

Pitt County Stormwater Ordinance

for Nutrient Control



Effective Date: October 11, 2004
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Pitt County Stormwater Management Ordinance for Nutrient Control

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Pitt County Stormwater Management Ordinance for Nutrient Control—Part 1

§ Section .01 Authority.

These regulations are adopted pursuant to the authority vested in Pitt County by the Session Laws and the General Statutes of North Carolina, particularly Article 18, Parts 1, 2, 3, and 4, Chapter 153A-140, Chapter 153A-121, and any special local legislation enacted by the General Assembly for Pitt County.

§ Section .02 Purpose.

The purpose of this ordinance is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in Pitt County. This ordinance seeks to meet that purpose through the following objectives:

- (A) To achieve and maintain a 30 percent reduction, relative to pre-development levels, in nitrogen loading to the Pamlico estuary from lands in Pitt County on which new development occurs;
- (B) To limit phosphorus loading to pre-development levels;
- (C) To provide control for peak stormwater flows from new development lands to ensure that the nutrient processing functions of existing riparian buffers and streams are not compromised by channel erosion;
- (D) To minimize, to the greatest extent practicable, nitrogen and phosphorus loading to the estuary from existing developed areas in the basin; and
- (E) To meet the requirements of 15A NCAC 2B .0258.

§ Section .03 Title.

This ordinance shall be known as the *Pitt County Stormwater Management Ordinance for Nutrient Control* and may be cited as the *Stormwater Ordinance*.

§ Section .04 Jurisdiction.

This ordinance shall be applied to all land within the planning jurisdiction of Pitt County except that the phosphorus component shall be excluded from the Neuse Basin of the County (15A NCAC 02 B.0235).

§ Section .05 Severability.

If any section, specific provision, or standard of these regulations is found by a court of competent jurisdiction to be invalid for any reason, the decision of the court shall not affect the validity of any other section, provision, or standard of these regulations except the provision in question. The other portions of these regulations not affected by the decision of the court shall remain in full force and effect.

§ Section .06 Relation to Other Ordinances.

This ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule, regulation, or other provision of law. If the provisions of this ordinance conflict with the provisions of any other validly enforceable ordinance(s) or laws, the most stringent provisions shall apply.

§ Section .07 Effective Date & Vesting Provisions.

These regulations shall become effective on October 12, 2004. For vesting purposes, all new development projects that have received approval from Pitt County for a site-specific plan by October 12, 2004, and are in accordance with local provisions shall be exempt from the requirements of the Tar-Pamlico Stormwater Rule. Any final plats associated with such development must be recorded within a maximum of five years from the date of development approval. All new development projects that have not received such approval by October 12, 2004, or recorded any plats associated with such development within five years of the development's approval shall be subject to the requirements of this ordinance.

I hereby certify that this is a true and correct copy of the stormwater ordinance for nutrient control as adopted by the Board of County Commissioners of Pitt County, North Carolina, on the 11th day of October, 2004.

WITNESS my hand and the official seal of Pitt County, this the 11th day of October, 2004 .

Eugene James, Chairperson

Susan Banks, Clerk

§ Section .08 Fees.

All fees referred to in this ordinance shall be those fees established by the Pitt County Board of Commissioners. Any time this ordinance requires the recordation of an instrument at the Office of the Register of Deeds of Pitt County, all costs associated with the recording of such instrument shall be in addition to any stated fees and shall be borne in full by the applicant. The stormwater fee schedule is found in the Pitt County Manual of Fees.

§ Section .09 Applicability.

- (A) No building, structure, or land shall be used, occupied, or altered; nor shall any building, structure, or part thereof be erected, constructed, reconstructed, moved, enlarged, or structurally altered; nor shall any changed use be established for any building, structure, or land; nor shall any land disturbing activity commence unless in conformity with the provisions of this ordinance, except that Part II of this ordinance shall not apply to:
 - (1) Any portion of a project, or use which has established vested rights according to this ordinance; or
 - (2) Any agriculture, mining, or forestry activities; or
 - (3) Any activity that disturbs one acre or less of land to establish, expand, or replace a single family or duplex residential development or recreational facility; or
 - (4) Any activity that disturbs one-half acre or less of land to establish, expand, or replace a multifamily residential development or a commercial, industrial or institutional facility.
- (B) It shall be the burden of the property owner or developer to prove to the satisfaction of the Stormwater Administrator that the proposed project meets the exceptions listed in (A) above. Any person claiming such an exception shall file a request for determination of exception with the Stormwater Administrator either prior to or in conjunction with an application for a stormwater permit issued by Pitt County. Such request shall be in writing and shall include all relevant documentation to prove such exception.
- (C) Redevelopment projects that result in no net increase in built-upon area and provide equal or greater stormwater control than the previous development will be considered in compliance with the nutrient loading and post-construction management requirements of this ordinance.

§ Section.10 Incorporation of the Stormwater Best Management Practices Manual.

The North Carolina Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, *Stormwater Best Management Practices Manual, 1999*, and all amendments thereto, is hereby adopted by reference as fully as though set forth herein. If any standard, requirement, or procedure as set forth in the manual is in conflict with any standard, requirement, or procedure as set forth in this ordinance then the most stringent shall prevail. A copy of this manual shall be available for public review in the office of the Stormwater Administrator.

§ Section.11 Rules of Construction and Definitions.

(A) Rules of Construction.

For the purposes of these regulations, the following rules of construction apply.

- (1) Interpretations shall be guided by statements of intent.
- (2) The term “this ordinance” shall refer to the *Pitt County Stormwater Ordinance*.
- (3) The words "shall", "must", and "will" are mandatory, implying an obligation or duty to comply with the particular provision.
- (4) The word “may” is permissive, except when the context of the particular use is negative, then it is mandatory (e.g. “may not”).
- (5) The word “should,” whether used in the positive or the negative, is a suggested guideline.
- (6) References to "days" will always be construed to be business days, excluding weekends and holidays, unless the context of the language clearly indicates otherwise.
- (7) For purposes of interpreting this ordinance, certain words, concepts, and ideas are defined in subsection (B) below. Except as defined herein, all other words used in this ordinance shall have their everyday dictionary definition.
- (8) Words used in the present tense include the future tense and words used in the future tense include the present tense.
- (9) Words used in the singular number include the plural and words used in the plural number include the singular.
- (10) The word “person” includes a firm, association, organization, partnership, corporation, trust and company as well as an individual.
- (11) The word “lot” includes the word “plot”, “parcel” or “tract.”
- (12) The word “building” includes the word “structure” and the word “structure” includes the word “building.”
- (13) The words “used” or “occupied” as applied to any land or building shall be construed to include the words “intended,” “arranged” or “designed” to be used or occupied.
- (14) Words used in the masculine gender include the feminine gender.
- (15) The word “street” includes the words road, avenue, place, way, drive, lane, boulevard, highway, and any other facility principally

designed for motor vehicle traffic, except an alley or an easement solely for utilities or pedestrians.

