

## Pitt County Stormwater Management Ordinance for Nutrient Control

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# **Pitt County Stormwater Management Ordinance for Nutrient Control—Part 1**

## **PART I ADMINISTRATION**

### **§ Section .01 Title.**

This ordinance shall be known as the *Pitt County Stormwater Management Ordinance for Nutrient Control* and may be cited as the *Stormwater Ordinance*. It is referred to herein as “this ordinance” or “these regulations.”

### **§ Section .02 Authority.**

These regulations are adopted pursuant to the authority vested in Pitt County by North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Chapter 153A-454; Chapter 160A, Chapter 160D, §§ 174, 185. and any special local legislation enacted by the General Assembly for Pitt County.

### **§ Section .03 Purpose.**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of nitrogen and phosphorus (Tar-Pamlico only) in stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment in the watershed of the Neuse and Tar-Pamlico estuary. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

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

- (A) Establishing decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources;
- (B) Requiring that new *development* and *redevelopment* maintain the *pre-development* hydrologic response in their *post-development* state for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and to maintain the integrity of stream channels and aquatic habitats;
- (C) Establishing minimum *post-development* *stormwater* management standards and design criteria for the regulation and control of *stormwater* runoff quantity and quality;

- (D) Establishing design and review criteria for the construction, function, and use of *Stormwater Control Measures* that may be used to meet the minimum post-development *stormwater* management standards;
- (E) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for *stormwater* and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- (F) Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (G) Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved *projects*, and to assure appropriate long-term maintenance;
- (H) Controlling illicit discharges into waters of the State; and
- (I) Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the waters of the State.

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).

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.

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 **3<sup>rd</sup> day of June, 2024** and shall become effective on the **1<sup>st</sup> day of July, 2024**.

WITNESS my hand and the official seal of Pitt County, this the 3<sup>rd</sup> day of June, 2024.

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Mark C. Smith, Chairman

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Kimberly Hines, Clerk

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

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

- (A) For the initial or first phase of *development* or expansion of *development*, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the *project* and a *subdivision* plan that has been approved.
- (B) For any subsequent phase of *development* or expansion of *development*, sufficient detail so that implementation of the requirements of this ordinance to that phase of *development* would require a material change in that phase of the plan.
- (C) Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

## § Section .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 and Exclusions

### General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and expansion of development throughout the planning jurisdiction of Pitt County, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to this ordinance.

#### (A) Exemptions

The following are exempt from this ordinance:

- (1) Single family and duplex residential and related recreational development and expansion of development that disturbs less than one acre;
- (2) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and does not expand existing structures on a parcel;
- (3) Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half acre and expands existing structures on a parcel and, but does not result in a cumulative built-upon area for the parcel exceeding twenty-four (24) percent;
- (4) Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot;
- (5) Existing development or redevelopment pursuant to N.C.G.S. 143-214.7(b3);
- (6) Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108;
- (7) Development or expansion of development for which the permit application was submitted prior to adoption of this ordinance;
- (8) Activities subject to requirements of the Neuse Agriculture Rule (15A NCAC 02B .0712) or Tar-Pamlico Agriculture Rule (15A NCAC 02B .0732)

#### (B) No Development or Expansion of Development Until Compliance and Permit

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

**(C) Map**

The provisions of this ordinance shall apply within the areas designated on the map titled "Neuse and Tar-Pamlico Watershed Stormwater Map of Pitt County, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

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

## § Section.10 Incorporation of the Stormwater Design Manual.

The North Carolina Department of Environmental Quality (NCDEQ), *Stormwater Design Manual, 2017*, 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.

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

### *Approved accounting tool*

The most recent version of the accounting tool for calculating nutrient loading and reduction approved by the *Division* for the relevant geography and development type under review.

### *Amendment*

A change made by correction, addition, or deletion.

### ***Built-upon area (BUA)***

That portion of a *development project* that is covered by impervious or partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. Built-upon area (BUA). Has

the same meaning as in N.C.G.S. 143-214.7.(b2).

