Wendell Town Board of Commissioners

Board Room

Town Hall, Board Room, 409 Landing View Drive, Wendell, NC, 27591

Regular Session Agenda

Monday, April 22, 2024 @ 7:00 PM

CALL TO ORDER

Call to Order - Mayor Virginia Gray
Pledge of Allegiance - Carver Elementary School Student, Carter Martin
Invocation - Wendell Council of Churches

1. ADJUSTMENT AND APPROVAL OF THE AGENDA

2. PUBLIC COMMENT PERIOD

The public may participate in public comment period in the following ways:
1. Signing up for public comment period the night of the meeting if attending in person. Please sign up at the podium in the Board Room lobby. Sanitation stations will be available. You will have three minutes to speak.
2. Submitting written statements via email to the Town Clerk at mtew@townofwendellnc.gov by the Friday prior to the Board Meeting, before 5 p.m. Please include your full name and address for the record. All written public comments timely received will be read into the record for a length of three minutes and copies will be provided to the Board of Commissioners at or before the meeting.

3. CONSENT AGENDA

3.a Wake County Tax Reports

Staff Contact: Mary Beth Tew
Town Clerk

mtew@townofwendellnc.gov

3.b Approval of Summary of Minutes from April 8, 2024

Staff Contact: Mary Beth Tew
Town Clerk

mtew@townofwendellnc.gov

4. RECOGNITIONS, REPORTS, AND PRESENTATIONS

4.a Recognition of Carver Elementary School Staff Member, Mrs. Shannon Cooper

Staff Contact: Mary Beth Tew

Town Clerk

mtew@townofwendellnc.gov

5. PUBLIC HEARINGS

5.a Evidentiary Hearing on Special Use Permit (SUP24-01) Request by Nikita Zhitov to allow Dwelling-Multifamily Apartments, at 10 S Main Street (PIN: 1783698741)

Staff Contact: Bryan Coates
Planning Director

bcoates@townofwendellnc.gov

6. ADMINISTRATIVE ITEMS

6.a Waiver of Building Permit Fees for Operation Coming Home Project Sponsored by the Homebuilders Association of Raleigh-Wake County

Staff Contact: Bryan Coates
Planning Director

bcoates@townofwendellnc.gov

6.b Fifth Amendment to the Agreement for Upgraded Streetlight Services between the Town of Wendell and Wendell Falls Community Association

Staff Contact: Bryan Coates
Planning Director

bcoates@townofwendellnc.gov

6.c Request to Temporarily Close a Portion of North Main Street for the Upcoming ProTown BMX Event

Staff Contact: Jeff Polaski
Parks and Recreation Director

jpolaski@townofwendellnc.gov

6.d Decision to Approve Rankings and Authorize the Town Manager to Negotiate a Contract for the Request for Qualification (RFQ) #2024-06 for Design Services for the Wendell Athletic Field Complex Project with CHA Consulting

Staff Contact: Jeff Polaski
Parks & Recreation Director

jpolaski@townofwendellnc.gov

6.e Resolution for the Exchange of Properties for the Old Town Hall Properties

Staff Contact: Matt Garner
Assistant to the Town Manager

mgarner@townofwendellnc.gov

6.f Amendment of Policy 100: Town of Wendell Personnel Policies

Staff Contact: Marc Collins
Town Manager

mcollins@townofwendellnc.gov

6.g Decision on Zoning Text Amendment (ZTA24-01) Update of UDO Chapter 6 – Environmental Protection

Staff Contact: Sarah Lentine
Town Engineer

slentine@townofwendellnc.gov

7. OTHER BUSINESS

Update on Board Committees by Town Board Members:
Capital Area Metropolitan Planning Organization - Commissioner Deans Eatman
Wake County Fire Commission - Mayor Pro Tempore Jason Joyner

8. COMMISSIONERS' REPORTS / COMMENTS

9. MAYOR'S REPORTS / COMMENTS

10. CLOSED SESSION

ADJOURN

AGENDA ITEM NO. 3.a

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Mary Beth Tew, Administration
ITEM TYPE:	Tax Reports
AGENDA SECTION:	CONSENT AGENDA
SUBJECT:	Wake County Tax Reports
SPECIFIC ACTION REQUESTED:	Information Only
ITEM SUMMARY:	The Town of Wendell Board of Commissioners will receive the attached tax report submitted to the Town by Wake County.

ATTACHMENTS:
Wake County Tax Report March 2024
Wake County Tax Report April 2024

WAKE COUNTY NORTH CAROLINA

Board of Commissioners
P.O. Box 550 • Raleigh, NC 27602

TEL 919 856 6180
FAX 919 856 5699

SHINICA THOMAS, CHAIR
SUSAN EVANS, VICE-CHAIR
VICKIE ADAMSON
MATT CALABRIA
DON MIAL
CHERYL STALLINGS
TARA WATERS

March 5, 2024

Ms. Mary Beth Tew
Town Clerk
Town of Wendell
409 Landing View Drive
Wendell, NC 27591

Dear Ms. Tew:

The Wake County Board of Commissioners, in regular session on March 4, 2024, approved and accepted the enclosed tax report for the Town of Wendell.

The attached adopted actions are submitted for your review; no local board action is required.

Sincerely,

Yvonne Gilyard
Clerk to the Board
Wake County Board of Commissioners

Enclosure(s)

WAKE COUNTY
NORTH CAROLINA

Wake County Tax Administration
Rebate Details
01/01/2024 - 01/31/2024
WENDELL

DATE	TIME	PAGE
02/04/2024	11:17:45 PM	1

REBATE NUMBER	PROPERTY	CITY TAG	LATE LIST	BILLED INTEREST	TOTAL REBATED	PROCESS DATE	ACCOUNT NUMBER	TAX YEAR	YEAR FOR	BILLING TYPE	OWNER
INDIVIDUAL PROPERTY ACCOUNTS											
869150	101.99	30.00	0.00	0.00	131.99	01/22/2024	0007016937	2024	2023	000000	HENLEY, RANDI JESSICA
868048	177.26	30.00	0.00	0.00	207.26	01/08/2024	0006994898	2023	2022	000000	ATWELL, WILLIAM CHARLES
SUBTOTALS FOR INDIVIDUAL PROPERTY ACCOUNTS	**279.25**	**60.00**	**0.00**	**0.00**	**339.25**		**2**	**Properties Rebated**			
TOTAL REBATED FOR WENDELL	**279.25**	**60.00**	**0.00**	**0.00**	**339.25**		**2**	**Properties Rebated for City**			

WAKE COUNTY
NORTH CAROLINA

Board of Commissioners
P.O. Box 550 • Raleigh, NC 27602

TEL 919 856 6180
FAX 919 856 5699

SHINICA THOMAS, CHAIR
SUSAN EVANS, VICE-CHAIR
VICKIE ADAMSON
MATT CALABRIA
DON MIAL
CHERYL STALLINGS
TARA WATERS

April 2, 2024

Ms. Mary Beth Tew
Town Clerk
Town of Wendell
409 Landing View Drive
Wendell, NC 27591

Dear Ms. Tew:

The Wake County Board of Commissioners, in regular session on April 1, 2024, approved and accepted the enclosed tax report for the Town of Wendell.

The attached adopted actions are submitted for your review; no local board action is required.

Sincerely,

Yvonne Gilyard
Clerk to the Board
Wake County Board of Commissioners

Enclosure(s)

WAKE COUNTY
NORTH CAROLINA

Wake County Tax Administration
Rebate Details
02/01/2024 - 02/29/2024
WENDELL

DATE	TIME	PAGE
03/07/2024	1:04:32 PM	1

REBATE NUMBER	PROPERTY	CITY TAG	LATE LIST	BILLED INTEREST	TOTAL REBATED	PROCESS DATE	ACCOUNT NUMBER	TAX YEAR	YEAR FOR	BILLING TYPE	OWNER
INDIVIDUAL PROPERTY ACCOUNTS											
871101	2.02	0.00	0.20	0.00	2.22	02/12/2024	0006483579	2023	2023	000000	RICARDO, RICO
872476	342.58	30.00	0.00	0.00	372.58	02/23/2024	0007009416	2024	2023	000000	DARDEN, LAUREN NICOLE
870807	209.81	30.00	20.98	0.00	260.79	02/07/2024	0006991041	2023	2023	000000	GLASS, KENDRA SHENAE
SUBTOTALS FOR INDIVIDUAL PROPERTY ACCOUNTS	**554.41**	**60.00**	**21.18**	**0.00**	**635.59**		**3**	**Properties Rebated**			
TOTAL REBATED FOR WENDELL	**554.41**	**60.00**	**21.18**	**0.00**	**635.59**		**3**	**Properties Rebated for City**			

AGENDA ITEM NO. 3.b

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Mary Beth Tew, Administration
ITEM TYPE:	Minutes
AGENDA SECTION:	CONSENT AGENDA
SUBJECT:	Approval of Summary of Minutes from April 8, 2024
SPECIFIC ACTION REQUESTED:	Approve the Summary of Minutes
ITEM SUMMARY:	On Monday, April 8, 2024, at 7:00 p.m., the Town Board of Commissioners held a Regular Meeting at Town Hall, 409 Landing View Drive, Wendell, NC 27591. The attached Summary of Minutes are to be approved at the Town Board of Commissioners' Meeting and then posted to the website and kept in the Minutes Book.

ATTACHMENTS:
Summary of Minutes - April 8, 2024

TOWN OF WENDELL
TOWN BOARD OF COMMISSIONERS REGULAR SESSION MINUTES
April 8, 2024

The Wendell Town Board of Commissioners held their Regular Session on Monday, April 8, 2024, in the Town Board Room, Wendell Town Hall, 409 Landing View Drive.

Present: Mayor Virginia Gray, Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach

CALL TO ORDER

Mayor Gray called the meeting to order at 7:03 p.m.

The Pledge of Allegiance was led by Lake Myra Elementary School Student, Franklin Mcrea, and Wendell Elementary School Student, Ava Pinckney.

The Invocation was led by Elder Dennis Calhoun, from Calvary Faith Center.

1. ADJUSTMENT AND APPROVAL OF THE AGENDA

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to approve the agenda as presented.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

2. PUBLIC COMMENT PERIOD

No one spoke during Public Comment Period.

3. CONSENT AGENDA

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to approve the Consent Agenda.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

3.a Deed of Easement With General Warranty for Sanitary Sewer Easement for Hollybrook Park

Staff Contact: Bryan Coates
Planning Director
bcoates@townofwendellnc.gov

3.b Resolution Amending the 2024 Board of Commissioners Meeting Schedule

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

3.c Approval of Summary of Minutes from February 26, 2024

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

3.d Approval of Summary of Minutes from March 11, 2024

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

4. RECOGNITIONS, REPORTS, AND PRESENTATIONS

4.a Recognition of Lake Myra Elementary School Staff Member, Mrs. Aquilla Doss

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

Mayor Gray recognized Mrs. Aquilla Doss, from Lake Myra Elementary School.

4.b Recognition of Wendell Elementary School Staff Member, Mrs. Sandy Morgan

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

Mayor Gray recognized Mrs. Sandy Morgan, from Wendell Elementary School.

4.c Proclamation Recognizing April 20, 2024 as Autism Awareness Day in the Town of Wendell

Staff Contact: Mary Beth Tew
Town Clerk
mtew@townofwendellnc.gov

Mayor Gray read the Proclamation and presented it to Mrs. Christin Price.

4.d Introduction of Town Engineer

Staff Contact: Brian Bray
Public Works Director
bbray@townofwendellnc.gov

Brian Bray, Public Works Director, introduced our new Town Engineer, Sarah Lentine.

5. PUBLIC HEARINGS

5.a Public Hearing to Rezone (R24-01) Approximately 1.17 acres Located at 10 & 20 Harris Street from Residential 2 (R2) and Residential 3 Conditional District (R3-CD) to Residential 4 (R4)

Staff Contact: Bryan Coates
Planning Director
bcoates@townofwendellnc.gov

Bryan Coates, Planning Director, provided the staff report for this item.

Mayor Gray opened the Public Hearing.

Speakers:
Philip Tarnaski, 230 Fowlkes Street
Bennie Collins, 302 W Second Street
Wallace Johnson, 308 Fowlkes Street
Patricia Burch, CEO of Habitat for Wake County, 2420 N Raleigh Boulevard, Raleigh
James Parham, 17 Deer Lake Trail
Mickey Phillips, 4 Forest Lane

The Board discussed the rezoning request.

Mayor Gray closed the Public Hearing.

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to approve the rezoning request and adopt the attached Ordinance.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

5.b Public Hearing on Zoning Text Amendment (ZTA24-01) Update of UDO Chapter 6 – Environmental Protection

Staff Contact: Sarah Lentine
Town Engineer
slentine@townofwendellnc.gov

Sarah Lentine, Town Engineer, provided the staff report for this item.

Mayor Gray opened the Public Hearing.

The Board discussed the text amendment.

Mayor Gray asked if there were anyone that wished to speak regarding this item. Seeing none, she closed the Public Hearing.

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to continue this item to the April 22, 2024 Board Meeting.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

6. ADMINISTRATIVE ITEMS

6.a Meet on Main Road Closure & Co-Sponsorship Request for 2024

Staff Contact: Stephanie Smith
Assistant Town Manager
ssmith@townofwendellnc.gov

Stephanie Smith, Assistant Town Manager, provided the staff report for this item.

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to approve the temporary closure of a section of Main Street, Campen Street, and Depot Street, and approve the co-sponsorship request for the 2024 Meet on Main events.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

6.b Adoption of Updated Financial Goals & Policies

Staff Contact: Garrett Johnson
Finance Director
gjohnson@townofwendellnc.gov

Garrett Johnson, Finance Director, provided the staff report for this item.

ACTION
Mover: Mayor Pro Tempore Jason Joyner made a motion to adopt the proposed updates to the Financial Goal and Policies document.
Ayes: Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays: None
Vote: 5-0

6.c Discussion on Proposed Budget Ordinance Language

Staff Contact: Garrett Johnson
Finance Director

gjohnson@townofwendellnc.gov

Garrett Johnson, Finance Director, provided the staff report for this item.

The Board discussed the proposed changes with staff.

6.d 2035 Wake County Transit Plan Update Stakeholders Identification

Staff Contact: Bryan Coates
Planning Director
bcoates@townofwendellnc.gov

Bryan Coates, Planning Director, provided the staff report for this item.

Commissioner Eatman volunteered to be the elected official candidate.

The Board discussed appointing Bennie Collins and Dr. James Parham.

The Board directed staff to check with those recommended to see if there were interested in participating in this process.

ACTION	
Mover:	Mayor Pro Tempore Jason Joyner made a motion to continue this item to the April 22, 2024 Board Meeting.
Ayes:	Mayor Pro Tempore Jason Joyner, Commissioner Jon Lutz, Commissioner Deans Eatman, Commissioner Braxton Honeycutt, and Commissioner Joe DeLoach
Nays:	None
Vote:	5-0

6.e Personnel Policy Update

Staff Contact: Marc Collins
Town Manager
mcollins@townofwendellnc.gov

Marc Collins, Town Manager, provided the staff report for this item.

7. OTHER BUSINESS

Update on Board Committees by Town Board members:

Capital Area Metropolitan Planning Organization - Commissioner Deans Eatman

8. COMMISSIONERS' REPORTS / COMMENTS

Mayor Pro Tempore Joyner encouraged everyone to look into the many upcoming events in the Town. He also noted the passing of Clarissa "Kissie" Morrell and her legacy in the Town.

Commissioner Lutz noted that the habitat project will be great for the community.

Commissioner DeLoach stated you don't have to be born here to become a part of the community and make a difference. He also noted that affordable housing does not mean cheap or subpar, and it is needed in the Town.

9. MAYOR'S REPORTS / COMMENTS

Mayor Gray noted there were a lot of ribbon cuttings for new businesses in the Town and it's always nice to support small businesses in your community. She also wished a Happy 100th Birthday to Mr. Ernest Jones. Lastly, she stated that Meet on Main would be April 19, 2024.

10. CLOSED SESSION

ADJOURN

Jim Cauley, Town Attorney, provided more information regarding item 5b.

There being no further business to come before the Board, the meeting adjourned at 8:53 p.m.

_____
Virginia R. Gray
Mayor

ATTEST:

_____
Mary Beth Tew
Town Clerk

AGENDA ITEM NO. 5.a

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Bryan Coates, Planning
ITEM TYPE:	Planning
AGENDA SECTION:	PUBLIC HEARINGS
SUBJECT:	Evidentiary Hearing on Special Use Permit (SUP24-01) Request by Nikita Zhitov to allow Dwelling-Multifamily Apartments, at 10 S Main Street (PIN: 1783698741)
SPECIFIC ACTION REQUESTED:	Hold an Evidentiary Hearing and Act on a Special Use Permit Request for Property Located at 10 S Main Street (PIN: 1783698741)

ITEM SUMMARY:

Nikita Zhitov has requested a Special Use Permit to allow Dwelling-Multifamily (Apartments), at 10 S. Main Street. The subject property is zoned Downtown Mixed-Use (DMX) and this use requires a Special Use Permit in the DMX zoning district. The intent is to create two apartments on the second floor of the existing building.

Dwelling—Multifamily *means a dwelling unit that is part of a structure containing more than one unit. Each unit has a separate entrance from the outside or through a common vestibule. Multi-family dwellings may include triplexes, or fourplexes (buildings under one ownership with two to four dwelling units in the same structure), as well as townhouses (a type of structure that has at least three or more separate dwelling units divided vertically, and each unit has separate entrances to a front and rear yard), and apartments.*

The application includes a reduced site plan per the requirements in Section 15.15 of the UDO and a floor plan.

Project Setting – Surrounding Land Uses

Currently the upstairs of the building is being used for storage. There are two businesses on the first level of the building. Saved Arrangements is located in the space fronting West Third Street, and Lavage Colonics & Wellness is in the space fronting South Main Street. Across the street to the north is Lino hair salon, Farmers and Merchants and Carolina Brewing Company and to the northeast, is Simply Bliss bridal shop. Across the street to the east is Larry's Tailor shop, a nail salon, PY Run and FGA Architects. Wendell Eyecare is located just south of this building and Little Doodles Play Café is a few doors down to the west. Within a five-minute walk are restaurants, cafes, shops and Campen Street where the Wendell Market is held.

Zoning District

The Downtown Mixed-Use District is coded to encourage the redevelopment and expansion of the traditional Downtown area. Individual buildings are encouraged to be mixed vertically with street level commercial and upper level residential or commercial uses. Higher densities of residential development are encouraged.

ATTACHMENTS:

Staff Analysis SUP- 10 S Main Multifamily
Application for 10 S. Main Multifamily SUP24-01
Plans for 10 S. Main Multifamily SUP24-01
Neighborhood Meeting Documentation
Updated Parking Statement- Applicant

Planning

Staff Analysis

Item Title: Evidentiary Hearing on Special Use Permit (SUP24-01) Request by Nikita Zhitov to Allow Dwelling-Multifamily at 10 S. Main Street (PIN: 1783698741)

Item Summary

Nikita Zhitov has requested a Special Use Permit to allow Dwelling-Multifamily (Apartments), at 10 S. Main Street. The subject property is zoned Downtown Mixed-Use (DMX) and this use requires a Special Use Permit in the DMX zoning district. The intent is to create two apartments on the second floor of the existing building.

Dwelling—Multifamily means a dwelling unit that is part of a structure containing more than one unit. Each unit has a separate entrance from the outside or through a common vestibule. Multi-family dwellings may include triplexes, or fourplexes (buildings under one ownership with two to four dwelling units in the same structure), as well as townhouses (a type of structure that has at least three or more separate dwelling units divided vertically, and each unit has separate entrances to a front and rear yard), and apartments.

The application includes a reduced site plan per the requirements in Section 15.15 of the UDO and a floor plan.

Project Setting – Surrounding Land Uses

Currently the upstairs of the building is being used for storage. There are two businesses on the first level of the building. Saved Arrangements is located in the space fronting West Third Street, and Lavage Colonics & Wellness is in the space fronting South Main Street. Across the street to the north is Lino hair salon, Farmers and Merchants and Carolina Brewing Company and to the northeast, is Simply Bliss bridal shop. Across the street to the east is Larry's Tailor shop, a nail salon, PY Run and FGA Architects. Wendell Eyecare is located just south of this building and Little Doodles Play Café is a few doors down to the west. Within a five-minute walk are restaurants, cafes, shops and Campen Street where the Wendell Market is held.

Land Use Map



Zoning District

The Downtown Mixed-Use District is coded to encourage the redevelopment and expansion of the traditional Downtown area. Individual buildings are encouraged to be mixed vertically with street level commercial and upper level residential or commercial uses. Higher densities of residential development are encouraged.

Special Use Permit Criteria

The evaluation and approval of the Special Use Permit shall be governed by quasi-judicial proceedings, which are based upon the sworn testimony and evidence presented at the hearing relevant to the following standards:

a. That the proposed use does not affect adversely the general plans for the physical development of the town as embodied in this Ordinance and in any plan or portion thereof adopted by the Board of Commissioners;

- *Blueprint Wendell 2030 contains two goals related to the need to add residential units within the downtown core. Residents living in the core can assist with creating the vibrancy of downtown.*

b. The proposed use will not be contrary to the purposes stated for these regulations;
   - *The creation of multi-family housing within the Town of Wendell requires a conditional district rezoning or a special use permit.*

c. The proposed use will not adversely affect the health and safety of residents and workers in the town;
   - *The applicant is requesting to create two apartments in an existing building at 10 S Main Street at the intersection of Third Street.*

d. The proposed use will not be detrimental to the use of development of adjacent properties or other neighborhood uses;
   - *The applicant is proposing that the residents of the two apartment units park within the existing on-street public parking. The seven parking spaces along the property frontage are within the two-hour parking area of the downtown.*

   - The applicant's engineer provided an updated statement on parking. "The proposed residential use will require about 3 parking spaces. This compared to a commercial use will generate less demand for parking during normal business hours. The owners are proposing shared on-street parking as the demand for the residential parking is highest after business hours. The owners will also propose a parking agreement with a nearby business owner that has off-street parking. This would be for residential parking during weekends, holidays, and/or nights when those businesses are closed. Nearby businesses that are closed during weekend and at night, with private off-street parking lots are within 500 feet of the building, and there are adequate pedestrian facilities connecting parking and proposed residences."

e. The proposed use will not be affected adversely by the existing uses;
   - *A mixture of retail, office, restaurants and residential uses exist within one block of the site.*

f. The proposed use will be placed on a lot of sufficient size to satisfy the space requirements of the use;
   - *The existing building follows the property lines, and the lot cannot accommodate any parking on-site. The applicant is proposing the residents utilize existing on-street parking.*

g. The proposed use will not constitute a nuisance or hazard because of the number of persons who will attend or use the facility, vehicular movement, noise, or fume generation or type of physical activity;

- *The applicant is proposing to create two residential units (a one-bedroom apartment and a two-bedroom apartment) within an existing building.*

h. The standards set forth for each particular use/project for which a permit may be granted have been met;

- *The applicant has submitted building plans and received approval from Wake County as the plans meet NC Building Code.*

i. The Board may impose or require such additional restrictions and conditions as may be necessary to protect the health and safety of works and residents in the community, and to protect the value and use of property in the general neighborhood;

- *The Board may impose conditions at its discretion for these reasons.*

j. The proposed use shall be subject to the minimum area, setback, and other location requirements of the zoning district in which it will be located; and

- *The applicant is proposing to utilize an existing building and within the DMX zoning district the setbacks are zero along the front, side and rear.*

k. The proposed use shall be subject to the off-street parking and service requirements of these regulations; provided, however, that an approved PUD Plan document may include modifications of such requirements.

- *For residential uses, UDO Section 10.4 requires one parking space per bedroom, up to two per unit. The proposed apartments will require three parking spaces.*

- *UDO Section 10.4.B General Parking Requirements Exemptions and Adjustments number 2 states On-Street Parking: Where parking on-street is permitted, the on-street spaces directly along a parcel's frontage for any use except a single-family dwelling may count toward the minimum parking requirement. The parcels frontage contains one on-street parking space along West Third Street and six along South Main Street for a total of seven spaces. The seven parking spaces, however, are designed as two-hour parking from 8 am to 6 pm.*

- *UDO Section 10.4.C Share/Combined Parking: The parking spaces required for one use may be used to satisfy the parking requirements for a second use on the same*

zoning lot, subject to certification by the Administrator that such joint usage of parking complies with the following:

1. The peak usage of the parking facility by one use will be at night or on Sundays (such as with theaters, assembly halls, or churches), and the peak usage of the parking facility by the second use will be at other times; or,

2. The second use is an accessory use to the first use, such as restaurants and meeting rooms to hotels and motels.

3. The joint use of shared off-street parking between two uses may be made by contract between two or more adjacent property owners.

- *UDO Section 10.4.G Satellite Parking: Satellite parking may be permitted, subject to certification by the Administrator that the following requirements have been met:*

1. The use being served by the off-site parking shall be a permitted principal use, as established in Chapter 2, in the zoning districts within which the lot containing such parking is located;

2. The off-site parking spaces shall be located within 500 feet walking distance, and accessible by sidewalks or other designated safe walkways, of a public entrance to the structure or zoning lot containing the use for which such spaces are required;

3. The continued availability of off-site parking spaces necessary to meet the requirements of this section shall be ensured by an appropriate condition that the continued validity of the zoning compliance or special use permit shall be dependent upon the permit holder's continued ability to provide the requisite number of parking spaces.

- *The applicant's engineer is proposing a parking agreement with a nearby business owner that has off-street parking, that would be utilized during weekends, holidays, and/or nights when the business is closed and within 500ft of the building.*

Blueprint Wendell 2030 classifies this area as Downtown Core. Multi-family apartments are listed as an appropriate use in the Downtown Core placetype.

DOWNTOWN CORE / DOWNTOWN FRINGE

DTN/F

Wendell's downtown is one of three major development "nodes" in the study area, but it is unique as a link to community, history, and source of identity for the Town. Commercial buildings have distinct characters, with events and public art contributing to the sense of place. The Downtown Fringe relies more on residential development, with many structures dating back 50 or more years. The synergy between the Downtown Core and Fringe is important to both placetypes, as is creating walking connectivity between them, developing consistent streetscapes, and quality of maintenance to what amounts to the calling card of the Town.







USES + BUILDINGS

Downtown Core:
- *Commercial uses in two-to-four stories including retail restaurants, personal services, and small-to-medium offices*
- *Co-Working space/Makerspace*
- *Attached single-family (townhome)*
- *Multi-family (condominiums, apartments)*
- *Lodging, hotels*
- *Civic uses including government offices and services such as library branches*
- *Event spaces such as greens or amphitheaters*

Downtown Fringe:
- *One- and two-story homes*
- *Institutional (religious and school)*
- *Small-scale neighborhood commercial*
- *Attached single-family (townhome)*

STREET PATTERN

Street Pattern: *Grid/Modified Grid*
Max Block Length: *n/a*

Connectivity:
- *400'*
- *600' with mid-block pedestrian connections*
- *Highly connected internally and externally (to adjacent development); alleys in Core and pedestrian walkways in Fringe*

Street Types:
- *Private*
- *Local 2-lane*
- *Local 2-lane divided*

OPEN SPACE

- *Pocket parks*
- *Formal and informal greens*
- *Neighborhood parks*
- *Streetscaped hard-surface trails*

Neighborhood Meeting

The applicant held a neighborhood meeting on April 4, 2024. The meeting notes are included in the attachments.

Staff Comments

The Town of Wendell Planning Staff presents the staff analysis but does not make a recommendation on Special Use Permit requests, however staff is requesting two conditions if the special use permit is approved.

The legal advertisement information is listed below.

- Newspaper ad ran for two consecutive weeks in the Wake Weekly on April 12, 2024, and April 19, 2024
- Notification was mailed to adjacent property owners on April 8, 2024
- A public hearing notice was placed at the location on April 8, 2023

Conditions of Approval

If the Board of Commissioners makes a motion to grant the special use permit, staff recommends the following condition:

1) All applicable building permits, laws and codes are obtained or maintained.
2) A parking agreement that meets ordinance requirements be in place prior to the issuance of a certificate of occupancy for the apartments.

Last edited 11/20/2020

WENDELL
Planning

Special Use Permit Application

In the state of North Carolina, Special Use Permits are decided in a quasi-judicial hearing. Therefore, ex parte contact between applicants, other interested person, or their respective representatives and members of the Board is inappropriate and not permitted.

No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board. (VIOLATION OF THIS RULE SHALL BE CAUSE FOR DISMISSAL.)

INSTRUCTIONS FOR FILING AN APPLICATION FOR A SPECIAL USE PERMIT

1. The applicant for a special use permit must complete this application in full. The application must be signed by the property owner(s) or their authorized representative (See page 7). **This application will not be processed unless all information requested is provided**.

2. In order to be considered by the Board, applications must be submitted to the Planning Department **at least thirty (30) working days** prior to the meeting.

   The Board meets in Town Hall, located at 15 East Fourth Street.

   For additional information or assistance, call the Town of Wendell Planning Department at **(919) 336-4448**.

3. The filing fee for each application is set out in the Schedule of Fees (**Currently $550.00 flat fee for special use permits included on Town of Wendell's Planning Department website)**

4. A digital version (PDF) of an accurate plot plan of the property in question must accompany the application. The plot plan shall be at a scale of 1" - 200' or larger. (**Note: Not all requests require plot plans, please consult planning staff for determination**)

   The plot plan shall include:

   - location and dimension of:
     - the entire lot including recorded easements;
     - all existing and proposed structures (principal and accessory) including number of stories and gross floor area;
     - all existing driveway(s), drive isles, and pedestrian improvements on site and on adjoining properties within ten (10) feet of the subject lot;
     - all existing and proposed parking areas including the total number of spaces (where the subject use is to share a common parking area with other existing or future uses indicate the allocation of spaces devoted or reserved to each separate use);
   - topographical features (streams, ditches, etc.);

- required bufferyards;
- minimum building lines (MBL) and existing and future right-of-way lines (R/W);
- location or vicinity map may be drawn to a scale of not less than 1" - 1000';

5. for item (a) below, the applicant must state all facts and attach any supporting documents that applicant asserts the parcel complies with the zoning ordinances and policies. IT IS NOT SUFFICIENT TO STATE - "the application does not violate the zoning policies.

for item (b) below the applicant must state how the use complies with or conforms to the General Land Use Plan. IT IS NOT SUFFICIENT TO STATE - "the use complies with the Land Use Plan."

for item (c) below, the applicant must state how the use will not be detrimental to health and safety and attach any documents the applicant asserts supports the proposed use.

for item (d) below, the applicant must state how the use will not be detrimental to the general public welfare.

for item (e) below, the applicant must state how the use will not be detrimental to the current uses of the property or surrounding properties and attach any documents that are claimed to support the facts stated. IT IS NOT SUFFICIENT TO STATE - "the use will not be detrimental".

for item (f) below, the applicant must state the facts to support how the use will not injure the property or cause injury to the value of the property or surrounding property. IT IS NOT SUFFICIENT TO STATE - "the use will not injury the property."

for item (g) below, the applicant must state how the use will not be a nuisance or create a hazard.