- (16) The terms “Board” and “Board of Commissioners” shall mean the Pitt County Board of Commissioners.
- (17) The term “Stormwater Administrator” shall mean the stormwater administrator of Pitt County, North Carolina or his designee.
- (18) The terms “Manager” or “County Manager” shall mean the manager of Pitt County, North Carolina.
- (19) The term “State” shall mean the state of North Carolina.
- (20) The term “the county” shall mean Pitt County, North Carolina.
- (21) Any reference to a section shall mean a section of *The Pitt County Stormwater Ordinance*, unless otherwise specified.

(B) Definitions.

“Applicant” means a property owner or agent of a property owner who has filed an application for a stormwater permit.

“Best Management Practice (BMP)” means a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities.

“Board of Adjustment” A quasi-judicial body, appointed by the County Board of Commissioners, that is given certain powers under this Article.

“Buffer” means a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer shall be measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

“Building” means any structure, either temporary or permanent, having walls and a roof, designed for the shelter of any person, animal, or property, and occupying more than 100 square feet of area.

“Built-Upon Area” means that portion of a development project that is covered by impervious or partially impervious surface including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.).

“Clean Water Act” means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

“Committee” means the Technical Review Committee (TRC).

“County” shall mean Pitt County.

“Dedication” means the deliberate appropriation of property by its owner for general public use.

“Design Manual” means the North Carolina Department of Environment and Natural Resources, Division of Water Quality, Water Quality Section, *Stormwater Best Management Practices Manual, 1999*, and all amendments thereto.

“Detention” means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

“Detention Facility” means a detention basin or alternative structure designed for the purpose of temporary storage of stream flow or surface runoff and gradual release of stored water at controlled rates.

“Developer” means a person who undertakes land disturbance activities.

“Development” means any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

“Discharge” means the addition of any man-induced waste effluent either directly or indirectly to state surface waters.

“Discharge Best Management Practices (Discharge BMPs)” means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

“Domestic Wastewater Discharge” means the discharge of sewage, non-process industrial wastewater, other domestic wastewater or any combination of these items. Domestic wastewater includes, but is not limited to, liquid waste generated by domestic water using fixtures and appliances, from any residence, place of business, or place of public assembly even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges and wastewater from restaurants.

“Drainage Easement” means a legal right granted by a landowner to a grantee allowing the use of private land for stormwater management purposes.

“Hazardous Materials” means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

“Illegal Connection” means:

- (i) Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency, or
- (ii) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records approved by [County].

“Illegal Discharge” means any direct or indirect non-stormwater discharge to the storm drain system, except as exempted by this ordinance.

“Impervious Cover” means those surfaces that cannot effectively infiltrate rainfall (e.g., building rooftops, pavement, sidewalks, driveways, etc).

“Industrial Discharge” means the discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:

- (a) wastewater resulting from any process of industry or manufacture, or from the development of any natural resource;
- (b) wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants; or
- (c) wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

“Infiltration” means the process of percolating stormwater into the subsoil.

“Jurisdictional Wetland” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to

support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

“Land Disturbing Activity” means any activity which changes the volume or peak flow discharge rate of rainfall runoff from the land surface or any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock, involves the diversion or piping of any natural or man-made watercourse, or the establishment of new impervious surface. The term “land disturbing” shall also include the term “land disturbance.”

“Landowner” means the legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.

“Nonpoint Source Pollution” means pollution from any source other than from any discernible, confined, and discrete conveyance, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

“Non-Stormwater Discharge” is any discharge to the storm drain system that is not composed entirely of storm water.

“Off-Site Facility” means a stormwater BMP located outside the subject property boundary described in the permit application for land development activity.

“1-year, 24-hour storm” means a rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months.

“On-Site Facility” means a stormwater BMP located within the subject property boundary described in the permit application for land development activity.

“Operation and Maintenance Agreement” means a legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

“Pollutant” means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and

residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

“Premises” means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

“Qualified Professional” means a professional licensed and/or registered in the state of North Carolina performing services only in their areas of competence.

“Recharge” means the replenishment of underground water reserves.

“Redevelopment” means any rebuilding activity other than a rebuilding activity that:

- (i) Results in no net increase in built-upon area, and
- (ii) Provides equal or greater stormwater control than the previous development.

“Riparian Area” means an area that is adjacent to a body of water.

“Stop Work Order” means an order issued which requires that all construction activity on a site be stopped.

“Stormwater” means any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

“Stormwater Administrator” means a Pitt County staff person appointed by the County Manager.

“Stormwater Management” means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, peak flow discharge rates and detrimental changes in stream temperature that affect water quality and habitat.

“Stormwater Permit” means a permit issued by the Stormwater Administrator.

“Stormwater Retrofit” means a stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

“Stormwater Runoff” means flow on the surface of the ground, resulting from precipitation.

“Stormwater Treatment Practices (STPs)” means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

“Technical Review Committee” means a Pitt County committee appointed by the Board of County Commissioners to assist the Stormwater Administrator with administration and enforcement of this ordinance.

“Wastewater” means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

“Watercourse” means a permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

“Waters” means any stream, river, brook, swamp, lake, sound, tidal estuary, bay, creek, reservoir, waterway, or other body or accumulation of water, whether surface or underground, public or private, or natural or artificial, that is contained in, flows through, or borders upon any portion of this State, including any portion of the Atlantic Ocean over which the State has jurisdiction.

§ Section.12 Inspections, Enforcement and Civil Penalties.

(A) Authority to Enter.

Agents and officials of Pitt County shall have the right to enter property at all reasonable times to inspect sites subject to the requirements of this ordinance to determine whether the development, BMPs, discharges and/or other activities on the property conform to the standards and requirements as set out herein. No person shall obstruct, delay, hamper, or in any way interfere with a county agent or official while in the process of carrying out their duties under this ordinance.

(B) Inspection of Stormwater Facilities.

Inspection programs may be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or a NPDES stormwater permit; 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 drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.

(C) Remedies.

The provisions of this ordinance may be enforced by one, all, or a combination of the remedies authorized and prescribed herein including civil penalties, criminal penalties, injunctive relief, stop work orders, permit revocation, restoration, and abatement.

(D) Notice(s) of Violation(s) and Penalties for Noncompliance.

(1) Any person who violates 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. The maximum civil penalty for a violation is five thousand dollars (\$5000.00) per day/violation. The maximum civil penalty for a violation of a stop-work order is five thousand dollars (\$5000.00). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. If, after the allotted time period has expired, the violator has not completed corrective actions, a civil penalty may be assessed from the first day the violation is detected. However, no time period for compliance need be given for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties. Each day of continuing violation shall constitute a separate violation.