***Commission***

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

***Common plan of development***

Has the same meaning as in 15A NCAC 02H .1002(8).

***County***

Pitt County, North Carolina

***Department***

The North Carolina Department of Environment and Natural Resources.

***Design manual***

The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the *Design Manual* are to the latest published edition or revision.

***Detention facility***

A facility, constructed for the purpose of detaining stormwater runoff from a developed site to control the peak discharge rates. A detention facility does not provide water quality treatment the way a Stormwater Control Measure (SCM) does.

***Developer***

A person, including a governmental agency or redevelopment authority, who undertakes any *development* and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.<sup>1</sup>

***Development***

Has the same meaning as in N.C.G.S. 143-214.7(a1)(1).

***Development approval***

An administrative or quasi-judicial approval made pursuant to N.C.G.S. 160D-102 that is written and that is required prior to commencing *development* or undertaking a specific activity, *project*, or *development* proposal. *Development* approvals include, but are not limited to, zoning permits, *site plan* approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to N.C.G.S. 160D-102, including plat approvals, permits issued, *development* agreements entered into, and building permits issued.

***Ditch***

An open channel constructed to transfer stormwater from one area to another. This does

not include any open channel that is classified as a perennial or intermittent stream or a swale.

***Drainage easement***

An easement granted for the installation and maintenance of the stormwater drainage system and/or along a natural stream or watercourse for preserving the channel and providing access for maintenance and operation.

***Existing development or built-upon area***

Those projects that are built or those projects that have established a vested right under North Carolina law as of the effective date of the state stormwater program or applicable local government ordinance to which the project is subject.

***Engineered stormwater control***

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

***Existing built-upon area***

The built-upon area or net equivalent amount of built-upon area resulting from existing development.

***Existing development***

Has the same meaning as in 15A NCAC 02H.1002(17).

***Exposure of prohibited substances***

Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping, pouring, emission or other discharge of any substance other than stormwater upon the land in such proximity to the stormwater drainage system, such that the substance is likely to reach the stormwater drainage system.

***Illicit connection***

Any unlawful connection that allows the discharge of prohibited non-stormwater to the stormwater drainage system in violation of these regulations.

***Illicit discharge***

Any unlawful disposal, placement, emptying, dumping, spillage, leakage, pumping,

pouring, emission or other discharge of any substance other than stormwater, unless associated with permitted activity as identified in section 9-9-16(A), into the stormwater drainage system.

***Jurisdictional stream***

A stream that has been determined to be either perennial or intermittent by the North Carolina Department of Environmental Quality (NCDEQ) or the United States Army Corps of Engineers (USACE).

***Land disturbing activity***

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

***Larger common plan of development or sale***

A site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans.

***Like-new condition***

Used to describe a compliant Stormwater Control Measure at the warranty inspection. The SCM shall have no visible erosion or accumulation of sediment, proper established vegetation per the design, and be functioning as designed.

***Major variance***

Any variance of this ordinance that is not a "minor variance" as that term is defined in this section. For provisions in this ordinance that are more stringent than the minimum applicable Neuse (15A NCAC 02B .0711) or Tar-Pamlico (15A NCAC 02B 0.731) rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than those rules.

***Minimum Design Criteria (MDC)***

The requirements stated in 15A NCAC 02H .1050 through .1062.

***Minor variance***

A variance from the minimum applicable Neuse or Tar-Pamlico Stormwater rules that results in the relaxation of up to 10 percent of any density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any density, or minimum lot size requirement applicable to high density development.

***One-year 24-hour storm event***

The maximum amount of rainfall during a 24 consecutive hour period expected, per the stated interval, as determined by the National Oceanic and Atmospheric Administration (NOAA) Precipitation Frequency Data Server (PFDS).

***Outfall***

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

***Owner***

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

***Person***

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

***Primary SCM***

Has the same meaning as in 15A NCAC 02H .1002(37)

***Project***

Has the same meaning as in 15A NCAC 02H .1002(38).