If the application does not comply with these requirements, it will be deemed incomplete and returned to the applicant to provide the requested information. A general statement or generalized conclusion/opinion is not enough to satisfy this requirement.

NOTE: These are minimum submission requirements. The Board reserves the right to require additional information where such submission is necessary to ensure compliance with applicable criteria in the individual case. The applicant is encouraged to submit additional information if desired.

The special use permit will expire six (6) months from the date of issuance if zoning compliance permit, building permit, or site plan approval is not obtained.

Last edited 11/20/2020

Date Received _____

TOWN OF WENDELL
SPECIAL USE PERMIT APPLICATION

Applicant Name(s) 10 S Main, LLC

Contact Name and Mailing Address Nikita Zhitov
107 Fayetteville Street, Suite 400
Raleigh, NC 27601

Contact Phone Number (919) 888-1285

Contact Phone Number (_____) _____

Contact Fax Number (_____) _____

Contact Email Address nikita@cityplat.com

Location /Street address of proposed use 10 S Main Street, Wendell, NC 27591

Tax Parcel # 1783698741

Proposed use Dwelling-Multifamily (two apartments) on second level of existing building

The Zoning Ordinance imposes the following General Restrictions on the use requested by the applicant. Under each requirement the applicant should explain, while referencing attached plans, where applicable, how the proposed use satisfies these requirements. Answers should be supported by facts when possible.

The Board may grant permission for the establishment of a listed special use if the Board finds from the evidence produced after a study of the complete record that:

(a) Conditions and Specifications. That the proposed use meets all required conditions and specifications of the Unified Development Ordinance and policies of the Town for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

Compliance with lot area, dimensional standards, setback and other location standards, off-street parking requirements, all additional specific criteria set forth in the UDO and all application submission requirements.

The lot area is 0.06 acres (approximately 2,600 square feet) and the building occupies the entire lot. The lot width is approximately 25 feet, which is the minimum lot width allowed in DMX zoning district. Minimum setbacks in DMX zoning are 0 feet (the building walls are at or on the property lines). The building is 2 stories, the apartments will be located on 2nd level and there is no off-street parking.

(b) Comprehensive Plan. That the proposed use is in general conformity with the Comprehensive Land Use Plan of the Town of Wendell and its extraterritorial jurisdiction.

The DMX district is coded to encourage redevelopment. The existing building will be renovated on the second level and a total of two new apartments will be added to the second level overlooking the street. Development patterns downtown currently include infill development and adaptive reuse of existing structures. Residential apartments located downtown will expand opportunities to live, work, and play in Wendell. The second level apartments will provide housing concentrated downtown where restaurants and other services are accessible. Residential apartments will help ensure the growth of a vibrant downtown. The Comprehensive Plan encourages multi-family condominium apartments within the Downtown Core and encourages diversifying uses, including residential.

(c) Health and Safety. That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.

Such health and safety considerations include but are not limited to the following:

1. The safe and convenient location of all on-site parking and drives.
2. The existing vehicular traffic on area streets.
3. The condition and capacity of area streets which will provide access to the proposed development.
4. The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
5. The reasonably anticipated increase in vehicular traffic generated by the proposed use.
6. The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.

On-street parking is available adjacent to entrances to the building. Cross walks provide safe location to cross street if needed. The number of on-street parking spaces within a block of the building will accommodate the 2 to 4 spaces needed for the proposed use. Downtown is well-lit and provides pedestrian friendly corridors surrounding the building. The residential use will generate approximately 2 to 4 trips that will not adversely impact traffic/parking.

(d) Detriment to Public Welfare. That the proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.

The proposed residential use will provide opportunities for walking to events, restaurants, and services located in the downtown core and fringe; decreasing vehicle traffic in the area. The proposed use will encourage staying in the downtown area and supporting local businesses.

(e) Existing Uses Detrimental. That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.

The majority of the commercial uses within the downtown close by 10pm; which reduces the chance of noise during late night and early morning when residents are sleeping. Parking is available in the evening when day-time businesses are closed.

(f) Injury to Properties or Improvements. That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.

The renovation of the existing building will likely increase the value of abutting properties and encourage more investment in redeveloping property and/or renovating buildings within the downtown core; thus improving the downtown neighborhood.

(g) Nuisance or Hazard. That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:

1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.
3. The visual impact of the proposed use.
4. The method of operation or other physical activities of the proposed use.
5. The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
6. The danger of fire or explosion.

People that frequent the residential use can reasonably be estimated to be 4 persons (residents); and non-frequent visitors generating low traffic volume.

I certify that all the information presented by me in this application is accurate to the best of my knowledge, information and belief. I authorize the Town of Wendell to place a sign on the property in question, for the purpose of alerting the general public of my request.

Print Name	Signature of Applicant	Date
Nikita Thakar		3/6/2024

Print Name	Signature of Applicant	Date

Last edited 11/20/2020

NOTE: If the person who is requesting the Board to take action on a particular piece of property is not the owner of the property and does not have a binding option to purchase the property, then the actual owner(s) of the land must complete this form. If the person who is requesting the Board to act on a particular piece of property is the owner of the property or has a binding option to purchase the property, please disregard this form. **Attach a copy of the option to purchase if the applicant has a binding option to purchase the property.**

I /We Nikita Zhitov (10 S Main, LLC) am /are the owner(s) of the property located at 10 S. Main Street, Wendell, NC 27591.

I /We hereby authorize John Oglesby and Robert Sanders (CSD Engineering)

to appear by consent before the Board order to ask for a special use permit to

change the use of the second floor of building to multi-family dwelling (two individual apartments)

at this location. I /We understand that the special use permit, if granted, is permanent and runs with the land unless otherwise conditioned. I /We authorize the Town of Wendell to advertise and present this matter in my /our name as the owner of the property.

If there are any questions, you may contact John Oglesby at my address, john@csd-engineering.com or by telephone at (919) 624-0997 or (910) 791-4441.

Respectfully yours,

Owner — Date: 3/6/24

Owner — Date

WAKE County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Nikita Zhitov

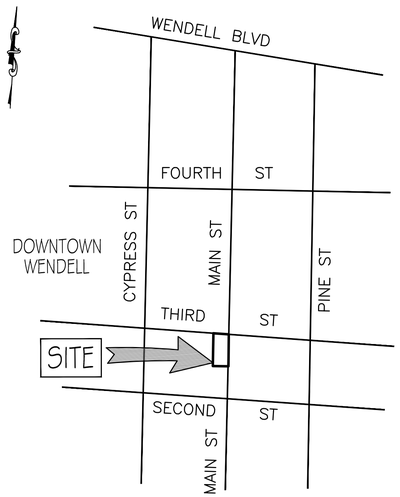
Date: 3-7-2024

Lauren Williams
Notary Public

(Official Seal)



My commission expires: 01-19-2028



LOCATION MAP

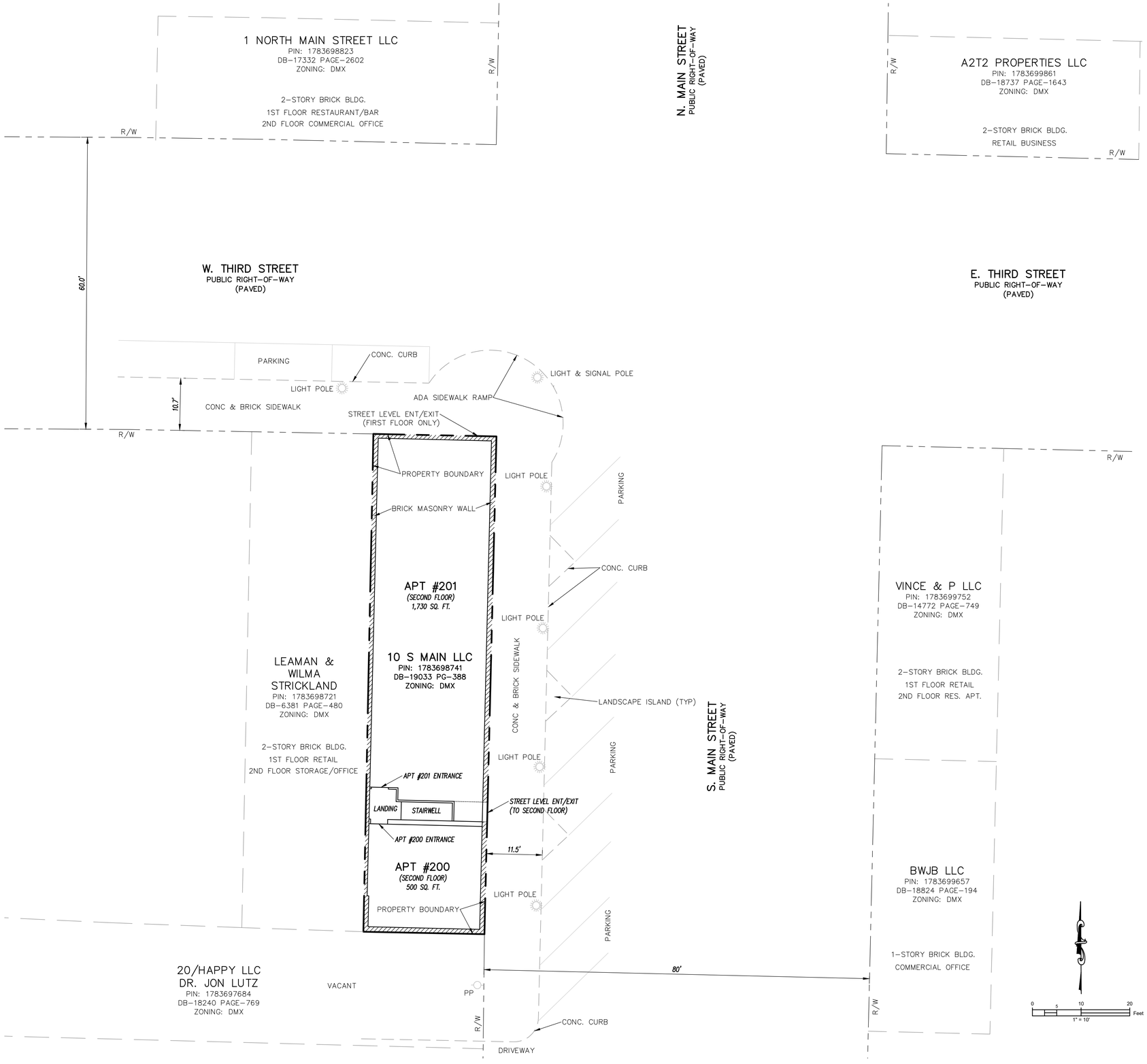
1" = 300'

GENERAL NOTES:

1. THIS MAP IS NOT FOR CONVEYANCE OR SALES.
2. THIS MAP IS A REDUCED SITE PLAN FOR A SPECIAL USE PERMIT APPLICATION FOR THE PROPOSED RESIDENTIAL USE ON THE SECOND FLOOR OF EXISTING BUILDING AT 10 S. MAIN STREET.
3. THE EXISTING BUILDING COVERS THE ENTIRE PROPERTY.
4. PLEASE REFERENCE ARCHITECT SHEETS A-2 AND A-4 INCLUDED IN THE SPECIAL USE PERMIT APPLICATION PACKAGE.
5. PLEASE NOTE THAT THE SECOND FLOOR OF BUILDING ACROSS MAIN STREET IS A SINGLE APARTMENT (RESIDENTIAL USE).
6. PARKING FOR APARTMENT WILL BE ON-STREET PARKING (EXISTING).

PROJECT DATA:

1. PROJECT ADDRESS: 10 S. MAIN STREET, WENDELL, NC 27591
2. PARCEL ID NO: 1783698741
3. CONSULTANT: CSD ENGINEERING, JOHN F. OGLESBY, PE, 919-624-0997 [M], 910-791-1551 [O], 910-791-1501 [F], john@csd-engineering.com
4. PROJECT OWNER: (APPLICANT) 10 S MAIN, LLC - NIKITA ZHITOV, 107 FAYETTEVILLE STREET - STE. 400, RALEIGH, NC 27601, 919-888-1285, nikita@cityplat.com
5. PROJECT ZONING: DOWNTOWN MIXED USE (DMX)
6. LAND CLASSIFICATION: DOWNTOWN CORE
7. DEEDED ACRES = 0.06 AC
8. ACTUAL LOT COVERAGE = 100%



CSD ENGINEERING
LICENSE # C-2710
ENGINEERING
LAND PLANNING
COMMERCIAL / RESIDENTIAL
P.O. BOX 1250
WENDELL, NC 27591
(910) 791-4441

SITE PLAN
EXHIBIT FOR SPECIAL USE PERMIT

This document is copyrighted by CSD ENGINEERING and all rights reserved. The use of this document or any portion thereof without the written permission of CSD ENGINEERING is strictly prohibited. Anyone violating this copyright may be subject to legal action. Ownership of this document does not convey any rights to the described real property or improvements hereon unless a written agreement is executed by CSD ENGINEERING and all fees associated with this document have been paid in full.

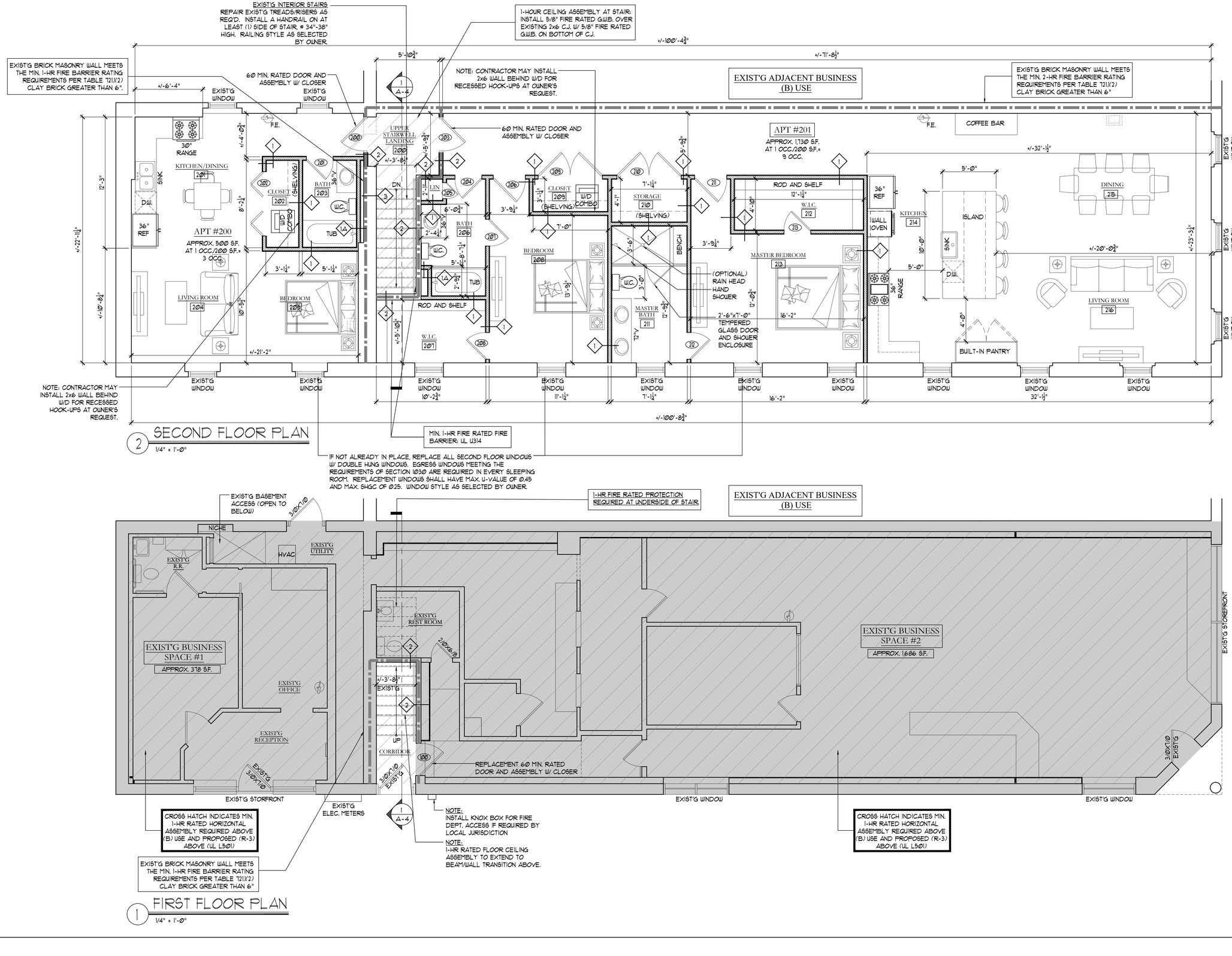
SITE PLAN FOR
10 S MAIN STREET APARTMENTS
LOCATED IN TOWN OF WENDELL
WAKE COUNTY, NORTH CAROLINA

OWNER: 10 S MAIN, LLC
CONTACT: NIKITA ZHITOV
107 FAYETTEVILLE STREET, SUITE 400
RALEIGH, NC 27601
(919) 888-1285

REV. NO.	REMARKS	BY	DATE

DATE: 3/7/2024
HORZ. SCALE: 1" = 10'
VERT. SCALE: N/A
DRAWN BY: JFO
CHECKED BY: RBS
PROJECT NO.: 24-0683

SUP-1
Sheet
Sheet No. 1 OF 1



2 SECOND FLOOR PLAN
1/4" = 1'-0"

1 FIRST FLOOR PLAN
1/4" = 1'-0"

© This plan is the property of Frank Gallucci, R.A. Architect. No part of this drawing may be reproduced or forwarded in any form, by any electronic or mechanical means, without the written consent of Frank Gallucci, R.A.

FGA ASSOCIATES, PLLC
FRANK GALLUCCI, ARCHITECT
11 S. MAIN ST.
WENDELL, N.C. 27591
Frank@FrankGArchitect.com
919-819-4635

SEAL:

NORTH CAROLINA PROFESSIONAL SEAL 14442 1/22/24 ARCHITECT FRANK GALLUCCI

NEW APARTMENTS
10 S. MAIN. ST.
WENDELL, N.C.27591

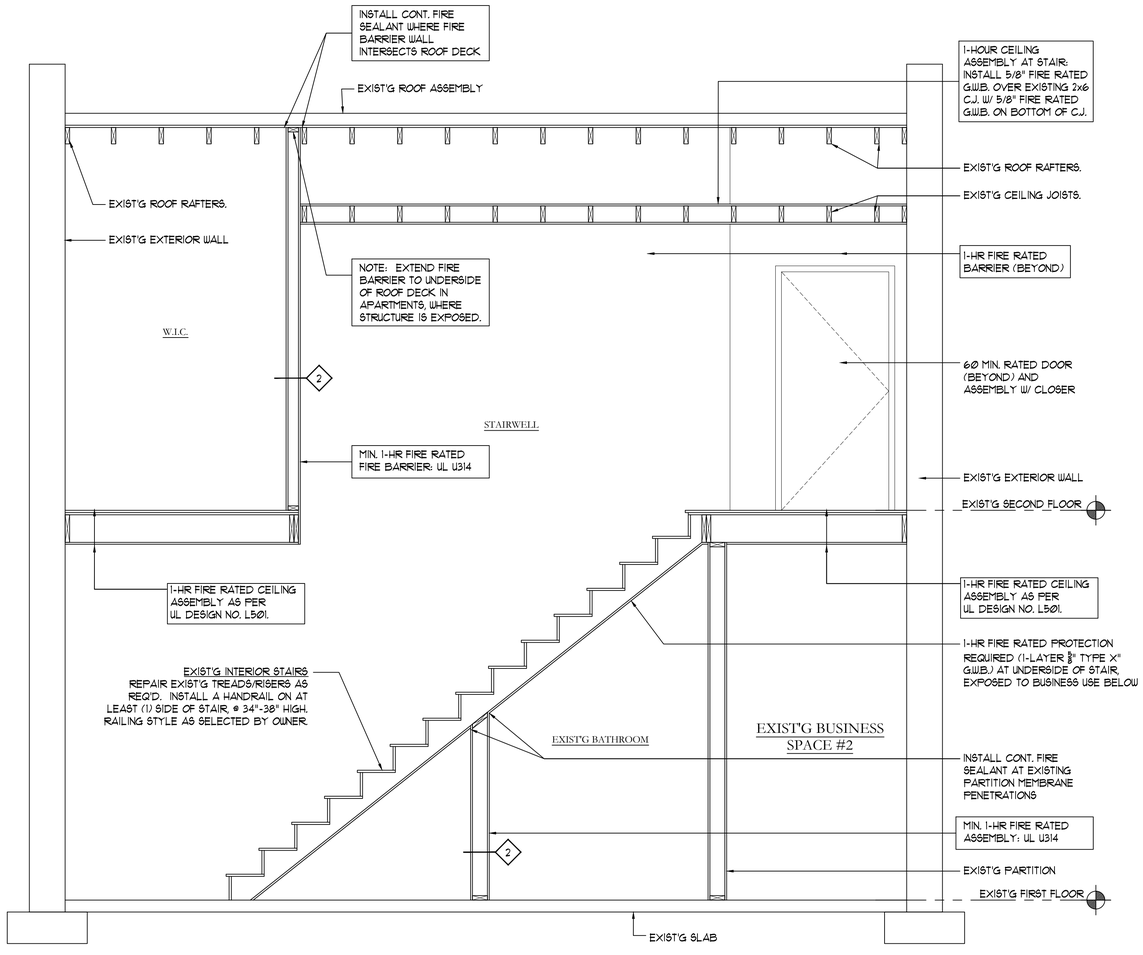
REVISION/ISSUE
1-22-2024_PERMIT SET

DATE:	1-22-2024
DRAWN BY:	FG
JOB NUMBER:	23-67

FLOOR PLANS

SHEET:

A-2



1 SECTION AT STAIRWAY

1/2" = 1'-Ø"

© This plan is the property of Frank Gallucci, R.A. Architect. No part of this drawing may be reproduced or forwarded in any form, by any electronic or mechanical means, without the written consent of Frank Gallucci, R.A.

FGA ASSOCIATES, PLLC
FRANK GALLUCCI, ARCHITECT
11 S. MAIN ST.
WENDELL, N.C. 27591
Frank@FrankGArchitect.com
919-819-4635

SEAL:

NORTH CAROLINA PROFESSIONAL SEAL 14442 1/22/24 ARCHITECT FRANK GALLUCCI

NEW APARTMENTS

10 S. MAIN. ST.
WENDELL, N.C.27591

REVISION/ISSUE

1-22-2024_PERMIT SET

DATE:	1-22-2024
DRAWN BY:	FG
JOB NUMBER:	23-67

SECTION

SHEET:

A-4

Project: 10 S Main 2nd Floor Apartments
Subject: Adjacent Property Owners

Owner: 10 S Main, LLC → Mark Vardy
Consuttant: CSD Engineering → John Oglesby

Parcel No.	PIN	Property Owner Name (Notified)	Physical Property Address	Print Name and Sign
1	1783697684	20/Happy, LLC (Dr. Jon Lutz)	0 S. Main Street	
2	1783698721	Leaman & Wilma Strickland	5 W. Third Street	
3	1783698823	1 North Main Street, LLC	1 N. Main Street	
4	1783699861	A2T2 Properties, LLC	2 N. Main Street	
5	1783699752	Vince & P, LLC	1 S. Main Street	Paul White
6	1783699657	BWJB, LLC	11 S. Main Street	Paul White

Neighborhood Meeting Notes

Mr. Paul White in attendance → no problems, liked idea & said "it's about time!" (has apartment across street)

Attendees + owner rep where told date + time of Town Council meeting → 4/22/24 @ 7:00 pm

Email Addresses:

Mark Vardy: mvardy@vardyhpc.com

John Oglesby: john@csd-engineering.com

Paul White: paul@universalchevy.com

Bryan Coates

From: John Oglesby <john@csd-engineering.com>
Sent: Wednesday, April 17, 2024 9:35 AM
To: Bryan Coates
Cc: Stacy Griffin; Jeannine Ngwira
Subject: Re: 10 S Main Street- Special Use Permit

Statement:

"The proposed residential use will require about 3 parking spaces. This compared to a commercial use will generate less demand for parking during normal business hours. The owners are proposing shared on-street parking as the demand for the residential parking is highest after business hours. The owners will also propose a parking agreement with a nearby business owner that has off-street parking. This would be for residential parking during weekends, holidays, and/or nights when those businesses are closed. Nearby businesses that are closed during weekend and at night, with private off-street parking lots are within 500 feet of the building, and there are adequate pedestrian facilities connecting parking and proposed residences."

John F. Oglesby, PE
CSD Engineering
(919) 624-0997 m

Sent from my iPhone

> On Apr 17, 2024, at 7:56 AM, John Oglesby <john@csd-engineering.com> wrote:
>
> Good morning, Bryan.
>
> I have a statement about parking approved by the owners. I will send that to you in a couple of hours when I return to my office.
>
> Thank you,
> John
>
> John F. Oglesby, PE
> CSD Engineering
> (919) 624-0997 m
>
> Sent from my iPhone
>
> > On Apr 11, 2024, at 1:36 PM, John Oglesby <john@csd-engineering.com> wrote:
> >
> > Sounds good. I will be there right after 2 pm.
> >
> > John F. Oglesby, PE
> > CSD Engineering
> > (919) 624-0997 m

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Bryan Coates, Planning
ITEM TYPE:	Project
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Waiver of Building Permit Fees for Operation Coming Home Project Sponsored by the Homebuilders Association of Raleigh-Wake County
SPECIFIC ACTION REQUESTED:	Approve waiving the Town of Wendell building permit fees totaling $310 for the Operation Coming Home project sponsored by the Home Builders Association of Raleigh-Wake County.

ITEM SUMMARY:

In 2007 a group of local veterans and members from the Home Builders Association of Raleigh-Wake County (HBA) decided to establish a project for severely wounded veterans. The mission of this project is to aid a local military service member who was severely wounded in combat, by fulfilling his/her family desire to live the American Dream of home ownership – thus the creation of Operation: Coming Home (OCH). The program relies on donations and sponsorships of individuals and companies as well as labor and supplies to make this program a success.

The HBA has identified its next Hero Home project in Wendell. The home will be for the surviving family of Russel Radon who was killed while serving our country. The home will be located at 428 Campbell Ridge Place in the McKenzie Meadows neighborhood on Old Zebulon Road. On average, a little over one home a year is built through this program in Wake County. The builder, Pulte Homes, is requesting the Town of Wendell and Wake County waive the building permit fees for this project. As a reminder, Wake County performs the building inspections for the Town of Wendell through a mutual agreement. The fee rate structure for building permits

is set by the Town of Wendell and the Wake County Board of Commissioners.

The Town of Wendell building permit fees for 428 Campbell Ridge Place are $310 and the Wake County fees total $772. The Wake County Board of Commissioners approved the fee waiver at their April 15, 2024 board meeting.

Budgetary impact is minimal and easily covered by the overages in the planning permit revenue lines.

AGENDA ITEM NO. 6.b

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Bryan Coates, Planning
ITEM TYPE:	Agreements/Contracts
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Fifth Amendment to the Agreement for Upgraded Streetlight Services between the Town of Wendell and Wendell Falls Community Association
SPECIFIC ACTION REQUESTED:	Authorize the Town Manager to sign the amended Streetlight Reimbursement Agreement with Wendell Falls

ITEM SUMMARY:

The Town's ordinance requires subdivisions using more than 25 upgraded streetlight fixtures to contract directly with Duke/Progress Energy and request the Town to reimburse them the cost of the standard pole and fixture at the standard spacing. This allows neighborhoods to use more elaborate lighting fixtures without the Town incurring any additional costs beyond what it would normally cover in a typical subdivision.

On May 30, 2018, the Town entered into such an agreement to reimburse Wendell Falls for Streetlight costs associated with Phases SF1, SF2, SF3, and SF13 of their development in the amount of $12,491 (for 95 fixtures).

The first amendment to the agreement, dated April 30, 2019, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by Wendell Falls adjacent to the right-of-way within Phases 5A, 5B, 5C, 5D, 5E, 6A and 6B of their development in the amount of $6,348 (for 49 fixtures).

The second amendment to the agreement, dated March 30, 2021, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by Wendell Falls adjacent to the right-of-way within Phases 5F, 8A, 8B, 8C, 8D, 8E and Big Falls Extension of their development in the amount of $6,863.76 (for 52 fixtures)

The third amendment to the agreement, dated March 28, 2022, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by Wendell Falls adjacent to the right-of-way within Phases 9A, 9B, 9C, 12, 7A and Elk Falls Extension of their development in the amount of $7670.16 (for 57 fixtures)

The fourth amendment to the agreement, dated March 15, 2023, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by Wendell Falls adjacent to the right of way along Taylor Road of their development in the amount of $3,567.36 (for 27 fixtures)

The attached Streetlight Agreement has been amended to include additional fixtures and reimbursement for Phases 7B, 10B, 10C, 10D, 11A and 11B. These additions would cover 148 streetlights and increase the annual reimbursement from $36,940.32 to $61,416.48

As of December 2023, Wendell Falls had 428 residential streetlights covered in the Fifth Amendment.

ATTACHMENTS:
2024.03.14 Fifth Amendment to Wendell Falls & Town of Wendell Agreement
2024.03.14 Comparison between Fourth and Fifth Amendments

Fifth Amendment to the Agreement for Upgraded Streetlight Services by and between The Town of Wendell and Wendell Falls Community Association, Inc.

Version Dated: March 15, 2024

This is the Fifth Amendment ("Fifth Amendment") to the agreement ("Agreement") previously entered into by the parties on or about May 30, 2018 and periodically amended thereafter by and between The Town of Wendell (hereinafter referred to as "TOWN") and Wendell Falls Community Association, Inc. (hereinafter referred to as "WF"), a duly incorporated non-profit association established according to North Carolina law, collectively referred to herein as the "Parties."

