

RIPARIAN BUFFER PROTECTION ORDINANCE

Section 1. Title

This Ordinance may be cited as the Pitt County Riparian Buffer Protection Ordinance.

Section 2. Purpose

Riparian buffers perform a variety of beneficial functions at the most critical locations within a local watershed. Rooting systems of a vegetated buffer provide streambank stabilization which in turn minimizes accelerated erosion rates and sedimentation that results from erosion. Sedimentation of a stream channel will raise base flood levels, and increase the risk of future property damage associated with flood events. Limiting the amount of sediment delivered to our stream channels will help achieve our strategies for local, long-term, hazard mitigation.

Vegetated buffer areas also control non-point source pollution by filtering nutrient-rich surface runoff (and sub-surface flow) from nearby agricultural fields, fertilized public and private lawns, impervious surfaces and construction sites. Nutrients are often carried by sediment, and by slowing or halting the constant input of nutrients into our streams, rivers, lakes and estuaries, the quality of our nutrient sensitive watersheds (Tar-Pamlico and Neuse River Basins) that provide drinking water are improved. Additionally, shading provided by vegetation along watercourses helps maintain a more constant water temperature, and therefore a more stable aquatic ecosystem for a diversity of fish and water fowl species.

For these purposes and others, Pitt County has created a local buffer protection Ordinance to:

- A. Protect and preserve the existing riparian buffers within Pitt County to maintain nutrient controlling functions;
- B. Preserve water quality for the citizens of Pitt County; and
- C. Establish policies through which the local government body may fulfill these objectives.

Section 3. Authority

Pitt County hereby exercises its authority to enact the Riparian Buffer Protection Ordinance pursuant to 15A NCAC 2B .0261 [Tar-Pamlico] effective August 1, 2000; 15A NCAC 2B .0235 [Neuse] effective August 1, 1998. The Pitt County Planning Department, with expertise and cooperation from the Technical Review Committee, shall administer, implement, and enforce the provisions of this Ordinance.

Section 4. Jurisdiction

This Ordinance shall govern the control of the Tar-Pamlico and Neuse River riparian buffers within Pitt County and outside the planning jurisdiction of any incorporated municipality; furthermore, this Ordinance may also regulate the control of riparian buffers within the jurisdiction of any municipality whose governing body by resolution agrees to such regulation through an interlocal agreement; provided, however, that any such municipal governing body, upon one year's written notice, may withdraw its approval of the Pitt County Riparian Buffer Protection Ordinance, and those regulations shall have no further effect within the municipality's jurisdiction (except state's exclusive jurisdiction as provided in G.S. 113A-56(A)). Pitt

County must notify the Division of Water Quality in writing when this duty is initiated or terminated for any municipality.

The Environmental Management Commission shall have jurisdiction over activities conducted under the authority of:

- A. The State of North Carolina;
- B. The United States;
- C. Multiple jurisdictions; and
- D. Pitt County units of government.

Section 5. Relationship with Other Laws

Wherever the provisions of this Ordinance are either more restrictive or less restrictive than comparable provisions of any other law, ordinance, or regulation, the most restrictive provisions shall apply. It is not intended that these regulations interfere with or annul any easements, covenants, deed restrictions, or other private agreements between parties.

Section 6. Severability

Should any section, subsection, or provision of these regulations be held void or invalid by a court of law for any reason, all other sections, subsections, or provisions shall be considered valid and enforceable.

Section 7. Fees

All fees associated with this Ordinance shall be established by the Pitt County Board of Commissioners. The Pitt County Riparian Buffer Protection fee schedule can be found in the Pitt County Manual of Fees.

Section 8. Definitions

As used in this Ordinance, unless the context clearly indicated otherwise, the following definitions apply:

Accelerated erosion: Any increase over the rate of natural erosion as a result of land-disturbing activity.

Agricultural Use: The operation of land for bona fide farm purposes, including stock watering, irrigation, and others.

Best Management Practice (BMP): A structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals. The BMP shall be designed in accordance with the most recent version of the NCDENR Stormwater Best Management Practices manual.

Buffer Zone: The strip of vegetated land adjacent to a lake or natural watercourse.

Built-upon Area: That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas, recreation facilities, etc.

Commission: The North Carolina Environmental Management Commission, which oversees and adopts rules for several divisions of the Department of Environment and Natural Resources.

Committee: The Technical Review Committee (TRC).