(2) The Technical Review Committee (TRC) shall determine the amount of the civil penalty to be assessed under this subsection and shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. In determining the amount of the penalty, the committee shall consider the following criteria:

- a. Severity of the Violation
- b. Degree and extent of harm
- c. Type of violation
- d. Duration
- e. Cause
- f. Extent of any damage which may have resulted
- g. Effectiveness of action taken by violator
- h. Adherence to plan submitted by violator
- i. Effectiveness of plan (if applicable) submitted by violator
- j. Cost of rectifying any damage

- k. The violator's previous record in complying with the rules of the ordinance
 - l. Estimated cost of installing and/ or maintaining corrective measures
 - m. Staff investigative costs
- (3) The Notice of Assessment shall direct the violator to either pay the assessment or contest the assessment, within 30 days after receipt of the notice of assessment, by written demand for an appeal. An appeal on a civil penalty shall be conducted at the next available Board of Adjustment meeting. The Board of Adjustment shall render its final decision on the civil penalty within (30) days of consideration of the written demand for an appeal. Appeal from the final decision of the Board of Adjustment shall be to the Superior Court. Where the Stormwater Administrator determines that the period of time stated in the notice of violation is not sufficient for abatement based upon the work required or consent agreement, the Stormwater Administrator may amend the notice of violation to provide for additional time not to exceed sixty calendar days from the date of the initial notice. The Board of Adjustment shall have the authority to extend this deadline for those cases where such time extension is proven to this board to be required due to the complexity and/or severity of the violation. Such extension shall be granted as a result of an appeal of the deadline established by the stormwater administrator. Violations which are an imminent threat to public health, safety, and/or welfare shall not be granted an extension.
- (4) If payment is not received within 30 days after demand for payment is made, the County of Pitt may institute a civil action to recover the amount of the assessment. The civil action may be brought to Superior Court. Such civil actions shall be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- (5) If a violation is repeated within a two-year period from the date of the initial violation, it shall be considered to be a continuation of the initial violation and shall be subject to additional penalties and remedies as set forth in this section. A repeat violation is one which is identical to or reasonably similar to a previous violation for which the county has issued a notice of violation or civil citation.

(E) Criminal Penalties.

Any person who violates any provision of this ordinance, any order issued pursuant to this ordinance, or any condition of an approved permit shall be guilty of a misdemeanor punishable by fines and/or imprisonment as determined by the court.

- (1) Civil penalties collected pursuant to this article shall be credited to the general fund of Pitt County as nontax revenue.
- (2) Any person who knowingly or willfully violates any provision of this article, or rule or order adopted or issued pursuant to this article, or who knowingly or willfully initiates or continues an illegal discharge and/or connection shall be guilty of a Class 3 misdemeanor which may include a fine.

(F) Injunctive Relief.

Whenever the county has reasonable cause to believe that any person is violating or threatening to violate any provision of this ordinance, any order issued pursuant to this ordinance, or any condition of an approved permit, the county may initiate a civil action in local superior court to restrain the actions of such person that would constitute a violation. Upon finding that such violation has occurred or is threatened to occur, the court may issue any order of abatement or action necessary to insure compliance with this ordinance. The institution of an action for injunctive relief shall not relieve any party to the proceeding from any civil or criminal penalty prescribed herein.

(G) Stop Work Order.

Whenever it is determined that work is proceeding without a valid stormwater permit, that work is proceeding in a manner inconsistent with a valid stormwater permit, or that work while proceeding according to a valid permit is insufficient to meet the requirements of this ordinance, the Stormwater Administrator may issue a stop work order. The order shall be in writing, directed to the person doing the work and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed. An appeal from a stop work order may be filed with the Stormwater Administrator as set out herein. This appeal must be heard by the Board of Adjustment at its next available meeting.

(H) Revocation of Permits

Any permit issued pursuant to this ordinance may be revoked by the Stormwater Administrator at any time for one or more of the following reasons:

- (1) Failure to comply with an approved permit.
- (2) The discovery of false, incomplete, or erroneous information submitted as part of the permit application.
- (3) Failure to allow reasonable and timely access to the property for any and all inspections deemed by the county to be necessary to insure compliance with this ordinance.
- (4) The discovery that a permit was mistakenly issued.

(I) Restoration.

Any person who violates any provision of this ordinance, any order issued pursuant to this ordinance, or any approved stormwater permit shall be, in addition to all other remedies, subject to site restoration. The Stormwater Administrator shall take into consideration the nature and extent of the violation, the impact upon the land, public health and safety and any other factors he deems necessary in determining whether or not restoration shall be required. If the Stormwater Administrator determines that restoration is required, the violator shall restore all land, water, and vegetation affected by the violation to its condition prior to the violation except that whenever the prior condition is unknown or disputed the Stormwater Administrator shall determine the extent of restoration required. Whenever trees are removed in violation of this ordinance, new trees shall be planted at a rate of nine inches of tree circumference for every one hundred square feet of disturbed area. All replacement trees shall be native woodland species suited to the growing conditions of the planting area. In setting the time limits for restoration, the Stormwater Administrator shall take into account the quantity of work required, planting seasons, and the consequences of delay.

(J) Abatement.

Whenever a violation of this ordinance for which a notice of violation has been sent remains uncorrected after the appeal rights of the violator have been forfeited or exhausted and such violation has been determined by the Stormwater Administrator to be dangerous or prejudicial to the public health, the county shall have the authority to remove, abate, or remedy the violation. The expense of this action including administrative costs shall be billed to the person in violation of this ordinance and, if not paid, shall be a lien upon the land or premises where the violation occurred and shall be collected as unpaid taxes.

(K) Continuing Violations.

Each day of violation shall constitute a separate and distinct violation subject to any and all remedies set forth herein.

§ Section.13 Variances and Appeals.

(L) Appeals.

- (1) The Board of Adjustment shall hear and decide appeals from any order, requirement, decision, or determination made by the Technical Review Committee or Stormwater Administrator pertaining to this ordinance.
- (2) An appeal may be taken by any person aggrieved by any order, requirement, decision or determination made by the Technical Review Committee or Stormwater Administrator. An appeal to the Board of Adjustment shall be made within twenty days of the order, requirement, decision, or determination made by Technical Review Committee or Stormwater Administrator.
- (3) An appeal, specifying the grounds thereof, shall be filed with the Stormwater Administrator. Once an appeal is filed, the Stormwater Administrator shall forward all papers with reference to the case to the Board of Adjustment.
- (4) The Board of Adjustment may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination with reference to the appeal.

(M) Variances.

- (1) When practical difficulties or unnecessary hardships would result from carrying out the strict letter of this ordinance, the Board of Adjustment shall have the power to vary or modify any of the regulations or provisions of this ordinance so the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done.
- (2) Anyone requesting a variance shall file such with the Stormwater Administrator on a form provided by the Stormwater Administrator. Applications shall be filed at least ten days prior to the Board of Adjustment meeting at which it will be heard. After filing, the request shall be heard at the next available Board of Adjustment meeting.