WHEREAS, in the original Agreement, WF requested that TOWN allow the installation of an upgraded streetlight system of the adjacent to the public right-of-way within phases SF1, SF2, SF3, and SF13 of the development, a streetlight system that differs from those typically used to meet current TOWN standards;

WHEREAS, the installation of this upgraded streetlight system resulted in a higher monthly charge from DUKE ENERGY PROGRESS, INC., (hereinafter referred to as "DUKE") than for a typical streetlight system meeting TOWN standard for brightness and uniformity of coverage;

WHEREAS, WF sought reimbursement from TOWN and TOWN desired to reimburse WF for the cost of streetlights typically installed by TOWN to meet current TOWN standards;

WHEREAS, TOWN, after reviewing this proposed upgraded streetlight design determined that the installation of such a system would meet or exceed current TOWN standards while not being injurious to the health and well-being of the citizens of TOWN;

WHEREAS, TOWN reserves the right to inspect any streetlight system installed on or adjacent to public right-of-way and to require certification that such system meets or exceeds TOWN'S minimum standards for brightness and uniformity of coverage;

WHEREAS, in the First Amendment to Agreement, dated April 30, 2019, the Parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 5A, 5B, 5C, 5D, 5E, 6A and 6B;

WHEREAS, in the Second Amendment to Agreement, dated March 30, 2021, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 5F, 8A, 8B, 8C, 8D, 8E and Big Falls Extension;

WHEREAS, in the Third Amendment to the Agreement, dated March 15, 2022, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 9A, 9B, 9C, 12, 7A and Elk Falls Extension;

WHEREAS, in the Fourth Amendment to the Agreement, dated March 15, 2023, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Taylor Road Extension;

WHEREAS, during the calendar year 2023, WF has installed additional streetlights adjacent to the right-of-way within Phases 7B, 10B, 10C, 10D, 11A and 11B; and

WHEREAS, TOWN and WF desire to amend the Agreement to provide for reimbursement of WF by TOWN for the monthly charge of the streetlights referred to in the Agreement as well as those added by this Fifth Amendment, namely those installed within Phases 7B, 10B, 10C, 10D, 11A and 11B;

NOW, THEREFORE, IT IS RESOLVED THAT in consideration for the commitments set forth below and for other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1.0 The Recitals above are incorporated herein by reference with the full effect as if fully set out herein.

2.0 WF has entered into an agreement with DUKE to assume responsibility for any and all financial charges associated with this proposed upgraded streetlight system on or adjacent to public right of way.

3.0 The number of streetlights reimbursed by TOWN shall be based on the standard set forth in TOWN's Unified Development Ordinance. At the time of this Agreement, the standard number of streetlights eligible for reimbursement is derived by dividing the total linear feet of publicly dedicated streets within a Phase by 300. In the event of a fraction, the number shall be rounded up to the nearest whole number.

4.0 WF is responsible for paying all the monthly operating charges for the upgraded streetlight system directly to DUKE based upon billing from DUKE to WF.

5.0 It is hereby acknowledged that TOWN will not take over ownership of the upgraded system and TOWN will not be responsible for any monthly payments to DUKE or be involved in any way with the day to day maintenance of the system. WF will be responsible for maintaining the streetlight system in proper working order and repairs will be made to damaged poles in a timely manner.

6.0 By March 15 of each year following approval of this Agreement WF intends to provide documentation to TOWN demonstrating that the total number of streetlights to be reimbursed by TOWN (as referenced in Section 3.0) were installed and operational by the end of the previous fiscal year. Such documentation must include, but is not limited to, copies of bills paid from DUKE for this upgraded system during December of the previous year. Reimbursements from TOWN shall be based on one full calendar year, even if installation occurred mid-year. In the event that WF has not installed the total number of operational streetlights to be reimbursed by TOWN (as referenced in Section 3.0) by December of the previous year, WF must wait an additional year to be eligible to apply for reimbursement.

7.0 Based upon confirmation that the requirements detailed in Section 6.0 have been met, and upon receipt of an invoice dated July 1 or after of the fiscal year, TOWN will reimburse WF for the equivalent cost of a standard streetlight system meeting TOWN'S requirement as specified in the municipal streetlight rate schedule approved by the North Carolina Utilities Commission for the current fiscal year on or after July 1 of the current year. The following approved rates, as applicable to the year of installation, were in effect according to SLS-28A for the fixtures in this Agreement:

2017 Installations:
Phases SF1, SF2, SF 3 and SF13

95 – "LED 75W" fixtures @ $7.53/mo.	**95 x $7.53 = $715.35/mo.**
95 – Gray Fiberglass poles @ $2.71/mo.	**95 x $2.71 = $257.45/mo.**
7% NC Sales Tax	**Subtotal = $972.8/mo. x 7% = $1,040.90/mo.**

2018 Installations:
Phases 5A, 5B, 5C, 5D, 5E, 6A and 6B

49 – "LED 75W" fixtures @ $7.38/mo.	**49 x $7.38 = $361.62/mo.**
49 – Gray Fiberglass poles @$2.71/mo.	**49 x $2.71 = $132.79/mo.**
7% NC Sales Tax	**Subtotal = $494.41/mo. x 7% = $529.02/mo.**

2019 Installations:
Phases 5F, 8A, 8B and Big Falls Extension

29 – "LED 75W" fixtures @ $7.57/mo.	**29 x $7.57 = $219.53/mo.**
29 – Gray Fiberglass poles @$2.71/mo.	**29 x $2.71 = $78.59/mo.**
7% NC Sales Tax	**Subtotal = $298.12/mo. x 7% = $318.99/mo.**

2020 Installations:
Phases 8C, 8D and 8E

23 – "LED 75W" fixtures @ $7.57/mo.	**23 x $7.57 = $174.11/mo.**
23 – Gray Fiberglass poles @$2.71/mo.	**23 x $2.71 = $62.33/mo.**
7% NC Sales Tax	**Subtotal = $236.44/mo. x 7% = $252.99/mo.**

2021 Installations:
Phases 9A, 9B, 9C, 12, 7A and Elk Falls Extension

57 – "LED 75W" fixtures @ $7.41/mo.	**57 x $7.41 = $422.37/mo.**
57 – Gray Fiberglass poles @$3.07/mo.	**57 x $3.07 = $174.99/mo.**
7% NC Sales Tax	**Subtotal = $597.36/mo. x 7% = $639.18/mo.**

2022 Installations:
Taylor Road Extension

27 – "LED 75W" fixtures @ $7.50/mo.	**27 x $7.50 = $202.50/mo.**
27 – Gray Fiberglass poles @$2.79/mo.	**27 x $2.79 = $75.33/mo.**
7% NC Sales Tax	**Subtotal = $277.83/mo. x 7% = $297.28/mo.**

2023 Installations
Phases 7B, 10B, 10C, 10D, 11A and 11B

148 – "LED 75W" fixtures @ $9.24/mo.	**148 x $9.24 = $1,367.52/mo.**
148 – Gray Fiberglass poles @ $3.64/mo.	**148 x $3.64 = $538.72/mo.**
7% NC Sales Tax	**Subtotal = $1,906.24/mo. x 7% = $2,039.68/mo.**

THE TOWN OF WENDELL 2017-2023 ANNUAL
TOTAL REIMBURSEMENT FOR THIS SYSTEM WILL BE:
$5,118.04/mo. x 12 = $61,416.48

8.0 WF hereby releases TOWN from any and all liability or any other responsibility associated with this upgraded streetlight system except as specified in this Agreement.

9.0 TOWN may terminate this agreement for failure of WF to cure a material default after thirty (30) day's written notice of the nature of the default. WF may terminate this Agreement at any time upon thirty (30) day's written notice to TOWN but, in the event of such termination by WF, WF shall assume responsibility for any cost associated with restoring the streetlights to TOWN standards in effect at the time of such termination.

10.0 Intentionally left blank.

11.0 Binding Effect. This Agreement shall be binding upon and enure to the benefit of all of the parties hereto, their agents and their heirs, personal representatives, grantees, successors, and assigns.

12.0 Choice of Law. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Wake County Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

13.0 Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to TOWN by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to TOWN. Contractor understands and agrees that TOWN may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

14.0 Miscellaneous

WF shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. WF represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with TOWN.

This Agreement may be amended only by written agreement of the parties executed by their authorized representatives.

15.0 Audit

The Town of Wendell Finance Department may conduct an audit of WF's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. TOWN or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law.

TOWN agrees to provide Contractor with an opportunity to discuss and respond to any findings before a final audit report is issued. TOWN'S rights under this provision shall survive the termination of this Agreement. TOWN may conduct an audit up to three years after this Agreement terminates.

15.0 E – Verify

WF shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of WF's knowledge, any subcontractor employed by WF as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

16.0 Entire Agreement.

This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, understandings, agreements, letters of intent or otherwise, all of which are of no further force or effect. This Agreement cannot be waived or amended except by written instrument executed by WF and TOWN. Each Party acknowledges that it has not been induced by or relied upon any information, representation, warranties, or statements, whether oral or written, express or implied, made by the other Party or any other person representing or purporting to represent the other Party which are not expressly set forth or provided for in this Agreement.

17.0 No Waiver.

Failure of either Party to insist upon compliance with any provision hereof shall not constitute a waiver of the rights of such Party to subsequently insist upon compliance with that provision or any other provision of this Agreement nor in any way to affect the validity of all or any part of this Agreement. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

18.0 Construction of Agreement.

WF and TOWN acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions, and the effect of all the provisions of this Agreement. WF and TOWN agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or

construing the provisions shall not apply the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the document. Typewritten or handwritten provisions, if any, inserted in this Agreement that are initialed by the Parties shall control over all printed provisions of this Agreement in conflict therewith. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

19.0 Counterparts.

This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties. The delivery of an executed counterpart of this Agreement by facsimile or as a PDF or similar attachment to an email, shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

20.0 Time of Essence.

Time is of the essence as to each provision of this Agreement.

[*Remainder of page left intentionally blank; signature pages to follow.*]

EXECUTED BY THE TOWN MANAGER ON THE

_____ DAY OF _____, 2024.

THE TOWN OF WENDELL

By: _____
MARVIN E. COLLINS
Town Manager

Attest: _____
MARY BETH TEW
Town Clerk

Date: _____

Date: _____

[*Signature page to follow.*]

WENDELL FALLS COMMUNITY ASSOCIATION, INC.

WENDELL FALLS COMMUNITY ASSOCIATION, INC.
a North Carolina Non-profit Corporation

By: _____
Tanya Matzen, President

Date: _____

[*End of document.*]

Fifth Amendment to the Agreement for Upgraded Streetlight Services by and between The Town of Wendell and Wendell Falls Community Association, Inc.

Version Dated: March 15, 2024

This is the Fifth Amendment ("Fifth Amendment") to the agreement ("Agreement") previously entered into by the parties on or about May 30, 2018 and periodically amended thereafter by and between The Town of Wendell (hereinafter referred to as "TOWN") and Wendell Falls Community Association, Inc. (hereinafter referred to as "WF"), a duly incorporated non-profit association established according to North Carolina law, collectively referred to herein as the "Parties."

WHEREAS, in the original Agreement, WF requested that TOWN allow the installation of an upgraded streetlight system of the adjacent to the public right-of-way within phases SF1, SF2, SF3, and SF13 of the development, a streetlight system that differs from those typically used to meet current TOWN standards;

WHEREAS, the installation of this upgraded streetlight system resulted in a higher monthly charge from DUKE ENERGY PROGRESS, INC., (hereinafter referred to as "DUKE") than for a typical streetlight system meeting TOWN standard for brightness and uniformity of coverage;

WHEREAS, WF sought reimbursement from TOWN and TOWN desired to reimburse WF for the cost of streetlights typically installed by TOWN to meet current TOWN standards;

WHEREAS, TOWN, after reviewing this proposed upgraded streetlight design determined that the installation of such a system would meet or exceed current TOWN standards while not being injurious to the health and well-being of the citizens of TOWN;

WHEREAS, TOWN reserves the right to inspect any streetlight system installed on or adjacent to public right-of-way and to require certification that such system meets or exceeds TOWN'S minimum standards for brightness and uniformity of coverage;

WHEREAS, in the First Amendment to Agreement, dated April 30, 2019, the Parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 5A, 5B, 5C, 5D, 5E, 6A and 6B;

WHEREAS, in the Second Amendment to Agreement, dated March 30, 2021, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 5F, 8A, 8B, 8C, 8D, 8E and Big Falls Extension;

WHEREAS, in the Third Amendment to the Agreement, dated March 15, 2022, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Phases 9A, 9B, 9C, 12, 7A and Elk Falls Extension;

WHEREAS, in the Fourth Amendment to the Agreement, dated March 15, 2023, the parties agreed to amend the Agreement to provide for reimbursement of additional streetlights installed by WF adjacent to the right-of-way within Taylor Road Extension;

WHEREAS, during the calendar year 2023, WF has installed additional streetlights adjacent to the right-of-way within Phases 7B, 10B, 10C, 10D, 11A and 11B; and

WHEREAS, TOWN and WF desire to amend the Agreement to provide for reimbursement of WF by TOWN for the monthly charge of the streetlights referred to in the Agreement as well as those added by this Fifth Amendment, namely those installed within Phases 7B, 10B, 10C, 10D, 11A and 11B;

NOW, THEREFORE, IT IS RESOLVED THAT in consideration for the commitments set forth below and for other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1.0 The Recitals above are incorporated herein by reference with the full effect as if fully set out herein.

2.0 WF has entered into an agreement with DUKE to assume responsibility for any and all financial charges associated with this proposed upgraded streetlight system on or adjacent to public right of way.

3.0 The number of streetlights reimbursed by TOWN shall be based on the standard set forth in TOWN's Unified Development Ordinance. At the time of this Agreement, the standard number of streetlights eligible for reimbursement is derived by dividing the total linear feet of publicly dedicated streets within a Phase by 300. In the event of a fraction, the number shall be rounded up to the nearest whole number.

4.0 WF is responsible for paying all the monthly operating charges for the upgraded streetlight system directly to DUKE based upon billing from DUKE to WF.

5.0 It is hereby acknowledged that TOWN will not take over ownership of the upgraded system and TOWN will not be responsible for any monthly payments to DUKE or be involved in any way with the day to day maintenance of the system. WF will be responsible for maintaining the streetlight system in proper working order and repairs will be made to damaged poles in a timely manner.

6.0 By March 15 of each year following approval of this Agreement WF intends to provide documentation to TOWN demonstrating that the total number of streetlights to be reimbursed by TOWN (as referenced in Section 3.0) were installed and operational by the end of the previous fiscal year. Such documentation must include, but is not limited to, copies of bills paid from DUKE for this upgraded system during December of the previous year. Reimbursements from TOWN shall be based on one full calendar year, even if installation occurred mid-year. In the event that WF has not installed the total number of operational streetlights to be reimbursed by TOWN (as referenced in Section 3.0) by December of the previous year, WF must wait an additional year to be eligible to apply for reimbursement.

7.0 Based upon confirmation that the requirements detailed in Section 6.0 have been met, and upon receipt of an invoice dated July 1 or after of the fiscal year, TOWN will reimburse WF for the equivalent cost of a standard streetlight system meeting TOWN'S requirement as specified in the municipal streetlight rate schedule approved by the North Carolina Utilities Commission for the current fiscal year on or after July 1 of the current year. The following approved rates, as applicable to the year of installation, were in effect according to SLS-28A for the fixtures in this Agreement:

2017 Installations:
Phases SF1, SF2, SF 3 and SF13

95 – "LED 75W" fixtures @ $7.53/mo.	**95 x $7.53 = $715.35/mo.**
95 – Gray Fiberglass poles @ $2.71/mo.	**95 x $2.71 = $257.45/mo.**
7% NC Sales Tax	**Subtotal = $972.8/mo. x 7% = $1,040.90/mo.**

2018 Installations:
Phases 5A, 5B, 5C, 5D, 5E, 6A and 6B

49 – "LED 75W" fixtures @ $7.38/mo.	**49 x $7.38 = $361.62/mo.**
49 – Gray Fiberglass poles @$2.71/mo.	**49 x $2.71 = $132.79/mo.**
7% NC Sales Tax	**Subtotal = $494.41/mo. x 7% = $529.02/mo.**

2019 Installations:
Phases 5F, 8A, 8B and Big Falls Extension

29 – "LED 75W" fixtures @ $7.57/mo.	**29 x $7.57 = $219.53/mo.**
29 – Gray Fiberglass poles @$2.71/mo.	**29 x $2.71 = $78.59/mo.**
7% NC Sales Tax	**Subtotal = $298.12/mo. x 7% = $318.99/mo.**

2020 Installations:
Phases 8C, 8D and 8E

23 – "LED 75W" fixtures @ $7.57/mo.	**23 x $7.57 = $174.11/mo.**
23 – Gray Fiberglass poles @$2.71/mo.	**23 x $2.71 = $62.33/mo.**
7% NC Sales Tax	**Subtotal = $236.44/mo. x 7% = $252.99/mo.**

2021 Installations:
Phases 9A, 9B, 9C, 12, 7A and Elk Falls Extension

57 – "LED 75W" fixtures @ $7.41/mo.	**57 x $7.41 = $422.37/mo.**
57 – Gray Fiberglass poles @$3.07/mo.	**57 x $3.07 = $174.99/mo.**
7% NC Sales Tax	**Subtotal = $597.36/mo. x 7% = $639.18/mo.**

2022 Installations:
Taylor Road Extension

27 – "LED 75W" fixtures @ $7.50/mo.	**27 x $7.50 = $202.50/mo.**
27 – Gray Fiberglass poles @$2.79/mo.	**27 x $2.79 = $75.33/mo.**
7% NC Sales Tax	**Subtotal = $277.83/mo. x 7% = $297.28/mo.**

2023 Installations
Phases 7B, 10B, 10C, 10D, 11A and 11B

148 – "LED 75W" fixtures @ $9.24/mo.	**148 x $9.24 = $1,367.52/mo.**
148 – Gray Fiberglass poles @ $3.64/mo.	**148 x $3.64 = $538.72/mo.**
7% NC Sales Tax	**Subtotal = $1,906.24/mo. x 7% = $2,039.68/mo.**

THE TOWN OF WENDELL 2017-2023 ANNUAL
TOTAL REIMBURSEMENT FOR THIS SYSTEM WILL BE:
$5,118.04/mo. x 12 = $61,416.48

8.0 WF hereby releases TOWN from any and all liability or any other responsibility associated with this upgraded streetlight system except as specified in this Agreement.

9.0 TOWN may terminate this agreement for failure of WF to cure a material default after thirty (30) day's written notice of the nature of the default. WF may terminate this Agreement at any time upon thirty (30) day's written notice to TOWN but, in the event of such termination by WF, WF shall assume responsibility for any cost associated with restoring the streetlights to TOWN standards in effect at the time of such termination.

10.0 Intentionally left blank.

11.0 Binding Effect. This Agreement shall be binding upon and enure to the benefit of all of the parties hereto, their agents and their heirs, personal representatives, grantees, successors, and assigns.

12.0 Choice of Law. All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action related to the Agreement shall be Wake County Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

13.0 Applicability of North Carolina Public Records Law

Notwithstanding any other provisions of this Contract, this Contract and all materials submitted to TOWN by the Contractor are subject to the public records laws of the State of North Carolina and it is the responsibility of the Contractor to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to TOWN. Contractor understands and agrees that TOWN may take any and all actions necessary to comply with federal, state, and local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Contract. To the extent that any other provisions of this Contract conflict with this paragraph, the provisions of this section shall control.

14.0 Miscellaneous

WF shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. WF represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with TOWN.

This Agreement may be amended only by written agreement of the parties executed by their authorized representatives.

15.0 Audit

The Town of Wendell Finance Department may conduct an audit of WF's financial, performance and compliance records maintained in connection with the operations and services performed under this Agreement. TOWN or its designee may conduct such audits or inspections throughout the term of this Agreement and for a period of three years after final payment or longer if required by law.

TOWN agrees to provide Contractor with an opportunity to discuss and respond to any findings before a final audit report is issued. TOWN'S rights under this provision shall survive the termination of this Agreement. TOWN may conduct an audit up to three years after this Agreement terminates.

15.0 E – Verify

WF shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C.G.S. §64-25 et seq. In addition, to the best of WF's knowledge, any subcontractor employed by WF as a part of this contract shall be in compliance with the requirements of E-Verify and N.C.G.S. §64-25 et seq.

16.0 Entire Agreement.

This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof and supersedes any and all prior or contemporaneous negotiations, understandings, agreements, letters of intent or otherwise, all of which are of no further force or effect. This Agreement cannot be waived or amended except by written instrument executed by WF and TOWN. Each Party acknowledges that it has not been induced by or relied upon any information, representation, warranties, or statements, whether oral or written, express or implied, made by the other Party or any other person representing or purporting to represent the other Party which are not expressly set forth or provided for in this Agreement.

17.0 No Waiver.

Failure of either Party to insist upon compliance with any provision hereof shall not constitute a waiver of the rights of such Party to subsequently insist upon compliance with that provision or any other provision of this Agreement nor in any way to affect the validity of all or any part of this Agreement. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

18.0 Construction of Agreement.

WF and TOWN acknowledge that they have read, understand, and have had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, restrictions, and the effect of all the provisions of this Agreement. WF and TOWN agree to the enforcement of any and all of these provisions and execute this Agreement with full knowledge of these provisions. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or

construing the provisions shall not apply the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the document. Typewritten or handwritten provisions, if any, inserted in this Agreement that are initialed by the Parties shall control over all printed provisions of this Agreement in conflict therewith. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

19.0 Counterparts.

This Agreement may be executed in separate counterparts. It shall be fully executed when each Party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties. The delivery of an executed counterpart of this Agreement by facsimile or as a PDF or similar attachment to an email, shall constitute effective delivery of such counterpart for all purposes with the same force and effect as the delivery of an original, executed counterpart.

20.0 Time of Essence.

Time is of the essence as to each provision of this Agreement.

[*Remainder of page left intentionally blank; signature pages to follow.*]

EXECUTED BY THE TOWN MANAGER ON THE

_____ DAY OF _____, 2024.

THE TOWN OF WENDELL

By: _____
MARVIN E. COLLINS
Town Manager

Attest: _____
MARY BETH TEW
Town Clerk

Date: _____

Date: _____

[*Signature page to follow.*]

WENDELL FALLS COMMUNITY ASSOCIATION, INC.

WENDELL FALLS COMMUNITY ASSOCIATION, INC.
a North Carolina Non-profit Corporation

By: _____
Tanya Matzen, President

Date: _____

[*End of document.*]

AGENDA ITEM NO. 6.c

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Jeff Polaski, Parks and Rec
ITEM TYPE:	Street Closure
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Request to Temporarily Close a Portion of North Main Street for the Upcoming ProTown BMX Event
SPECIFIC ACTION REQUESTED:	Motion to approve the Temporary Closing of North Main Street for the ProTown BMX Event with authorization granted on either the scheduled date or the potential rain date
ITEM SUMMARY:	ProTown BMX is a bike stunt team out of Greenville, NC that has performed all over the world. They will perform two shows on Saturday, May 18, 2024. Shows are at 11:00am and 2:00pm. Each show would follow up with an autograph session and free riding clinics. In the event of inclement weather, the rain date is Sunday, May 19, 2024 with shows at 11:00am and 2:00pm. North Main Street would be closed from Third Street to the railroad tracks from 9:30am-5:00pm. Public Works will provide the street barricades and cones for this event with delivery on the Friday before the activity. The Parks and Recreation Department will submit the sound permit as well as staff the event. All of Main Street vendors will be contacted about this event.

ATTACHMENTS:
ProTown BMX Street Closure 2024

Town of Wendell
Street Closing Application

CONTACT INFORMATION

Name of Organization: Wendell Parks & recreation	Name of Event Coordinator: Jeff Polaski
Email Address: jpolaski@townofwendellnc.gov	Phone Number: 919-366-2266
Address: 409 Landing View Dr	City, State, Zip Code: Wendell, NC 27591

EVENT INFORMATION:

What is the event: ProTown BMX		
Types of activities during the event: Bike stunt show		
Date of Closure: May 18, 2024	Set-up Time Begins: 9:30am	Time Event Begins: 11:00am
Time Event Ends: 4:00pm	Clean-up time Ends: 5:00pm	Estimated Attendance: 500
Requirement of Town barricades and/or cones are at the discretion of staff. If required, an additional $25 fee will be due for approval.		

EVENT LOCATION:

Street(s): Main Street	Block: Between the railroad tracks and Third St

Street Closing Requirements:
The Town of Wendell is committed to supporting the activities among residents, provided certain guidelines are observed to ensure the safety of participants and to preserve the Town's ability to protect its citizens and assets. The following guidelines are established to achieve these goals:

- Review of the request begins when a completed application, $15 application fee, and $25 cone fee [if applicable] are received.
  - Application fee is non-refundable.
  - Upon approval of request, the barricades and cones will be scheduled for delivery.
- Event organizer is responsible for contacting and receiving permission from adjoining businesses or neighbors adjacent to the request.
- Sound permit is required for the amplification of music and sound, including mega-phones.
- Approval may be required for all commercial food vendors by Wake County Environmental Services. Contact 919-856-6609 for details.
- Alcohol is prohibited on outdoor Town property without special permission from the Town of Wendell Board of Commissioners, except for the following locations: Campen Row & Town Square. Permission may be granted by the Town Manager placing an item on the agenda for an upcoming Board Meeting for Board action. Police attendance, additional insurance and all associated fees are required for any event serving alcohol.
- Event organizers must maintain a fourteen (14) foot lane on all blocked streets for emergency vehicle access.
- Weights such as water barrels or cement buckets must be used for anchoring temporary tents. **Stakes are not permitted.**
- All trash and recycling must be promptly removed at the conclusion of the event.
- All barricades must be monitored. Event organizers shall be required to move barricades in the case of an emergency.
- Major street closures will require Board approval at a regularly scheduled Board Meeting.

Event Organizer Certification:
I hereby certify that I have read and understand the above requirements for this Street Closing Request; the information given in this application is correct to the best of my knowledge. Event organizer agrees to indemnify and hold harmless the Town of Wendell for any and all liability arising from the event.

Signed: Jeffrey A Polaski Date: 4/11/24

Print Name: Jeffrey A Polaski

Please submit completed application and application fee payment to:
Town of Wendell
Attn: Assistant to the Town Manager
15 E Fourth Street
Wendell, NC 27592
Phone: 919.365.4450
Fax: 919.366.1462
You will be notified when the permit is approved or denied.

Staff Use

Payment received by: _____ Amount of Payment: _____ Date: _____

_____ Town Manager	Approved: Yes ☐ No ☐ Date: _____	Note(s):

Date of Notifications: ☐ Police ☐ Public Works ☐ Finance ☐ Event Organizer

_____ _____ _____ _____ _____

AGENDA ITEM NO. 6.d

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Jeff Polaski, Parks and Rec
ITEM TYPE:	RFP/RFQ
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Decision to Approve Rankings and Authorize the Town Manager to Negotiate a Contract for the Request for Qualification (RFQ) #2024-06 for Design Services for the Wendell Athletic Field Complex Project with CHA Consulting
SPECIFIC ACTION REQUESTED:	Motion to accept the rankings for RFQ #2024-06 and authorize the Town Manager to negotiate a contract for professional design services for the Wendell Athletic Field Complex Project
ITEM SUMMARY:	Staff issued RFQ #2024-06 for Professional Design Services for the Wendell Athletic Field Complex Project and requested responses by 2:00pm on February 19, 2024. The Town received seven (7) responses to the RFQ by the deadline. Staff reviewed the submissions and ranked the responses based on the submittal requirements in the RFQ document (see Attachment A). Following the scoring process, staff interviewed the top 4 firms and ranked the submissions in the following order: 1. CHA Consulting 2. Kimley-Horne 3. McAdams 4. WithersRavenel Upon approval, staff will negotiate design/build services and return the agreed contract to the Board for approval. The FY 2024 Budget provides funding from the Bond Proceeds in the amount of $813,165 for the design of the Wendell Athletic Field Complex Project. Design would continue through FY 2025 and the construction of the facility in FY 2026. The project is funded by Wake County Tourism Funds and Town of Wendell Recreation Bond Funds.

ATTACHMENTS:
Wendell Athletic Field Complex RFQ Scoresheet

Town of Wendell, 409 Landing View Drive, Wendell, NC 27591
919-365-4450
www.townofwendellnc.gov

Wendell Athletic Field Complex RFQ Scoresheet

Name: _____

Category	Total Score	ESP	McAdams	Kimley-Horn	CHA	WithersRavenel	Benesch	Surface 678
The firm's recent experience, knowledge, and familiarity in conducting similar projects and the firm's demonstrated ability in master plans and design incorporating the client's preferences.	15							
The successful experience of the staff to be assigned to this project to perform the type of work required within the budget established by the Wendell electedofficials and with minimal to no change orders.	15							
Adequate staff and/or consultant team in order to meet a time schedule established for the work including current workload.	15							
Proposed design approach for the projects.	15							
The firm's ethical and professional standing and satisfactory performance on previous contracts including a positive client relationship, commitment to the project budget, no major legal or technical problems and sufficient supervision of the construction project.	15							
The firm's financial ability to undertake the work and assure the liability as well as adequacy of an accounting system to identify costs chargeable to the project.	15							
Any other factors that may be applicable for this project.	10							
Total Score	100							

AGENDA ITEM NO. 6.e

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Matt Garner, Administration
ITEM TYPE:	Resolutions
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Resolution for the Exchange of Properties for the Old Town Hall Properties
SPECIFIC ACTION REQUESTED:	Motion to table the decision to adopt the resolution for the exchange of property for the Old Town Hall properties until the May 8, 2024 Board of Commissioners meeting
ITEM SUMMARY:	Staff requests the Board to make a motion to Table this item until the May 8, 2024 meeting to allow revisions requested by both parties to be made. Per Statute, and with advice of the Town Attorney, the item was provided public notice for the exchange of public property and should remain on this agenda prior to continuing the decision to the next meeting. The draft resolution (attached) executes the disposal of the former Town Hall site in exchange for two properties on Fourth Street as well as $44,442.00. The former Town Hall Site includes the Town Hall building and property as well as the two adjacent parcels utilized currently for parking which totals approximately 0.67 combined acres having a combined appraised value of $602,010. The property in exchange consists of 7 N Oakwood Avenue which is the current Park'n'Ride lot valued at $278,784 and 107 W Fourth Street which is currently used by Universal Chevrolet as overflow parking and is valued at $278,784. The two properties along with $44,442 in an additional cash payment is equivalent to the value of the Town Hall Site.

ATTACHMENTS:
RESOLUTION - Property Exchange (Old Town Hall & Parking Lots)

RESOLUTION OF THE BOARD OF COMMISSIONERS
OF THE TOWN OF WENDELL
AUTHORIZING THE EXCHANGE OF REAL PROPERTY

WHEREAS, the Town of Wendell is the owner of the real properties known as 15 E Fourth Street (PIN 1784701560, REID No. 0103513; PIN 1784701660, REID 0075569 and PIN 1784701663, REID 0087093) which is approximately 0.67 combined acres having a combined appraised value of $602,010 (referred to as the "Former Town Hall Property"); and

WHEREAS, White Brothers and G&W LLC, are the owners of the real property known as 7 N Oakwood Avenue, (PIN 1784705208; REID No. 0009581) which is approximately 0.4 acres having an appraised value of $278,784 (referred to as the "First Exchange Property); and

WHEREAS, G&W LLC is the owner of the real property known as 107 W Fourth Street, (PIN 1784603383; REID No. 0051524) which is approximately 0.40 acres having an appraised value of $278,784 (referred to as the "Second Exchange Property"); and

WHEREAS, the property owned by the Town is considered surplus and is not needed for any municipal purpose; and

WHEREAS, the respective owners thereof desire to exchange the Former Town Hall Property for the First and Second Exchange Properties together with a cash payment to the Town by the owners of the First and Second Exchange Properties in the sum of $44,442.00; and

WHEREAS, notice of the proposed exchange was duly published in *The Wake Weekly* newspaper; and

WHEREAS, the public notice invited individuals to submit objections, if any, to this exchange of real property, more than ten (10) days lapsed since the notice was published and no one has offered such an objection and the Board of Commissioners desires to confirm and approve the exchange.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF WENDELL THAT:

1. The exchange of the hereinabove described Former Town Hall Property for the First and Second Exchange Properties together with the payment of cash consideration to the Town in the sum of $44,442.00 is hereby authorized.

