Town of Pittsboro, North Carolina

Engineering Department

To: Mayor Voller and the Town Board of Commissioners

From: Fred Royal, PE, Town Engineer

Date: November 12, 2013

Subject: Recommendation to adopt *Town of Pittsboro, NC Stormwater Management Ordinance for New Development and Redevelopment in the Jordan Lake Watershed*

Background and Discussion

Please find attached the Stormwater Ordinance recommended for adoption tonight. A second Public Hearing was held on October 28, 2013 for the consideration of this ordinance and the associated fee schedules.

The Draft ordinance was approved by the NC Division of Water Quality (DWQ), Environmental Management Commission (EMC) and the Town Board of Commissioners. The resolution was provided in a previous meeting packet. Once adopted, the ordinance will be forwarded to DENR for concurrence of the revisions described below.

As presented in the second Public Hearing, the Draft ordinance was revised to add Section 7. Stormwater Utility Service Fee and Section 8, Illicit Discharges in addition to minor text changes for clarification purposes and to allow for Low Impact Development (LID) practices.

Section 7 was included to allow the Town of Pittsboro the authority to establish a stormwater utility and enterprise fund if the Town determines it is necessary to generate revenues for stormwater programming in this manner at any time in the future.

Section 8, Illicit Discharges is required by the Jordan Lake Rules, Stage One Adaptive Management Program. These provisions require the Town to regulate illegal discharges from entering the storm drainage system.

Recommendation

Adopt the attached "*Town of Pittsboro, North Carolina Stormwater Management Ordinance for New Development and Redevelopment in the Jordan Lake Watershed*".

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Town of Pittsboro, North Carolina

Stormwater Management Ordinance for New Development and Redevelopment in the Jordan Lake Watershed

November 12, 2013

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SECTION 1: GENERAL PROVISIONS

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."

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.

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.*

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.

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.

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

i. 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.

ii. 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.

iii. 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.

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 and/or the *Department* 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. The *Department* may also need to be contacted in cases of conflict with the DWQ Manual.

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.

(A) 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 *person*s shall be provided.

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.

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.

110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

a. Effective Date

This Ordinance shall take effect on November 12, 2013.

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

201 REVIEW AND DECISION-MAKING ENTITIES

a. Stormwater Administrator

i. Designation

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

ii. 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.

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 Stormwater Permit Application Requirements, Schedule, and Fees

i. Application Contents and Form

The Stormwater Administrator shall establish requirements for the content and form of all Stormwater Permit 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.

ii. Submission Schedule

The Stormwater Administrator shall establish a submission schedule for Stormwater Permit 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.

iii. Stormwater Permit Review Fees

The Stormwater Administrator shall establish stormwater permit application 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.

iv. 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.

i. 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.

ii. 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.

iii. Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator within fifteen (15) calendar days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (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.

203 APPLICATIONS FOR APPROVAL

a. Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete and prior to preliminary engineering design, 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:

i. 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.

ii. 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 classifications and origins, riparian 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. These include steep slopes (>25%), soils suitable for infiltration and other natural features.

iii. 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 (LID); 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.

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.

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

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.

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 *Jordan Lake Stormwater Nutrient Load Accounting Tool (latest approved version)*. This tool shall be provided in digital form to the Stormwater Administrator for review and approval

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).

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.

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.

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.

307 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

Stormwater BMP's shall be considered as private. However, if deemed necessary by the Town, 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.

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

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 *person*s 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 control*s;

(4) The date the inspection was made;

(5) A statement that all inspected *engineered stormwater control*s 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.

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 *owner*s 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 *owner*s 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 control*s 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 control*s. If *engineered stormwater control*s 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 control*s, 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 control*s. 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 control*s. 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 control*s.

(6) Allowing the Town of Pittsboro to recover from the association and its member's any and all costs the Town of Pittsboro expends to maintain or repair the *engineered stormwater control*s 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 control*s, and the Town of Pittsboro shall not be liable to any *person* for the condition or operation of *engineered stormwater control*s.

(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.

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.

404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(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 control*s 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.

405 NOTICE TO *OWNER*S

(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 control*s 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.

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.

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.

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.

SECTION 5: ENFORCEMENT AND VIOLATIONS

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. *Person*s 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.

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.

(C) Criminal Penalties

Violation of this ordinance may be enforced as a criminal matter under North Carolina law.