Completion of Construction or Development: That no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

Critical Area: The area adjacent to a water supply intake, or reservoir where risk associated with pollution is greater than that from the remaining portions of the watershed.

Denuded: The removal of ground cover from, on, or above the soil surface.

Department: The North Carolina Department of Environment and Natural Resources (DENR).

Development: 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.

Director: The Director of the Division of Water Quality, within DENR.

District: The Pitt County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.

Division: The North Carolina Division of Water Quality, within the DENR.

Drainage Easement: A minimum strip of land reserved for conveyance of stormwater generally located along the rear of side lot lines, but may cross lots at such points that will not pose a hazard to persons or property.

Energy Dissipater: A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

Ephemeral Stream: A feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

Erosion: The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

Existing Development: The projects that are built or vested as of the effective date of the Division of Water Quality's Riparian Buffer Protection Rules (Tar-Pam: August 1, 2000; Neuse: August 1, 1998).

Fertilizer: Any substance containing nitrogen or phosphorous which is used primarily for its plant food content.

Fishing: The taking of fish by sport or commercial methods as well as the consumption of fish or shellfish or the propagation of fish and such other aquatic life as is necessary to provide a suitable environment for fish.

Footprint: The area (square footage) of land that is currently being utilized, including by not limited to buildings, agricultural activities, private lawn maintenance, utility lines, etc.

Forest Vegetation: The plants of an area which grow together in disturbed or undisturbed conditions in various wooded plant communities in any combination of trees, saplings, shrubs, vines and herbaceous plants. This includes mature and successional forests as well as cutover stands.

Ground Cover: Any vegetative growth or other material which renders the soil surface stable against accelerated erosion.

Intermittent Stream: A well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented

by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

Lake or Natural Watercourse: Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

Land-disturbing Activity: Any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway, and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

Major Variance: A documented exclusion, granted by the Water Quality Committee of the North Carolina Environmental Management Commission, from the minimum statewide watershed protection rules only for activities that involve the infringement of the first 30 feet of land adjacent to a surface water (Zone 1 buffer) that is regulated by this Ordinance.

Minor Variance: A documented exclusion, granted by Pitt County staff or the Division of Water Quality, from the minimum statewide watershed protection rules only for activities that involve the infringement of Zone 2, the 20 feet of land adjacent to a Zone 1 buffer.

Natural Erosion: The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

Non-Point Source Pollution: Pollution which enters waters mainly as a result of precipitation and subsequent runoff from lands which have been disturbed.

Nutrient Sensitive Water: Those which are designated (NSW) in the classification schedule in order to limit the discharge of nutrients (usually nitrogen and phosphorous).

Perennial Stream: A well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

Person: Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

Person Conducting Land-Disturbing Activity: Any person who may be held responsible for a violation unless expressly provided otherwise by this Ordinance, the Act, or any order adopted pursuant to the Ordinance or the Act.

Person Responsible for the Violation:

- A. The person who has financial or operational control over the land-disturbing activity; or
- B. The landowner or person in possession or control of the land-disturbing activity or who has benefited from it.

Receiving Watercourse: A lake, natural watercourse, or other natural or manmade area into which stormwater run-off flows from a land-disturbing activity.

Sediment: Solid particulate matter, or other mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

Sedimentation: The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

Siltation: Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity.

Technical Review Committee (TRC): Representatives of local and state agencies who collectively provide professional expertise relating to land use and development.

Uncovered: The removal of ground cover from, on or above the soil surface.

Undertaken: The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

Velocity: The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

Working Days: Days exclusive of Saturday and Sunday during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.

Section 9. Basic Control Objectives

The State of North Carolina Department of Environment and Natural Resources (NCDENR), Division of Water Quality (DWQ) has adopted riparian buffer protection rules to preserve buffers along waterways for the purposes of slowing the input of nitrogen, phosphorus, and other pollutants to our surface waters. These rules are a part of more comprehensive plans to protect the nutrient sensitive waters of the Tar-Pamlico and Neuse River Basins.

Pitt County has gained authority from the Environmental Management Commission to administer these statewide programs at a local level. The primary objectives of this ordinance are specifically drafted to maintain diffuse flow of runoff before entering surface waters, limit accelerated soil erosion, sedimentation, non-point pollution, as well as preserve water quality in Pitt County. Essential to these goals is the continued protection of our riparian buffers for their filtering capabilities of surface runoff and groundwater flow.