***Qualified professional***

As determined by the Stormwater Administrator an individual who both: has received a baccalaureate or postgraduate degree in the natural sciences or engineering; and is trained and experienced in stormwater treatment techniques and related fields as may be demonstrated by state registration, professional certification, or completion of coursework that enable the individual to make sound, professional judgments regarding stormwater control/treatment and drainage planning and subject to the requirements of Section 23.

***Redevelopment***

Has the same meaning as in N.C.G.S. 143-214.7 (a1)(2)

***Registered professional***

An individual who is registered in the State of North Carolina as a professional engineer.

***Riparian buffer***

The 50-foot wide area directly adjacent to surface waters in the Tar-Pamlico and Neuse River Basins (intermittent streams, perennial streams, lakes, ponds and estuaries), excluding wetlands. For the purpose of this definition, a surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey

map 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).

***Runoff Volume Match***

As defined in 15A NCAC 02H .1002.

***Site Plan***

A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The *site plan* may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the *project* and the *site plan* review. A *site plan* approval based solely upon application of objective standards is an administrative decision and a *site plan* approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A *site plan* may also be approved as part of a conditional zoning decision.

***Stormwater***

As defined in N.C.G.S. 143-213(16a).

***Stormwater Administrator***

The person responsible for all decisions concerning application of the stormwater management and control ordinance, programs, and policies and any matters related to the program.

***Stormwater Control Measures (SCMs)***

As defined in 15A NCAC 02H .1002(49)

***Stormwater drainage system***

Natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, branches, reservoirs, ponds, drainage ways, inlets, catch basins, pipes, head walls, storm sewers, lakes, wetlands, other waters of the state, and other physical works, properties, and improvements which transfer, control, convey or otherwise influence the movement of stormwater runoff.

***Stormwater management program***

Program designed to protect water quality by controlling the level of pollutants in, and the quantity and flow of, stormwater.

***Surface drainage***

A system by which the stormwater runoff is conducted to an outlet. This would include the proper grading of parking lots, streets, driveways and yards so that stormwater runoff is removed without ponding and flows to the stormwater drainage system.

## *Swale*

A natural or constructed waterway, usually broad and shallow, covered with erosion-resistant grasses, used to conduct surface water from a field, diversion or other site feature.

### *Subdivision*

The division of land for the purpose of sale or development as specified in G.S. 160D-802.

### *Substantial progress*

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

## *Waters of the state*

Has the same meaning as in N.C.G.S. 143-212(6).

**(A) Authority to Enforce.**

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

**(B) Violation Unlawful**

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

**(C) Each Day a Separate Offense**

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

**(D) Responsible Persons/Entities**

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, engineered stormwater control, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

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

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

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

**(2) Responsibility for Land or Use of Land**

The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use or *development* of the property.

**(E) 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, stormwater control measures, 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.

**(F) Inspection of Stormwater Facilities.**

(1) 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.

**(G) Remedies and Penalties.**

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

**(1) Remedies.**

**(a) Withholding of Certificate of Occupancy**

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

**(b) Disapproval of Subsequent Permits and Development Approvals**

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Technical Review Committee, Pitt County Planning Board, Pitt County Board of Commissioners may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning,

subdivision, soil erosion, and/or building regulations for the land on which the violation occurs.

**(c) Injunction, Abatements, etc.**

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

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

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

**(e) Stop Work Order**

The Stormwater Administrator may issue a stop work order to the *person(s)* violating this ordinance pursuant to N.C.G.S. 160D-404.. A copy of the order shall be delivered to the holder of the *development* permit and to the *owner* of the property involved (if that person is not the holder of the *development* permit) by personal delivery, electronic delivery, or first-class mail. The stop work order shall remain in effect until the *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the *person* to take the necessary remedial measures to cure such violation or violations.