2. White Brothers and G&W, LLC shall deliver to the Town of Wendell a deed conveying all rights, title and interest in the First Exchange Property.

3. G&W, LLC shall deliver to the Town of Wendell a deed conveying all rights, title and interest in the Second Exchange Property.

4. White Brothers and G&W, LLC shall deliver to the Town of Wendell the sum of $44,442.00 at closing.

5. The Town Attorney shall cause a deed to be prepared from the Town of Wendell to White Brothers and G&W, LLC, conveying all rights, title and interest in the Former Town Hall Property.

6. The Mayor, Manager and Town Clerk shall execute such documents as may be necessary on behalf of the Town of Wendell to accomplish this transaction.

DULY ADOPTED this 22nd day of April, 2024.

TOWN OF WENDELL

_____
Virginia R. Gray, Mayor

ATTEST:

_____
Mary Beth Tew, Town Clerk

(SEAL)

AGENDA ITEM NO. 6.f

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Marvin Collins, Administration
ITEM TYPE:	Policies
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Amendment of Policy 100: Town of Wendell Personnel Policies
SPECIFIC ACTION REQUESTED:	Motion to adopt the recommended amendments to the Town of Wendell Personnel Policy

ITEM SUMMARY:

After review of the Town of Wendell Personnel Policy, there are several changes that are recommended to bring the policy up to current standards, as well as alignment with best practices. The proposed changes support the continued policy of the Town to put our people first and provide a regular review of policies and procedures that provide the framework for a healthy workplace and workforce.

As reported to the Board at the April 8, 2024 meeting, the Policy amendment will be presented to at the April 22, 2024 meeting for adoption.

An overview of the changes is outlined below:

- Adjusting the law enforcement hours to be more in alignment to the equivalent of a standard 40-hour per week full-time employee (Article 1, Section 11).
- Clarification that the Position and Classification Plan is available in the Budget document published publicly each year (Article 2, Section 5).
- The addition of drug screening criteria, to be in

alignment with current best practices (Article 4, Section 4).
- Additional clarification around promotions (Article 4, Section 6).
- The adjustment of the workweek to Monday – Sunday, previously listed as Friday – Thursday (Article 5, Section 1).
- Re-write of the Harassment Policy following an all-employee training and legal review (Article 5, Section 5).
- Removal of provisions for employees hired prior to September 20, 1994, as it is no longer relevant (Article 6, Section 2).
- The addition of the Wendell Lifestyle Benefit Account (LBA) provides a new, flexible benefit for employees from a progressive menu of eligible expenses (Article 6, Section 10).
- The addition of the Dependent Fee Waiver Benefit for Parks and Recreation Programs waiving Town program fees for the dependents of employees for certain programs (Article 6, Section 11).
- The addition of Juneteenth to the approved list of holidays (Article 7, Section 2).
- The revision of the vacation leave benefit to allow the payment of up to 40 hours of unused vacation leave to employees rather than just rolling the hours into sick leave (Article 7, Section 3 under Maximum Accumulation).
- An expansion of the ability for employees to donate sick leave (Article 7, Section 4).
- The addition of a new leave entitled Caregiver Leave that provides up to 8 weeks of paid leave for eligible live events for the care of an immediate family member including the birth, adoption, foster care placement, or elder care (Article 7, Section 13).
- Removal of specific prices related to travel expenses, and reference to the State per diem rates (Article 11, Section 3).

The remaining edits throughout the document are administrative, with the sole purpose of providing clear and concise information, without the adjustment of the policy rules.

While not exhaustive, the updates provide a start and represent the initiation of an annual process to review the

policy and provide for its regular update to ensure legal compliance and its purpose as a meaningful policy guide for those in service to the Wendell community. Any additional changes to its final form will be to correct scrivener's error and formatting.

ATTACHMENTS:
100 - Personnel Policy Reformatted - Final Draft for 4-22-24

TOWN OF WENDELL

PERSONNEL POLICY



Effective: ~~May~~ April 22, 2024~~3~~
Supersedes: ~~February 28~~May 22, 2023~~2~~
Policy Number: 100

Style Definition: TOC 1: Tab stops: 6.69", Right,Leader: …

Style Definition: TOC 2: Tab stops: 6.69", Right,Leader: …

TOWN OF WENDELL
PERSONNEL POLICY

ARTICLE I. GENERAL PROVISIONS ..... 5~~5~~1
Section 1. Purpose of the Policy ..... 5~~5~~1
Section 2. At Will Employment ..... 5~~5~~1
Section 3. Merit Principle ..... 5~~5~~1
Section 4. Role of the Board of Commissioners ..... 6~~6~~2
Section 5. Role of The Town Manager ..... 6~~6~~2
Section 6. Role of the Human Resources Officer ..... 7~~7~~3
Section 7. Application of Policies, Plan, Rules and Regulations ..... 7~~7~~3
Section 8. Departmental Policies ..... 8~~8~~4
Section 9. Tobacco Use in the Workplace Policy ..... 8~~8~~4
Section 10. Conflict with Federal and State Law ..... 8~~8~~4
Section 11. Definitions ..... 8~~8~~4
ARTICLE II. POSITION CLASSIFICATION PLAN ..... 10~~10~~6
Section 1. Purpose ..... 10~~10~~6
Section 2. Composition of the Position Classification Plan ..... 10~~10~~6
Section 3. Use of the Position Classification Plan ..... 10~~10~~6
Section 4. Administration of the Position Classification Plan ..... 10~~10~~6
Section 5. Authorization of New Positions and the Position Classification Plan ..... 11~~11~~7
Section 6. Request for Reclassification ..... 11~~11~~7
ARTICLE III. POSITION MANAGEMENT AND PAY ADMINISTRATION ..... 12~~12~~8
Section 1. Definition ..... 12~~12~~8
Section 2. Administration and Maintenance ..... 12~~12~~8
Section 3. Starting Salaries ..... 12~~12~~8
Section 4. Trainee Designation and Provisions ..... 13~~13~~9
Section 6. Performance Pay ..... 13~~13~~9
Section 7. Performance Pay Bonus ..... 13~~13~~9
Section 8. Salary Effect of Promotions, Demotions, Transfers and Reclassifications ..... 13~~13~~9
Section 9. Effective Date of Salary Changes ..... 14~~14~~10
Section 10. Compensatory Time Provisions – Non-Exempt Personnel ..... 14~~14~~10
Section 11. Compensatory Time Provisions – Exempt Personnel ..... 15~~15~~11
Section 12. Call-back and Stand-by Pay ..... 15~~15~~11
Section 13. Payroll Deductions ..... 16~~16~~12
Section 14. Hourly Rate of Pay ..... 16~~16~~12
Section 15. Pay for Interim Assignment in a Higher Level Classification ..... 16~~16~~12
Section 16. Longevity Pay ..... 16~~16~~12
Section 17. Pay Periods ..... 17~~17~~13
Section 18. Pay Upon Termination ..... 17~~17~~13
ARTICLE IV. RECRUITMENT AND EMPLOYMENT ..... 18~~18~~14
Section 1. Equal Employment Opportunity Policy ..... 18~~18~~14
Section 2. Implementation of Equal Employment Opportunity Policy ..... 18~~18~~14
Section 3. Recruitment, Selection and Appointment ..... 18~~18~~14
Section 4. Drug-Free Workplace, Substance Abuse and Drug Testing ..... 19~~19~~15
Section 5. Probationary Period ..... 23~~23~~15
Section 6. Promotion ..... 24~~24~~16

Section 7. Demotion 242416
Section 8. Transfer 242416
ARTICLE V. CONDITIONS OF EMPLOYMENT 262617
Section 1. Work Schedule 262617
Section 2. Political Activity 262617
Section 3. Outside Employment 262617
Section 4. Employment of Relatives 272718
Section 5. Harassment 272718
Section 6. Acceptance of Gifts and Favors 312819
~~**Section 7. Performance Evaluation** ..... 322819~~
Section 87. Safety 322819
Section 98. Direct Deposit 322920
Section 109. Use of Town Supplies and Equipment 322920
Section 1110. Code of Ethics 333020
Section 1211. Solicitation 333021
Section 1312. Identification 333021
Section 1413. Criminal Record and Credit Reports Required 343021
Section 1514. Compliance with Americans with Disabilities Act (ADA) 343122
Section 1615. Notification of Employment 343122
Section 1716. Driver's License 353122
Section 1817. Dress Code 353223
ARTICLE VI. EMPLOYEE BENEFITS 363324
Section 1. Eligibility 363324
Section 2. Group Health and Hospitalization Insurance 363324
Section 3. Group Life Insurance 373325
Section 54. Retirement 373425
Section 65. Supplemental Retirement Benefits 373425
Section 76. Social Security 373425
Section 87. Workers' Compensation 373425
Section 98. Unemployment Compensation 383526
Section 109. Tuition Assistance Program 383526
Section 10. Wendell Lifestyle Benefit Account (LBA) 39
Section 11. Dependent Fee Waiver Benefit for Parks and Recreation Programs 39
ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE 403628
Section 1. Policy 403628
Section 2. Holidays 403628
~~Section 3. Holidays: Effect on Other Types of Leave ..... 403629~~
~~Section 4. Holidays: Compensation When Work is Required or Regularly Scheduled Off for Shift Personnel ..... 403629~~
Section 53. Vacation Leave 403629
~~Section 6. Vacation Leave: Use by Probationary Employees ..... 413729~~
~~Section 7. Vacation Leave: Accrual Rate ..... 413729~~
~~Section 8. Vacation Leave: Maximum Accumulation ..... 413730~~
~~Section 9. Vacation Leave: Manner of Taking ..... 423730~~
~~Section 10. Vacation Leave: Payment upon Separation or Retirement ..... 423830~~
~~Section 11. Vacation Leave: Payment upon Death ..... 423831~~
Section 124. Sick Leave 423831

Formatted: Font: 12 pt, Check spelling and grammar, Ligatures: None

Formatted: Normal

Section 13. Sick Leave: Accrual Rate, Accumulation, and Manner of Taking 423831
Section 14. Transfer of Sick Leave from Previous Employer 433933
Section 15. Sick Leave: Medical Certification 433933
Section 16Section 5. Donation of Sick Leave to Other Employees 443933
Section 176. Leave Pro-rated 444035
Section 187. Extended Medical Leave 444035
Section 19. Leave Certification 474337
Section 20. Leave Without Pay 474337
Section 21. Extended Medical Leave and Leave Without Pay: Retention and Continuation of Benefits 484338
Section 228. Workers' Compensation Leave 484438
Section 239. Military Leave 494439
Section 24. Reinstatement Following Military Service 494539
Section 2510. Civil Leave 494540
Section 2611. Community Service Leave 504540
Section 2712. Educational Leave 504640
Section 2813. Adverse Weather and Emergency Conditions 504640
Section 2914. Bereavement Leave 504641
Section 3015. Return of Town Equipment While in Leave Status 514741
Section 16. Caregiver Leave 51
ARTICLE VIII. SEPARATION AND REINSTATEMENT 534842
Section 1. Types of Separations 534842
Section 2. Resignation 534842
Section 3. Reduction in Force 534842
Section 4. Disability 534842
Section 5. Voluntary Retirement 534844
Section 6. Death 544944
Section 7. Dismissal 544944
Section 8. Reinstatement 544944
ARTICLE IX. DISCIPLINARY ACTION 555045
Section 1. Disciplinary Actions 555045
Section 2. Disciplinary Action for Failure in Performance of Duties: Progressive Steps 555045
Section 3. Disciplinary Action for Inappropriate Personal Conduct 565146
Section 4. Role of the Human Resources Officer in Disciplinary Actions 565146
Section 5. Disciplinary Action Conference 565146
Section 6. Non-Disciplinary Suspension 575247
ARTICLE X. GRIEVANCE PROCEDURE 585348
Section 1. Policy 585348
Section 2. Grievance Defined 585348
Section 3. Purposes of the Grievance Procedure 585348
Section 4. Grievance Process 595449
Section 5. Role of the Human Resources Officer 605551
ARTICLE XI. TRAVEL EXPENSES 615652
Section 1. Policy 615652
Section 2. Travel by Personal Auto 615652
Section 3. Travel Related Expenses 615652

Formatted: Font: 12 pt, Check spelling and grammar, Ligatures: None

Formatted: Normal

ARTICLE XII. INFORMATION TECHNOLOGY POLICY 635854
Section 1. Purpose.....63
Section 2. Overview.....63
Section 3. Applicability.....63
Section 4. Definitions.....63
Section 5. Proper Use of Town Technology Resources.....64
Section 6. Proper Use of Electronic Mail Resources.....65
Section 7. Proper Use of Telecommunications Resources.....65
Section 8. Technology.....66
Section 9. Improper Use.....67
Section 10. Downloaded Materials.....67
Section 11. Right to Monitor.....67
Section 12. Misuse Reporting.....68
Section 13. Enforcement and Exception Handling.....68
Section 14. Password Policy.....68
ARTICLE XIII. RECORDS AND REPORTS 706561
Section 1. Public Information 706561
Section 2. Access to Confidential Records 706562
Section 3. Personnel Actions 716662
Section 4. Records of Former Employees 716663
Section 5. Remedies of Employees Objecting to Material in File 716663
Section 6. Examining and/or Copying Confidential Material without Authorization 716663
Section 7. Destruction of Records Regulated 716663
ARTICLE XIV. IMPLEMENTATION OF POLICIES 726764
Section 1. Conflicting Policies Repealed 726764
Section 2. Separability 726764
Section 3. Effective Date 726764
Section 4. Amendments 726764

Formatted: Font: 12 pt, Check spelling and grammar, Ligatures: None

Formatted: Normal

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Formatted: Font: Not Bold

ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose of the Policy

It is the purpose of this policy, and the rules and regulations set forth, to establish a fair and uniform system of personnel administration for all employees of the Town under the supervision of the Town Manager. This policy is established under authority of Chapter 160A, Article 7, of the General Statutes of North Carolina.

The policies included in this *Personnel Policy* shall apply to all appointed employees of the Town unless otherwise noted. That shall include all regular, temporary, probationary, full-time and part-time employees. No department of the Town may establish rules, operating procedures, etc., that are inconsistent or in conflict with these policies.

All employees will be provided with a copy of the *Personnel Policy* upon employment and at other such times as deemed appropriate by the Town Manager. Employees will be required to sign a statement indicating receipt of a copy of the manual. Other policy statements either adopted in this manual or policies adopted subsequent to adoption of this manual may require an employee's signature.

Throughout the manual the personal pronoun "his" or "he" is used to refer to Town employees. Such reference is intended to refer to both males and females and does not imply gender preference or discrimination.

Section 2. At Will Employment

The issuance of this manual in no way establishes a contractual relationship with employees, either expressed or implied. Employees are considered to be employed "at will" and may be disciplined and/or dismissed for any reason within the sole discretion of the Town. The Town reserves the unrestricted right to administer discipline in the manner it deems appropriate and may modify or eliminate any of the requirements of this manual. Nothing stated in this manual guarantees an employee any vested rights as benefits and policies are subject to change without notification. No person has the authority to grant any employee any contractual rights of employment.

Section 3. Merit Principle

All appointments and promotions shall be made solely on the basis of merit. All positions requiring the performance of the same duties and fulfillment of the same responsibilities shall, to the extent possible, be assigned to the same class and the same salary range. No applicant for employment or employee shall be deprived of employment opportunities or otherwise adversely affected as an employee because of such individual's race, color, religion, sex, national origin, political affiliation, non-disqualifying disability, or age.

Section 4. Role of the Board of Commissioners

It is the responsibility of the Board of Commissioners to approve policies to govern employment with the Town. At such time it is deemed necessary by the Board, or upon the recommendation of the Town Manager, the Board may amend, delete, or add policies. The establishment and approval of personnel policies rests solely with the Board of Commissioners.

The Board of Commissioners shall require a manual to be developed, in typewritten or electronic form, and to be issued to each employee. The Board of Commissioners shall also require the manual to be periodically updated and maintained as needed and to provide such updates to employees in a timely fashion.

Section 5. Role of The Town Manager

It is the responsibility of the Town Manager to administer the personnel policies and to provide interpretation of policies as needed. While it is not the responsibility of the Town Manager to establish policies, it is the Town Manager's duty to make recommendations to the Board of Commissioners regarding policies that need amendment or new policies that need to be created and to interpret policies as necessary.

All matters dealing with personnel shall be directed to the Town Manager who shall maintain or delegate the maintenance of a complete system of personnel files and records. The Town Manager is responsible for causing the *Personnel Policy* to be developed and maintained with timely distribution to the employees.

The Town Manager will, on occasion, need to interpret the application of policies. The Town Manager has the authority to make such interpretations and to use discretion whenever needed or indicated. The Town Manager may also allow exceptions to or modification of the rules in those situations where such authorization is not specifically noted in policy. The Town Manager is the appointing authority for the Town and therefore has the authority to establish conditions of employment.

In some instances, policy statements may refer to the Town Manager or "designee". The Town Manager has the authority under these policies to designate authority to another employee to take actions specified in the policy.

The Town Manager shall:

- Recommend rules and revisions to the personnel system to the Board of Commissioners for consideration;
- Make changes as necessary to maintain an up to date and accurate position classification plan and recommend necessary revisions to the pay plan;
- Determine which employees shall be subject to the overtime provisions of the Fair Labor Standards Act (FLSA);
- Appoint an employee to the role of Human Resources Officer; in the absence of a

Human Resources Officer, the Town Manager shall fulfill the role.

Section 6. Role of the Human Resources Officer

The responsibilities of the Human Resources Officer are:

- Recommend rules and revisions to the personnel system to the Town Manager for consideration;
- Recommend changes as necessary to maintain an up to date and accurate position classification plan;
- Recommend necessary revisions to the pay plan;
- Recommend which employees shall be subject to the overtime provisions of FLSA;
- Maintain a roster of all persons in the municipal service;
- Establish and maintain a list of authorized positions in the municipal service at the beginning of each budget year which identifies each authorized position, class title of position, salary range, any changes in class title and status, position number and other such data as may be desirable or useful;
- Develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- Develop and coordinate training and educational programs for Town employees;
- Investigate periodically the operation and effect of the personnel provisions of this policy;
- Perform such other duties as may be assigned by the Town Manager not inconsistent with this policy;
- Maintain all records and files related to human resources management and act as custodian of the same.

Section 7. Application of Policies, Plan, Rules and Regulations

The personnel policy and all rules and regulations adopted pursuant thereto shall be binding on all Town employees. The Town Manager, Town Attorney, members of Board of Commissioners and Advisory Boards and Commissions will be exempted except in sections where specifically included. An employee violating any of the provisions of this policy shall be subject to appropriate disciplinary action, as well as prosecution under any civil or criminal laws which have been violated.

The terms and conditions herein stated in this *Personnel Policy* shall become effective immediately upon approval by the Board of Commissioners. All other policies previously in effect shall be repealed with the approval of these policies.

Section 8. Departmental Policies

Because of the particular personnel and operational requirements of the various departments of the Town, each department is authorized to establish supplemental, written policies applicable only to the personnel of that department. All such policies shall be subject to the approval of the Town Manager and shall not in any way conflict with the provisions of this policy but shall be considered as a supplement.

Section 9. Tobacco Use in the Workplace Policy

The Town is committed to providing a safe, healthy, and productive work environment for its employees. Consequently, the use of tobacco products is prohibited while on duty, in any Town vehicle, or in any of the facilities governed by the Town. Smoking and the use of other tobacco products are permitted only during breaks for outside work assignments and in designated areas on Town property.

Section 10. Conflict with Federal and State Law

The terms and conditions included in this manual are intended to be consistent with current Federal and State laws. In the event of changes in laws and/or errors or omissions, Federal and State law take precedence over this policy.

Section 11. Definitions

For the purposes of this policy, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- **Exempt Employee** – An employee who meets the qualifications for exemption from the overtime provisions of the Fair Labor Standards Act (FLSA).
- **Full-time Employee** – An employee in an authorized position working the standard 40 hours per week, or law enforcement working ~~168~~ 84 hours in ~~28~~ 14 days.
- **Non-Exempt Employee** – An employee who is subject to the provisions of FLSA and therefore the overtime provisions of the Act.
- **Part-time Employee** – An employee who is regularly scheduled to work less than the normal 40 hours in a week. A part-time employee may be in a temporary or regular status.
- **Probationary Employee** – An employee who is working a "trial" period following initial appointment or promotion to a new position. The period of probation is normally six months, except for law enforcement and in cases where probation has been extended.
- **Regular Employee** – An employee who has satisfied a probationary period and has

been notified that he has been taken off probation. Regular employees may be either full-time or part-time.

- **Temporary Employee** – An employee, either full-time or part-time, who is employed to work for a specific period of time.

- **Trainee** – An employee who does not meet the minimum requirements of the job at the time of hire but is expected to meet the requirements within a reasonable period of time. Trainee status is normally less than a year but may be longer depending upon the circumstances of employment.

- **Immediate Family** – For the purpose of this policy, immediate family includes:
    - Spouse
    - Parent (biological, adoptive, step, in-law, or guardian)
    - Child (biological, adoptive, step, foster, legal ward, in-law)
    - Sibling (biological, adoptive, step, in-law)
    - Grandparents or grandchildren (step, great)
    - Life partner

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Purpose

The position classification plan provides a complete inventory of all authorized and permanent positions in the Town service, and an accurate description and specification for each class of employment. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

Section 2. Composition of the Position Classification Plan

The classification plan shall consist of:

- A grouping of positions in classes which are approximately equal in difficulty and responsibility which call for the same general qualifications, and which can be equitably compensated within the same range of pay under similar working conditions;
- Class titles descriptive of the work of the class;
- Written specifications for each class of positions; and
- An allocation list showing the class title of each position in the classified service.

Section 3. Use of the Position Classification Plan

The classification plan is to be used:

- As a guide in recruiting and examining applicants for employment;
- In determining lines of promotion and in developing employee training programs;
- In determining salary to be paid for various types of work;
- In determining personnel service items in departmental budgets; and
- In providing uniform job terminology.

Section 4. Administration of the Position Classification Plan

The Town Manager, assisted by the Human Resources Officer shall allocate each position covered by the classification plan to its appropriate class, and shall be responsible for the administration of the position classification plan. The Town Manager shall periodically review portions of the classification plan and make minor revisions to ensure that classifications accurately reflect current job duties and responsibilities. The Town Manager shall also periodically review the entire classification plan and, when needed, recommend major changes to the Board of Commissioners.

Section 5. Authorization of New Positions and the Position and Classification Plan

New positions shall be established upon recommendation of the Town Manager and approval of the Board of Commissioners. New positions shall be recommended to the Board of Commissioners with a recommended class title and grade. The *Position and Classification Plan*, that will include any new positions or classifications, shall be approved by the Board of Commissioners and kept on file with the Human Resources Officer. ~~Copies will be available to all Town employees for review upon request.~~The plan is published in the Budget each fiscal year.

Formatted: Font: Italic

Section 6. Request for Reclassification

Because job duties change over time, individual positions or classifications may be subject to a classification review before it is scheduled for review. A review of individual positions or classifications can be approved by the Town Manager upon the recommendation of the Human Resources Officer and Department Head. In order for a classification review to be authorized, the Department Head must provide the Human Resources Officer with documentation on how and to what extent the work has changed as well as the reasons for studying an individual position or classification before the study of all Town positions. The Town Manager must authorize all "out-of-cycle" reviews.

ARTICLE III. POSITION MANAGEMENT AND PAY ADMINISTRATION

Section 1. Definition

The pay plan includes the salary schedule and the *Position and Classification Plan* adopted by the Board of Commissioners. The salary schedule consists of minimum salary, maximum salary, and mid-point of the salary range for all classifications authorized by the Town.

Section 2. Administration and Maintenance

The Town Manager, assisted by the Human Resources Officer, shall be responsible for the administration and maintenance of the pay plan. All employees covered by the pay plan shall be paid at a rate listed within the salary range established for the respective position classification, except for employees in trainee status or employees whose existing salaries are above the established maximum rate following transition to a new pay plan. Each year, if appropriate, the Town Manager shall recommend a market adjustment amount based on a variety of factors including the salary adjustments proposed by other local governments. When market adjustments are approved by the Board of Commissioners, the salary plan should adjust by that amount so that hiring rates and maximum rates of pay remain competitive in the market.

The pay plan is intended to provide equitable compensation for all positions, reflecting differences in the duties and responsibilities, the comparable rates of pay for positions in public employment in the area, changes in the cost of living, the financial conditions of the Town, and other factors. To this end, from time to time the Town Manager shall request the Human Resources Officer to make comparative studies of all factors affecting the level of salary ranges and may make minor adjustments in the allocation of positions to salary grades. Periodically, but no more than every five years, the Town will conduct a comprehensive classification and pay study to update the plan insuring internal equity and external competitiveness. When major adjustments encompassing numerous positions are needed, or when a general adjustment is needed to the pay plan, the Town Manager shall recommend such changes in salary ranges as appear to be warranted to the Board of Commissioners. The Board of Commissioners shall adopt any changes to the *Position and Classification Plan*.

Section 3. Starting Salaries

All persons hired or promoted into positions approved in the position classification plan shall be compensated at the minimum for the classification in which they are employed, however, exceptionally well-qualified applicants may be paid above the minimum of the established salary range upon recommendation of the hiring Department Head and with the approval of the Human Resources Officer and the Town Manager.

Section 4. Trainee Designation and Provisions

Applicants being considered for employment or Town employees who do not meet all requirements for the position for which they are being considered may be hired, promoted, demoted, or transferred to a "trainee" status. In such cases, a plan for training, including a time schedule, must be prepared by the Department Head. "Trainee" salaries shall be one, but no more than two grades, below the minimum established for the position for which the person is being trained. A trainee shall remain a probationary employee until the trainee period is satisfactorily completed.

If the training is not successfully completed to the satisfaction of the Town, the trainee shall be transferred, demoted, or dismissed. If the training is satisfactorily completed, the employee shall be paid at least at the minimum established for the position for which the employee was trained. Anyone employed in a trainee status is subject to dismissal without following the normal disciplinary process.

Section 5. Performance Pay

An annual performance evaluation shall be conducted for each employee as close as practical to January 1. Consultation between the employee and supervisor regarding performance at times other than the annual performance evaluation, particularly a mid-year evaluation, is anticipated and encouraged under this policy and shall be considered to supplement rather than replace the annual performance evaluation. Upward movement within the established salary range for an employee is not automatic but rather based upon specific performance-related reasons. Employees may be recommended for and approved for performance or merit pay subject to budgetary and other considerations at the time of review.

Section 6. Performance Pay Bonus

Employees who are at the maximum of the salary range for their position classification are eligible to be considered for a performance bonus at their regular performance evaluation time. Performance bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation and shall be the same percentage of annual salary as employees within the salary range with the same performance level. Performance bonuses do not become part of base pay and shall be awarded in a lump sum payment.

Section 7. Salary Effect of Promotions, Demotions, Transfers and Reclassifications

Promotions. When an employee is promoted, the employee's salary shall normally be advanced to the minimum of the new classification, or to a salary which provides an increase of at least five percent (5%) over the employee's salary before the promotion, provided that the new salary may not exceed the maximum rate of the new salary range. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility.

Demotions. When an employee is demoted to a position for which qualified, the salary shall be set at the rate in the lower pay range which provides a salary commensurate with the employee's qualifications to perform the job when the demotion is not the result of discipline. If the current salary is within the new range, the employee's salary may be retained at the previous rate, if appropriate. Consideration should be given to whether the employee is receiving the same pay for decreased workload or responsibility level and action should be appropriate to this consideration. If the demotion is the result of discipline, the salary shall be decreased at least five percent (5%) but may be no greater than the maximum of the new range.

Transfers. The salary of an employee reassigned to a position in the same class or to a position in a different class within the same salary range shall not be changed by the reassignment.

Reclassifications. An employee (or employees) whose position is reclassified to a class having a higher salary range is not generally given any adjustment in salary if the employee's salary is within the new salary range. However, given the circumstances of the reclassification, as well as budgetary and other considerations, the Town Manager may recommend to the Board of Commissioners an implementation schedule that may result in salary increases.

If the position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level (no salary increases including merit pay, cost of living, etc.) until the range is increased above the employee's salary.

Section 8. Effective Date of Salary Changes

Salary changes approved after the first working day of a pay period shall become effective at the beginning of the next pay period, or at such specific date as may be authorized by the Town Manager.

Section 9. Compensatory Time Provisions – Non-Exempt Personnel

Employees of the Town can be requested and may be required to work overtime hours as necessitated by the needs of the Town and as determined and authorized by the Department Head. ~~or designee. All overtime hours worked must be authorized by the employee's department head.~~ The Town will comply with the Fair Labor Standards Act (FLSA), which requires positions that are not exempt from the FLSA to be compensated in either money or time for all hours worked over 40 in a workweek, or ~~171~~ 86 hours in a ~~28~~14-day pay cycle for law enforcement. It is the policy of the Town to compensate for overtime by giving compensatory time. *(Note: Although sworn law enforcement officers work ~~168~~ 86 hours in a ~~28~~14-day period, overtime pay does not begin until time exceeds 171 hours in a 28-day period. The ~~three~~two-hour difference between ~~171~~ 86 and ~~168~~ 84 is paid as straight time.)*

The Human Resources Officer shall recommend, and the Town Manager shall approve, those jobs which are "non-exempt" and are therefore subject to FLSA. Each position in the Town shall be considered separately for the purpose of determining exemption status and such designation shall be in accordance with the FLSA and reviewed periodically.

Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their position (40 hours in a 7-day period; ~~171~~ 86 hours for police in a ~~28~~14-day cycle). Hours worked in excess of the FLSA established limit will be compensated in paid time off at the rate of one and one-half times the hours worked. In extenuating circumstances, and subject to budgetary considerations and approval of the Town Manager, the Town may opt to pay employees for some or all of their overtime. In determining eligibility for overtime in a work period, only hours actually worked shall be considered. In no event will vacation, sick leave, holiday time, or compensatory leave hours be counted toward the total hours for the purpose of overtime compensation. Departments may schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of incurring overtime.

Non-exempt employees with compensatory time shall use that time prior to using any vacation or sick leave. Upon termination of employment with the Town all compensatory time must be taken prior to leaving or paid for at the time of departure.