Section 10. General Requirements

This Ordinance shall establish a 50-foot wide riparian buffer directly adjacent to surface waters (i.e. intermittent streams, perennial streams, lakes, ponds, reservoirs and estuaries) within the County of Pitt. These buffer protection rules shall be enforced on lands used for agriculture, silviculture, forestry, or whenever land use changes take effect. Wetlands adjacent to surface waters shall be considered a part of the riparian buffer, but are regulated pursuant to 15A NCAC 2H .0506.

Surface waters are present if the feature is approximately shown on either (a) the most recent version of the 1:24,000 scale (7.5 min) quadrangle topographic map prepared by the United States Geologic Survey (USGS), or (b) the most recent hard copy version of the soil survey map prepared by the Natural Resources Conservation Service. Riparian buffers that are adjacent to waters shown on either of these maps shall be subject to the requirements of this ordinance unless otherwise determined by County Staff or the DWQ.

The vegetated riparian buffer shall be further delineated into two zones:

- A. Zone 1 of the buffer shall be maintained at 30 feet from the appropriate edge of the watercourse, and will remain essentially undisturbed vegetation; and

- B. Zone 2 of the buffer shall extend 20 feet beyond Zone 1, and will be managed vegetation.

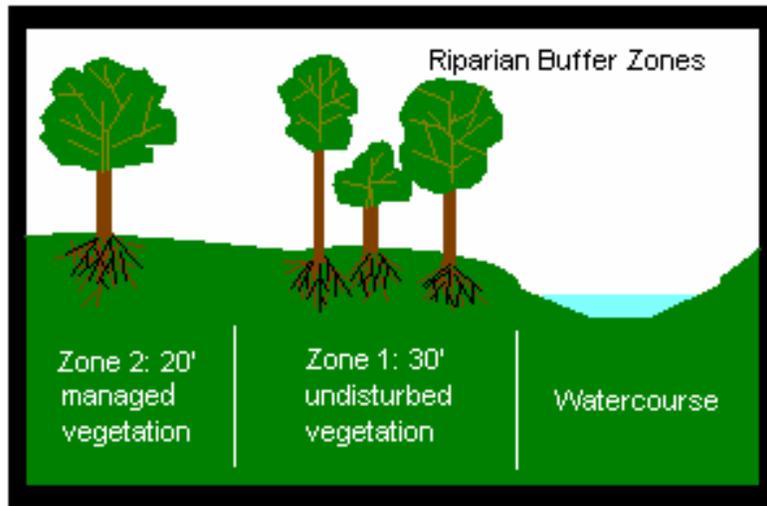


Figure 1. Pictogram of Riparian Buffer Zones

Delineation of Zone 1:

- A. For both intermittent and perennial streams, the Zone 1 buffer shall begin at the top of bank or the rooted vegetation area and extend landward to a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
- B. For ponds, lakes, and reservoirs, Zone 1 shall begin at the normal water level or the rooted vegetation and extend landward to distance of 30 feet, measured horizontally on a line perpendicular to the surface water.
- C. For estuaries, Zone 1 shall begin at the more restrictive limit of the following options:
1. The normal high water level;
 2. The normal water level; or
 3. The limit of coastal wetlands.

Delineation of Zone 2:

- A. For all surface waters the Zone 2 buffer 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.

Clearing and regrading activities are permitted within Zone 2; however the diffuse flow of runoff, as part of the functioning capabilities of Zone 1, must remain throughout the disturbance and the disturbed areas are re-established with vegetation following disturbance.

Clear and accurate project maps must be provided on all submitted soil erosion and sedimentation control and stormwater management plans. As part of the surface water delineation requirement, clients shall provide characteristics such as water alignment, flow direction, and bank locations. Pitt County staff shall verify these characteristics and provide certification as to their authenticity.