**(2) Civil Penalties.**

**(a)** The Stormwater Administrator may request that the Technical Review Committee assess a civil penalty against any person who violates any provision of this ordinance or of a permit or other requirement pursuant to this ordinance. Civil penalties may be assessed up to the full amount of penalty authorized by N.C.G.S. 143-215.6A. The maximum civil penalty for a violation is five thousand dollars (\$25,000.00) per day/violation. 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.

(b) 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:

- (1) Severity of the Violation
- (2) Degree and extent of harm
- (3) Type of violation
- (4) Duration
- (5) Cause
- (6) Extent of any damage which may have resulted
- (7) Effectiveness of action taken by violator
- (8) Adherence to plan submitted by violator
- (9) Effectiveness of plan (if applicable) submitted by violator
- (10) Cost of rectifying any damage
- (11) The violator's previous record in complying with the rules of the ordinance
- (12) Estimated cost of installing and/ or maintaining corrective measures
- (13) Staff investigative costs

(c) 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 60 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.

- (d) 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.
- (e) 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.

**(3) Criminal Penalties.**

Violation of this ordinance may be enforced as a criminal matter under N.C.G.S. 14-4.

**(H) Procedures.**

**(1) Initiation/Complaint**

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

**(2) Inspection**

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

**(3) Notice of Violation and Order to Correct**

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

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

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

**(4) Extension of Time**

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 30 -day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

**(5) Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the

Stormwater Administrator shall determine if the violation is corrected. The Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance whether or not the violation has been corrected.

## **(6) Emergency Enforcement**

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

## § Section.13 Variances and Appeals.

**(A) 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.

## (B) 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 20 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) Any person may petition the Board of Adjustment for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. For all proposed major and minor variances from the requirements of this ordinance, Board of Adjustment shall make findings of fact in accordance with the procedures of N.C.G.S 160D-406 showing that:
  - (a) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;
  - (b) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and
  - (c) in granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of 15A NCAC 02B .0711 or 15A NCAC 02B .0731, and that the public safety and welfare have been assured and substantial justice has been done.
- (4) In the case of a request for a minor variance, the Board of Adjustment may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (5) The Board of Adjustment may attach conditions to the major or minor variance approval that support the purpose of this ordinance. If the variance request qualifies as a major variance, and the Board of Adjustment decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the North Carolina Environmental Management Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes Pitt County to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to Pitt County. The Board of Adjustment shall prepare a final decision denying the major variance.

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

- (a) The decision of the Board of Adjustment is filed; or
- (b) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Board of Adjustment at the time of its hearing of the case.

**(C) 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.

**(D) 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.

**(E) Effect 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 DWR 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 DWR 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.**

The Planning Director or his or her designee shall serve as the Stormwater Administrator and shall be responsible for all decisions concerning application of the stormwater management and control ordinance, programs, and policies and any matters related to the program.

##### **(A)                    Stormwater Management Permit.**

- (1) A stormwater management permit is required for all development and expansion of development unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- (2) A stormwater management permit shall govern the design, installation, construction, operation, and maintenance of stormwater management and control practices on the site, including stormwater control measures and elements of site design for stormwater management other than stormwater control

measures.

- (3) The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development site consistent with the requirements of this ordinance, whether the approach consists of stormwater control measures or other techniques such as low-impact or low-density design. The permit continues in existence indefinitely for the life of the development. Expansion or redevelopment of a permitted development may require amendment to the stormwater management permit. Continued compliance after project construction is assured by the maintenance provisions of this ordinance.

**(B) Application Requirements.**

- (1) The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. The Stormwater Administrator shall establish a checklist of minimum required information to constitute a complete application. At a minimum, the stormwater permit application shall describe in detail how *post-development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed *project* will meet the requirements of this ordinance.
- (2) All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the North Carolina Stormwater Design Manual, and that the designs and plans ensure compliance with this ordinance.
- (3) 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) Three paper copies of a stormwater management plan and all required items necessary to complete a review;
  - (b) Two copies of an operation and maintenance agreement;

(c) Digital submission of the plan shall be in one of the following electronic formats:

.pdf

.dxf file

.dwg files

Arc view shape files

Arc Info coverages

(d) 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 such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the North Carolina Stormwater Design Manual, and that the designs and plans ensure compliance with 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.