Section 10. Compensatory Time Provisions – Exempt Personnel

Employees in positions determined to be "exempt" from the FLSA are not required to be compensated in either money or time off for work over 40 hours in a week. However, Town policy is to allow exempt personnel to earn compensatory time. Exempt personnel may earn compensatory time on an hour-for-hour basis up to a maximum of 80 hours. Compensatory time must be used before the use of any vacation or sick leave.

Under no circumstances shall an exempt employee be paid for unused compensatory time at the time of separation unless specifically authorized by the Town Manager.

Section 11. Call-back and Stand-by Pay

The Town provides a continuous service to its citizens. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the Town is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal. ~~In cases of natural disasters, work outside normal working hours will be scheduled to the extent possible.~~

Call-back. Non-exempt employees will be guaranteed a minimum payment of two hours per 24 hours for being called back to work outside of normal working hours. "Call-back" provisions do not apply to previously scheduled overtime work, scheduled one or more days in advance.

Stand-by. ~~The Town does not normally require personnel to be in a "stand by" status.~~ "Stand-by" status is normally reserved for night and weekend responses to emergencies. Personnel most affected by "stand-by" status are in the Police Department where internal policies and procedures will dictate recognition for being on stand-by.

Section 12. Payroll Deductions

The Finance Director is authorized to make established deductions from an employee's gross pay to cover federal and state income taxes, contributions for retirement systems, court ordered payments or garnishments, and for employee group insurance premiums.

Section 13. Hourly Rate of Pay

Employees working in a part-time capacity, with the same duties as full-time employees, will work at a rate in the same salary range as the full-time employees. Temporary employees shall work at whatever rate of pay determined appropriate by the Town.

Section 14. Pay for Interim Assignment in a Higher-Level Classification

An employee who is formally designated for a period of at least one month to perform the duties of a job that is assigned to a higher salary grade than that of the employee's regular classification shall receive an increase for the duration of the acting assignment. The employee shall receive a salary adjustment to the minimum salary of the classification in which the employee is acting or an increase of at least five percent, whichever is greater. In extenuating circumstances, the Town Manager may determine a temporary salary increase greater than specified above. The salary increase shall be temporary, and the employee shall go back to their original salary ~~he would have had if not assigned to the acting role~~after completion of the temporary designation.

Section 15. Longevity Pay

~~The Town recognizes the value of continuity of service of its employees.~~ Full-time employees of the Town shall be compensated for years of continuous service by payment of a longevity supplement based on continuous years of full-time service as of December 1st of each year, provided such pay has been approved in the annual budget. Longevity pay shall be distributed by December 1st of each year.

Continuous service is continuous employment including any approved leave. Employees who leave the employment of the Town and subsequently return to employment are only allowed to count the years of service from the time the employee is reemployed. ~~*Only full-time employment qualifies for determining years of service with the Town.*~~

Longevity amounts shall be as follows:

Years of Service	Amount
5 - 9 years	1.5%

10 - 14 years	2.0%
15 - 19 years	2.5%
20 - 24 years	3.0%
25 - 29 years	3.5%
30 plus years	4.0%

Employees who retire within the year will receive longevity pay pro-rated based on the number of months worked during the year. The Town Manager may approve alternative reasons for leaving employment to provide pro-rated pay based on the number of months worked during the year.

Section 16. Pay Periods

All employees shall be paid bi-weekly on every other ~~Thursday~~Friday. In the event a holiday falls on a scheduled payday, the payday shall then be the last working day prior to the holiday.

Section 17. Pay Upon Termination

Upon termination of employment, an employee is entitled to payment, in the regularly scheduled pay period, for regular pay, unused vacation leave, and unused compensatory time if the employee is designated as non-exempt. No sick leave or other such leave as shall be paid upon termination. The Finance Director shall deduct and withhold from the final paycheck any amount owed to the Town - including any reimbursable expenses~~such as for group insurance premiums and leave that has been advanced~~. The final payment for unused vacation leave will be combined with the last paycheck.

ARTICLE IV. RECRUITMENT AND EMPLOYMENT

Section 1. Equal Employment Opportunity Policy

It is the policy of the Town to foster, maintain and promote equal employment opportunity. The Town shall select employees on the basis of the applicant's qualifications for the job and award them without regard to age, sex, race, color, religion, national origin, disability, political affiliation, marital status, or for any other reason. ~~The Town does not discriminate against anyone for any reason.~~ Applicants with physical disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of required duties with or without reasonable accommodation.

Section 2. Implementation of Equal Employment Opportunity Policy

All personnel responsible for recruitment and employment will continue to regularly review the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, disability, national origin, political affiliation, marital status or for any other reason. Notices regarding equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

Section 3. Recruitment, Selection, and Appointment

Recruitment Sources. When position vacancies occur, the Human Resources Officer shall publicize these opportunities for employment, including applicable salary information and employment qualifications~~. Information on job openings and hiring practices will be published on the Town's website and in local and other newspapers and websites as necessary to inform the community and create a quality and diverse pool of applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments.~~. Individuals shall be recruited from a geographic area as wide as necessary and for a period of time sufficient to ensure that a well-qualified and diverse pool of applicants are obtained for Town service. In some situations, the Town may hire or promote current Town employees without advertising jobs.

Job Advertisements. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes and be of such distribution as to ensure a well-qualified and diverse pool of candidates.

Application for Employment. The Town will only receive employment applications for open positions ~~and may accept application from individual who wish to file an application to remain on file~~.

Application Reserve File. Applications shall be kept in an inactive reserve file for a period of two years, in accordance with Equal Employment Opportunity Commission guidelines.

Selection. Department Heads, with the assistance of the Human Resources Officer, shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills, experience and overall qualifications required for the position. In the event the Town uses tests or other selection methods, those methods shall be valid indicators of potential job performance.

Appointment. Before any unconditional or conditional offer is made to an applicant, the Department Head shall make a recommendation to the Human Resources Officer regarding the recommended selection. The Human Resources Officer and Department Head shall recommend the candidate, along with starting salary and other conditions of employment, to the Town Manager. The Town Manager is the appointing authority and must make the offer of employment and determine the conditions of employment.

Section 4. Drug-Free Workplace, Substance Abuse, and Drug Testing

~~The Town has the responsibility to ensure the safety of its citizens and other employees by making sure Town employees are not under the influence of drugs and/or alcohol. Likewise, the~~ The Town ~~may be required to comply with~~ voluntarily follows the provisions of the Drug-Free Workplace Act ~~as a result~~ regardless of the status of receiving Federal grant funds. ~~Regardless of the status of federal grant funds at any given time, the Town voluntarily follows the provisions of the Drug-Free Workplace Act.~~ The Act prohibits the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the workplace. The Town will not tolerate employees reporting to work with their ability to perform impaired by alcohol, illegal drugs, or inappropriately used prescription or over-the-counter drugs.

The Town will comply with the Act by reporting any conviction of a drug-related crime. An employee convicted of a drug-related crime in the workplace is required to notify the Town Manager within five days of conviction.

The Town does not generally require general drug testing prior to employment, however, for safety sensitive positions in law enforcement or equipment operation, candidates may be subject to pre-employment drug testing. The Town also participates in random drug-testing program for all safety sensitive positions. The Human Resources Officer maintains a list of all safety sensitive positions. Employees in these positions are subject to random testing through a provider designated by the ~~regional program manager~~ Regional Drug Desting Program Manager.

Current employees may be subject to random drug testing or drug testing in the case of accidents. The Town has the right to require any employee to submit to a drug test if there is reasonable suspicion that the employee may be under the influence of drugs or alcohol. The Town shall designate the testing source and escort the employee to the testing site if there is reasonable suspicion of substance abuse.

The Town shall assume financial responsibility for all testing and abide by the following Drug Screening Criteria: ~~-~~

Pre-Employment. Applicants who have been offered employment in a safety-sensitive position with the Town of Wendell, will be required to undergo a pre-employment drug screening test as part of the hiring process. The Town will withdraw an offer of employment made to any applicant whose drug screen test reveals the presence of illegal drugs or prescription drugs without a valid prescription.

Post-Accident or Incident. All employees will be tested for the presence of controlled substances and/or alcohol following an on-the-job accident, incident or unsafe practice, when the supervisor or department head determines there is a reasonable possibility that alcohol or drugs could have been a contributing factor. Post-accident testing should be done under the following circumstances:

- There is a reasonable basis, based on the elements of reasonable suspicion, that alcohol or drugs may have been a contributing factor to the accident, incident, or unsafe practice.
- The accident involves a fatality or bodily injury requiring immediate professional medical attention away from the scene of the accident if circumstances indicate such bodily injury may have been caused by the employee.
- If a vehicle involved receives disabling damage to the extent that it must be towed.
- If the employee receives a citation under state or local law for a moving traffic violation arising from the accident.
- If significant property damage is involved and if circumstances suggest that the employee may have contributed to the accident/incident.

- A post-accident alcohol test should be administered as soon as possible, but not more than eight (8) hours following the accident. A post-accident drug test should also be administered as soon as possible, but not more than 32 hours following the accident. If the tests cannot be performed in the specified time frame, the reasons for the failure to test should be documented by the supervisor and given to the Human Resources Officer.

Random Testing. Drug and/or alcohol tests may be conducted on a random basis on employees that hold safety-sensitive positions, chosen by a method that provides an equal probability that every employee in these positions will have an equal chance of being selected.

- For purposes of this policy, a safety sensitive position is a position in which the essential duties of the employee carry with it a heightened risk of injury or danger to themselves or any person(s) under their span of control. Employees whose names are randomly selected from the pool must be tested just before, during or just after performing job responsibilities. Safety sensitive positions include:
- All sworn law enforcement personnel
- All positions requiring a Commercial Driver's License (CDL)

- Positions requiring the consistent and frequent operation of heavy equipment, machinery or motor vehicles as a primary task
- Positions working around large equipment with potential for hazards
- Positions requiring the handling of hazardous materials which may place the employee or the general public at risk of serious injury
- Positions working with youth and/or those required to drive citizens or clients
- Other positions as required by law, or as designated by the Town Manager due to the specific safety-sensitivity of individual jobs.

Reasonable Suspicion Testing. Any employee (regardless of position) may be required to submit to a reasonable suspicion drug and/or alcohol test if specific direct observations indicate that the employee may be under the influence of a controlled substance, medication, or alcohol; or if the employee's appearance or behavior indicates substance abuse.

- Reasonable Suspicion testing must be authorized by the Department Director or Human Resources Officer with the approval of the Town Manager. The Supervisor must maintain written record of specific observations.
- Testing should be done within 2 hours of the direct observation suspecting drug or alcohol use. If the test is not administered within the 2-hour window, the following actions are required. The supervisors will document why the test was not performed and continue to attempt to test the employee for up to 32 hours for drug tests and up to 8 hours for alcohol testing. After the 32-hour and 8-hour testing window, the supervisor will stop attempting to test the employee and document reasons for the test not being administered and send the report to Human Resources and the Town Manager.
- With the approval of the Town Manager, the employee will be put on Administrative Leave from the time the test is administered until the results have been reviewed by Human Resources and the Town Manager; or the appropriate testing window is exceeded.
- Reasonable suspicion is a judgment made by a trained supervisor or other Town Official and may be based on any of the following conditions:
- Direct observation of the physical symptoms of being under the influence of a substance, such as impairment of motor functions or speech.
- A pattern of abnormal conduct or erratic behavior.
- Arrest or conviction for a drug-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use, or distribution.
- Information that is provided by reliable and credible sources or that can be independently corroborated.
- Evidence that the employee tampered with a previous drug test.
- And other factors supervisors enforcing this policy have been trained to recognize as the signs of drug and alcohol use.

Return To Duty Testing. Return-to-duty tests are required for employees who tested

positive or otherwise violated the prohibitions of the Town of Wendell's Drug Testing and Substance Abuse policy. Employees who have violated this policy and are returning to work, or otherwise have been referred to counseling or rehabilitation as a result of a positive drug or alcohol test will be required to undergo drug and/or alcohol screening tests prior to returning to work, and at any time after their return-to-duty for a period of up to two (2) years.

Follow-Up Testing. Follow-up testing is required to return-to-duty and a negative test result must be received to resume work in a safety-sensitive position. Employees subject to follow-up testing pursuant to the Federal Motor Carrier Safety Act will be tested at least six (6) unannounced times within the first year back to work. Employees required to complete follow-up testing may be subject to additional testing for a period of 12 months after their first year of returning to duty.

Drug/Alcohol Testing Details. Drug tests require an employee to provide a urine sample or other legally acceptable testing specimen. The collection, analysis and reporting processes are strictly controlled to ensure privacy, sanitation, accuracy and confidentiality. With respect to the results of a drug test, a "positive" test means a test result showing the presence of drugs or controlled substances at a level specified to be a positive test pursuant to then-current law.

Alcohol tests will be conducted from a saliva, breath, blood specimen, or other legally acceptable testing mechanism. A blood alcohol concentration of 0.04 or higher is considered a positive alcohol test. A blood alcohol concentration of 0.02 or greater may require a confirmation test pursuant to applicable law.

An employee will be notified of any confirmed positive test result. An employee with a confirmed positive result must be notified of their right to retesting per North Carolina and Federal law. Employees have the right to retest a confirmed positive sample at their own expense.

A confirmed positive test may result in disciplinary action up to and including termination. Factors which may be considered in determining an appropriate action include the nature of the position to which assigned, the employee's work history, the extent of performance deficiencies, the seriousness of accidents or incidents, and existence of past disciplinary actions, and the trusted position of the Town as an employer and provider to the public. Mandatory EAP referral, leave without pay and/or disciplinary action, up to and including termination may result. Employees who continue employment while undergoing counseling or rehabilitation will be required to meet all established standards of conduct and job performance as well as fully cooperate and participate in their rehabilitation program and adhere to recommendations of the Town Manager.

Employees are encouraged to voluntarily request counseling or rehabilitation before substance abuse leads to disciplinary or other work-related problems. A refusal to submit to testing within the guidelines of this policy may result in immediate termination of employment. A refusal to test will be considered a positive test result.

Impairment And Other Related Behaviors. Any employee whose job duties require operation of a motorized vehicle, hazardous machinery or use of hazardous materials who is charged with a controlled substances or alcohol related offense (including DWI) must notify the appropriate supervisor or department head within five workdays of arrest, arraignment, or indictment. Any employee who is required to have a driver's license for the

performance of their job duties will be placed either in a non-disciplinary or a disciplinary suspension without pay status until their license is returned after the automatic ten-day revocation. An employee's failure to notify his/her supervisor or department head may result in disciplinary action, up to and including termination. Under no circumstances shall an employee operate a Town vehicle or equipment without a valid operator's license.
Any employee convicted of a controlled substance or alcohol related offense must notify the appropriate supervisor or department head within five workdays of conviction. Failure to notify management may result in disciplinary action, up to and including termination. If an employee's job functions require a valid driver's license and the employee's license is revoked, the employee shall be subject to disciplinary action, up to and including termination. Failure to notify the supervisor or department head of any revocation shall result in disciplinary action, up to and including termination. Under no circumstances will an employee operate a Town vehicle or equipment without a valid operator's license.
Any employee convicted of an off-the-job controlled substance or alcohol related offense which could directly, or indirectly, affect his/her credibility or ability to carry out effectively the duties and responsibilities of his/her position with the Town shall be subject to review by the Town Manager with the possibility of disciplinary action, up to and including termination.

Relief from Duty. An employee will normally be placed on non-disciplinary leave without pay while awaiting results of a post-accident or reasonable suspicion drug test (since the employee is awaiting disciplinary action if the test is positive).

Refusal to Cooperate. Employee compliance with the Town's Substance Abuse, Alcohol and Drug Testing Policy is mandatory. Failure or refusal to fully cooperate and participate in the program, sign any required documents or submit to a drug and/or alcohol screening test will be grounds for termination of employment. Failure or refusal to cooperate means that an employee fails to report for a test, refuses to provide a sample, purposely provides an insufficient sample, refuses to sign the confirmation test certification, or otherwise engages in conduct that clearly obstructs the testing process, such as purposefully avoiding the time limits described in the above policy. An employee who leaves a testing site before a test can be administered or who unnecessarily leaves the scene of an accident before a required test is administered or fails to remain readily available for testing may be deemed as having refused to cooperate.

Section 5. Probationary Period

It is the policy of the Town that all ~~An~~ employees ~~appointed or promoted to~~hired into a regular position shall serve a probationary period for six months. Employees promoted to a regular positions shall also serve a 6-month probationary period. Sworn law enforcement employees ~~police officers~~ shall serve a 6-month probationary period for the Town and satisfy the twelve-month probationary requirements of the North Carolina Criminal Justice Education and Training Standards Commission~~shall serve a twelve-month probationary period~~. Employees hired as trainees shall remain on probation until the provisions of their traineeship are satisfied.

During the probationary period, the supervisor of the employee serving in a probationary status shall closely monitor the progress of that employee and shall frequently discuss

performance with the employee. Before the end of the probationary period the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion shall be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of six additional months.

Disciplinary action, including demotion and dismissal, may be taken at any time and for any reason during the probationary period of a new hire without following the steps outlined in this policy for disciplinary action. A promoted employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed.

Section 6. Promotion

Promotion is the movement of an employee to a position in a class assigned to a higher salary range. It is the Town's policy to create career opportunities for its employees whenever possible. Therefore, when current employees apply for and are best suited for vacant positions, and when all other factors are equal, current Town employees will be given priority for vacant positions.

In some situations, the Town will consider external candidates for a selection rather than promoting from within. Internal candidates will be chosen for promotions based on their qualifications and their work records. However, internal candidates must apply for promotions into a vacant position using the same application process as external candidates. Based on recommendations from the Department Director and the Human Resources Officer, promotions will be submitted to the Town Manager. The Town Manager shall be the approving authority for all promotions.

Formatted: Justified, Tab stops: 0", Left + 0.5", Left + 1", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Left + 6.5", Right

Section 7. Demotion

Demotion is the movement of an employee to a position in a class assigned to a lower salary range. Demotion may be voluntary or involuntary. An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a voluntary demotion. A voluntary demotion is not a disciplinary action.

Section 8. Transfer

Transfer is the movement of an employee to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process. The Department Head wishing to transfer an employee to a different department or classification shall make a recommendation to the Town Manager with the consent of the receiving Department

Head. Any employee transferred without requesting the action may appeal the action in accordance with the grievance procedure outlined in this policy. An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Work Schedule

The Town has a normal work week of 40 hours. Regular office hours are Monday through Friday from 8:00 am to 5:00 pm. ~~Because of the nature of work of individual departments, w~~With the approval of the Town Manager, departments are allowed to deviate from the standard workday and set their own hours. Department Heads shall establish work schedules, which meet the operational needs of the department in the most cost-effective manner possible.

For the purpose of determining hours worked in a week, the Town defines the work week as the period from 12:00 AM ~~Friday~~ Monday to 11:59 PM Sunday~~Thursday~~.

Section 2. Political Activity

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

- Engage in any political or partisan activity while on duty;
- Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- Use any supplies or equipment of the Town for political or partisan purposes; or
- Be a candidate for Town of Wendell Board of Commissioners.

Any violation of this section shall subject the employee to disciplinary action including dismissal.

Section 3. Outside Employment

The work of the Town shall have precedence over other occupational interests of employees. Outside employment must not reflect negatively upon the Town and must be reported to and approved by the employee's Department Head in advance. The Department Head will review such employment for possible conflict of interest and determine whether to recommend approval of the work to the Town Manager. The Town Manager has final authority for approving outside employment and for setting conditions on such employment. Outside employment shall be reviewed annually. Conflicting or unreported outside employment are grounds for disciplinary action including dismissal. Documentation of the approval of outside employment will be placed in the employee's personnel file.

Department Heads are prohibited from secondary employment. There are times when Department Heads may serve on boards, commissions, etc., for which they are compensated. These types of assignments do not come under the general definition of "outside employment". In the event a Department Head is going to be in a situation where compensation will be rendered for services, the approval of the Town Manager is required in advance.

Employees are prohibited from participating in dual employment with the Town, and are authorized to hold appointment to only one position at a time.

Section 4. Employment of Relatives

The Town prohibits the employment of immediate family in regular positions within the same ~~work unit~~ department. The Town also prohibits the employment of any person into a regular position who is an immediate family member of individuals holding the following positions:

- Mayor
- Mayor Pro Tem
- Board of Commissioner
- Town Manager
- Finance Director
- Human Resources Officer
- Town Clerk
- Town Attorney

Otherwise, the Town will consider employing family members or related persons in the service of the Town, provided that such employment does not:

- Result in a relative supervising or auditing the work of a relative;
- Create a conflict of interest with either relative and the Town; or
- Create the potential or perception of favoritism.

Should a family member of a current employee be elected to the Town's Board of Commissioners, the employee must resign within six months of the relative taking office.

Section 5. Harassment

~~Harassment on the basis of race, color, religion, gender, national origin, age, disability, or for any other reason, constitutes discrimination. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual for any reason. The Town opposes harassment in any form.~~

~~Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:~~

- ~~Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;~~
- ~~Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;~~
- ~~Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.~~

~~Any employee who believes that they may have a complaint of harassment~~, ~~or are a witness of harassment,~~ ~~may follow the Grievance Procedure described in this Policy or may file the complaint directly with the Town Manager, Human Resources Officer, or any Department Head, who will advise the Human Resources Officer of the complaint. The Human Resources Officer will ensure that an investigation is conducted into any allegation of harassment and make a recommendation to the Town Manager as to what action is to be taken. The Town Manager is responsible for taking whatever action necessary to address any form of harassment.~~

~~Employees witnessing harassment shall also report such conduct to an appropriate Town official.~~

The Town is committed to providing a work environment in which all individuals are treated with respect and dignity. The Town of Wendell has a zero-tolerance policy against any form of unlawful workplace harassment and works to ensure that Town work sites are free of unlawful workplace harassment. This policy also prohibits retaliation against employees who make a complaint of harassment or participate in a workplace harassment investigation. Disciplinary action, up to and including termination, will be administered for violations of this policy.

Harassment

Unlawful workplace harassment is unsolicited and unwelcome speech or conduct based upon race, sex, religion, national origin, age, color, disability, or genetic information where"

- Enduring the offensive conduct becomes a condition of continued employment, or
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive.

Sexual Harassment

Harassment on the basis of sex is a particular type of violation of unlawful workplace harassment and includes the additional prohibitions of the following:

- Unwelcome sexual advances,
- Requests for sexual favors,
- And other verbal or physical conduct of a sexual nature.

The prohibited acts constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2)

submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Retaliation

Retaliation is any adverse action taken against an individual for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability, genetic information, or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

Confidentiality

Considering the sensitive nature of harassment complaints, every effort will be made to keep the complaint and name of the employee confidential and shared on a need-to-know basis. However, due to the nature of conducting an investigation, confidentiality cannot be guaranteed. Employees involved in any investigation, whether as complainant or alleged harasser, witness or investigator, should keep all communications confidential.

Investigation files shall remain separate from personnel files. Neither the complainant nor the alleged harasser has a right to view the contents of these files. Any personnel action such as discipline which might result from an investigation shall be filed in the employee's personnel file. The content of these files are protected according to Town Code and State Statute as applicable.

Reporting Procedure

Reporting of any kind of harassment is difficult since complaints generally involve a supervisor or a coworker. Therefore, an employee who believes that they have a complaint of harassment should file the complaint directly with the Human Resources Officer. All complaints will be investigated by the Human Resources Officer in consultation with the Town Manager. In the case the Human Resource Officer is absent more than one day, the shall be filed with the Town Manager (or Manager's designee). In the event a complaint is made against the Human Resources Officer, the affected employee shall file the complaint directly with the Town Manager.

- Any employee who has been a victim of harassment or inappropriate conduct in the workplace should clearly tell the harasser that such conduct is offensive and to stop the conduct. Regardless of whether the harasser stops, the employee shall report the incident as outlined. If the employee reporting the complaint advises the behavior has stopped, there may not be any further investigation but documentation will be maintained. If the employee does not report the incident and the behavior is repeated, the employee is again reminded that reporting incidents of harassment is mandatory.
- Complaints must be filed timely so that a thorough investigation can be conducted and appropriate action taken. Complaints that are not timely filed are difficult to investigate. The employee is advised to report the conduct within 30 calendar days of the alleged harassment to the Human Resources Officer, and either or both if the following: the immediate supervisor or the first level supervisor who is not involved in the alleged harassment.

Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"

- The report should provide specific facts about the conduct including:
  - Who committed the conduct,
  - What was the specific conduct,
  - When and where did the conduct occur,
  - Were there any witnesses and who were they,
  - Did the conduct occur more than once, and
  - Did the victim or any other employee tell the alleged harasser to stop the offensive conduct.
- Supervisors and/or Department Heads who have received a report of workplace harassment shall contact the Human Resources Officer or the Town Manager to make the report the same or next business day. Failure to do so may result in disciplinary action.

Investigation of Alleged Workplace Harassment

- When a report of workplace harassment is received by the Human Resources Officer (or Town Manager), an impartial and thorough investigation will be undertaken that shall include, but not necessarily be limited to, interviewing individuals who are believed to have knowledge of the matter including the alleged victim, the alleged harasser and reviewing any relevant information.
- Employees named in reports and/or complaints will be given sufficient information about the allegation to provide them a reasonable opportunity to respond.
- Employees are encouraged to respond to questions and cooperate fully in investigations alleging workplace harassment.
- Upon receipt of a complaint, the Town will take all appropriate steps to prevent the alleged conduct from continuing, pending completion of the investigation.
- The Human Resources Officer has 30 calendar days to complete the investigation. In no event shall the Human Resources Officer (or Town Manager designee) delay the investigation past 30 calendar days without the written consent of the complainant.
- Upon completion of the investigation and review of the Town Manager, the Human Resources Officer will issue a final report which will include the facts and findings ascertained in the investigation. The final report will contain recommendations for remedial and/or disciplinary action, if applicable, and will be distributed inly to persons having a need or right to know.
- The Town has 30 days from the date of the final report to implement remedial and/or disciplinary actions as recommended in the final report.
- The Human Resources Officer will convey the general resolution of the complaint to the complainant. However, the complainant is not privileged to information regarding disciplinary action taken with the alleged harasser(s), if any.

Workplace Harassment Grievance Procedure

In order to maintain harmonious and cooperative relationships between the Town and its employees, it is the policy of the Town to provide for the resolution of disputes or employee concerns through an orderly procedure free from interference, discrimination or reprisal. The complainant shall file all correspondence regarding grievances under this policy with the Human Resources Officer. Such grievances which are not received within the time allowed as prescribed in this Section or which are not filed as prescribed in the Section shall be dismissed.

Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Bulleted + Level: 2 + Aligned at: 0.5" + Indent at: 0.75"
Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Font: (Default) Arial
Formatted: Bulleted + Level: 1 + Aligned at: 0" + Indent at: 0.25"

- Any employee who has filed a workplace harassment complaint has the right to appeal the following to the Town Manager, or an appointed designee in their absence:
    - Remedial actions taken by the Town as a result of a workplace harassment complaint; however, disciplinary actions which are part of remedial action shall only be grieved by the recipient of the disciplinary action as provided for under Article X herein.
    - Failure by the Town to investigate a workplace harassment complaint and respond within 30 calendar days, unless written consent to extend was provided by the complainant.
- Any employee who testified, assisted, or participated in any manner in a hearing, proceeding, or investigation of workplace harassment or employment discrimination has the right to appeal to the Town Manager, or an appointed designee, any retaliatory action of any kind by an employee of the Town against them because of their participation.
- Employees shall be allowed one hour from regular duties for preparing a grievance.
- A employee shall have the right of legal counsel and the expense of legal counsel shall be borne by the employee. However, no attorneys representing either side may attend the grievance conference.
- An employee shall file a written grievance promptly within 15calendar days after an appealable action has occurred. The employee shall attach all additional information and supporting documents to the appeal. The notice of appeal shall be received by the Human Resources Officer by 5:00 pm on the fifteenth day.
- The official conducting the hearing shall within seven calendar days contact the employee to set the date, place, and time for oral presentation of the grievance.
- The official conducting the hearing shall make every possible effort to achieve an equitable solution to the problem at this meeting but may take the necessary time to investigate the problem.
- In no event shall the official conducting the hearing delay rendering a decision more than seven (7) calendar days from the grievance conference without the consent of the employee or former employee.
- The official conducting the hearing shall render a decision in writing and such writing shall contain the employee's and the Town's official statements and the Town's official conclusions.
- After the procedure is ended, the documents are filed with the Human Resources Officer with all harassment process records.

Formatted: List Paragraph, Bulleted + Level: 1 + Aligned at: 0.25" + Indent at: 0.5"

Formatted: Font: (Default) Arial

Section 6. Acceptance of Gifts and Favors

As a general rule no employee of the Town shall accept any gift, favor, or thing of value from anyone doing business with or potentially doing business with the Town. Employees are allowed to accept gifts of nominal value such as a meal. Nominal valued gifts are those things that a reasonable person would interpret as being inexpensive and inconsequential. By no means shall an employee accept any gift or favor that would give the impression of favoritism toward any individual or company. Nominal gifts provided to a department or the Town as a whole are acceptable as long as the gift does not go to the

benefit of an individual employee.

~~**Section 7. Performance Evaluation**~~

~~Supervisors and/or Department Heads shall conduct performance evaluation conferences with each employee at least once a year to review the employee's accomplishments and strengths, areas for improvements, goals for the next year, and overall performance level. These performance evaluations shall be documented in writing and placed in the employee's personnel file. The Human Resources Officer shall determine procedures and evaluation forms for the performance evaluation program.~~

Section ~~8~~7. Safety

~~Safety is the responsibility of both the Town and employees.~~ It is the policy of the Town to establish a safe work environment for employees. ~~The Town shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads and supervisors are responsible for ensuring safe work procedures for all employees and providing necessary safety training programs.~~ Employees shall follow the safety policies and procedures and attend safety-training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action including dismissal. All safety issues should be brought to the attention of the Town Manager.

Each Town employee is responsible for:

- Developing and maintaining safe work habits;
- Promptly reporting all accidents and injuries;
- Pointing out dangerous practices and working conditions;
- Taking proper care of equipment;
- Knowing the location and use of fire extinguishers, the location of fire exists and the method of reporting a fire or other emergency;
- Reporting suspicious persons or activities;
- Practicing safe driving habits; and
- Reporting unsafe conditions and submitting practical safety suggestions.

Section ~~9~~8. Direct Deposit

Employees are required to participate in the Town's direct deposit program. Each employee's net pay is deposited into the employee's bank account of record on each payday.

Section ~~10~~9. Use of Town Supplies and Equipment

Town equipment, materials, tools, and supplies shall not be available for personal use nor be removed from Town property except in conduct of official Town business.

Town employees shall provide reasonable care for any Town vehicle as a duty and function of their job requirements and will be held accountable for the vehicle. In the event a Town vehicle is damaged due to the negligent and/or careless actions of the employee, the employee may, at the Town's discretion, be required to pay the Town's insurance deductible. Such vehicles are to be used exclusively for official Town business, except that by special approval by the Town Manager, an employee may be directed to take the vehicle home when doing so shall serve the best interest of the Town. Use of Town vehicles for commuting to and from work shall usually be limited to an employee who is subject to emergency call-back work. IRS guidelines will dictate any charges which shall accrue to the employee for personal use of a Town-owned vehicle. No individual shall operate or ride in a Town vehicle except as is required for the conduct of official Town business.