- (3) The Board of Adjustment, in considering an application for a variance, shall not consider the following as grounds for granting a variance:
 - (a) The use of land or structures in the county that are not in compliance with the requirements of this ordinance.
 - (b) The fact that property may be used more profitably.
 - (4) The Board of Adjustment, before granting a variance, shall make all of the following findings:
 - (a) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. This shall be construed to mean:
 - i. If the property owner complies with the provisions of this ordinance, he can secure no reasonable return from, nor make reasonable use of, his property;
 - ii. The hardship results from the application of the requirements of this ordinance;
 - iii. The hardship is suffered by the applicant's property;
 - iv. The hardship is not the result of the applicant's own actions;
 - v. The hardship is peculiar to the applicant's property, rather than one shared by many surrounding properties.
 - (b) That the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit.
 - (c) That in granting of the variance, the public safety and welfare have been assured and substantial justice has been done.
 - (d) That the reasons set forth in the application justify the granting of a variance, and that the variance is the minimum one that will make possible the reasonable use of land or structures.
 - (5) The Board of Adjustment, in granting a variance, may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which a variance is granted, shall be deemed a violation of this ordinance.
- (N) Amendments.
- (1) Authority. The Board of Commissioners shall have the authority to amend the text of this ordinance. However, under no circumstances shall the county amend, supplement or change these regulations so as to cause them to violate 15A NCAC 2B .0258, as

adopted and amended by the N.C. Environmental Management Commission.

- (2) Initiation. Any amendment to the text may be initiated by the Board of Commissioners, the staff, and any citizen or agent thereof upon filing an official petition including a complete application.
 - (3) Application. A petition for amendment to the text of this ordinance shall consist of:
 - (a) A written justification for the requested amendment including consistency of the proposal with the state rule.
 - (b) All appropriate fees.
 - (c) Any other information deemed necessary by the Stormwater Administrator.
 - (4) Hearing. The Board of Commissioners may refuse to call for a public hearing on any petition for amendment to the text for any reason or no reason. Notice of public hearings required under these regulations shall be in accordance with the North Carolina General Statutes. The hearing shall be conducted in accordance with rules and procedures established by the Board of Commissioners.
 - (5) Decision. The Board of Commissioners may modify any proposed text amendment upon adoption of an ordinance enacting the amendment, without the withdrawal or modification of the petition or further public hearings, when, in the opinion of the board, such a change would not require a separate public hearing.
 - (6) NC DWQ Review and Approval. All text amendments shall be submitted to NC DWQ for formal review and approval. The effective date of any amendment to this ordinance shall not be set earlier than the date such amendment is approved by NC DWQ.
- (O) Withdrawal or Amendment of Petition.
- (1) A petition filed according to this section may be withdrawn by the petitioner at any time up to the public notice of the date of the public hearing on the petition.
 - (2) If the petitioner wishes to withdraw the petition after the notice of the public hearing, the petitioner may file a written request to withdraw with the Stormwater Administrator. On the date scheduled for the hearing, the appropriate board may approve the request for withdrawal if it finds that there are substantial circumstances favoring the withdrawal and that the withdrawal will not be detrimental to the interests of any citizens affected by the petition.

- (3) Once the petition has been filed, the petitioner shall not be allowed to amend it except by request to the board at the public hearing. No changes to the petition shall be accepted prior to the public hearing.
 - (4) If the board hearing the petition deems any amendment to be a substantial change to the petition, it shall defer action on the petition for thirty days to allow interested parties the opportunity to comment on the amendment to the petition.
- (P) Affect of Denial.
- (1) Any request denied by the Board of Commissioners may be appealed to the local superior court by proceedings in the nature of certiorari within thirty days after the decision of the Board is filed in the office of the Stormwater Administrator.
 - (2) Any petition under this section which is denied may not be resubmitted unless, in the opinion of the Stormwater Administrator, substantial changes to the request result in a new petition before the Board.

**Pitt County Stormwater Management Ordinance for Nutrient
Control—Part II**

**PART II
ESTABLISHMENT OF STORMWATER CONTROLS**

§ Section.14 Exceptions to this Part.

- (A) Activities undertaken during an emergency except that such activities, if resulting in anything other than short term temporary stormwater impacts, shall, if otherwise required by this ordinance, meet all of the requirements of this part after such emergency.
- (B) Any of the activities listed within 15A NCAC 2B .0259 as exempt shall not be made to comply with the buffer requirements established herein.
- (C) Any project for which a variance has been granted by DWQ to the buffer requirements in accordance with 15A NCAC 2B .0259(9).
- (D) Any project for which vested rights have been determined to exist by DWQ in accordance with 15A NCAC 2B .0259.
- (E) Any project for which the vesting provisions of Section 7 of this article have been determined to exist.

§ Section.15 Permit Procedures, Requirements, and Approvals.

- (A) Permit Required.
No person shall receive any permit for land development or land disturbing activity without first meeting the requirements of this part and receiving a stormwater permit prior to commencing the proposed activity unless specifically excluded from the requirements of this ordinance.
- (B) Application Requirements.
 - (1) Any person desiring a stormwater permit shall submit a permit application to the Stormwater Administrator on a form provided by Pitt County for that purpose.

- (2) Unless otherwise excepted by this ordinance, a permit application must be accompanied by the following in order for the permit application to be considered:
 - (a) Six copies of a stormwater management plan and all required items necessary to complete a review,
 - (b) Two copies of an operation and maintenance agreement, and
 - (c) A non-refundable permit review fee.
- (C) Application Procedure.
 - (1) Applications for a stormwater permit shall be filed with the Stormwater Administrator during regular business hours, at least 20 working days prior to the next TRC meeting, if to be considered at that time.
 - (2) Any applicant claiming a variance to one or more requirements of this ordinance shall submit evidence of valid approval of such variance at the time of permit application and any applicable fees.
- (D) Stormwater Management Plan Requirements.
 - (1) All plans shall be prepared and sealed by a qualified professional who also certifies under seal that the plan, including engineering detail, conforms to the minimum requirements established by this ordinance.
 - (2) All plans shall include a site plan, which at a minimum, clearly indicates the following features unless the Stormwater Administrator determines that certain elements are not appropriate or are unnecessary for a particular application:
 - (a) Title, scale, north arrow, date, and name of person preparing the plan;
 - (b) The entire area of development and existing built-upon area on the site;
 - (c) Existing and proposed structures and impervious surfaces;
 - (d) The location of any watercourses or surface water bodies;
 - (e) The location, extent and dimensions of all existing and proposed stormwater conveyances on and immediately adjacent to the development site;
 - (f) Existing and proposed buffer areas;
 - (g) Existing and proposed open space;