- (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 stormwater control measure, 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 SCMs shall involve a qualified professional capable of designing the SCMs under review.
- (2) Within the review schedule the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.
- (3) 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.
- (4) If the permit application is denied, the Stormwater Administrator shall provide written comments to the applicant explaining the reason(s) for denial.
- (5) If the permit application is approved by the Technical Review Committee, a stormwater permit shall be issued.
- (6) 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.
- (7) Approval and issuance of the Stormwater Management Permit authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- (8) Pursuant to N.C.G.S. 160D-108 an approved permit shall become null and void if the applicant fails to make substantial progress on the site within the applicable vesting period.

**(F) As-Built Plans and Final Approval.**

- (1) Upon completion of a *project*, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed *project* is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater control measures or detention facilities after final construction is completed.
- (2) The designer of the stormwater management measures and plans shall certify, under seal, that the stormwater measures, controls,

and devices are constructed and in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.

- (3) No certificate of compliance or occupancy shall be issued without "as-built" drawings and a final inspection and approval by the Stormwater Administrator, except where financial sureties have been submitted to and approved by the Stormwater Administrator to ensure compliance with this ordinance.

**(G) 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.

**(H) 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 Standards.**

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

**(A) Nitrogen and Phosphorus Loading Rate Targets.**

- (1) The *project* shall meet one or a combination of the following for the entire *project* area:
  - a) Projects draining to the Tar-Pamlico River basin shall meet a nitrogen loading rate target of 4.0 pounds per acre per year (lbs/ac/yr) and a phosphorus stormwater loading target of 0.8 lbs/ac/yr, OR
  - b) Projects draining to the Neuse River basin shall meet a nitrogen loading rate target of 3.6 pounds per acre per year

(lbs/ac/yr). Projects draining to the Neuse river basin are not required to meet phosphorus loading rate targets, OR

- c) Projects meet “runoff volume match” as defined in 15A NCAC 02H .1002.

- (2) The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area. The project density used for determining stormwater requirements is the amount of built-upon area subject to this ordinance at project completion divided by the project area.
- (3) The developer shall determine the nitrogen and phosphorus loading generated from the project area without engineered stormwater controls, and determine the needed nitrogen or phosphorus reduction by using the approved accounting tool.
- (4) The nitrogen and phosphorus loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 02B .0714, 15A NCAC 02B .0734 and 15A NCAC 02B .0295.

## **§ 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.
- (D) All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of twenty-four (24) percent built-upon area or greater, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State's Minimum Design Criteria, 15A NCAC 02H .1050 through .1062.
- (E) Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat the runoff generated from all built-upon area by one inch of rainfall in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.
- (F) Where high-density stormwater design is not required, stormwater systems shall meet the low-density stormwater design standards set forth in 15A NCAC 02H .1003(2).
- (G) Phased projects may have a combination of low-density and high-density phases.
- (H) Low density projects or phases may be expanded and redeveloped to increase to high-density at which time the high-density requirements in part B of this section shall apply to the project or phase.

## **§ Section.18                    Buffer Requirements.**

- (A) The Tar-Pamlico riparian buffer protection rule, 15A NCAC 2B .0734 and Neuse riparian buffer rule, 15A NCAC 02B .0714, require that 50-foot riparian buffers be maintained on all sides of intermittent and perennial streams, ponds, lakes and estuarine waters in the basin. The buffer rule provides for certain “allowable” uses within the buffer with NCDEQ approval, such as road and utility crossings.
- (B) The County shall disapprove any new development activity proposed within the first 50 feet adjacent to a waterbody that is shown on either the USGS 7.5 minute topographic map or the NRCS soil survey map unless the owner can show that the activity has been approved by NCDEQ. NCDEQ approval may consist of the following:
  - (1) An on-site determination that surface waters are not present;
  - (2) An authorization certificate from NCDEQ for an “allowable” use such as a road crossing or utility line, or for a use that is “allowable

with mitigation" along with a NCDEQ-approved mitigation plan. A table delineating such uses is included in the buffer rule;

- (3) An opinion from NCDEQ that vested rights have been established for the proposed development activity; and/or
- (4) A letter from NCDEQ documenting that a variance has been approved for the proposed development activity.