This policy does not apply to sworn law enforcement personnel whose use of Town vehicles is governed by the Police Department's standard operating procedures. However, if a Town vehicle is damaged as a result of the negligent and/or careless actions of a law enforcement officer, that officer may, at the discretion of the Town, be required to pay the Town's insurance deductible.

Section ~~11~~10. Code of Ethics

Town employees are expected to discharge their duties conscientiously and to conduct themselves in a manner, on and off the job, which will reflect favorably upon the Town.

Employees shall:

- Refrain from any misuse of their position motivated by the desire for private gain for themselves or others. They must conduct themselves in such a manner that there is no suggestion of private gain from their employment with the Town.
- Exercise discretion in their care of personal financial activities to avoid any legal liabilities, which would reflect unfavorably upon the Town.
- Not use their positions to coerce, or give the impression of coercing, another person to provide any financial benefit to the employee or to other persons.
- Avoid any action, which might result in giving preferential treatment to any organization or person, lose his independence, or lose the confidence of the public.
- Notify appropriate supervisory personnel if the employee witnesses another employee engaging in an unlawful act on the job or violation of these personnel policies.

Section ~~12~~11. Solicitation

Solicitation in the Town by employees or outsiders is generally prohibited. However, employees may participate in solicitation for civic and non-profit causes if done in a discrete manner. Solicitation must be conducted in such a way that no employee feels pressure to participate. ~~Solicitation may be by e-mail, posting or word of mouth.~~ Town copy equipment shall not be used to make copies for solicitations.

Section ~~13~~12. Identification

All new hires to the Town shall present proof of identification and employment eligibility before they are placed on the payroll. Documentation for identification must be in accordance with the Immigration Reform and Control Act of 1986 and an I-9 form completed. The Finance Director, or designee, shall be responsible for obtaining adequate identification and for maintaining such documentation in the files. In addition to the I-9 form requirement, the Town also participates in the E-Verify program, which is an internet-based system that allows employers to verify that applicants are eligible to work in the United States.

Section ~~14~~13. Criminal Record and Credit Reports Required

Prior to employment, and after a conditional offer of employment has been made, all employees are subject to a criminal background check~~ and a credit report~~. It is the responsibility of the Town to conduct the criminal background check~~ and it is the responsibility of the employee to provide the Town with a current credit report~~. Employees who have received conditional employment offers are required to submit an authorization to complete the criminal background report. Authorization must include specific permission to obtain the report and include name, address, date of birth, and social security number. A criminal record ~~or a poor credit report~~ may exclude a person from employment if the criminal ~~and/or credit~~ activity has a potential impact on the work a person will be assigned or have a significant negative impact on the organization, but shall not be used for any discriminatory purpose. The Town may check the credit reports for employees with fiduciary responsibilities, fiscal oversight, or regularly handle public funds as it deems necessary.

Section ~~15~~14. Compliance with Americans with Disabilities Act (ADA)

The Town is required to comply with ADA by making reasonable accommodation to qualified employees with disabilities who, with or without reasonable accommodation, can perform the essential functions of a job desired or held.

Disabled employees include those who have, have a record of, or are regarded as having sensory impairments, mobility impairments, and other impairments as defined under ADA. Reasonable accommodation for such employees applies not only to the work an employee is doing, but also to all other aspects of an employee's job, which includes access to facilities and work schedule.

It is the policy of the Town to comply with the provisions of ADA and to make reasonable accommodation for disabled employees whenever necessary and requested.

Section ~~16~~15. Notification of Employment

All persons offered employment with the Town will be provided with a written confirmation of employment. Such confirmation shall include the salary being paid, title, date of hire, and other conditions of employment that may be established. Such confirmation shall not be construed to create any employment contract or otherwise alter the at-will nature of employment with the Town.

Section ~~17~~16. Driver's License

All employees whose job requires the operation of a motor vehicle shall maintain a valid North Carolina driver's license at all times.

Requirements For New Employees. Any person who is applying for a position which will require operation of a licensed motor vehicle in the course of employment must list all traffic convictions on the employment application at the time application is made. Applicants will be required to produce a valid North Carolina driver's license prior to employment. Out-of-state candidates may submit a driver's license from the state where they currently reside but must obtain a North Carolina driver's license within 30 days of employment. Any omission or inaccuracy can result in disciplinary action including dismissal.

Requirements for Current Employees. After employment all employees who are required to operate a vehicle as part of their job shall be required to maintain a current, valid North Carolina driver's license. All citations and/or arrests or charges for moving violations and accidents must be reported in writing to the Department Head and the Human Resources Officer on the next business day following the conviction. All license suspensions or revocations must be reported to the Department Head and Human Resources Officer immediately. Failure to report a conviction, suspension, or revocation can result in disciplinary action including dismissal. The Town may check the driving record of employees periodically but no less than one time each year.
All accidents that occur while on official Town business must be reported to the employee's supervisor immediately who shall in turn notify the Department Head and Human Resources Officer.

Section ~~18~~17. Dress Code

The image of the Town is directly related to its employees and the way in which they conduct and present themselves. All employees are expected to dress in an acceptable and professional manner at all times~~ which is consistent with good business practice~~. Employees must be neat, clean, and presentable while on duty. In departments where uniforms are required, employees must wear assigned uniforms in the manner in which they were intended while on duty. The Department Head shall have the responsibility of determining acceptable dress in each department.

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility

All full-time and part-time employees of the Town are eligible for employee benefits as provided for in this Policy. These benefits are subject to change at the Town 's discretion. Temporary employees are eligible only for workers' compensation and FICA.

Section 2. Group Health and Hospitalization Insurance

The Town provides group health and hospitalization insurance programs for full-time employees, subject to annual appropriation by the Board of Commissioners and insurance policy provisions. The term group health is intended to be inclusive of insurance programs for vision and dental care if separate plans from the health and hospitalization plan.

Part-time employees who are scheduled to work 30 hours or more per week on a continuous, year-round basis may purchase group health through the Town for themselves and their qualified dependents. A pro-rated amount of the cost of coverage paid for a full-time employee shall be paid by the Town with the remainder of the cost being paid by the employee. This pro-rated amount shall be based on regularly scheduled hours.

Information concerning cost and benefits shall be available to all employees from the Human Resources Officer.

Retiree Insurance Coverage

The Town provides medical, dental, vision, and life insurance coverage for retirees, at no cost to the retiree. Employee eligibility for this coverage is determined as follows:

- ~~Employees who began Town employment prior to September 20, 1994 and retire with the Town of Wendell will have insurance benefits paid by the Town without regard to the length of service or whether retirement is full or reduced service retirement.~~
- Employees who began Town employment between September 20, 1994 and July 31, 2001 and retire with the Town of Wendell will have insurance benefits paid by the Town if they have 10 years of full-time service with the Town of Wendell without regard to whether retirement is full or reduced service retirement.
- Employees who began Town employment between August 1, 2001 and April 11, 2004 and retire with the Town of Wendell will have insurance benefits paid by the Town if they have 10 years of uninterrupted full-time service with the Town of Wendell and they retire with ~~regular full-service retirement~~ full, unreduced retirement benefits as defined by the Local Government Employees' Retirement System.
- Employees who began Town employment on or after April 12, 2004 and retire with the Town of Wendell will have insurance benefits paid by the Town if they have 20 years of uninterrupted full-time service with the Town of Wendell and they retire with regular full-service retirement.
- Employees who retire under the disability provisions of the North Carolina Local Government Employees' Retirement System are subject to the above provisions.

- Sick leave is not used to make the calculation of creditable service with the Town of Wendell.

Section 3. Group Life Insurance

The Town may elect to provide group life insurance for each employee subject to the stipulations of the insurance contract. Employees may elect to purchase additional coverage for themselves or to insure other family members. Additional employee insurance and dependent coverage is at the expense of the employee.

Section 4. Retirement

Each employee who is expected to work for the Town more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System immediately upon employment.

Section 5. Supplemental Retirement Benefits

The Town provides supplemental retirement benefits through a 401(k) or a 457 plan for full and part-time non-law enforcement personnel at the rate of five percent of the employee's annual salary consistent with provisions under State Statute.~~.~~

Section 6. Social Security

The Town participates in FICA and therefore withholds FICA from the employee as well as provides the employer's matching share.

Section 7. Workers' Compensation

All employees of the Town are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once. ~~This provision also applies to reactions to smallpox vaccinations administered to Town employees under Section 304 of the Homeland Security Act. Such reactions shall be treated the same as any other workers compensation claim with regard to leave and salary continuation.~~

Before returning to work, a statement from the attending physician should be submitted to the Human Resources Officer giving permission for the employee to resume regular duties.

Upon returning to work the employee's salary will be computed on the basis of the last salary plus any merit increment or other salary increase to which the employee would have been entitled during the disability covered by Workers Compensation. An employee continues to earn annual leave and sick leave and will retain all accumulated sick or annual leave. Employees may use sick leave and/or vacation during the waiting period before Workers' compensation benefits begin.

Responsibility for claiming compensation under the Workers' Compensation Act lies with the injured employee and such claims should be filed with the North Carolina Industrial Commission within five days of the date of injury. The Human Resources Officer will assist the employee in filing the claim.

Section 8. Unemployment Compensation

In accordance with Public Law 94-566 and subsequent amendments, local governments are covered by unemployment insurance. Town employees who are terminated due to a reduction in force or released from Town service through no fault of their own may apply for benefits through the local Division of Employment Security office. Eligibility for unemployment will be determined by the Division of Employment Security.

Section 9. Tuition Assistance Program and Professional Development Payments

Employees are encouraged and supported in efforts to be life-long learners and grow as public employees in service to the community. To that end, employee tuition assistance is provided as reimbursement through the Wendell Lifestyle Benefit Account (LBA). Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time or during educational leave which will improve their skills for their current job or prepare them for promotional opportunities with the Town. Tuition, registration, fees, laboratory fees, required books with an authentic receipt, and student fees are eligible expenses. ~~Employees may be reimbursed eligible expenses up to a total of $1,500 per fiscal year.~~ Employees must provide necessary supporting documentation for approved expenses, including receipts for paid tuition, provided the documentation clearly shows what was paid, not what is owed. Satisfactory completion of the courses with at least a "C" in graded courses or for a pass/fail course will be required for reimbursement. The employee must provide a letter from the course instructor certifying the successful completion of the course or a certificate of completion from the institution within 30 days of class ending.

Employees must certify the amount and kind of other funds received for educational purposes from Federal, State, or other sources (such as scholarships and grants). The Town will not reimburse the employee for amounts funded by other sources. Employees may not receive total reimbursements in excess of 100 percent of the total eligible expenses.

~~Requests for tuition assistance shall be submitted to the Human Resources Officer prior to course registration and are subject to the review and approval of the Department Head and Town Manager and are subject to availability of funds. The Human Resources Officer shall request funding for this program as part of the budget process if not included in individual departmental budgets. Employees enrolled in approved educational programs may use Town-owned computers to do work related to school so long as such use does not detract from job related duties. Employees receiving tuition assistance will be required to repay the tuition assistance if separated from employment with the Town within 24~~ months of receiving the tuition assistance.

Professional development and the maintenance of credentials is both encouraged and

expected for all employees as appropriate for the job ~~The~~description. The Town will provide employees with professional development opportunities and the opportunity to obtain and maintain credit hours for certifications as the Town's budget and scheduling permits. ~~Costs for courses and classes for professional development exceeding $500 will be required to be repaid if the employee separates from employment with the Town within 12 months of payment of said cost.~~

Section 10. Wendell Lifestyle Benefit Account (LBA)

The Town acknowledges the value and unique needs of each individual employee in the provision of benefit. The establishment of the Wendell Lifestyle Benefit Account benefit provides allows full-time employees to customize benefits not covered by health care plans to fit Wendell's unique culture and align with the individual lifestyle needs of the employee. Eligible expenses are broad and subject to annual review and plan approval to include provisions for the following:

- Childcare and support
- Education and school (for you, your child, or your legal dependent)
- Fitness and physical activity
- Financial and personal budgeting
- Health and Medical (items not covered by Town health, dental, vision, or HRA plans for yourself, spouse, domestic partner, child, or legal dependent)
- Health and wellness services
- Other Helpful Resources (as provided for in the LBA).

The benefit amount provided to employees is subject to annual budgetary appropriation and plan approval by the Town Manager or their designee.

Section 11. Dependent Fee Waiver Benefit for Parks and Recreation Programs

Dependents of full-time employees shall receive a comprehensive fee-waiver for all dependent youth (18 years and under) for certain Parks and Recreation programs. The dependent youth must live in the employee's household to be eligible for the waiver.

Dependents of employees are eligible for an entire waiver of fees for all athletics, track-outs, and summer camps offered and sponsored by the Town of Wendell Parks and Recreation Department. The waiver of fees does not include programs offered by other vendors or contractors. The Town Manager may make waivers to this provision as needed.

Formatted: Font: Not Bold

ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

Section 1. Policy

The policy of the Town is to provide vacation, sick, and holiday leave to all full-time and part-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of different lengths. Temporary employees do not earn vacation or sick leave nor are they eligible to be paid for holidays.

Leave balances should be periodically provided to employees and may be included in bi-weekly pay advices.

Section 2. Holidays

The following days, and other such days as the Board of Commissioners may designate, are holidays with full pay for employees of the Town:

- New Year's Day
- Martin Luther King, Jr's Birthday
- Good Friday
- Memorial Day
- Juneteenth
- Independence Day
- Labor Day
- Veterans Day
- Thanksgiving Day and Friday after
- Christmas - 3 days to coincide with the State of NC (according to NC GS 1126-4(5))

When a holiday falls on a Saturday or a Sunday, Monday shall be observed as a holiday except for Christmas. The Town Manager has the authority to designate a day other than Monday if circumstances warrant.

An employee must be in active paid status before and after the holiday in order to receive a paid holiday.

Effect on Other Types of Leave. Regular holidays which occur during a vacation, sick, or other leave period shall be considered as a holiday and shall not be considered as vacation, sick, or other leave.

Compensation When Work is Required or Regularly Scheduled Off for Shift Personnel. Effective July 1, 2007, employees required to perform work on regularly scheduled holidays shall be paid at the regular rate for hours actually worked and receive pay at the regular rate for the holiday hours they did not take off. Holiday time will be pro-rated based on the average workweek.

Section 3. Vacation Leave

Vacation leave may be used for any reason desired by the employee for an absence from work. Employees are also provided with leave for sickness or family illnesses; however, vacation leave may be used for absences due to illness if the employee so chooses. All employees are strongly encouraged to take five (5) consecutive days of vacation each calendar year ~~however, employees whose duties require them to collect money are required to take five consecutive days~~.

Use by Probationary Employees. Employees serving a probationary period following initial employment may accumulate vacation leave but shall not be permitted to take vacation leave during the first six months of the probationary period, unless approved by the Town Manager. Employees shall be allowed to take accumulated vacation leave after six months of service.

Accrual Rate. Each full and permanent part-time employee of the Town shall earn vacation on a monthly basis based on the following schedule, prorated by the average number of hours scheduled in the workweek understanding that law enforcement employees are subject to 84 hours per 14 day schedule:~~:~~

Months of Service	General Employees	Law Enforcement Employees
0 - 35	8 Hours Per Month	8.4 Hours Per Month
36 - 95	10 Hours Per Month	10.5 Hours Per Month
96 - 179	12 Hours Per Month	12.6 Hours Per Month
180 - 239	14 Hours Per Month	14.7 Hours Per Month
240 - 299	16 Hours Per Month	16.8 Hours Per Month
300 - 359	18 Hours Per Month	18.9 Hours Per Month
360 +	20 Hours Per Month	21.0 Hours Per Month

Maximum Accumulation. Vacation leave may be accumulated without any applicable maximum until June 30 of each fiscal year. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed thirty days (30). Effective the last payroll in the fiscal year, any employee with more than 30 days of accumulated vacation leave shall have the excess converted to sick leave. Not withstanding the above, ~~E~~employees are ~~not~~ eligible to receive pay for vacation time not taken during employment not to exceed compensation for up to 40 hours of leave per year for traditional 80 hour pay period positions and up to 42 hours of leave for law enforcement positions using an 84 hour pay period. The pay is for vacation time above 240 hours (or 252 hours for law enforcement) rolled over if authorized by the Town Manager and subject to annual budget appropriation.~~.~~ Any excess leave beyond the hours paid are converted to sick leave as described herein.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum

accumulation.

Manner of Taking. Employees shall be granted the use of earned vacation leave at those times designated by the Department Head which will least obstruct normal operations of the Town. Department Heads are responsible for ensuring that approved vacation leave does not hinder the effectiveness of service delivery. Vacation may be taken in one-quarter hour increments and should be requested in advance according to departmental policies and procedures.

Payment Upon Separation or Retirement. An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation, subject to a 30-day maximum; provided, however, in the case of resignation, written notice must be given to the supervisor at least two weeks in advance of the effective date of resignation. Department Heads are required to give a minimum of 30 days' notice of resignation. Any employee failing to give the written notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Manager when deemed to be in the best interest of the Town. Employees separated involuntarily shall also receive vacation balances paid according to these provisions.

An employee retiring under the provisions of the North Carolina Local Government Employees' Retirement System may have any vacation in excess of the 30-day maximum converted to sick leave and used for retirement service credit.

Payment upon Death. The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed 30 days as described above.

Section 4. Sick Leave

Sick leave is a privilege granted to an employee for use consistent with this policy and is not a right. Sick leave may be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, temporary disabilities, required physical or dental examinations or treatment, exposure to a contagious disease when continuing work might jeopardize the health of others, and death in the immediate family.

Sick leave may also be used when an employee must care for a member of his or her immediate family who is ill or needs medical care. An employee's immediate family member is defined in Article 1, Section 11 of this Policy.

Sick leave may be used concurrently with Family and Medical Leave. See "Family and Medical Leave (Extended Leave)". Sick leave may also be used to supplement Workers' Compensation Disability Leave during the waiting period before Workers' compensation benefits begin.

Accrual Rate, Accumulation, and Manner of Taking. Sick leave shall accrue at a rate of one day per month of service or twelve days per year. Sick leave for full-time and part-time employees working other than the basic work schedule shall be pro-rated. Notification

of the desire to take sick leave shall be submitted to the employee's supervisor prior to the leave or not later than two hours after the beginning of a scheduled workday following return from leave. An employee who works in shifts must notify his supervisor of the desire to take sick leave prior to leave or not later than two hours prior to the beginning of the shift. Failure to notify the appropriate supervisor may result in disciplinary action.

The minimum amount of sick leave that may be taken is one half hour and leave must be taken in increments of one-quarter hour.

There is no maximum accumulation of sick leave and unused sick leave may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the Town, except as stated for employees retiring.

Transfer of Sick Leave from Previous Employer. The Town will accept the transfer of sick leave for employees from other employers who are participants of the North Carolina Local Government or State Employees Retirement System, provided the employer is the immediate past employer. The sick leave will be treated as though it were earned with the Town of Wendell. The previous employer must certify the sick leave amount. This sick leave may be taken after the employee successfully completes the initial probationary period.

Sick leave earned from an out-of-state employer will be considered for transfer on a case-by-case basis. Generally, the leave earned in states that allow unused sick leave to be applied toward retirement credit will be accepted by the Town.

Medical Certification

Under the general sick leave policy, the employee's Department Head may require a physician's certificate stating the necessity of the employee's absence due to an illness relating to the employees own health or the health condition of a family member. The certificate must state the employee's ability to resume duties for each occasion on which an employee uses sick leave or whenever the supervisor observes a pattern of absenteeism. The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

- Employees shall not be on duty when they might endanger their health or the health of other employees; and
- To prevent the abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action including dismissal.

Under the Family and Medical Leave policy, the employee's or family's physician must

complete specific certification forms to support the request for Family and Medical Leave and submit them to the Human Resources Officer.

Donation of Sick Leave to Other Employees. Employees may donate some of their accumulated sick leave to other Town employees. The employee must request a donation in writing for approval by the Town Manager. Multiple donations to the same or different employee are allowed. However, the donating employee will only be allowed to donate up to one work week of time within a calendar year. Additionally, the donated leave must not cause the donating employee's sick leave balance to fall below two (2) work weeks. ~~Donations are allowed one time per year not to exceed three days (24 hours) per year.~~

In order to donate sick leave to another employee, the recipient must:

- Have an illness themselves or have a prolonged illness in their immediate family;
- Have exhausted, or will exhaust in a short time, their sick leave balance; and
- Not be absent due to an injury involving a worker's compensation claim.

Employees can only donate sick leave to another employee. Compensatory and vacation leave cannot be donated. ~~Only sick leave may be transferred. Annual leave cannot be donated.~~

Leave Pro-Rated. Holiday, annual, and sick leave earned by full-time and part-time employees with fewer or more hours than the basic work week shall be determined by the following formula:

- The number of hours worked by such employees shall be divided by the number of hours in the basic workweek, usually 40 hours.
- The proportion obtained in step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic workweek.
- The number of hours in step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned. The number of hours in step 2 divided by 26 shall be the number of hours of leave earned per bi-weekly payroll period.

This means, for example, law enforcement officers scheduled for an annual average 42-hour week earn 8.4 hours for each day of sick, vacation, or holiday leave.

Extended Medical Leave. The Family and Medical Leave Act (FMLA) entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if they had not taken leave for up to 12 weeks. If the employee is in a pay status, such as using vacation, compensatory, or sick leave, the Town will continue to pay for benefits until such leave is exhausted.

Other voluntary insurance and payroll deductions are the responsibility of the employee, and the employee must make those payments for continued coverage of that benefit. An employee shall retain all unused vacation and sick leave while on Leave Without Pay. An employee ceases to earn leave credits on the date leave without pay begins. The

employee may continue to be eligible for benefits under the Town 's group insurance plans at his or her own expense, subject to any regulation adopted by the Board of Commissioners and the regulations of the insurance carrier. ~~The Town employs in excess of 50 employees and is required to follow the provisions of FMLA. The Town supports the provisions of FMLA in fairness to its employees.~~

Employee eligibility is based on two requirements:

- Must have a total of at least 12 months of service with the Town; and
- Must have worked at least 1,250 hours during the last 12 months of service with the Town.

Eligible employees are entitled to the following:

Twelve workweeks of leave in a 12-month period for:

- The birth of a child and to care for the newborn child within one year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
- To care for the employee's spouse, child, or parent who has a serious health condition;
- A serious health condition that makes the employee unable to perform the essential functions of his or her job; *(A serious health condition is defined as a condition, which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illnesses of a serious and long-term nature resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition which results in a period of incapacity of more than three days would be considered a serious health condition.)*
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" or

Twenty-six workweeks of leave during a single 12-month period to care for:

- A covered service member with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

Eligible employees will be allowed to take up to 12 weeks of leave per 12 months and may use their accumulated compensatory, vacation, and sick leave to cover the absence. Intermittent leave or a reduced working schedule may be provided for FMLA leave when required as part of a medically necessary process. ~~FMLA leave may be taken using vacation and/or sick leave, unpaid, or a combination of paid and unpaid. As in the sick leave policy, sick leave is available only upon documented illness of an employee or when an employee must care for a covered family member who is ill.~~ Unpaid leave may be granted when the employee has exhausted all types of paid leave or when it is in the best interest of the employee to take some or all of the leave without pay. Additional time away from the job beyond the 12-week period may be approved in accordance with the Town 's Leave Without Pay Policy and with the approval of the Human Resources Officer and the

Town Manager.

The employee must submit the request for the use of FMLA leave to the Human Resources Officer in writing. Eligibility will be determined, and the request will be approved or denied by the Human Resources Officer and the Town Manager within 5 business days of receipt. When the leave is foreseeable the employee must submit the request in writing to the Human Resources Officer 30 days in advance or as soon as practical. Unforeseeable leave requests must be made as soon as practical.

~~Within 5 business days of receipt of a request for FMLA leave or knowledge that the leave may be FMLA qualifying, the Human Resources Officer will determine if the employee is eligible for FMLA leave and provide the employee with an oral or written~~A response of either approval or denial will be provided using forms *WH-381: Notice of Eligibility and Rights and Responsibilities* and *WH-382: Designation Notice indicating approval or denial of FMLA leave*. The Human Resources Officer will also notify the Department Head of the request. After receiving notice of initial approval of FMLA leave, the supervisor and/or the Department Head shall note absences on all subsequent timesheets pertaining to FMLA leave.~~. The Human Resources Officer will also notify the Department Head of the request. If the employee is not eligible for FMLA leave, the Human Resource Officer will also notify the employee within 5 business days.~~

Formatted: Font: Not Bold

Formatted: Font: Not Bold, Italic

Formatted: Font: Not Bold

In the case of serious health conditions, the Human Resources Officer will supply the requesting employee with the necessary medical certification forms. One of the following forms, specific to the type of request, may be supplied to the employee:

- Form WH-380E or WH-380F: Certification of Health Care Provider for Serious Health Condition
- Form WH-384: Certification of Qualifying Exigency for Military Family Leave
- Form WH-385: Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave

FMLA leave forms should be completed by a medical professional and submitted to the Human Resources Officer within 15 days. The Human Resources Officer or the Town Manager may contact the health care provider only to authenticate the source of the information or to clarify the meaning of a response. If the certification form is not received within the allotted time, the Town reserves the right to deny leave until the necessary documentation has been received.

~~FMLA leave approval or denial notices will be given to the employee within 5 business days of receiving a completed medical certification form or otherwise acquiring enough knowledge to determine whether an employee qualifies for FMLA leave. The Human Resources Officer will provide the employee with form **WH-382: Designation Notice indicating approval or denial of FMLA leave.** After receiving notice of initial approval of FMLA leave, the supervisor and/or the Department Head shall note absences on all subsequent timesheets pertaining to FMLA leave.~~

An employee who takes leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the

same or one which entails substantially equivalent skill, effort, responsibility, and authority.

After a reasonable period of leave, the employee must respond to the employer's request for information about the status and intent to return to work. For an employee's own serious health condition, the Town may require certification that the employee is able to resume work. ~~*The Town will follow the provisions of the Family and Medical Leave Act.*~~

~~**Leave Certification.** The Town requires medical certification for an employee to qualify for leave under Family and Medical Leave. Upon the request of Family and Medical Leave, the Human Resources Officer will provide the employee with the necessary medical certification forms which must be taken to the employee's or the family member's physician (see Section 18. Family and Medical Leave).~~

~~The certification form completed by the employee's or the family member's physician should include the date when the condition began, its expected duration, and a brief statement of treatment that does not violate the employees right to privacy. For the employee's own health condition, the certification should state that the employee is unable to perform the essential functions of his/her position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and the employee's presence would be beneficial or required.~~

~~Certification should be furnished at least 30 days prior to the needed leave unless the employee's or family member's condition is a sudden one. Certification should be received no longer than 15 days from the date of the employee's request to the Human Resources Officer. The approval or denial decision will be made by the Human Resources Officer and the Town Manager within 5 days of receiving the certification.~~

~~The employee is expected to return to work at the end of the allotted time stated in the medical certification unless he/she has requested additional time in writing under the Town's Leave Without Pay policy. To return to work, the employee must provide a fitness-for-duty certification.~~

~~Section 20.~~ Leave Without Pay

A full or part-time employee may be granted a leave of absence without pay for a period of up to twelve months by the Town Manager. The leave shall be used for reasons of personal disability after both sick leave and vacation have been exhausted, sickness or disability of immediate family members, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justified by the Town Manager.

The employee shall apply in writing to their supervisor for leave. The employee is obligated to return to duty by the end of the time determined appropriate by the Town Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority, and pay. If the employee decides not to return to work, the supervisor shall be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested, shall be considered a resignation.

~~**Family and Medical Leave (Extended Leave) and Leave Without Pay: Retention and Continuation of Benefits.** When an employee is on Family and Medical leave (Extended Leave), the Town will continue the employee's health and other non-leave benefits at the same level and under the same conditions as if the employee had continued to work for a period of up to 12 weeks. If the employee is in a pay status, such as using vacation, compensatory, or sick leave, the Town will continue to pay for benefits until such leave is exhausted.~~

~~Other voluntary insurance and payroll deductions are the responsibility of the employee and the employee must make these payments for continued coverage of that benefit. An employee shall retain all unused vacation and sick leave while on Leave Without Pay. An employee ceases to earn leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the Town's group insurance plans at his or her own expense, subject to any regulation adopted by the Board of Commissioners and the regulations of the insurance carrier.~~

Section 5. **Workers' Compensation Leave.** An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued compensatory, vacation, and sick leave during the first waiting period. The employee may also elect to supplement workers' compensation payments after they begin with compensatory, vacation, and sick leave provided that the combination of leave supplement and workers' compensation payments does not exceed normal compensation. An employee on workers' compensation leave may be permitted to continue to be eligible for benefits under the Town's group insurance plans. When workers' compensation leave extends long enough for the waiting period to be reimbursed, the employee shall return the reimbursement check to the Town and have leave hours re-instated for all time covered by paid leave. In such cases, the Town will pay the employee for any unpaid time that is owed the employee.

All injuries arising out of, and during, the course of employment should be reported by the injured employee to the immediate supervisor as soon as possible. The supervisor or Department Head shall file an injury report immediately. The employee must use sick leave or annual leave for the first seven (7) days of disability. These days will be reimbursed only if the disability continued for more than twenty-one (21) days.

Before returning to work, a statement from the attending physician should be submitted to the Human Resources Officer giving permission for the employee to resume regular duties. The Town reserves the right to request a second opinion, at the expense of the Town, to verify the employee is fit for duty.

Upon return to work, the employee's salary will be computed on the basis of the last salary plus any merit increment or other salary increase to which the employee would have been entitled during the disability covered by workers' compensation. While receiving workers' compensation benefits, an employee continues to earn annual leave, and will retain all accumulated sick or annual leave.

~~This provision also applies to reactions to smallpox vaccinations administered to Town~~

~~employees under Section 304 of the Homeland Security Act. Such reactions shall be treated the same as any other workers' compensation claim as regards leave and salary continuation. Workers' Compensation leave may run concurrently with FMLA leave.~~

Section ~~5~~6. Military Leave

Regular employees who are members of an Armed Forces Reserve or National Guard shall be granted two calendar weeks per calendar year for military leave without pay. Employees may use compensatory or vacation leave or leave without pay during military leave. On rare occasions due to annual training being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For this purpose only, an employee shall be granted an additional ten days of military leave during the same calendar year. If such duty is required beyond these ten workdays, the employee shall be eligible to take vacation leave, compensatory time, or leave without pay. While taking the standard military leave, the employee's leave and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. However, for military leave beyond the standard two weeks, leave and other benefits shall cease after the fourth week.