- (h) Existing and proposed topography using two foot contours;
 - (i) Existing and proposed structural BMPs;
 - (j) The extent of existing vegetation;
 - (k) Acreages of the various proposed land covers (e.g. pervious, impervious, managed open space, etc.);
 - (l) Parcel number (s) of proposed project;
 - (m) Any other information that the Stormwater Administrator needs in order to determine compliance with these regulations; and
 - (n) Ownership and use of the proposed site and all surrounding properties; and
- (3) All plans shall clearly demonstrate protection of and diffuse flow through buffer areas.
 - (4) All plans shall include nutrient calculation worksheets and peak flow calculations. Forms and formulas for calculating nutrient load and peak flow are available at the office of the Stormwater Administrator.
 - (5) All plans shall include data, site plans, and information necessary to support a proposed offsite approach, if applicable.
 - (6) All plans shall include a landscaping plan which clearly shows the extent of undisturbed vegetation and the location, species, number, and planting characteristics (including height at time of planting, spacing, etc.) of proposed vegetation. The plan must also describe the vegetative stabilization and management techniques to be used at the site after construction is completed, who will be responsible for the maintenance of vegetation, and what practices will be employed to ensure that adequate vegetative cover is preserved.
 - (7) All plans shall include engineering detail for each structural BMP, including calculations, sufficient to determine compliance with this ordinance.

- (E) Permit Review and Approval Procedure.
- (1) A copy of the permit application, plan and other documentation necessary to complete the plan review shall be forwarded to the Pitt County Technical Review Committee for review. The committee shall have forty-five (45) working days to review the application from the date of submittal and shall forward all comments to the Stormwater Administrator. Review of all applications that require stormwater BMPs shall be involve a qualified professional capable of designing the BMPs under review.
 - (2) At the appointed date, on or before forty-five (45) working days from the completed submittal, the TRC shall approve, approve with conditions, or deny the permit application.
 - (3) If the permit application is denied, the Stormwater Administrator shall provide written comments to the applicant explaining the reason(s) for denial.
 - (4) If the permit application is approved by the Technical Review Committee, a stormwater permit shall be issued.
 - (5) A previously denied permit application may not be resubmitted for consideration unless the Stormwater Administrator determines that material facts, either in the ordinance or the application, have changed significantly enough to warrant reconsideration.

(F) Permit Duration.

Permits issued under this section shall be valid for a period of two years from the date of issuance unless a valid building permit has been issued and maintained for the site or the permit has been revoked by Pitt County. If after two years the permitted activity has not begun nor a valid building permit secured, the stormwater permit shall expire.

(G) Permit Amendments.

Once an applicant has received a stormwater permit, any minor change or alteration to the site, as determined by the Stormwater Administrator, that is inconsistent with the approved permit shall require an amendment to the approved permit. Any major change or alteration to the site, as determined by the Stormwater Administrator, shall require the owner to submit a new stormwater permit application to the Stormwater Administrator for review and approval. Until such amendment or new permit have been approved, no work inconsistent with the original permit shall be commenced.

§ Section.16 Nutrient Reduction Requirements.

- (A) The nitrogen export contributed by the proposed new development activity shall not exceed 4.0 pounds per acre per year.
- (B) The phosphorus export contributed by the proposed new development activity shall not exceed 0.4 pounds per acre per year.
- (C) For residential developments, if the computed nitrogen export is greater than 4.0 pounds per acre per year but less than 6.0 pounds per acre per year, then the applicant may either:
 - (1) Install BMPs onsite to remove the excess nitrogen to achieve the required maximum loading, or
 - (2) Provide treatment of an offsite developed area that drains to the same stream to achieve the same nitrogen mass loading reduction that would have occurred onsite.
 - (3) Pay a one-time offset payment to the North Carolina Ecosystem Enhancement Program's Riparian Buffer Restoration Fund using the applicable nitrogen and phosphorous offset payment calculations specified in the Nutrient Offset Payments Rule (15A NCAC 02B.0240).

If computed nitrogen export is 6.0 pounds per acre per year or greater, then the applicant must use on-site BMPs to reduce nitrogen export to below 6.0 pounds at which point he may choose either of the strategies listed above to further reduce it to 4.0 pounds or less per acre per year.

- (D) For non-residential developments, if the computed nitrogen export is greater than 4.0 pounds per acre per year but less than 10.0 pounds per acre per year, then the applicant may either:
 - (1) Install BMPs onsite to remove the excess nitrogen to achieve the required maximum loading, or
 - (2) Provide treatment of an offsite developed area that drains to the same stream to achieve the same nitrogen mass loading reduction that would have occurred onsite.
 - (3) Pay a one-time offset payment to the North Carolina Ecosystem Enhancement Program's Riparian Buffer Restoration Fund using the applicable nitrogen and phosphorous offset payment calculations specified in the Nutrient Offset Payments Rule (15A NCAC 02B.0240).

If computed nitrogen export is 10.0 pounds per acre per year or greater, then the applicant must use on-site BMPs to reduce nitrogen export to below 10.0 pounds at which point he may choose either of the strategies listed above to further reduce it to 4.0 pounds or less per acre per year.

- (E) Nutrient loading shall be calculated on worksheets provided by Pitt County.
- (F) Redevelopment projects that replace or expand existing structures or improvements and that result in a net increase in built-upon area shall achieve a 30% reduction in nitrogen loading and no increase in phosphorus loading relative to the previous development. Such projects may achieve these loads through onsite or offsite measures or some combination thereof.
- (G) Multi-family residential, commercial, industrial, and institutional projects may choose to achieve all of this reduction by providing treatment of off-site developed areas.

§ Section.17

Peak Runoff Control Requirements.

- (A) All new development is required to control peak discharge rate from the site for the 1-year, 24-hour storm to predevelopment levels to avoid contributing to erosion to the stream channel.
- (B) Peak flow shall be calculated according to one of the approved methods listed and using all appropriate values assigned in the *Pitt County Stormwater Program Plan*.
- (C) Peak flow control is not required for developments that meet one or more of the following requirements:
 - (1) The increase in peak flow between pre- and post-development conditions does not exceed ten percent, or
 - (2) The proposed new development meets all of the following criteria: overall impervious surface is less than fifteen percent and the remaining pervious portions of the site are utilized to the maximum extent practical to convey and control the stormwater runoff.
 - (3) Pitt County may exempt development in specific locations if such locations are prone to flooding and controlling peak flow will aggravate the flooding problems.

§ Section.18

Buffer Requirements.