Section 11. Exemptions

Exemptions of subject surface waters may be granted in the following circumstances:

- A. In the event that a surface water is inaccurately included in the series of maps, and is proven so by a site investigation conducted by either the Division of Water Quality or an appropriate delegated staff authority in Pitt County. Proper documentation shall accompany any exemption, and land-disturbing activities shall not commence without such documentation;
- B. In areas where an existing use is present or vested as of the effective dates for the appropriate river basins (Tar-Pam January 1, 2000; Neuse July 22, 1997). Uses shall include, but are not limited to, agriculture, buildings, commercial facilities, industrial facilities, maintained public lawns, sewage systems, transportation facilities, or utility lines. In any of these examples such uses are exempt, however the footprint associated may not be enlarged nor the intensity of use be increased significantly. Activities that are necessary to maintain existing uses are allowed provided that no additional vegetation is removed from Zone 1, and diffuse flow is maintained;
- C. Ditches and manmade conveyances other than modified natural streams unless they are constructed for navigation and/or boat access; manmade ponds and lakes located outside natural drainage ways; and ephemeral (stormwater) streams;
- D. Uses that are listed as 'exempt' in the table of uses (Section 13);
- E. Areas over which the State has exclusive regulatory jurisdiction;
- F. For the duration of an emergency, activities essential to protect human life.

Section 12. Administration

A. *Pitt County Riparian Buffer Protection Administrator*

The Pitt County Planning Department shall name an Administrator, who shall coordinate the implementation and enforcement of the program. The Administrator shall attend an initial training session by the Division, and subsequent annual training sessions. Furthermore, the Administrator shall ensure that Pitt County staff that work directly with the program receive training to understand, implement and enforce the riparian buffer protection program.

B. *Pitt County Technical Review Committee (TRC)*

The Technical Review Committee shall hear penalty cases when the Administrator finds that a violation has occurred and the corrective actions have occurred in a timely manner. The Committee as established by the Pitt County Board of Commissioners shall consist of one representative from each of the following agencies:

1. North Carolina Department of Transportation
2. Pitt County Emergency Services Department
3. Pitt County Environmental Health Division
4. Pitt County Planning Department
5. Pitt County Soil and Water Conservation Service

Any change in the membership structure of the TRC shall be approved by the Board of Commissioners. Daily administration and enforcement of the Ordinance shall be performed by Planning Department staff. Staff decisions indirectly involve the Technical Review Committee, which provides comprehensive professional expertise promoting the general purpose, scope and intent of this program.

Section 13. Table of Uses

Land Use Type	Exempt	Allowable	Allowable w/ Mitigation	Prohibited
<i>Airport facilities:</i>				
Airport facilities impacting ≤ 150 linear feet, or ≤ one-third of an acre of riparian buffer		x		
Airport facilities impacting > 150 linear feet, or > one-third of an acre of riparian buffer			x	
Archaeological activities	x			
Bridges		x		
Dam maintenance activities	x			
<i>Drainage ditches, roadside ditches, and stormwater outfalls through riparian buffers:</i>				
Existing ditches or outfalls, provided they are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	x			
New ditches or outfalls, provided a stormwater management facility is installed to control nitrogen, and attenuate flow before the conveyance discharges through the riparian buffer		x		
New ditches or outfalls, that do not provide control for nitrogen, before discharging through the riparian buffer				x
Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch				x
Drainage of a pond in a natural drainage way provided that a new riparian buffer meets the requirements of their respective buffer zone, and diffuse flow requirement	x			
<i>Driveway crossing of surface waters subject to this ordinance:</i>				
Driveway crossing on single family residential lots disturbing ≤ 25 linear feet, or ≤ 2,500 square feet of riparian buffer	x			
Driveway crossings on single family residential lots that disturbs > 25 linear feet, or > 2,500 square feet of riparian buffer		x		
In a subdivision that cumulatively disturb ≤ 150 linear feet, or ≤ one-third of an acre of riparian buffer		x		
In a subdivision that cumulatively disturb > 150 linear feet, or > one-third of an acre of riparian buffer			x	
Fences provided that disturbance is minimized and installation does not remove forest vegetation	x			
Land Use Type	Exempt	Allowable	Allowable w/ Mitigation	Prohibited
Forest harvesting- see section (XVIII)				
<i>Fertilizer application:</i>				
One-time application to establish vegetation	x			
Ongoing fertilizer application				x
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized	x			
Greenway / hiking trails		x		
Historic preservation	x			
Landfills as defined by G.S. 130A-290				x