Employees who are eligible for military leave have all job rights specified by the Vietnam Veterans Readjustment Act. Covered employees under the Uniformed Services Employment and Reemployment Rights Act ("USERRA") shall be entitled to the rights therein and in the event of any conflict with these policies, the requirements of USERRA shall control.

Reinstatement Following Military Service. An employee called to extended active duty with the United States military forces shall be reinstated with full benefits provided the employee:

- Applies for reinstatement within ninety days after the release from military service;
- Can perform the duties of the former position or similar position; or
- Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of the military service but is able to perform the duties of another position in the service of the Town. In this case the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

An employee who remains in uniformed service for a period of five years or more shall not be eligible to be reinstated to service with the Town and is subject to termination. The Town Manager is responsible for determining whether circumstances warrant continued employment or termination.

Section ~~6~~7. Civil Leave

A Town employee called for jury duty or as a court witness for the Federal or State governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and

travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to the Town any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

Section ~~7~~8. Community Service Leave

~~The Town encourages employees to be involved in their children's school activities as well as the community and civic organizations in the Town.~~ Each employee is authorized to take 12 hours of community service leave per fiscal year, an average of one hour per month., ~~to attend school functions, participate in a child's classroom, or volunteer for school and other community-based organizations.~~ Such leave must be taken with advanced approval from the employee's supervisor. Community Service Leave shall not be carried over from one fiscal year to the next. All unused Community Service Leave is lost at the end of the fiscal year.

Section ~~8~~9. Educational Leave

The Town Manager may grant educational leave to an employee in his sole discretion. Educational leave may be granted with or without pay to an employee and is limited to one course at a time.

Section ~~9~~10. Adverse Weather and Emergency Conditions

Because the Town is responsible for providing public safety services it is the general policy of the Town that offices do not close for inclement weather. However, under extenuating circumstances brought on by ice, snow, hurricanes, and other hazardous conditions, the Town Manager, or designee, shall declare that the Inclement Weather Plan is in effect by announcing that offices will open and/or close at some time other than the normal time. Such notification will be made through whatever means the Town Manager, or designee, deems appropriate. Department Heads should designate which staff are in critical positions that are required to work regardless of weather conditions.

Employees in non-critical positions may report to work by the designated opening time or leave at a designated early closing time and still be considered as having worked the entire day. Those who do not report to work at all will be charged leave for the entire day. Employees reporting after the designated starting time shall be charged leave for the hours of work missed. Employees should always consider their personal safety in making a decision as to whether to report to work.

Because some employees are required to work during times when the Town Manager has declared the Town's offices closed, those employees will be allowed compensatory time on an hour-for-hour basis. Those hours worked are not considered as extra hours for determining hours worked in a workweek. Since the police department is normally scheduled to work 24 hours a day, seven days a week, this provision does not apply to sworn law enforcement personnel.

Section ~~10~~11. Bereavement Leave

Bereavement Leave may be used for death in the employee's immediate family not to exceed 24 consecutive hours for any two occurrences in a calendar year. Additional leave time required for such occurrence may be charged to vacation or other leave such as accrued compensatory time when approved by the Department Head. Bereavement Leave for those not covered by the immediate family definition may be charged to vacation or compensatory leave. An employee's immediate family member is defined in Article 1, Section 11 of this Policy.~~For purposes of this policy immediate family includes:~~

Section ~~11~~12. Return of Town Equipment While in Leave Status

When paid leave is exhausted, all Town equipment is to be returned to the Town until the employee has been reinstated and returns to work.

Section 13. Caregiver Leave

Effective July 1, 2024, regular full-time employees who have been in pay status for the prior twelve (12) month period shall receive a maximum of 320 hours of job-protected, continuous paid parental or elder care leave. If the employee is eligible for FMLA, the paid leave is included in the total FMLA period and is in addition to other parental protections for pregnancy and nursing mothers as required by local, state, and federal laws. The Caregiver Leave is provided for both Parental Leave and Elder Care as described herein.

Employees requesting paid caregiver leave must contact the Human Resources Officer in writing at least sixty (60) days in advance of taking such leave, when possible and practical, and submit both a Caregiver Leave Request Form and an FMLA form. The FMLA form must be completed by a certified medical provider. Leave must be approved by the Department Head, Human Resources Officer, and Town Manager.

While on leave, employees will receive approved caregiver leave not to exceed 320 hours, in the same manner and on the same schedule as employees are normally paid while not in leave status. The employee's usual payroll deductions and contributions and the Town's usual payroll contributions will continue.

All benefits provided to the employee per Town policy prior to paid Caregiver Leave will continue. Any employee contributions for benefits, 401k loans, or other employee obligations normally paid by the employee through payroll deduction will continue. If a holiday occurs during the paid caregiver leave period, the holiday will be paid and will not count against the paid caregiver leave hours. Employees using paid caregiver leave continue to accrue service time as well as sick and vacation leave according to Town policy.

A qualifying employee is entitled to paid caregiver leave once within any 24 month period. Leave may be taken either consecutively or intermittently. However, employees for consecutive and/or intermittent leave must communicate in advance with their Department Head to ensure continuity of operations within their department. All unused leave will be forfeited upon the employee's return to work. Caregiver Leave does not rollover.

An employee is expected to return to work at the end of their approved paid caregiver

leave unless the employee has received approval from the Town Manager (or their designee) to extend the time away from work with other types of accrued leave. Employees should notify the Human Resources Officer and Department Head if there is any anticipated change in their original return-to-work date. The Town Manager has the authority to approve deviations to the Caregiver Leave policy to accommodate the needs of the Town and the employee.

Parental Leave
The purpose of the parental leave is to enable the employee to care for and bond with a newborn, a newly adopted, or newly placed foster child consistent with the procedures established by the Town Manager and Human Resources Officer.

Elder Care
The purpose of elder care leave is to enable the employee to provide for the care of a parent, grandparent, spouse, partner, or legal guardian consistent with the procedures established by the Town Manager and Human Resources Officer.

ARTICLE VIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

Resignation. An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two weeks with 30 days' notice being required for Department Heads. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation unless the notice is waived upon recommendation of the Department Head and approval by the Town Manager. Vacation leave may not be taken in the final two weeks when an employee is working during the resignation notice period, unless authorized by the Town Manager or designee. The Department Head may require a physician's certification if sick leave is used during the resignation notice period.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation.

Employees must return any Town property including uniforms and equipment upon resignation.

Reduction in Force. In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's performance, organizational needs, and seniority in determining those employees to be retained. Employees who are separated because of a reduction in force shall be given at least two weeks' notice of the anticipated action. No regular employee shall be separated because of a reduction in force while there are temporary or probationary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary or probationary employee.

Disability. An employee who cannot perform the required duties because of a physical or mental impairment may be separated for disability. The employee or the Town may initiate action. In cases initiated by the employee, such action must be accompanied by medical evidence acceptable to the Town Manager. The Town may require an examination, at the Town 's expense, performed by a physician of the Town's choice.

In cases where the employee becomes disabled while employed and if requested, the Town will make a reasonable accommodation for such disability under the provisions of the American With Disabilities Act (ADA).

Voluntary Retirement. An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan. The employee shall give the Town notice of voluntary retirement.

Death. Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

Dismissal. An employee may be dismissed in accordance with the provisions and procedures of Article IX of this Policy.

Reinstatement. An employee who resigns while in good standing or who is separated because of a reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head and approval of the Town Manager. An employee who is reinstated in this manner shall be re-credited with their previously accrued sick leave and previous service.

ARTICLE IX. DISCIPLINARY ACTION

Section 1. Disciplinary Actions

When an employee fails to meet the expectations of the Town in either job-related performance or in personal behavior the employee may be subject to disciplinary action. Discipline may take the form of oral or written reprimand, demotion, suspension or termination.

The Town, under the laws of the State of North Carolina, is an at-will employer and as such may terminate an employee for any reason. The Town subscribes to fair employment practices and therefore encourages training, coaching, and other measures to make each employee successful in their jobs. Such practices include giving employees oral and written feedback on the quality of their performance through periodic performance evaluations.

Disciplinary Action for Failure in Performance of Duties: Progressive Steps

In cases where an employee's performance is unsatisfactory, the supervisor shall document where performance is unsatisfactory and give the employee specific guidance in ways that performance needs to be improved. This is normally done during scheduled performance evaluation sessions but may be done at any time performance issues arise.

If the employee is not meeting the expectations of the job, the supervisor and/or Department Head shall follow the steps listed below in administering progressive discipline. ~~The Town may dispense with any or all of the below steps in its sole discretion if circumstances warrant.~~

Step 1. Provide a Written Warning – At this step of the disciplinary process the employee is warned that their performance is not acceptable and must improve in order to avoid termination. The supervisor shall be specific and document in writing what the deficiencies in performance are. This step follows any oral warnings and/or coaching sessions, which the supervisor shall document in writing. The supervisor shall inform the employee in person, and document in writing, that if performance is not improved in a reasonable amount of time, demotion or termination is the consequence. The Department Head, if not the direct supervisor, shall participate in a written warning conference and be provided with a copy of the warning and all other written documentation. Since all disciplinary actions have their own unique set of circumstances, it is often difficult to determine how long a "reasonable amount of time" is. It is up to the Department Head, with the consultation of the direct supervisor and the Human Resources Officer, to determine what constitutes a reasonable amount of time.

Step 2. Action for Demotion or Termination – If the employee's performance has not improved as a result of the written warning, and after a reasonable amount of time, the ~~the Department Head must prepare a determination on final disciplinary action. A reasonable amount of time should be provided to allow the employee an opportunity to improve performance. The department~~ Department Head shall recommend to the Town Manager either demotion to a lower position or termination. Demotion is only an option if the

employee shows promise of being successful in a position of less responsibility. If termination is recommended, the Department Head must document the reasons why the employee has not met the expectations of the job. The recommendation to terminate must be reviewed with the Human Resources Officer before being sent to the Town Manager for final approval.

Disciplinary Action for Inappropriate Personal Conduct. In some instances, it is the behavior of an employee that warrants a disciplinary action rather than a failure in performance of duties. For example, ~~An inappropriate behavior may be, as an example~~, coming to work late and may result in a mild disciplinary action such as a written reprimand. Another example of an inappropriate behavior may be reporting to work under the influence of drugs or alcohol or assaulting another employee which may result in a more serious disciplinary action such as dismissal. It is the responsibility of the Department Head to determine appropriate disciplinary actions, however, suspension or termination must be approved by the Town Manager.

Role of the Human Resources Officer in Disciplinary Actions. Supervisors and Department Heads shall involve the Human Resources Officer in every aspect of disciplinary actions. It is the responsibility of the Human Resources Officer to:

- Ensure that due process has been followed.
- Ensure that all aspects of the process have been adequately documented.
- Review the documented deficiencies in performance or behavior of the employee to ensure the recommended disciplinary action is consistent with the deficiencies.
- Serve as a resource to the Town Manager, Department Head, supervisor, and employee.
- Make a recommendation to the Town Manager as to what action should be taken.

Disciplinary Action Conference. The Department Head or Town Manager, in the presence of the Human Resources Officer, shall hold a disciplinary action conference with the employee for the purpose of explaining the action being taken: demotion, suspension, or termination. In cases of suspension or termination such action shall take effect immediately. The Town may dispense with the Disciplinary Action Conference as warranted by the circumstances when approved by the Town Manager.

Suspension from job duties may be an action in response to a failure in personal conduct. Unless it is deemed a non-disciplinary suspension, described below, suspensions are without pay. Suspensions are normally one to three days depending upon the offense. The Department Head shall recommend a length of suspension to the Human Resources Officer for his recommendation to the Town Manager. The Town Manager ultimately has the authority to administer suspensions.

In instances where personal safety of Town employees is involved, or in cases of egregious behavior, the Department Head has the authority to administer an immediate suspension. Such suspension shall be immediately referred to the Human Resources Officer and Town Manager for action. If termination is warranted that action must be by the Town Manager.

Non-Disciplinary Suspension. During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of any civil action involving an employee, when suspension would, in the opinion of the Department Head, be in the best interest of the Town, with authorization and approval of the Town Manager, the Department Head may suspend the employee for part or all of the proceedings as a non-disciplinary action. In such cases, the Department Head may:

- Temporarily relieve the employee of all duties and responsibilities and place the employee on paid or unpaid leave for the duration of the suspension; or
- Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities.

If the employee is reinstated following the suspension such employee shall not lose any compensation or benefits to which otherwise the employee would have been entitled had the suspension not occurred. If the employee is terminated following suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits with the exception of accrued vacation and sick leave shall be maintained during the period of suspension. Nothing herein shall preclude the Town from terminating an employee during or prior to any investigation, hearing, or trial for any criminal charge, during the course of any civil action, or as a result of alleged detrimental conduct if the Town deems necessary under the circumstances and in its sole discretion.

ARTICLE X. GRIEVANCE PROCEDURE

Section 1. Policy

It is the policy of the Town to provide a just procedure for the presentation, consideration, and disposition of employee grievances. ~~The purpose of this article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.~~

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action including dismissal.

Section 2. Grievance Defined

A grievance is a claim or complaint by an employee based upon an event or condition which affects the circumstances under which an employee works and is allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions. All grievances are subject to the steps outlined below.

All cases of harassment or discrimination can be grieved directly to the Town Manager. In such cases the timeframe and requirements outlined in ~~Step 2 of the grievance procedure shall be followed.~~ Article V, Section 5) shall be followed

Section 3. Purposes of the Grievance Procedure

The purposes of the grievance procedure include, but are not limited to:

- Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;
- Encouraging employees to express themselves about the conditions of work which affect them as employees;
- Promoting better understanding of policies, practices, and procedures which affect employees;
- Increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures;
- Increasing the sense of responsibility exercised by supervisors in dealing with their employees;
- Encouraging conflicts to be resolved between employees and supervisors who must maintain an effective future working relationship, and therefore, encouraging conflicts to be resolved at the lowest level possible of the chain of command through collaboration and/or mediation; and
- Creating a work environment free of continuing conflicts, disagreements, and negative feelings about the Town or its leaders, thus freeing up employee motivation, productivity, and creativity.

Section 4. Grievance Process

When an employee has a grievance, the following successive steps are to be taken. The number of calendar days indicated for each step should be considered the maximum unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved by the Town Manager before the decision becomes effective.

Step 1. Informal Resolution with the Supervisor. Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve the Human Resources Officer as a resource to help resolve the grievance.

Step 2. Grievance Filed with Department Head. If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the Department Head. Grievances related to disciplinary suspensions, demotions, or dismissals shall skip the informal resolution process and be initially presented directly to the Department Head. The grievance must be presented within seven calendar days of the event or within seven calendar days of learning of the event or condition. The written grievance should identify the action that is deemed unfair and the reason the grieving employee believes it to be unfair. The Department Head shall respond to the grievance within seven calendar days after receipt of the grievance. The Department Head should consult with all relevant employees with the goal of ~~, and is encouraged to, consult with any employee of the Town in order to~~ reaching a correct, impartial, fair, and equitable determination or decision concerning the grievance. Any employee consulted by the Department Head is required to cooperate to the fullest extent possible.

The response from the Department Head shall be in writing and signed. In addition, the employee shall sign a copy to acknowledge receipt. A copy of the grievance and the Department Head's response shall be provided to the Human Resources Officer.

Step 3. Grievance Filed with the Town Manager. If the grievance is not resolved to the satisfaction of the employee by the Department Head, the employee may appeal, in writing, to the Town Manager within seven calendar days after receipt of the response from the Department Head. The Town Manager shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The Town Manager's decision regarding the grievance, as well as the disposition of the grievance shall be the final decision.

~~Department heads may file grievances directly with the Town Manager as outlined in Step 3.~~ Mediation may be used at any step in the process if authorized by the Town Manager. Mediations shall not be authorized if the grievance is based on a disciplinary suspension, demotion, or dismissal. Mediation is the neutral facilitation of the conflict where the facilitator helps the parties find a mutually agreeable outcome. The mediator should be a party agreed upon by all parties to the grievance. The process of obtaining a mediator is the responsibility of the Human Resources Officer.

~~The Town Manager's decision regarding the disposition of the grievance shall be the final decision.~~

Section 5. Role of the Human Resources Officer

Throughout the grievance procedure, the Human Resources Officer shall:

- Receive grievances and forwards to Town Manager, if applicable;
- Advise parties (including employee, supervisors, and Town Manager) of their rights and responsibilities under this policy, including interpreting the grievance and other policies for consistency of application;
- Be a clearinghouse for information and decisions in the matter including maintaining files of all grievance documents;
- Give notices to parties concerning timetables of the process, etc.;
- Assist employees and supervisors in drafting statements;
- Facilitate the resolution of conflicts in the procedures or of the grievance at any step in the process; and
- Help locate mediation or other resources as needed.

The Human Resources Officer shall also determine whether or not additional time shall be allowed to either side in unusual circumstances if the parties cannot agree upon extensions when needed or indicated.

ARTICLE XI. TRAVEL EXPENSES

Section 1. Policy

Employees are expected to travel from time to time and incur travel-related expenses. The Town will reimburse employees for reasonable and job-related expenses in accordance with the guidelines established below. The Town Manager, or designee, must approve all out-of-county travel in advance for the travel to be eligible for reimbursement. All requests for travel reimbursement must be submitted on a Town-approved travel form.

Section 2. Travel by Personal Auto

Travel by private vehicle will be reimbursed at the IRS rate in effect at the time of travel only in cases where a town-owned vehicle is not available. Employees who choose to use their private vehicle when a town-owned vehicle is available are not eligible for reimbursement. Employees should confer with the Finance Department regarding the mileage reimbursement rate prior to travel if there is any question about whether travel will be reimbursed. Mileage will be paid on the basis of actual miles traveled from the Town offices. Travel by means other than personal car vehicle must be approved by the Town Manager in advance of the travel. All claims for travel shall be submitted on an approved travel claim form and submitted to the Finance Department within five (5) working days upon return to the office.

Section 3. Travel Related Expenses

Travel expenses, other than meals, which are based on a per diem basis, will be authorized only for trips lasting overnight or longer and will be figured on an actual expense basis. Receipts documenting hotel expenses and other travel related expenses are required for reimbursement. Meals are reimbursed according to the ~~up to a total of $39 per day according to the following maximum reimbursable amounts:~~

~~Breakfast - $8.00~~
~~Lunch - $12.50~~
~~Dinner - $18.50~~

~~The above rates are subject to change periodically. The Town has adopted the per meal and~~ per diem rates of the State of North Carolina and, as such, will change as the State changes its rates.

Formatted: Not Highlight

Employees may be reimbursed for meals for partial days of travel when in overnight travel status and the partial day is the day of departure or the day of return. The following applies:

- Breakfast: depart duty station prior to 6:00 AM and extend the workday by two hours.
- Lunch: depart duty station prior to 12:00 PM on the day of departure or return to duty station after 2:00 PM on the day of return.
- Dinner: depart duty station prior to 5:00 PM on the day of departure or return to duty station after 8:00 PM on the day of return and extend the workday by three hours.
- The travel must involve a travel destination located at least 35 miles from the

employee's duty station or home, whichever is less.

- Reimbursement cannot be paid to employees for lunches if travel does not involve an overnight stay.
- All meal expenses associated with conferences the employee has been authorized to attend will be reimbursed if part of the conference.
- Employees of the Town shall be reimbursed for the actual cost for special expenses paid by them from their personal funds, such as registration fees, tuition fees, special tours, convention banquets, or similar events scheduled as a part of the convention or course attended. Reimbursement for these items will be at actual cost and must be approved in advance by the Town Manager.
- No reimbursement will be paid without a written travel claim, with receipts attached, and signed by the employee and supervisor.
- With the approval of Town Manager, an employee may obtain a travel advance prior to travel and such advance must be accounted for on the travel claim. Employees are not entitled to a second travel advance if an earlier advance has not been paid back or accounted for.
- Regular pay will continue during an employee's absence on official business, or when employee is participating in authorized training courses or when employee is attending authorized professional conferences and meetings. During these times the employee will be considered as officially working and such time will be used to determine hours worked for the week.

ARTICLE XII. INFORMATION TECHNOLOGY POLICY

Section 1. Purpose

The purpose of this policy is to outline the acceptable use of computer equipment and other electronic devices and resources when conducting Town of Wendell business. These policies are in place to protect both the employees and the Town. Inappropriate use exposes the Town to risks including virus attacks, compromise of network systems and services, and legal issues.

Section ~~1~~2. Overview

The Acceptable Use Policy and accompanying standards and guidelines define the Town objectives and procedures on appropriate business use of the Town's information and telecommunications systems and equipment.

The Town provides technology-based resources, including Internet, electronic mail, software, telecommunications, voicemail and fax, for official and authorized business purposes. Any use of such systems and equipment perceived to be illegal, harassing, offensive, or in violation of other policies, standards or guidelines, or any other uses that would reflect adversely on the Town, can be considered a violation of this policy.

The Town reserves the right to monitor, record, or periodically audit use of any of its information and telecommunications systems and equipment. Use of these systems and equipment constitutes expressed consent by those covered by the scope of this policy to such monitoring, recording, and auditing. Actual or suspected misuse of these systems should be reported to the appropriate Management representative in a timely manner.

Section 3. Applicability

This policy applies to anyone who uses Town Technology Resources, including full-time and temporary employees, contractors, vendors, and all others who use the Town Technology resources, including those with access to Town systems, networks, company information, nonpublic personal information, personally identifiable information, and/or customer data.

Section 4. Definitions

- *BYOD Technology* is defined as any non-Town-owned device and stands for “Bring Your Own Device” Technology.
- *Town Technology Resources* refer to the Town owned/leased systems, networks, equipment, software, and processes, including internet resources, that provide access to and/or use of the Town data including accessing, downloading, transmitting, or storing data and information as well as the operation of software products, telecommunications resources, and tools.
- *Electronic Communications Systems* refer to all Town information systems and equipment including electronic mail resources, Internet resources and telecommunications resources.

- *Electronic Mail Resources* refer to Town owned systems, networks, equipment, software, and processes including but not limited to the software products and tools that provide access to and/or use of electronic mail
- *Jailbreak* refers to the technique of disabling control restrictions programmed into carrier mobile technology for the intent of having top level control over the hardware and software of the device.
- *Managed Service Provider* is defined as the Town staff or contractor who provides information technology management, support and oversight.
- *Objectionable* refers to anything that could be reasonably considered to be obscene, indecent, harassing, offensive, or any other uses that would reflect adversely on the Town, including but not limited to comments or images that would offend, harass, or threaten someone on the basis of his or her race, color, religion, national origin, gender, sexual preference, or political beliefs.
- *Policy* refers to the fundamental statement of Town's stance on proper and appropriate configuration, use, and management of Town resources
- *Procedures* refer to written or unwritten protocols implementing specific instructions and requirements outlined in Standards.
- *Standards* refer to a written statements providing specific instructions and requirements to implement objectives outlined in Policies.
- *Telecommunications Resources* refer to both: Town owned telecommunications systems and equipment including phones (wired, cellular, digital, wireless, softphone, smart phone, etc.) as well as voice mail, fax, pager, and modem communications.
- *Users* refer to all individuals, groups, or organizations authorized by the Town to access and use Town Technology Resources.
- *Public Record* refers to any method of conducting business on behalf of Town of Wendell including but not limited to email and attachments, faxes, telephone voicemail, internet, text messages or computers, pursuant to Chapter 132 of North Carolina General statutes and applicable federal laws.

Section 5. Proper Use of Town Technology Resources

All the activities of the Town are in public domain and therefore employees should have no expectations of privacy when using any information technology resources. Additionally, contents contained in the BYOD associated with Town business may be subject to the same requirements.

Whenever possible, Town-owned resources should be the primary tool used to conduct Town business. Town technology resources are provided for official and authorized Town business use and purposes in support of the Town mission, business goals and objectives. In the event the BYOD technology cannot be supported to meet the Town requirements, the device in question will not be permitted to connect in any way to Town technology resources. Use of social media platforms shall be subject to the Town of Wendell Social Media Policy. Limited personal use of town technology resources, including accessing third party electronic mail or personal social media accounts via town technology resources, is acceptable as long as it does not interfere with normal business operations, conflict with business interests, or have an adverse impact on the reputation of the Town.

All software and licenses used by the Town must be legally purchased or acquired. The use of Town technology resources shall be in accordance with applicable laws and regulations, as well as relevant copyright laws and legally applicable software license agreements. Users shall be accountable for all their activity via town technology resources, as well as all activity associated with their accounts. Users shall download and install only software and apps for any type of Town-owned devices that have been certified and approved by their supervisor and the IT Specialist. Users can use only Town approved versions and configurations of hardware and software when using town technology resources. Users must not adjust the hardware/software security settings to be less restrictive than the Town approved configuration.

Section 6. Proper Use of Electronic Mail Resources

Users must not send sensitive information such as credit card information, social security numbers or passwords via electronic mail resources unless the sensitive information is encrypted. The use of third-party electronic mail for the transmission of Town information is prohibited. Town e-mail should not be used for personal purposes, including but not limited to: sending personal emails, registering at websites, sending broadcast transmissions, mass mailings, or bulletin boards.

All electronic mail transmissions outside the Town must have the following disclaimer attached: *"This e-mail message (and any attachment) is intended for the use of the individual or entity to which it is addressed. This message contains information from the Town of Wendell that may be privileged, confidential, or exempt from disclosure under applicable law. If you are not the intended recipient or authorized to receive this for the intended recipient, any use, dissemination, distribution, retention, archiving, or copying of this communication is strictly prohibited. Email correspondence to and from this address is subject to the North Carolina Public Records Act and may be disclosed to third parties unless made confidential under applicable law. If you have received this email in error, please notify the sender immediately by reply e-mail, delete this message, and delete the material from all devices."*

Section 7. Proper Use of Telecommunications Resources

- Town private branch exchange (PBX) or voice over IP (VOIP) systems should be programmed when feasible to disable access to unauthorized information services or exchanges where charges beyond those for normal telephone calls can be assessed.
- Exceptions must be pre-authorized by staff as appointed by the Town Manager.
- Caution should be used when utilizing speaker phone systems to limit the potential for the release of sensitive information and limit the disruption to others. Users are responsible for preventing the unauthorized disclosure of their voicemails.
- Default voicemail passwords must be changed as soon as issued and comply with information security guidelines.
- All Town fax transmissions require a cover page with the following disclaimer statement: *"This fax and any of its contents may contain information, which is privileged and confidential. This fax is intended solely for the use of the individual or*

entity to which it is addressed. If you are not the intended recipient of this fax, you are hereby notified that any dissemination, distribution, copying, or action taken in relation to the contents of and attachments to this fax is strictly prohibited and may be unlawful. If you have received this fax in error, notify the sender immediately and permanently delete the original and any copy of this fax."

Section 8. Technology

Any use of town technology resources, or town telecommunications resources, must not be illegal, must not constitute or be perceived as a conflict of Town interest, must not violate Town policies, and must not interfere with normal business activities and operations. Employees are not allowed to use personal smartphones and other BYOD technology for Town network access. Town technology resources shall not be used to download, transmit, or store objectionable material, images, or content. Users should not allow others to access town technology resources by using their accounts unless business needs require immediate access to user's capabilities, the user is unavailable and only with department head approval. Unauthorized copying of copyrighted software and licenses for corporate, personal use, or for distribution to others is prohibited. Receipt or use of unauthorized software copies and licenses is prohibited. The use of third-party technology such as personal electronic mail or file storage accounts outside of Town approved technology resources in the transmission of Town information is prohibited.

Jailbreaking or rooting your Town owned device is a technique that poses a risk to town technology resources if it adversely impacts the intended performance of security software, data leakage controls and risk mitigating controls implemented by the Town. Disabling the technology implemented to protect town technology resources can result in disciplinary actions including termination.

Participation in any chat groups, electronic bulletin boards, or forums is permitted only when conducting official and authorized Town business. Personal use of town technology resources to participate in any chat groups, electronic bulletin boards, or forums is prohibited.

The following may result in the user losing BYOD technology privileges (including cell phone stipend) or other disciplinary action up to and including termination:

- Excessive use of mobile services;
- Not following security protocols as defined by the Town;
- Not following laws related to mobile phones (i.e. no texting or emailing while driving);
- Not upgrading to standard devices and operating systems that Town can secure and cost-effectively support;
- Excessive fees or other pay per use features;
- Unapproved purchase or replacement of devices or accessories;
- Not reporting a lost or stolen BYOD technology device to Information Security within two (2) hours; and
- Downloading software which may adversely impact town technology resources.

Section 9. Improper Use

Using any Town technology resource for activities that are illegal, inappropriate, offensive, or violates the civil rights of any person, including but not limited to: the use of sexually explicit material or material or remarks that ridicule others on the basis of race, creed, religion, color, sex, disability, age, political affiliation, national origin or sexual orientation is prohibited can result in disciplinary actions including termination.

Any time information is transmitted through e-mail, over the Internet, or through other electronic media, there is the possibility that it could be intercepted. If the employee is uncertain whether information is confidential, employees should obtain approval before transmitting it. In the event material is determined to be confidential, appropriate steps should be taken to prevent its unauthorized receipt or access.

Employees are prohibited from using the Internet to present their personal views in a way that would lead the public to interpret it as an official Town position. This includes posting to external news groups, bulletin boards, or other public forums.

Live stream use of the Internet strains the network, significantly slows network speed, degrades network performance, and interferes with official business. Employees must exercise caution and good judgment concerning when and how to use the Internet as a radio, music or video player, using "push" technology on the Internet, or other continuous data streams.

Section 10. Downloaded Materials

Town technology resources shall not be used to access, download, transmit, or operate any commercial software, shareware, or freeware that has not been authorized by the Town. All material and content that has been downloaded using Town technology resources must be reviewed for malicious code and viruses in accordance with best practices.

Electronic mail resources shall not be used to send, receive or store commercial software, shareware, or freeware without the Town's prior written authorization. For security and performance purposes, electronic mail attachments should be less than 10 MB. Larger files should be shared by providing link through approved file share software (including but not limited to: OneDrive, Dropbox, Google Docs).

Section 11. Right to Monitor

The Town reserves the right to monitor and review all activities associated with using Town technology resources, including internet resources and software, at any time by Town employees. The Town also reserves the right to disclose the nature and content of any employee's activities involving Town technology resources to law enforcement officials or other third parties without any prior notice to the employee.

All electronic mail created, received, processed, transmitted, printed, and/or stored via

Town technology resources are Town information assets and property. The Town reserves the right to monitor the location of employee's BYOD technologies to restrict file/data access. The Town reserves the right to take appropriate steps to minimize the risk to town technology resources for lost or stolen BYOD devices. This may include the employee working with their BYOD vendor to lock or wipe clean of all data. The Town takes no responsibility for the personal information the employee may have lost on the software.

When an employee leaves the Town, upon separation from the Town, Town data should be removed from all BYOD devices.

The Town reserves the right to remove software installed or used on Town electronic communications systems when the IT Department detect or determine that the software copy or the use of the software does not comply with the existing licensing agreement.