(C) After site development, it shall be the responsibility of the landowner or person in possession or control of the land to properly maintain all necessary permanent erosion and sediment control measures installed for the protection of the riparian buffers.

## **§ Section.19 Methods to Meet Nutrient Control Requirements.**

- (A) Projects subject to this ordinance shall meet nitrogen and phosphorus loading targets as specified in Section 16 through one or a combination of the following methods:
  - (1) Projects may reduce nitrogen or phosphorus through any combination of SCMs treating runoff on the site or in an approved offsite regional stormwater control measure. The developer shall calculate the nitrogen and phosphorus reduction provided by these controls using the approved accounting tool.
  - (2) Sufficient nitrogen or phosphorus reduction needs not provided by SCMs serving the project shall be acquired prior to construction through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703. The Stormwater Administrator shall issue a letter, as conditions of the approval, the needed nitrogen or phosphorus credits and the location of the project with relation to hydrologic unit code (HUC). All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.
  - (3) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet the nitrogen and phosphorus reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.
- (B) Permanent nutrient offset credits shall be acquired pursuant to NCGS 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project through one of the following methods:
  - (1) A private nutrient bank

- (2) Offsite offset provided by the developer and approved by the Stormwater Administrator
- (3) Payment into the Riparian Buffer Restoration Fund established in NCGS 143-214.21.

(C) Excess permanent nutrient offset credits acquired beyond what is required for the project may not be applied to any other project.

**§ Section. 20                    Impervious Surface Averaging.**

Impervious surface averaging allows development plans for two or more noncontiguous parcels to be submitted together and treated as a single project for density and nutrient loading calculations in order to meet the requirements of this ordinance.

- (A) Application to use the impervious surface averaging option shall be included with the submittal of the stormwater management permit application. Application for impervious surface averaging shall include a plat showing the 2 (or more) properties and a binding legal agreement to be reviewed and approved by the Stormwater Administrator, and recorded prior to the issuance of a building permit. The Stormwater Administrator has the power to authorize, in specific cases, impervious surface averaging for projects that meet the criteria outlined below. The County, in its sole discretion, may accept or reject a proposed paired-parcel, averaged-impervious surface development.
- (B) The total amount of development (built-upon area) allowed for the paired parcels taken together cannot exceed the amount of built-upon area that would be allowed if the parcels were developed separately.
- (C) Parcels being submitted for approval under this provision shall be submitted for development approval as a single proposal and shall be located in the same watershed basin.
- (D) Parcels to be used in pairs can be located throughout the County, unless specifically prohibited herein, according to the following standards:
  - (1) If one of the parcels is located in a water supply watershed critical area and one is located in a protected area, the critical area parcel shall not be developed.
  - (2) Impervious surface averaging is not allowed between parcels when both are in the critical area of a protected watershed.
- (E) Peak flow requirements in Section 17 must be calculated and controlled on the developing lot using the area of the developing lot only, so as to minimize drainage impact on downstream properties.

- (F) Applicants shall agree to bind themselves and their successors in title, individually and collectively, to maintain the pattern of development proposed for so long as the requirements of this section are applicable. Parties to enforcement of such agreement shall include the County. No such agreement shall be accepted without approval of the county attorney as to the legal sufficiency of the documents involved.
- (G) A conservation easement must be recorded with the plat for the parcel to which it applies.