- (A) All developments shall be in full compliance with the buffer requirements as established by 15A NCAC 2B .0259 prior to occupancy or use of land or structures.
- (B) In accordance with 15A NCAC 2B .0259, buffer areas shall be defined as consisting of two zones:
 - (1) Zone 1 shall consist of a vegetated area that is undisturbed except as allowed in 15A NCAC 2B .0259(6). The location of Zone 1 shall begin at the most landward limit of:
the normal high water level;
the normal water level; or
the landward limit of coastal wetlands as defined by the Division of Coastal Management;
and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water, whichever is more restrictive.
 - (2) Zone 2 shall consist of a stable, vegetated area that is undisturbed except as allowed in 15A NCAC 2B .0259(6). Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water.
 - (3) The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.
- (C) Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.
 - (1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters Zone 2 of the riparian buffer.
 - (2) Periodic corrective action to restore diffuse flow shall be taken as necessary to impede the formation of erosion gullies.

- (D) No new development activity shall be approved within the first 50 feet adjacent to a waterbody that is shown on either the USGS 7.5 minute topographic map or the Natural Resources Conservation Service of the United States Department of Agriculture Soil Survey map unless the applicant can demonstrate that the activity has been approved by DWQ in accordance with the provisions of 15A NCAC 2B .0259(12)(b)(ii).

§ Section.19

Offsite Partial Offset Option.

- (A) Proposals involving nitrogen export greater than 4 pounds per acre per year may partially offset their load increases as specified in Section 16 by treating existing developed areas offsite that drain to the same stream. If an offsite offset approach is proposed, the following information shall, at a minimum, be provided along with a stormwater permit application. The Stormwater Administrator may require additional information to determine the ability and/or intent of the proposal to meet the requirements of this ordinance.
 - (1) Technical information required:
 - (a) Clear demonstration that the proposed facility drains to the same stream as the proposed development site;
 - (b) The type and design of the proposed stormwater facility;
 - (c) The location, extent, type of use, and built-upon areas on the existing development site that will be treated by the stormwater facility;
 - (d) All calculations necessary to demonstrate compliance with the nutrient requirements of this ordinance; and
 - (e) All calculations and designs necessary to demonstrate compliance with attenuation requirements, if proposed. The offsite facility may not address the attenuation requirements for the proposed development unless a development proposal demonstrates that meeting some or all attenuation requirements offsite will not result in degradation of surface waters to which the new development site discharges.

- (B) Ownership and maintenance requirements.
- (1) A complete list of all owners of the existing development site along with their addresses and contact information—the offsite facility may be public or private;
 - (2) A binding legal instrument to be recorded at the Pitt County Register of Deeds prior to the release of a certificate of occupancy for the new development site that:
 - (a) Permits the applicant to construct and maintain the offsite facility on the property of the existing development;
 - (b) Clearly describes the responsibilities and limitations of all parties;
 - (c) Holds all owners and parties in interest in the existing development and the proposed new development corporately and separately liable to the county for the ongoing maintenance of the facility;
 - (d) Clearly states that the offsite facility is dedicated to achieving the specified nutrient and flow reductions for the life of the new development;
 - (e) Attaches to both properties and is automatically transferable to any and all new owners, parties in interest, future successors and assigns;
 - (f) Will remain in full force and effect unless and until the county shall approve the closure of the offsite facility;
 - (g) Clearly indicates by numerical standard(s) the nutrient reduction and, if applicable, stormwater attenuation ability of the facility(ies);
 - (h) Acknowledges that as long as the agreement is in effect future change of use or land disturbing activity of either site shall be reviewed for its impact on the ability of the offsite facility to meet the nutrient and, if applicable, attenuation requirements of this ordinance and shall not be approved if the requirements cannot be maintained; and
 - (i) Acknowledges the intent of the county to insure through any and all inspection and enforcement authorities it has that the offsite facility is maintained in perpetuity; and

- (C) A maintenance agreement and plan for the offsite facility that meets all of the requirements of this ordinance.
- (D) The offsite facility may serve multiple projects provided all of the requirements of this section are met.
- (E) An as-built survey of the existing development site along with the location and extent of the proposed offsite facility and clear indication of the area the facility is treating shall be required to be submitted, approved, and recorded prior to the release of a certificate of occupancy for the new development site. Such survey shall show on its face the following note signed by all owners:

NOTE: The stormwater facility(ies) shown on this site are provided as an offsite offset facility for the property known as [subdivision/development name] located at [physical address] with tax identification number(s) [##]. This (these) facility(ies) and such property(ies) are legally bound by a maintenance agreement recorded at the Pitt County Register of Deeds [reference number].

This note shall also be shown on the face of the recorded site plan and/or subdivision plat of the new development site, signed by all owners of that property, and shall appear along with the owner's signature on all future subdivision maps and/or documents of both properties as long as the agreement is in effect.

- (F) Prior to approval of any subsequent change of use or land development activity on either site, the applicant shall demonstrate that offsite property nutrient loading reductions and, if applicable, attenuation as required by this ordinance shall be maintained.
- (G) The occupancy and/or use of land or structures which are the subject of a stormwater permit prior to release of a certificate of stormwater compliance shall constitute a violation of this ordinance and shall subject the owner and occupants to any and all remedies provided herein.

§ Section. 20 Regional or Jurisdiction-Wide Approaches

Pitt County will consider the approval of a regional or jurisdiction-wide approach on a case by case basis. The North Carolina Division of Water Quality must review and approve all regional or jurisdiction-wide approaches. For consideration of such an approach the developer or landowner is required to submit a proposal which includes, at a minimum, the following information:

- (1) Data to demonstrate that such measures will not contribute to the degradation of surface waters.
- (2) Nutrient and flow reductions.
- (3) Outlines the type of BMP's to be constructed / installed.

§ Section. 21 General Performance Criteria for Post-Construction Stormwater Management Controls.

The following performance criteria shall be addressed for stormwater management at all sites:

- (1) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable. The use of on-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders are recommended; and
- (2) All built-upon areas shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters, unless a variance is obtained from the North Carolina Division of Water Quality. For the purpose of this ordinance, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0259 (3)(a).
- (3) Where the use of BMPs is necessary based on approved export calculations, projects shall be required to implement post-construction stormwater management BMPs and shall conform to the following requirements:
 - a. All site designs shall clearly indicate any proposed structural BMPs.