<i>Mining activities:</i>				
Mining activities that are covered by the Mining Act provided that new riparian buffers meet the requirements of this ordinance are established adjacent to the relocated channels		x		
Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements are not established adjacent to the relocated channels.			x	
Wastewater or mining dewatering wells with approved NPDES permit	x			
Non-electric utility-lines: Impact other than perpendicular crossings in Zone 2 only.		x		
Non-electric utility lines: Impact other than perpendicular crossings in Zone 1			x	
<i>Non-electric utility line perpendicular crossings of surface waters subject to this rule:</i>				
Perpendicular crossing that disturb \leq 40 linear feet of riparian buffer with a maintenance corridor \leq 10 feet in width	x			
Perpendicular crossing that disturb \leq 40 linear feet of riparian buffer with a maintenance corridor $>$ 10 feet in width		x		
Perpendicular crossing that disturb $>$ 40 linear feet but \leq 150 linear feet of riparian buffer with a maintenance corridor \leq 10 feet in width		x		
Perpendicular crossing that disturb $>$ 40 linear feet but \leq 150 linear feet of riparian buffer with a maintenance corridor $>$ 10 feet in width			x	
Perpendicular crossing that disturb $>$ 40 linear feet of riparian buffer			x	
On-site sanitary sewage systems- new ones that use ground absorption				x
Land Use Type	Exempt	Allowable	Allowable w/ Mitigation	Prohibited
Overhead electric utility lines: Impacts other than perpendicular crossings in Zone 2 only	x			
Overhead electric utility lines: Impacts other than perpendicular crossings in Zone 1	x			
<i>Overhead electric utility line perpendicular crossings of surface waters subject to this rule:</i>				
Perpendicular crossings that disturb \leq 150 linear feet of riparian buffer	x			
Perpendicular crossings that disturb $>$ 150 linear feet of riparian buffer		x		
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical		x		
Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	x			
Playground equipment installed on lands other than single family lots or that requires removal of vegetation		x		
<i>Ponds in natural drainage ways, excluding dry ponds:</i>				
New ponds provided that a riparian buffer that meets the requirements of this rule is established adjacent to		x		

the pond				
New ponds where a riparian buffer that meets the requirements of this rule is NOT established adjacent to the pond			x	
Protection of existing structures, facilities and stream-banks when this requires additional disturbance of the riparian buffer or the stream channel		x		
Railroad impacts other than crossings of surface waters subject to this rule			x	
<i>Railroad crossings of surface waters subject to this rule:</i>				
Railroad crossings that impact ≤ 40 linear feet of riparian buffer	x			
Railroad crossings that impact > 40 linear feet but ≤ 150 linear feet or ≤ one-third of an acre of riparian buffer		x		
Railroad crossings that impact > 150 linear feet or ≤ one-third of an acre of riparian buffer			x	
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	x			
Land Use Type	Exempt	Allowable	Allowable w/ Mitigation	Prohibited
Road impacts other than crossings of surface waters subject to this rule			x	
<i>Road crossings of surface waters subject to this rule:</i>				
Road crossings that impact ≤ 40 linear feet of riparian buffer	x			
Road crossings that impact > 40 linear feet but ≤ 150 linear feet or ≤ one-third of an acre of riparian buffer		x		
Road crossings that impact > 150 linear feet or > one-third of an acre of riparian buffer			x	
Scientific studies and stream gauging	x			
<i>Stormwater management ponds excluding dry ponds:</i>				
New stormwater management ponds provided that a riparian buffer that meets the requirements of this rule is established adjacent to the pond		x		
New stormwater management ponds where a riparian buffer that meets the requirements of this rule is NOT established adjacent to the pond			x	
Stream restoration	x			
Streambank stabilization		x		
<i>Temporary roads:</i>				
Temporary roads that disturb ≤ 2,500 square feet provided that vegetation is restored within six months of initial disturbance	x			
Temporary roads that disturb > 2,500 square feet provided that vegetation is restored within six months of initial disturbance		x		
Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are concluded immediately after construction		x		
<i>Temporary sediment and erosion control devices:</i>				
In Zone 2 only provided that vegetation in Zone 1 is not				