## § Section. 21 Stormwater Control Measure (SCMS).

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

- (A) Stormwater Control Measures in any new development shall be the entire and sole responsibility of the landowner except those drainage laterals for which the drainage district has accepted the responsibility for continuous maintenance.
- (B) All detention facilities, SCMs, and drainage systems required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice in the NCDEQ Stormwater Design Manual and the state's Minimum Design Criteria (MDC), 15A NCAC 02H .1050 through .1062. The Stormwater Administrator and County Engineer shall determine whether proposed engineered stormwater controls will be adequate to meet the requirements of this ordinance.
- (C) Stormwater Control Measures that are designed, constructed, and maintained in accordance with the criteria and specifications in the NCDEQ Stormwater Design Manual and MDC will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the MDC, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.
- (D) Disconnected Impervious Surface as defined in Chapter C-10 of the NCDEQ Stormwater Design Manual and MDC defined in 15A NCAC 02H .1060 are prohibited for use as an approved SCM for single-family developments. For other than single-family developments these SCMs

must meet all required MDC in 15A NCAC 02H .1050 and .1060 as well as the following:

- (1) A recorded easement on the vegetated area and maintenance access to a public right-of-way,
- (2) Drawings that show any roof ridgelines and the drainage area to each SCM vegetated area,
- (3) Easements and inspections shall not include the area of building gutters and downspouts,
- (4) No other landscaping, equipment, fences, or improvements, with exception of subsurface utilities, are allowed within the SCM easement, and
- (5) The design engineer shall certify on record drawing, that the drainage area for each SCM vegetated area is per design.

(E) The Stormwater Administrator shall have the authority to disallow, limit, or include additional necessary design criteria for any type of detention facility or SCM that he/she has determined to be ineffective, unmaintainable, or unenforceable in the County.

(F) 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      Inspection and Maintenance of Stormwater Control Measures.**

(A) Each detention facility or SCM shall have a maintenance plan and agreement on file in the office of the Stormwater Administrator. Maintenance plans must be on file prior to construction and shall contain the following information:

- (1) Owner's name or names;
- (2) Owner's mailing address;
- (3) Deed book, page number or other recording information for the land containing the detention facility or SCM(s);
- (4) Any easements for maintenance, ingress, egress and regress to the detention facility or SCM(s);
- (5) A description of the detention facility or SCM(s);
- (6) Maintenance recommended for the detention facility or SCM(s) to achieve the maximum effect; and

(7) Notarized signature of the owner of the detention facility or SCM(s) and statement that the owner understands the requirements of the rules and regulations for the detention facility or SCM(s).

(B) Each detention facility or SCM shall be maintained as required in the maintenance plan as to allow the detention facility or SCM to achieve its maximum effect. Maintenance is to be performed as needed or specified by the Stormwater Administrator.

(C) Maintenance of the detention facility or SCM includes maintaining access for the stormwater to reach and leave the detention facility or SCM, maintenance of the detention facility or SCM structure itself, and maintaining access to the detention facility or SCM for the purpose of inspections, maintenance and repairs.

(D) An annual maintenance and inspection report completed by a qualified professional shall be maintained by the owner for each detention facility or SCM in accordance with the operation and maintenance agreement submitted in the initial plan submittal. The annual report will describe the maintenance and repair activities of the subject year, including copies of inspection and repair logs, and note any needed modifications to the repair plan for the following year. Annual reports shall be provided to the Stormwater Administrator annually upon completion and kept on record for a minimum of five years. Records of annual and any other inspections required by the Operation and Maintenance agreement shall be made available to the County upon request.

(E) Single-Family Residential

(1) 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.

(2) For long term maintenance of required stormwater detention facility or SCM's and improvements per the requirements of the operation and maintenance plan/agreement, a homeowner's association shall be incorporated in accordance with NCGS 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.