- b. All BMPs shall seek to use pervious areas for stormwater treatment and to infiltrate stormwater runoff from driveways, sidewalks, rooftops, parking lots, and landscaped areas to the maximum extent practical.
- (4) New development shall not discharge untreated stormwater directly into a jurisdictional wetland or water body without adequate treatment as determined by the Stormwater Administrator. Where such discharges are proposed, the impact of the proposal on wetland functional values shall not be greater than allowed by the Army Corp of Engineers (ACE) or the North Carolina Division of Water Quality (NCDWQ).
- (5) Structural BMPs shall be designed to:
 - a. Meet the general engineering design criteria as listed in 15A NCAC 2H .1008(c).
 - b. Meet all design requirements and pollutant removal standards included in the Design Manual except that any standards explicitly stated within this ordinance that are more stringent than the manual shall prevail, and
 - f. Address the physical characteristics of the site including but not limited to:
 - i. Topography (minimum 2 foot contours)
 - ii. Maximum Drainage Area
 - iii. Depth to Water Table
 - iv. Soils
 - v. Slopes
 - vi. Terrain
 - vii. Vegetation, existing and planned
 - viii. Location in relation to environmentally sensitive features such as surface waters and wetlands.
- (7) All stormwater management practices shall have a landscaping plan detailing the vegetation to be used in conjunction with the BMP.
- (8) Any development proposing to operate or maintain an on-site wastewater treatment systems for domestic wastewater, including but not limited to septic tanks, shall submit evidence that such systems have been approved by Pitt County Environmental Health prior to release of a certificate of stormwater compliance and shall be required to submit a certification under seal prepared by a

qualified professional that the system has been designed and installed to prevent fecal coliform contamination of surface waters to the maximum extent practicable.

- (9) Prior to site design, applicants are encouraged to consult with the Stormwater Administrator to determine if their project is subject to additional stormwater or land development design requirements.

§ Section.22 Maintenance of Best Management Practices.

- (1) Single-Family Residential
 - (a) For residential development, the developer shall maintain , per the requirements of the operation and maintenance plan/agreement, permanent nutrient control best management practices for two years following plat approval.
 - (b) For long term maintenance of required stormwater BMP's and improvements per the requirements of the operation and maintenance plan/agreement, a homeowner's association shall be incorporated in accordance with General Statute 55. Appropriate bylaws shall be prepared, and proposed covenants or deed restrictions which address maintenance, apportionment of financial responsibility, and enforcement shall be provided. The County Attorney shall approve the adequacy of these materials prior to final plat recordation. These materials shall be recorded at the same time as the final plat and shall be appropriately cross-referenced in the County Register of Deeds office.
- (2) Commercial, Industrial and Multifamily
 - (a) For commercial, industrial or developments other than residential developments that require the installation of permanent stormwater management best management practices, the landowner shall be responsible for maintenance of such improvements per the requirements of the operation and maintenance plan/agreement.
- (3) The process for BMP maintenance enforcement shall be as

follows:

- (a) The County will annually inspect the BMP's and send an inspection report to the appropriate party; if maintenance is needed, a deadline for corrective actions would be cited on the inspection report;
- (b) If requirements of the inspection report are not met, the County may pursue legal action to bring the site into compliance, including civil and criminal penalties (Refer to Section 12 for the Enforcement Process)

§ Section.23

Operation and Maintenance Plan Required.

- (1) A written inspection and maintenance agreement shall be submitted by the applicant, approved by the Stormwater Administrator, and recorded in the Office of the Register of Deeds of Pitt County prior to release of a certificate of stormwater compliance. Such agreement shall:
 - (a) Be legally binding on all current and future parties in interest for all properties served by the BMP.
 - (b) Identify and describe the maintenance and monitoring operations required to insure the proper function of the BMP. Such operations shall be specific to each of the BMPs on the site and shall include, as appropriate, but shall not be limited to the following:
 - (i) Routine maintenance measures such as grass mowing and trash removal.
 - (ii) Routine inspections of required vegetation.
 - (iii) Routine maintenance thresholds such as maximum and minimum vegetation heights and coverages, maximum sediment storage capacity, proper drainage indicators, etc.
 - (iv) Routine inspection of BMPs for sediment, blockage, and other repair/maintenance needs.
 - (v) Routine inspection of BMPs after large storm events for structural damage and other repair/maintenance.
 - (vi) A schedule of expected significant repair/maintenance activities indicating the frequency of the activity, the expected duration of

the activity, and the expected cost of the activity in current dollars.

- (vii) Maintenance actions and frequencies specified by practice in the Design Manual.
- (c) Records of Installation and Maintenance Activities.
- (d) The operation and maintenance agreement shall stipulate that parties responsible for the operation and maintenance of a stormwater management facility shall make and keep records of the installation and of all maintenance and repairs, and shall retain the records indefinitely. As long as records are maintained privately, they shall be made available to Pitt County or its agents during inspection of the facility and at other reasonable times upon request.

§ Section.24 As-Built Survey Required.

Prior to release of a certificate of stormwater compliance, as-built surveys shall be required as follows:

- (1) The survey shall include the entire legal lot of record showing all impervious surfaces, building footprints, required buffers and any encroachments therein. Such survey shall include an information block totaling the percent of impervious coverage, the amount of impervious coverage on the site in square feet, building footprints, required buffers and any encroachments therein, and all constructed BMPs. Such survey shall include topography at two foot contours.
- (2) The survey shall compare acreages of the various land covers as constructed to those permitted. If substantially different, the survey shall provide calculations demonstrating compliance with nutrient export requirements. If this is not the case, the owner shall amend the permit and make on-site or offsite adjustments accordingly to achieve the required export.
- (3) Stormwater conveyances. Any development that results in the construction or alteration of stormwater conveyance shall submit an as-built survey showing the location, extent, dimension and type of each conveyance.

§ Section.25 As-Built Plan Required.

Prior to release of a certificate of stormwater compliance, an as-built plan prepared and sealed by a qualified professional shall be filed with the Stormwater Administrator for each new structural BMP. Such plan shall clearly indicate the location and dimensions of the BMP, the vegetation planted in conjunction with it, and shall include a certification under seal that the BMP has been installed as designed and meets the minimum criteria required by this ordinance. Submission of the plan shall be in one of the following electronic formats:

- .dxf file
- .dwg files
- Arc view shape files
- Arc Info coverages

§ Section.26 Issuance of Building Permits

No building permits shall be issued for lots or sites where BMP's are required until an as-built plan for the BMP's is approved or an approved financial surety is provided to the County..

§ Section.27 Maintenance Easement Required.

Prior to release of a certificate of stormwater compliance for any project that has a structural BMP as one of the requirements of the permit, the applicant or owner of the site must execute a maintenance easement agreement that shall be binding on all subsequent owners of land served by the stormwater management facility. The agreement shall provide for access to the facility at reasonable times for periodic inspection by Pitt County or their agent, and for regular inspection and review by property owners served by the BMP or their agents to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this ordinance. The easement agreement shall be recorded in the office of the Register of Deeds of Pitt County.

§ Section.28

Financial Sureties Required.

To provide reasonable assurance that BMPs are constructed and installed based on the approved plan, an acceptable financial surety shall be required from the applicant to be held by the county until all constructed BMPs have received final approval by the county.