compromised and that discharge is released as diffuse flow in accordance with this rule	x			
In Zones 1 and 2 only to control impacts associated with uses approved by the Division of Water Quality or that have received a variance provided that sediment and erosion control for upland areas is addressed to maximum extent practical outside the buffer		x		
In-stream temporary erosion and sediment control measures for work within a stream channel	x			
Land Use Type	Exempt	Allowable	Allowable w/ Mitigation	Prohibited
Underground electric utility line impacts other than perpendicular crossings in Zone 2 only	x			
Underground electric utility line impacts other than perpendicular crossings in Zone 1	x			
<i>Underground electric utility line perpendicular crossings of surface waters subject to this rule</i>				
Perpendicular crossings that disturb ≤ 40 linear feet of riparian buffer	x			
Perpendicular crossings that disturb > 40 linear feet of riparian buffer		x		
<i>Vegetation management:</i>				
Emergency fire control measures provided that topography is restored	x			
Periodic mowing and harvesting of plant products in Zone 2 only	x			
Planting vegetation to enhance the riparian buffer	x			
Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	x			
Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life	x			
Removal of poison ivy	x			
Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline # 30	x			
Water dependent structures as defined in 15A NCAC 2B .0202		x		
<i>Water supply reservoirs:</i>				
New reservoirs provided that a riparian buffer that meets the requirements of this rule is established adjacent to the reservoir		x		
New reservoirs where a riparian buffer that meets the requirements of this rule is NOT established adjacent to the reservoir			x	
Water wells	x			
Wetland restoration	x			

Section 14. Requirements for Categories of Uses

- A. *Exempt.* Exempt uses are categorized as such in the Table of Uses in Section 14. Uses designated as exempt are allowed within the riparian buffer provided that every reasonable effort is made to preserve buffer functions. In addition, exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable.
- B. *Allowable.* Uses designated as allowable may proceed within the riparian buffer provided that there are 'no practical alternatives' to the requested use pursuant to Section 14 of this Ordinance. These uses require written authorization from Pitt County staff prior to initiating the activity.
- C. *Allowable with Mitigation.* Uses designated as allowable with mitigation may proceed within the riparian buffer provided that there are 'no practical alternatives' to the requested use pursuant to Section 14 of this Ordinance and an appropriate mitigation strategy has been approved pursuant to the Mitigation Section 16 of this Ordinance. These uses require written authorization from the Division of Water Quality or Pitt County staff.
- D. *Prohibited.* Uses designated as prohibited, and any use interpretations that are not categorized within the Table of Uses in Section 13, may not proceed within the riparian buffer unless a variance is granted pursuant to Section 15 of this Ordinance. Mitigation may be required as one condition of a variance approval.

Section 15. Determination of "No Practical Alternatives"

Persons or entities who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a 'no practical alternatives' determination to the Pitt County Planning Department. The applicant shall certify that the criteria listed below are met. Staff shall grant an Authorization Certificate upon a 'no practical alternatives' determination. The procedure for making an Authorization Certificate shall be as follows:

- A. For any request for an Authorization Certificate, staff shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a 'no practical alternatives' determination:
 - 1. The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - 2. (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
 - 3. (iii) Best management practices (bmp's) shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- B. Requests for an Authorization Certificate shall be reviewed by staff and either approved or denied within 30 days of receipt of a complete submission based on the criteria above. Failure to issue an approval or denial within 30 days shall constitute that the applicant has demonstrated 'no practical alternatives'. Pitt County may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
 - 1. The name, address and phone number of the applicant;
 - 2. The nature of the activity to be conducted by the applicant;
 - 3. The location of the activity, including the jurisdiction;

4. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
 5. An explanation of why the plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
 6. Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- D. Any disputes over determinations regarding Authorization Certificates shall be referred to the Pitt County Board of Adjustment for a decision. The Board of Adjustment's decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

Section 16. Variances

- A. Variances to this Ordinance may be issued for prohibited land uses on an individual basis. In order to qualify for a variance Pitt County staff shall determine whether all of the following conditions apply:
1. There exist practical difficulties or unnecessary hardships that prevent total compliance with the guidelines of the riparian buffer protection requirements. Practical difficulties are evaluated in accordance with the following:
 - a. Application of this Ordinance will deprive the owner of reasonable use, or economic recovery from the property. Simply proving that a variance would permit a greater profit from the property shall not be considered adequate justification;
 - b. The hardship experiences have resulted directly from application of this Ordinance to the property, rather than from any combination of extraneous factors;
 - c. The hardship is due to the physical nature of the applicant's property, such as size, shape, orientation, or topography, and such limitations are not represented by neighboring property;
 - d. The applicant did not cause the hardship by knowingly or unknowingly violating this rule;
 - e. The applicant did not purchase the property after the effective date of this Ordinance, and then requested an appeal;
 - f. The hardship experienced is unique to the applicant's property. In the case that other properties are equally subject to the hardship created, then granting an individual variance would be a special privilege denied to others, and would not promote equal justice.
 2. The variance does not compete with the general purpose, scope and intent of the State's riparian buffer protection requirements and preserves its spirit; and
 3. Public safety and welfare have been assured, water quality has been protected, and justice has been served by issuing the variance.
- B. Variances to this Ordinance shall be categorized by their location within the riparian buffer zones.
1. Major Variance for those activities involving the infringement of the Zone 1 buffer: If the individual variance request has been determined to satisfy the provisions of Section 18, then staff shall forward the application to the Pitt County Technical Review Committee for review and prepare a preliminary finding and submit it to the Water Quality Committee of the

