *Persons* subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other *person* who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other *person*, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

For the purposes of this article, responsible *person(s)* shall include but not be limited to:

(1) *Person* Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other *person* who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any *person* who is responsible for stormwater controls or practices

pursuant to a private agreement or public document, or any *person*, who has control over, or responsibility for, the use or *development* of the property.

xx-502 REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

(1) Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Board of Commissioners may disapprove, any request for permit or *development* approval or authorization required by this ordinance for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Manager of the Town of Pittsboro, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any *person* violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Manager of the Town of Pittsboro, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the *person(s)* violating this ordinance. The stop work order shall remain in effect until the *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work

order may be withdrawn or modified to enable the *person* to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

The Stormwater Administrator may assess a civil penalty against any person who violates any provision of this ordinance or of a permit or other requirement pursuant to this ordinance. Civil penalties may be assessed up to the full amount of penalty authorized by G.S. 143-215.6A.

xx-503 PROCEDURES

(A) Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any *person* may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other *person* violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

A *person* who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation

cannot be corrected within the specified time limit for reasons beyond the control of the *person* requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 45 calendar days. The Stormwater Administrator may grant 15-day (calendar) extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the *person* violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. The Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance whether or not the violation has been corrected.

(F) Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any *person* so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

xx-601 TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Approved accounting tool

The accounting tool for nutrient loading approved by the *EMC* for the relevant geography and development type under review.

Built-upon area (BUA)

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material. The project site or area must exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other *development* regulated under a federal, state or local stormwater regulation.

Department

The North Carolina Department of Environment and Natural Resources.

Design Manual

The stormwater design manual approved for use in this part of the Jordan Watershed by the *Department* for the proper implementation of the requirements of the Jordan Watershed stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

Development

Any *land-disturbing* activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.

Division

The Division of Water Quality in the *Department*.

EMC

The North Carolina Environmental Management Commission, in the *Department*.

Existing development

Development not otherwise exempted by this ordinance that meets one of the following criteria:

- (a) It either is built or has established a statutory or common-law vested right as of the effective date of this ordinance; or
- (b) It occurs after the effective date of this ordinance, but does not result in a net increase in *built-upon area* and does not decrease the infiltration of precipitation into the soil

Engineered stormwater control

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. *Engineered stormwater control* includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Engineered stormwater control” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

Land disturbing activity

Any use of the land that results in a change in the natural cover or topography that may cause or contribute to erosion.

Larger common plan of development or sale

Any area where multiple separate and distinct construction or *land-disturbing activities* will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Major variance

A variance from the minimum statewide watershed protection or Jordan rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Jordan rules, a variance to this ordinance is not considered a *major variance* as long as the result of the variance is not less stringent than the state's minimum requirements.

Minor variance

A variance from the minimum statewide watershed protection or Jordan rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation by a factor up to 10 percent, of any management requirement under the low density option.

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

Outfall

A point at which stormwater (1) enters surface water or (2) exits the property of a particular *owner*.

Owner

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other *person* or entity holding proprietary rights in the property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every *person* or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of “owner” under another description in this definition, such as a management entity.

Person

Includes, without limitation, individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

Redevelopment

Any *development* on previously-developed land. *Redevelopment* of structures or improvements that (i) existed prior to December 2001 and (ii) would not result in an increase in *built-upon area* and (iii) provides stormwater control at least equal to the previous development is not required to meet the nutrient loading targets of this ordinance.

Stormwater system

All engineered stormwater controls owned or controlled by a *person* that drain to the same *outfall*, along with the conveyances between those controls. A system may be made up of one or more stormwater controls.

Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

SUPPLEMENTAL INFORMATION

PROGRAM APPROVAL

The Draft Jordan Stormwater Ordinance for New Development and Draft Stormwater Program for New Development were approved by the Town Board of Commissioners in March 2012 and June 2012 respectively. Following Commission approval of the Ordinance and Program in July 2012, public hearings for the Final Jordan Stormwater Ordinance for New Development and Final Stormwater Program for New Development will be set for August 13, 2012 at the July 11, 2012 Town Board of Commissioners meeting. The Town Board of Commissioners will hold the hearings on August 13, 2012 and vote on the approval of the Final Jordan Stormwater Ordinance for New Development and Final Stormwater Program for New Development with an effective date for implementation of September 3, 2012.

ORDINANCE CHANGES

The following ordinance sections will require revisions to meet the Jordan New Stormwater Rule [15A NCAC 2B .0265] requirements:

- Zoning Ordinance (Appendix E), Section 5.5.6 Buffer Areas
- Zoning Ordinance (Appendix E), Section 5.5.10 High Density Development Option
- Zoning Ordinance (Appendix E), Section 5.5.11 Stormwater Control Structures
- Zoning Ordinance (Appendix E), Section 5.5.12 Financial Security for Stormwater Control Structures
- Zoning Ordinance (Appendix E), Section 5.5.13 Maintenance and Inspection of Stormwater Control Structures

LAND USE PLANNING

The Town of Pittsboro will begin the process of ordinance unification in the near term. All of the Town's current development ordinances will be thoroughly reviewed during this process. The Town will take this opportunity to modify the ordinances to incorporate improved growth management practices, provide planning measures to reduce impervious surfaces and reduce untreated nutrient loading rates from new developments.

APPEALS PROCESS

Per Section 2 of the Town of Pittsboro's Jordan Stormwater Ordinance for New Development (Appendix H), any aggrieved person may file a notice of appeal to the Town Board of Commissioners within thirty (30) calendar days. The Town Board of Commissioners shall make a final decision within ninety (90) calendar days of receipt of the notice. All decisions of the Town Board of Commissioners are subject to review by Superior Court provided a petition for review is filed within thirty (30) days of the decision.