- (F) Commercial, Industrial and Multifamily
  - (1) For commercial, industrial or developments other than residential developments that require the installation of permanent detention facility or SCM's, the landowner shall be responsible for maintenance of such improvements per the requirements of the operation and maintenance plan/agreement.
- (G) The process for BMP maintenance enforcement shall be as follows:
  - (1) The County will annually inspect the detention facility or SCM'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;

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 Qualified Professional Status.

- (A) All detention facilities or SCM(s) shall be inspected by the County annually in addition to the inspections performed by the owner's qualified professional. This inspection by the County will be to verify consistency with inspections performed by the qualified professionals.
- (B) The County will provide the owner and his/her qualified professional the inspection report and detail any required repairs or maintenance. Where there are differences in the inspection report from the qualified professional's inspection and the County's inspection, the County's inspection and list of required repairs and maintenance shall take precedence.
- (C) If the Stormwater Administrator determines there to be significant and major errors or omissions in one or more annual inspection reports provided by a qualified professional, the Stormwater Administrator shall:
  - (1) Notify the SCM owner and the qualified professional in writing of the errors or omissions; and
  - (2) Offer relevant training and education for the qualified professional including on-site consultation.
- (D) If the Stormwater Administrator determines there to be significant and major errors or omissions in three or more annual inspection reports

provided by a qualified professional, regardless of the particular detention facility or SCM inspected or the time frame of the inspections, the Stormwater Administrator shall:

- (1) Suspend the qualified professional status from the inspector for a minimum period of 12 months. During this time, inspections from the suspended individual will not be accepted by the County to comply with the annual inspection requirement. This suspension applies only to the individual inspector and not to his/her company or firm; and
- (2) Notify the detention facility or SCM owner(s) and the qualified professional in writing of the suspension and instructions for status restoration.

An inspector whose qualified professional status has been suspended may apply to restore his/her qualified professional status only after a minimum of 12 months and completion of an on-site personalized training with County staff. The inspector should coordinate scheduling of this training with the Stormwater Administrator anytime during the suspension as County staff are available.

Once qualified professional status has been restored to an inspector, the County will audit the next three inspection reports submitted by that qualified professional to ensure accuracy and consistency. If the Stormwater Administrator determines there to be significant and major errors or omissions in one or more of these three reports, the inspector shall be re-suspended and shall repeat the restoration per this section.

For repeated, fraudulent, or egregious errors or omissions submitted by a qualified professional, the Stormwater Administrator shall have the authority to permanently revoke his/her qualified professional status and/or file a report with any applicable licensing or certifying board or agency.

## **§ Section.24 As-Built Plan Required.**

(A) 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 detention facility or SCM's Prior to release of a certificate of stormwater compliance, as-built plans 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.
- (4) Submission of the plan shall be in one of the following electronic formats:
  - .pdf
  - .dxf file
  - .dwg files
  - Arc view shape files
  - Arc Info coverages

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

## § Section.26 Maintenance Easement Required.

(A) 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 detention facility or SCM's. 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.

(A) To provide reasonable assurance that detention facility or SCM's 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 detention facility or SCM's 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, the county engineer, and Stormwater Administrator 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.

(d) Recording of Final Plat: A final plat of the common plan of development shall not be recorded until the SCM's have been installed or a financial surety has been accepted by the County.

- (c) Building Permits: Once a financial surety has been accepted by the County, building permits may be applied for and issued by the County's Building Inspections Department.
- (5) 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.

(B) Commercial, Industrial and Multifamily:

- (1) All detention facilities or SCM'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**

## **Purpose and Intent.**

(A) 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.29 Discharges Prohibited.

## **Discharges Prohibited.**

(A) 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.30 Discharges Exempted.

(A) 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,
- (15) 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, and
- (16) And, any other water source not containing pollutants which has been approved by the Stormwater Administrator.

- (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.32      **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.33****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 SCMs.
- (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 SCMs to prevent the further discharge of pollutants to the stormwater collection system or watercourses.

**§ Section.34****Notification of Spills.**

- (A) 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 email 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.35                    Watercourse Protection.**

- (A) 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.