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

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 (or Resources) in the *Department.*

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

Engineered Stormwater Control Measures
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.

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

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 sedimentation or 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.

Low Impact Development
Low Impact Development (LID) practice is an innovative stormwater management approach with a basic principle to mimic natural hydrologic conditions by managing rainfall runoff close to the source, minimizing development impacts and disturbance, using existing site characteristics and conditions and decentralized drainage and treatment systems. LID also incorporates design techniques that infiltrate, filter, store, reuse, evaporate, and/or detain runoff close to its source. LID practices generally reduces infrastructure costs and incorporates open space/natural space preservation, limited site disturbance, limited impervious surfaces and landscapes that also treat stormwater runoff. LID may be applied to new development, redevelopment, and retrofits to existing development. Acceptable LID practices may be used in accordance with the applicable design manuals and guidelines referenced by the Town of Pittsboro.

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.

Section 7: STORMWATER UTILITY SERVICE FEE

701 GENERAL

A. Authority

Pursuant to N.C.G.S. Article 16 of Chapter 160A, the Town of Pittsboro is authorized to create a stormwater services utility and enterprise fund and, in so doing, establish a schedule of rents, rates, fees, charges, and penalties for the use of or the services furnished by such public enterprise.

B. Purpose

A stormwater services utility is an identified fiscal and accounting fund for the purpose of comprehensively addressing the stormwater management needs of the Town of Pittsboro through programs designed to protect and manage water quality and quantity by controlling the level of pollutants, stormwater runoff, and the quantity and rate of stormwater received and conveyed by structural and natural stormwater and drainage systems of all types. It provides a schedule of rents, rates, fees, charges and penalties necessary to assure that all aspects of the stormwater program are managed in accordance with federal, state, and local laws, rules, and regulations.

The Town Board of Commissioners may, by adopting a schedule of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise, establish a stormwater service utility at any point in the future.

C. Jurisdiction

The boundaries and jurisdiction of the stormwater services utility shall extend to the Jurisdiction of the Town of Pittsboro, including all areas hereafter annexed thereto.

Section 8: ILLICIT DISCHARGES

801 GENERAL

A. Prohibited Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, of any liquid, solid, gas or other substance, other than stormwater, unless permitted by an NPDES Permit. Prohibited substances and discharges include, but are not limited to:

- Wastewater
- Greywater (such as from washing machines)
- Food waste
- Petrochemicals and Petroleum products such as oil, gasoline, diesel fuel
- Fats, Oils and Grease
- Household, industrial, and chemical waste

- Anti-freeze
- Animal waste
- Paints
- Paint wash water
- Commercial car washes
- Garbage
- Litter
- Chlorinated swimming pool discharges
- Leaves
- Grass clippings
- Dead plants
- Sediment/soil

B. Allowable Discharges

Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

- Drinking water line flushing
- Discharge from emergency fire fighting activities
- Irrigation water
- Diverted stream flows
- Uncontaminated ground water
- Uncontaminated pumped ground water
- Residential foundation/footing drains
- Air conditioning condensation
- Uncontaminated springs
- Water from crawl space pumps
- Individual non-commercial car washing operations
- Flows from riparian habitats and wetlands
- Street wash water
- Swimming pool discharges that have been through a de-chlorination process
- Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina.

C. Illicit Connections

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in this Ordinance, are unlawful.

Prohibited connections include, but are not limited to, industrial/commercial floor drains, waste water or sanitary sewers, wash water from commercial vehicle washing operations or steam cleaning operations, and waste water from septic systems.

(2) Where such connections exist in violation of this Ordinance and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this Ordinance.

However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat. The one-year grace period shall also not apply to connections made in violation of any applicable regulation or code other than this Ordinance.

(3) The Stormwater Administrator shall designate the time period within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration the quantity and complexity of the work, the consequences of delay, the potential harm to the environment, public health, and public and private property, and the cost of remedying the damage.

D. Spills and Accidental Discharges

In the case of accidental discharges, the responsible party shall immediately begin to collect and remove the discharge and restore all affected areas to their original condition unless the material is considered to be hazardous. If considered as hazardous, the responsible party shall immediately notify the Town of Pittsboro of the accidental discharge including the location of the discharge, type of pollutant, volume or quantity discharges, time of discharge, and the corrective actions taken.

Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.