Environmental Management Commission for a decision. Approval by the Committee allows for the issuance of a Major Variance, and authorizes only the applicant's individual land use activity. Request for appeal of denial of a Major Variance by the Water Quality Committee shall be made to the Office of Administrative Hearings.

2. Minor Variance for those activities involving the infringement of the Zone 2 buffer: If the individual variance request has satisfied the provisions of Section 18, then Pitt County staff or the Division may approve the proposal and attach additional performance-based conditions to support the purpose, spirit and intent of the Ordinance. Request for appeals of a decision made by Pitt County staff shall be initially brought to the local Board of Adjustment, and secondarily brought to the Division.

Section 17. Mitigation

Persons willing to undertake uses that have been designated as allowable with mitigation shall meet the following requirements in order to proceed:

- A. Obtain a determination of 'no practical alternatives' to the proposed use pursuant to Section 14; and
- B. Obtain approval for a mitigation proposal pursuant to 15A NCAC 2B.0242 for the Neuse River Basin, and 15A NCAC 2B.0260 for the Tar-Pamlico river basin.

Section 18. Penalties

A. Civil Penalties

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, in addition to possible mitigation measures (as directed in Section 16. The maximum civil penalty for a violation is twenty-five thousand dollars (\$25,000.00) per day per violation. The maximum civil penalty for a violation of a stop-work order is twenty-five thousand dollars (\$25,000.00). 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 and type of the violation
 - b. Degree and extent of harm
 - c. Duration
 - d. Cause
 - e. Extent of any damage which may have resulted
 - f. Effectiveness of plan and action taken by violator
 - g. Adherence to plan submitted by violator

- h. Cost of rectifying any damage
 - i. Estimated cost of installing and/ or maintaining corrective measures
 - j. The violator's previous record in complying with the rules of the ordinance
 - k. 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 by the Board of Adjustment, within (30) days after the date of the written demand for the hearing. The Board of Adjustment shall render its final decision on the civil penalty within (30) days of the receipt of the written demand for an appeal. Appeal from the final decision of the Board of Adjustment shall be to the Superior Court of the county where the violation occurred, or the location of the violator's residence or principal place of business.
 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 in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. 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.

Civil penalties collected pursuant to this Ordinance shall be credited to the general fund of North Carolina.

B. *Criminal Penalties*

Any person who knowingly or willfully violates any provision of this Ordinance, or rule or order adopted or issued pursuant to this Ordinance, or who knowingly or willfully initiates or continues any degradation of riparian buffers, except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 3 misdemeanor which may include a fine not to exceed five hundred dollars (\$500) per day per violation as allowed by N.C.G.S. 14-4.

C. *Mitigation Penalties*

Any person who violates any of the provisions of this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance may be subject to mitigation measures as described in Section 16. Standards for mitigation proposals are governed by 15A NCAC 2B.0242 for the Neuse, and 15A NCAC 2B.0260 for the Tar-Pamlico river basin.

Section 19. Forest Harvesting Requirements

Forest harvesting operations and practices shall adhere to the requirements set forth in either the Neuse River Management Strategy (15A NCAC 02b.0233 section 11), or the Tar-Pamlico River Management Strategy (15A NCAC 02b.0259 section 11).

Section 20. Injunctive Relief

Whenever the County of Pitt has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision of an approved plan, it may, either before or after the institution of any other action or proceeding authorized by this ordinance, institute a civil action in the name of the County of Pitt for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Pitt County.

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

Section 21. Annual Reporting

Pitt County shall maintain on-site records for a minimum of 5 years. The Pitt County Riparian Buffer Protection Administrator must furnish a copy of these records to the Director within 30 days of receipt of a written request for the records. The Division shall inspect the local riparian buffer protection program to ensure that the program is being implemented and enforced in keeping with a request approved under 15A NCAC 2B.0242 for the Neuse, and 15A NCAC 2B.0260 for the Tar-Pamlico River Basins.