(1) Single-Family Residential:

- (a) Amount and duration: If the required improvements have not been made or will not be completed by the time of final plat submittal, the applicant shall have the option of providing a financial guarantee or surety satisfactory to the county attorney and the county engineer in an amount not less than one hundred twenty (120) percent of the estimated cost of the improvements. The financial guarantee shall stipulate that the improvements will be made by the applicant not later than twenty-four (24) months after approval of the final plat; that the surety will be valid for twenty-seven (27) months or until the improvements are made, whichever is shorter; and shall ensure that these improvements can be made without cost to the county in the event of default by the applicant.
- (b) Acceptable forms: Acceptable forms of financial guarantee include letters of credit, performance bonds, cash escrows, first deeds of trust, and any others as approved by the county attorney. The estimated cost of improvements shall be reviewed by the county engineer and the arrangements for the financial guarantee shall be approved by the county attorney prior to final plat submittal. This option may be used in any combination with actual installation of improvements, and the face value of the surety may be reduced by the county as the improvements are made by the applicant.
- (c) Certification and release: Prior to full or partial release of the financial guarantee by the county, the applicant engineer or surveyor shall certify by letter that the improvements have been completed in accordance with the approved plan. Where any variation from the approved plan occurs, a certified "as-built" plan shall be provided. If this certification is not provided in accordance with this subsection (3), the county may proceed with necessary

actions to ensure that the required improvements are completed.

(2) Commercial, Industrial and Multifamily:

- (a) All BMP's for commercial, industrial and multifamily developments must be installed and approved prior to occupancy or commencement of land use.

Pitt County Stormwater Management Ordinance for Nutrient Control—Part III

PART III ILLEGAL DISCHARGE DETECTION AND ELIMINATION

§ Section.29 Purpose and Intent.

The purpose of this part is to provide for the health, safety, and general welfare of the citizens of Pitt County through the identification and removal of certain non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by 15A NCAC 2B .0258. In particular, the objectives of this ordinance are:

- (1) To regulate certain non-stormwater discharges to the storm drainage system by any user,
- (2) To provide for the identification and removal of illegal discharges,
- (3) To prevent illegal discharges to the maximum extent practicable, and
- (4) To establish the legal authority to carry out all inspection, monitoring and enforcement procedures necessary to ensure compliance with this ordinance.

§ Section.30 Discharges Prohibited.

No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, pollutants, waters, or other substance containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water. Examples of illegal discharges include, but shall not be limited to:

- (1) Dumping of oil, anti-freeze, paint or cleaning fluids
- (2) Commercial car wash washwater
- (3) Industrial discharges
- (4) Contaminated foundation drains
- (5) Cooling waters, unless no chemicals added and has valid NPDES permit
- (6) Wash waters from commercial and industrial activities
- (7) Chlorinated backwash and drainage associated with swimming pools
- (8) Domestic wastewater
- (9) Septic system effluent
- (10) Washing machine discharges
- (11) Sanitary sewer discharges

§ Section.31 Discharges Exempted.

The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except for the following:

- (1) Water line flushing or discharge from other potable water sources,
- (2) Landscape irrigation or lawn watering,
- (3) Diverted stream flows,
- (4) Rising ground water,
- (5) Ground water infiltration to storm drains,
- (6) Uncontaminated pumped ground water,
- (7) Foundation or footing drains (not including active groundwater dewatering systems),
- (8) Crawl space pumps,
- (9) Air conditioning condensation,
- (10) Natural ground or surface water springs,
- (11) Non-commercial washing of vehicles,
- (12) Natural riparian habitat or wetland flows,
- (13) Swimming pools (if dechlorinated - typically less than one PPM chlorine),
- (14) Fire fighting activities,
- (A) Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.
- (B) And, any other water source not containing pollutants which has been approved by the Stormwater Administrator.

§ Section.32 Prohibition of Illegal Connections.

- (A) The construction, use, maintenance or continued existence of illegal connections to storm drainage system is prohibited. This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

- (B) A person is considered to be in violation of this ordinance if the person connects a line conveying any type of sewage to the MS4, or allows such a connection to continue.

§ Section.33 Illegal Discharge Detection.

- (A) Pitt County shall be permitted to enter and inspect existing facilities and uses as often as may be necessary to determine compliance with this ordinance. If security measures are in force which require proper identification and clearance before entry onto premises, the owner/operator shall make the necessary arrangements to allow access to representatives of Pitt County.
- (B) In the event of a suspected violation, Pitt County has the right to install monitoring equipment on private property as necessary or, alternatively, to require the property owner/discharger to install monitoring equipment as necessary. If installed by the property owner/discharger, this equipment shall be maintained at all times in a safe and proper operating condition by the owner/discharger at his own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure accuracy.
- (C) Any temporary or permanent obstruction to safe and easy access to a facility or property to be inspected and/or sampled shall be promptly removed by the owner/operator at the written or oral request of Pitt County and shall not be replaced except upon county approval. The costs of clearing such access shall be borne by the owner/operator.
- (D) Unreasonable delays in allowing Pitt County access to a permitted facility is a violation of a stormwater permit/stormwater discharge permit and of this ordinance. A person who denies Pitt County reasonable access to a site for the purpose of conducting any activity authorized or required by this part shall be in violation of this ordinance.
- (E) If Pitt County has been refused access to any part of a site from which stormwater is discharged and is able to demonstrate probable cause to believe that such discharge is in violation of this ordinance; or there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder; or to protect the overall public health, safety, and welfare of the community; then Pitt County may seek issuance of a search warrant from any court of competent jurisdiction.

§ Section.34 Removal, Abatement and Prevention Required.

- (A) Pitt County shall review each building permit, change of use, or other permits for land disturbing activity where a stormwater permit application is not routinely required for uses and/or activities known or suspected to have potential discharges prohibited by this ordinance. In the event such uses and/or activities occur, the applicant shall be required to obtain a stormwater permit from the Stormwater Administrator. Such permit shall include any and all conditions necessary to prevent illegal discharges.
- (B) Pitt County may adopt requirements identifying Best Management Practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S.
- (C) The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the stormwater collection system or watercourses through the use of structural and/or non-structural BMPs.
- (D) Any person responsible for a property or premise, which is, or may be, the source of an illegal discharge, may be required by Pitt County to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the stormwater collection system or watercourses.

§ Section.35 Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for a use, facility or operation, or responsible for emergency response for a use, facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Stormwater Administrator in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Stormwater Administrator within three business days of the notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained indefinitely, except that whenever the facility or operation ceases to exist, such records shall be transferred to Pitt County. As long as records are maintained privately, they shall be made available to Pitt County or its agents at reasonable times upon request.

§ Section.36 Notice of Violation.

In addition to the enforcement actions and penalties listed in Part 1, a notice of violation for an illegal discharge may require any one or all of the following without limitation:

- (A) The performance of monitoring, analyses, and reporting;
- (B) The elimination of illegal connections or discharges;
- (C) That violating discharges, practices, or operations shall cease and desist;
- (D) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- (E) The implementation of source control or treatment BMPs and
- (F) Any other action the Stormwater Administrator determines to be required to remove an illegal discharge and/or restore the environment to its previous condition.

§ Section.37 Watercourse Protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.