Section 12. Misuse Reporting

Violations of this Policy and associated standards, in whole or in part, may constitute misuse and should be reported within two (2) hours. Upon the receipt or continued receipt of objectionable content, employees should contact the Human Resources Officer on same day of each occurrence. The Human Resources Officer will then notify the Town Manager, or designee, who will determine other staff to be notified.

Reports of misuse must include:

- Name and corporate e-mail address of person reporting misuse;
- Name(s) of person(s) suspected of misuse;
- Specific details of misuse or violation, including date, time, and description of event. If electronic documentation, should be part of reporting;
- All reports will be processed immediately by the IT Department in accordance with Town-approved processes and procedures; and
- Town Management should not directly discuss violations with the individual(s) involved in misuse unless instructed by the Human Resources Officer.

Section 13. Enforcement and Exception Handling

Failure to comply with the associated standards, guidelines, and procedures can result in disciplinary actions including termination of employees, or termination of contracts for contractors, partners, consultants, and other entities. Legal actions also may be taken for violations of applicable regulations and laws. Nothing in this policy shall prohibit law enforcement officers from conducting overt or covert operations in accordance with applicable Federal or State Laws.

Section 14. Password Policy

Passwords are an important part of the Town's efforts to protect its technology systems and information assets by ensuring that only approved individuals can access the Town's information systems and assets. Passwords provide the first line of defense against unauthorized access to computers and personal information.

Password Construction. To provide system security, a password must meet minimum length and complexity requirements. Because of technology constraints, password construction rules may vary from one system to another, but the long and complex passwords may be difficult for employees to remember. Therefore, this policy provides guidance to employees on how to construct a memorable password that meets (or exceeds) these requirements.

A password should be made up of:

- Eight (8) or more characters;
- At least one uppercase letter;
- At least one lowercase letter;
- At least one number (0 through 9); and
- At least one special character.

Password Change and Reuse. To minimize the window of opportunity for misuse by someone who has discovered a user's password, users will be required to change their passwords periodically. A employee's new password will be completely different from any recently used password. Employee's must create a new password that is different from their previous four passwords. An employee will be free to choose a new password at any time, but may not perform multiple changes in quick succession to enable continued use of a recently used password. If an account or password is suspected to have been compromised, the incident should be reported to the Information Technology Department.

Rules:

- Employees must change his or her password a minimum of every 90 days.
- Employees may not change his or her password more than once in two days.
- Employee's passwords must be different from the previous four passwords.

Responsibilities:

- Always keep passwords confidential.
- Do not disclose passwords to anyone or talk about a password in front of others.
- Do not hint at the format of a password to anyone.
- Do not write down passwords.
- Do not reveal passwords on questionnaires or security forms.
- Do not use the "remember password" feature in any Web browser.
- Do not send a password electronically via email.
- Do not use any "password keeper" or "password wallet" software or service.
- Choose a password that meets or exceeds requirements of this Policy.
- Choose a new password that has no more than three characters in common with your previous password.
- Computers should be locked when not in use.

ARTICLE XIII. RECORDS AND REPORTS

Section 1. Public Information

In compliance with GS 160A-168, the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; the terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the Town has the written contract or a record of the oral contract in its possession; current position; title; current salary; date and amount of each increase or decrease in salary with the Town; date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification with the Town; date and general description of the reasons for each promotion with the Town; the office to which the employee is currently assigned; and the date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the Town. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the Town setting forth the specific acts or omissions that are the basis of the dismissal. Any person may have access to this information for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt.

Section 2. Access to Confidential Records

All information contained in a Town employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

- The employee or their duly authorized agent may examine all portions of their personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.
- A licensed physician designated in writing by the employee may examine the employee's medical record.
- A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- An official of an agency of the State or Federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- An employee may sign a written release to be placed in their personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational

institutions, or other persons specified in the release.

- The Town Manager, with the concurrence of the Board of Commissioners, may inform any person of the employment, non-employment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Manager shall determine in writing that the release is essential to maintaining the level and quality of Town services. The written determination shall become a part of the employee's personnel file.

Section 3. Personnel Actions

The Human Resources Officer, with the approval of the Town Manager, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system. The official personnel files are those which are maintained by the Human Resources Department. These files shall contain documents such as employment applications and related materials, records of personnel actions, documentation of employee warnings, disciplinary actions, performance evaluations, retirement and insurance records, letters of recommendation, and other personnel-related documents. Any documents not contained in these files or maintained as designated by the Human Resources Officer is not an official part of the personnel file. The Human Resources Officer shall serve as custodian of all personnel records.

Section 4. Records of Former Employees

The provisions for access to records apply to former employees as they apply to present employees.

Section 5. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. The employee may seek removal of such material in accordance with established grievance procedures.

Section 6. Examining and/or Copying Confidential Material without Authorization

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

Section 7. Destruction of Records Regulated

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources.

ARTICLE XIV. IMPLEMENTATION OF POLICIES

Section 1. Conflicting Policies Repealed

All policies, ordinances, or resolutions that conflict with the provisions of these policies are hereby repealed.

Section 2. Separability

If any provision of these policies or any rule, regulation, or order thereunder of the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies of such rules, regulations, or orders to persons or circumstances other than those held invalid will not be affected thereby.

Section 3. Effective Date

These policies shall become effective on a date approved by the Board of Commissioners.

Section 4. Amendments

This policy may be amended by action of the Board of Commissioners and by resolution appropriately approved. Notice of any suggested amendment to the policy, or any portion thereof, shall be provided to employees and opportunities for employee comment and reaction shall be made available prior to the amendments going to the Board of Commissioners for action. ~~Proposed amendments should be posted on bulletin boards in all employee work locations and/or in employee newsletters.~~ Any revisions or amendments adopted in conformance with this procedure shall become effective as of the date of such adoption.

Duly adopted on ~~TBD~~ April 22, 2024 while in regular session.

_____
Virginia R. Gray,
Mayor

ATTEST:

_____
Mary Beth Tew,
Town Clerk

AGENDA ITEM NO. 6.g

Item Cover Page

TOWN BOARD OF COMMISSIONERS AGENDA ITEM REPORT

DATE:	April 22, 2024
SUBMITTED BY:	Mary Beth Tew, Planning
ITEM TYPE:	Staff Analysis
AGENDA SECTION:	ADMINISTRATIVE ITEMS
SUBJECT:	Decision on Zoning Text Amendment (ZTA24-01) Update of UDO Chapter 6 – Environmental Protection
SPECIFIC ACTION REQUESTED:	Make a Motion to Adopt the Attached Ordinance

ITEM SUMMARY:

The text amendment was tabled to the April 22, 2024 meeting to allow for a staff and legal review of the penalties sections in the amended ordinance to ensure that the use of civil and criminal penalties are appropriate. A staff report on the findings will be provided at the meeting. As criminal penalties are included in the text, Statute requires a second reading prior to consideration.

The current UDO Chapter 6 is not up to date with the new North Carolina Administrative Code, Session Laws, and requirements for the MS4 permit. The proposed updates to UDO Chapter 6 are as follows:

- Section 6.3 Neuse River Riparian Buffers
  - NCAC 15A 2B
  - Buffers are a form of open space. This describes how they are to be deeded.
  - NC Department of Environmental Quality requires this to be adopted in order to renew our MS4 permit.
- Section 6.6 Stormwater Runoff Provisions - Administration and Procedures
  - Requirements added for video pipe inspection and GIS files for the final approval of new stormwater systems.
  - This requirement allows staff to see pipe failures

before they are accepted and can be remedied without the use of Town funds.

- Section 6.6 Stormwater Runoff Provisions - General Standards
  - NCAC 15A 02H.0703, NCAC 15A 02H.1002, and NCAC 15A 02H.1003
  - Explains stormwater system design requirements for the control and treatment of runoff.
  - States requirements for Nitrogen Loading Rate Targets.
  - Explains methods to meet the nutrient control requirements.
  - Gives rules for the nutrient offset credits and how they can be acquired.
  - Defines Built-Upon Area Standards.
  - Gives details on Illicit Discharge enforcement, monitoring of discharges, and suspension of MS4 access.

Planning Board Action:

At their March 18, 2024 meeting, the Planning Board voted 7-0 on the motion to recommend approval of the rezoning.

Voting in Favor: Benjamin Griffin, Bradley Taylor, Phil Veasley, Tevis High, Matthew Meinig, Brad Jordan and Tina Cheek

Voting Against: none

Absent: Adam King and J. Harold Broadwell

Statement of Plan Consistency:

The proposed ordinance amendment is consistent with Blueprint Wendell 2030 since it furthers the goals listed below:

- Growth Management – Goal GM3.3 Amend or Rewrite the Unified Development Ordinance
- Natural Resource Conservation – Goal N1.9 Enact Stormwater Low-Impact Design Best Practices

ATTACHMENTS:
O-06-2024 Ordinance to Update UDO Chapter 6
Updated UDO Chapter 6
Staff Analysis - ZTA24-01 Update of Chapter 6 Environmental Protection
Current UDO Chapter 6 with Deletions marked

ORD # O-06-2024

AN ORDINANCE TO AMEND MULTIPLE SECTIONS OF CHAPTER 6 – ENVIRONMENTAL PROTECTION OF THE TOWN OF WENDELL UNIFIED DEVELOPMENT ORDINANCE TO COME INTO COMPLIANCE WITH THE NEW NORTH CAROLINA ADMINISTRATIVE CODE, SESSION LAWS, AND REQUIREMENTS FOR THE MS4 PERMIT

WHEREAS, Chapter 6 – ENVIRONMENTAL PROTECTION of the Town of Wendell Unified Development Ordinance contain sections that are required to be updated in compliance with the new North Carolina Administrative Code, Session Laws, and requirements for the MS4 permit; and

WHEREAS, the Town of Wendell Unified Development Ordinance Section 15.11 establishes uniform procedures for amending the text of the Ordinance;

NOW, THEREFORE BE IT ORDAINED by the Town Board of the Town of Wendell, North Carolina:

SECTION 1. That Chapter 6 – ENVIRONMENTAL PROTECTION of the Town of Wendell Unified Development Ordinance be amended to read as follows:

Chapter 6 – ENVIRONMENTAL PROTECTION

6.3 - Neuse River Basin Riparian Buffers (NRBs)

A. Both the corporate limits and the Extra Territorial Jurisdiction (ETJ) of the Town of Wendell fall completely within the Neuse River basin and are therefore subject to the riparian buffer rules as governed by North Carolina Administrative Code (NCAC), Title 15A, Chapter 2, Sub-Chapter B as amended.
B. NRBs are a form of open space, and as such, may only be retained in private ownership if the necessary conservation easements are recorded with the Wake County Register of Deeds. Otherwise, NRBs shall be separately deeded to a homeowner's association, a non-profit land trust or conservancy, Wake County, or the Town of Wendell (upon approval by the Town Council).

6.4 – Sedimentation and Erosion Control

In order to prevent soil erosion and sedimentation pollution, the developer shall comply with all requirements of the North Carolina Sedimentation Pollution Control Act of 1973, as amended. A Sedimentation and Erosion Control Plan approved by Wake County Environmental Services (or other agencies having jurisdiction) shall be in place prior to any land disturbing activity.

A. General Requirements. All new development and redevelopment shall be required to take measures to minimize erosion during construction and after development. All new development and redevelopment shall comply with the provisions of the latest adopted amendment to Town of Wendell Environmental Protection Ordinance. A land disturbance permit or exemption shall be obtained from Wake County prior to issuance of a construction improvement permit (CIP) for a subdivision, or part thereof.
B. Residential Clearing and Grading. In order to promote land development practices that minimize disturbance to vegetation and soils, limit alteration of the natural topography, minimize surface water and ground water runoff and diversion, minimize the need for additional storm drainage facilities, reduce sedimentation in surrounding waters and promote land development and site planning practices that are responsive to the town's scenic character without preventing the reasonable development of land; the initial clearing and grading of all residential major

subdivisions shall be limited to dedicated public rights-of-way and easements for the installation of streets, utilities, and other infrastructure. All grading activities shall be done in accordance with all applicable federal, state and local laws, rules and regulations; including those pertaining to air and water pollution and noise control.

1. Infrastructure. Grading for infrastructure improvements (streets, sidewalks, curb, gutter, water, sewer, utilities, stormwater, spoil and borrow areas, etc.) shall be phased according to the Master Plan. Prior to proceeding to another phase, the developer shall stabilize the present phase with adequate ground cover sufficient to restrain erosion and have all infrastructure installed.
2. Lots. Grading of individual lots within the major subdivision shall not begin without having first obtained a building permit from the Town of Wendell and shall be limited to those areas comprising the building footprint, driveway and a minimal area surrounding the building footprint to accommodate construction equipment.
3. Exemptions. Exemptions to the requirements of Section 6.4 (B) are as follows:
    a. Grading and clearing in emergency situations involving immediate danger to life or property or substantial fire hazards.

6.5 – Pre-Development Site Grading

Pre-development site grading may commence only with a permit issued in accordance with the provisions of Section 6.6, Stormwater Runoff Provisions. Predevelopment site grading, for the purpose of this ordinance, is any land disturbing activity of one acre or more that is not regulated by a site plan previously approved by the Board of Commissioners.

The grading may be considered a "low impact" or "high impact" activity based on the table below. If one or more of the high impact activities exist, the grading is considered high impact.

Low Impact Activity	High Impact Activity
1. Land disturbing activity is more than 100 feet from a residential district.	1. Land disturbing activity is 100 feet or less from a residential district.
2. Land disturbing activity will not intrude into either the Street Yard landscaping area or Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*	2. Land disturbing activity will intrude into either the Street Yard area or the Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*
3. The steepness of the proposed slope at clearing limit is 3:1 (horizontal: vertical) or flatter.	3. The steepness of the proposed slope at clearing limit is greater (steeper) than 3:1 (horizontal: vertical)
4. The height of the proposed grade change (cut or fill) is less than or equal to 3 feet.	4. The height of the proposed grade change is greater than 3 feet.

6.6 – Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance

General Provisions

Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development and redevelopment sites.

It is further determined that the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this Ordinance.

Additionally, the North Carolina Environmental Management Commission has identified and has promulgated rules that have been amended and affirmed by the North Carolina General Assembly (Neuse River Nutrient Management Strategy) to reduce the average annual loads of nitrogen and phosphorus delivered to the Neuse River from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction.

Therefore, the Town of Wendell establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge for development and redevelopment.

A. Purpose

1. The purpose of this article 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: increased post-development stormwater runoff, nitrogen; phosphorus, and total suspended solids in stormwater runoff; nonpoint and point source pollution associated with new development and redevelopment; and illicit discharges into municipal stormwater systems. 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.
2. This ordinance seeks to meet its general purpose through the following specific objectives and means:
    a. Establishing decision-making processes for development and redevelopment that protects the integrity of watersheds and preserves the health of water resources.
    b. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, stream bank erosion, nonpoint and point source.
    c. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; by requiring that new development not exceed export targets for nitrogen in stormwater runoff for the watershed through site layout, engineered stormwater controls, or permanent nutrient offset credits.
    d. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space, riparian buffers, and other conservation areas to the maximum extent practicable.
    e. Establishing design and review criteria for the construction, function, and use of structural stormwater best management practices (BMPs) and Stormwater Control Devices (SCMs) that may be used to meet the minimum post-development stormwater management standards.
    f. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs and SCMs 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 engineered stormwater controls inspection and management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

h. Controlling illicit discharges into the municipal separate stormwater system.

i. Managing flooding and downstream impacts with an awareness of impending regional growth.

j. Establishing design and review criteria for the construction, function, and use of engineered stormwater controls that may be used to meet the minimum post-development stormwater management standards; See code of ordinance Article 6.6.

k. Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the municipal separate stormwater system and waters of the State.

B. Definitions

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.

Built-upon area (BUA) Means the same as defined in N.C.G.S. 143-214.7(b2) “built-upon area" means impervious surface and 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" does not include a wooden slatted deck, the water area of a swimming pool, or gravel.

Density means the calculation of the total impervious area of a project divided by the total project area. Surface water bodies shall be included in calculations of project density.

Department means the North Carolina Department of Environmental Quality.

Design Manual means the North Carolina Department of Environmental Quality “Stormwater Design Manual”

Development means any land disturbing activity that increases the amount of built-upon area or that decreases the infiltration of precipitation into the soil.

Division means the Division of Water Quality in the North Carolina Department of Environmental Quality.

Engineered stormwater control means a physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property.

Engineered stormwater control measure inspection and maintenance plan written plan submitted by the owner for the required inspection, and maintenance of engineered stormwater control measures.

Erosion and Sediment control permit means the erosion and sedimentation control plan approval and land disturbance permit issued by Wake County for control of stormwater during land disturbing activities.

Flood Protection Zone means the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA.

High-Density Project. A project is a High-Density Project if it has 24 percent or more Built-upon Area (BUA) based on total project acreage for all residential and non-residential Development. Any project that exceeds the low-density threshold for a built-upon area.

Impervious Area. Impervious areas are those surfaces which prevent the infiltration of or impede the rate of infiltration of stormwater into the soil as compared with the natural conditions prior to development. Common areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, engineered and compacted gravel surfaces used for vehicular travel or parking and other surfaces which prevent or impede the natural infiltration of stormwater runoff that existed prior to development.

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

Low-Density project. A project is a Low-Density project if it has more than 15 percent Built-Upon Area (BUA) and no more 24 percent Built-Upon Area (BUA) based on total project acreage for all residential and non-residential development.

A project with an overall density at or below the relevant Low-Density threshold but containing areas with a density greater than the overall project density, may be considered low density if the project meets or exceeds the post-construction model practices for Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practical.

Non-Structural BMP means a best management practice that is intended to reduce the impacts of stormwater runoff by managing pollution at the source and that is not a physical device constructed to control or treat stormwater runoff. Examples of Non-Structural BMP's include reducing impervious areas, making use of existing natural features and system, reforestation, and cluster development.

A 1-year, 24-hour storm means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

Owner means 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.

Pre-existing Development means development in existing, or development review approved prior to the implementation date(s) of this ordinance.

Redevelopment means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Snap Tool means the most recent nutrient calculator approved by DEQ.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur:

Obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 21 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.

Ultra Low-Density Project. A project is an Ultra Low-Density project if it has 15 percent or less Built-Upon Area (BUA) and has less than one dwelling unit per acre for all residential and non-residential Development. A project with an overall density at or below the relevant Ultra Low-Density threshold but containing areas with a density greater than the overall project density, may be considered ultra low-density as long as the project meets or exceeds the post-construction model practices for Ultra Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

C. Applicability and Jurisdiction

1. Beginning with and after its effective date, this ordinance shall be applicable to all development and redevelopment throughout the Town limits and Extra-Territorial Jurisdiction (ETJ) of the Town of Wendell, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection 2 of this Section, Exemptions.
2. Exemptions:
    a. Single family and duplex residential and related recreational development and expansion of development that cumulatively disturbs less than 20,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance. This exemption does not relieve any development from applicable federal, state or local laws.
    b. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than 20,000 square feet and does not expand existing structures on a parcel is exempt from the provisions of this ordinance.
    c. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than 20,000 sf and expands existing structures on a parcel but does not result in a cumulative built-upon area for the parcel exceeding 24 percent is exempt from the provisions.
    d. Development and redevelopment that disturb less than 20,000 square feet are not exempt if such activities are part of a larger common plan of development or sale, and the larger common plan exceeds 20,000 square feet even though multiple, separate or distinct activities take place at different times on different schedules.
    e. Activities subject to requirements of the Neuse River Agriculture Rule, 15A NCAC 02B .0712 are exempt from the provisions of this ordinance.
    f. Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108 is exempt from the provisions of this ordinance.
        i. Development or expansion of development for which the permit application was submitted prior to adoption of this ordinance is optionally exempt from the provisions of this ordinance per the requirements of N.C.G.S. 143-755.
    g. Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.
    h. Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) existing development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls.

When an existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

3. No Development or Redevelopment until Compliance and Permit: No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.
4. Map.
    a. The provisions of this ordinance shall apply within the areas designated on the "Corporate Limits" map. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.
    b. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to consider 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.

D. Interpretation.
1. References to Statutes, Regulations, and Documents: Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the North Carolina Stormwater Best Management Practices Manual, hereinafter "the Design Manual"), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

E. Design Manual.
1. The Stormwater Administrator or his/her designee shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about sediment and erosion control permits and about the design, implementation and performance of engineered stormwater controls and other practices for compliance with this ordinance.
2. The Design Manual includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws, and the Neuse River rules.
3. Relationship of Design Manual to Other Laws and Regulations: If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.
4. Changes to Standards and Specifications: If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended after the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance regarding the application.

F. Relationship to Other Laws, Regulations and Private Agreements.

1. Conflict of Laws: This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards shall control.
2. Private Agreements: This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town of Wendell be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

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

H. Effective Date and Transitional Provisions.
1. The effective date of the stormwater ordinance is the date of adoption by the Board of Commissioners.
2. Final Approvals, Complete Applications: All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Wendell prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.
3. 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: the type and intensity of use for a specific parcel or parcels. This shall include, at a minimum, the boundaries of the project and a subdivision plan that has been approved.
    b. For any subsequent phase of development: sufficient detail showing that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.
4. Violations Continue: Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

Administration and Procedures

I. Stormwater Administrator: A Stormwater Administrator shall be designated by the Town of Wendell to administer and enforce this ordinance.
1. In addition to the powers and duties that may be conferred by other provisions of the Town of Wendell's Code of Ordinances and other laws, the Administrator shall have the following powers and duties under this ordinance:
    a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

b. To make determinations and render interpretations of this ordinance.
c. To review and make recommendations to other Town staff and Town boards on applications for development or redevelopment approvals.
d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
e. To maintain records, maps, forms and other official materials as they relate to the adoption, amendment, enforcement, and administration of this ordinance.
f. To designate appropriate other person(s) who shall carry out the powers and duties of the Administrator.
g. To take any other action necessary to administer the provisions of this ordinance.

J. Review Procedures.
1. A sediment and erosion control permit issued by Wake County is required for all development and redevelopment.
2. A sediment and erosion control permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including engineered stormwater control and elements of site design for stormwater management other than engineered stormwater control. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of engineered stormwater control or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.
3. Notification of Submittal of Complete Application: A notification shall be sent to the Stormwater Administrator when a complete application pursuant to the Wake County Erosion and Sedimentation Control regulations has been submitted.

K. Applications for Approval.
1. Concept Plan and Consultation Meeting. Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the Zebulon and Wendell Open Space and Greenway Master Plan, the Framework Plan (as described in the Town of Wendell Comprehensive Plan), and other relevant resource protection plans should be consulted in the discussion of the concept plan. This plan is available at the Town of Wendell Planning department. To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:
a. Existing Conditions/Proposed Site Plans: Existing conditions and proposed site layout sketch plans, which illustrate at a minimum:
i. existing and proposed topography;
ii. Perennial and Intermittent streams;
iii. mapping of predominant soils from soil surveys (if available);

iv. Stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements;

v. boundaries of existing predominant vegetation;

vi. proposed limits of clearing and grading;

vii. location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

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

c. Stormwater Management System Concept Plan: A written and graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed engineered stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

2. As-Built Plans and Final Approvals.

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

b. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. This shall also include;

i. Any geotechnical surveys completed by an authorized representative

ii. Video inspection of pipe with the following;

a. Provided on a USB compatible device

b. Drainage location information matching plan sheet drainage numbering system

c. Pipe size and type

d. 360° footage of each joint

iii. Geographical Information System (GIS) files from all stormwater conveyances provided in one of the following formats;

a. .gdb

b. .shp

c. .dwg (with georeference included)

iv. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of plat and any performance securities.

L. Approvals.

1. Effect of Approval: Approval authorizes the applicant to go forward with only the specific plans and activity 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.
2. Time Limit/Expiration: An approved plan shall become null and void if the applicant has failed to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.
3. In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

M. Appeals.

1. Right of Appeal: Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Administrator may file an appeal to the Zoning Board of Adjustment within 30 days.
2. Filing of Appeal and Procedures: Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the town. The Stormwater Administrator shall transmit to the town's Appeal Board all documents constituting the record on which the decision appealed from was taken.
3. The hearing conducted by the town's Appeal Board shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.
4. Review by Superior Court: Every decision of the town's Appeal Board 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 30 days after the latter of the following:
    a. The decision of the town's Appeal Board is filed; or
    b. A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the (Chair or Secretary of the Board of Adjustment that will hear appeals) at the time of its hearing of the case.

General Standards

N. 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.

O. Downstream Impact Analysis: The Downstream Impact Analysis must be performed in accordance with the "ten percent rule," and a copy of the analysis must be provided with the

permit application. The purpose of the Downstream Impact Analysis is to determine if the project will cause any unintentional additional impacts on flooding or channel degradation downstream of the project site. The analysis must include the assumptions, results and supporting calculations to show safe passage of post-development design flows downstream. This analysis shall be performed at the outlet(s) of the site, and downstream at each tributary junction to the point(s) in the conveyance system where the area of the portion of the site draining into the system is less than or equal to ten percent of the total drainage area above that point.

1. The typical steps in the application of the ten percent rule are:
    a. Using a topographical map, determine the point downstream where the proposed site equals ten percent of the total drainage area, called ten percent point. Identify all tributary junctions between the downstream site boundary and the ten percent point. All points identified, as well as the outlet of the site, are known as ten percent rule comparison points.
    b. Using a hydraulic model with existing land uses, determine the pre-development peak runoff rate (cfs) for the ten-year design storm event at each comparison point.
    c. Insert the proposed site design and proposed BMP's into land uses and determine the post-development peak runoff rate for the ten-year design storm at each comparison point.
    d. If the ten-year post-development peak discharge rate is greater than the pre-development discharge rate at any comparison point, then one of the following actions must be taken:
        i. Revise the site plan for the proposed site to incorporate better use of natural features, design additional structural control facilities, reduce impervious cover, or alter timing of peak flows to lower post-Development flows at each comparison point to pre-Development levels.
        ii. Obtain a flow easement from downstream property owners through the ten percent point where the post-Development peak discharge rate is higher than the pre-Development peak discharge rate.
        iii. Work with the town to determine other acceptable approaches to reduce the peak discharge rate for the ten-year storm.

    For further information on the ten percent rule, refer to the Georgia Stormwater Manual.

P. Standards for Stormwater Control Measures.

1. Evaluation According to Contents of Design Manual: All stormwater control measures, and engineered stormwater controls (or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.
2. Determination of Adequacy; Presumptions and Alternatives: Engineered stormwater controls that are designed, constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide documentation, calculations, and examples as necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

3. Separation from Seasonal High Water Table: For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.
4. Changes to Stormwater Plan Based on Emerging Technologies: Subject to the standards of this ordinance and other applicable law, a developer, in conjunction with the development's lot owners, may submit an application to revise the approved stormwater plan so as to use new technologies or best management practices not available when the original stormwater plan was approved. Innovative technologies may be used on a demonstration basis for a period of one year while simultaneously collecting data on the effectiveness of the technology according to its design. If at the end of the demonstration period the technology is not performing according to its intended design functions as judged by the Stormwater Administrator, the developer must retrofit the site with standard technology.

Q. Control and Treatment of Runoff
1. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (24) percent built-upon area, 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.
2. 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 volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary engineered stormwater control. These projects may utilize offsite Primary engineered stormwater control dedicated to treating an area encompassing the project.
3. 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).

R. Additional Stormwater Management Measures: In some cases, the Stormwater Administrator may require more stringent stormwater management measures where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters or to minimize offsite damage from stormwater runoff in accordance with the purpose of this ordinance as defined in Section D.

S. Nitrogen Loading Rate Targets
1. The project shall meet either a nitrogen stormwater loading rate target of 3.6 pounds per acre per year (lb./ac/yr.) and or 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 than 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 load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen load reduction to meet nutrient targets by using the Snap tool.
4. The nitrogen 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 and .0295.

T. Methods to Meet Nutrient Control Requirements

1. Projects may reduce export of nitrogen through any combination of engineered stormwater controls treating runoff on the site, in an approved offsite regional engineered stormwater control, or through the acquisition of permanent nutrient offset credits. The developer shall calculate the nitrogen reduction provided by these controls using the North Carolina Department of Environmental Quality Snap Tool.
2. 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 nitrogen reduction needs for the project entirely using permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

U. Use of Permanent Nutrient Offset Credits

1. Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan. The Stormwater Administrator shall issue an approval letter for the development that documents the needed nitrogen credits and where the development is located relative to the Town of Wendell Rules geographic requirements. All permanent nutrient offset credits permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.
2. Permanent nutrient offset credits shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.
3. A developer subject to this ordinance may acquire permanent nutrient offset credits through one of the following methods:
    a. Through a private nutrient bank.
    b. Through offsite offset provided by the developer and approved by Town of Wendell.
    c. Through an offset option provided by Town of Wendell.
    d. Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.
4. Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

V. Low Impact Development (LID) Project Classifications.

1. Low Impact Development (LID) project classification is an optional, best management practice which is not required by any standards of this ordinance.
2. Classification as a Low Impact Development requires that the development mimic the pre-developed hydrologic conditions of the site, as defined as "woods in good condition" for the two-year, 24-hour storm, within ten percent. The pre-developed conditions shall include: its hydrologic balance; frequency distribution of high flows; magnitude, frequency, and duration of low flows; groundwater recharge (or infiltration), and flow length and pattern. The conditions shall be measured through the comparison between measures of the pre-developed and developed conditions including total runoff volume, time of concentration, curve number, and peak discharge. Mimicry of the pre-developed hydrologic conditions may be achieved through such techniques as the minimization of disturbed areas and the use of on-lot distributed retention storage.
3. The following techniques must be used to achieve LID classification:
    a. Natural site design in consultation with the Town.
    b. Site buildings, roads, and other disturbance in the least environmentally sensitive areas, pursuing steep slopes, naturally well-draining soils, and other hydrologically valuable features undisturbed.

4. In addition, one of the following two techniques must be used to achieve LID classifications:
    a. Bio-retention systems.
    b. On-site infiltration.
5. In additions, at least one of the following techniques must be used to achieve LID:
    a. Retention of 50 percent of vegetated area, including open space, landscaping, or forests.
    b. Installation of tree-box filters for all residential street trees.
    c. Installation of driveway runners (in lieu of fully paved driveways) for all residential driveways.
    d. Installation of a Disconnected Impervious Surface (DIS) system on all residential lots (in accordance with the NCDENR Stormwater BMP manual), with all yards fully sodded:
        i. Installation shall be confirmed prior to Certificate of Occupancy, but no easement shall be required.
    e. Use of Permeable pavement for private driveways, private roads, or parking areas in accordance with the North Carolina Stormwater Best Management Practices Design Manual.
    f. Installation of one underground rain cistern per lot.
    g. Installation of vegetated roofs.
    h. Increasing all buffers in the Riparian Buffer Zone or the Flood Protection Zone, whichever is greater, by 50 feet, in accordance with Section 6.7 A.
    i. Use of reclaimed water for all buildings in accordance with State and local laws.
    j. Use of innovative LID techniques subject to the approval of the Town. For residential projects, this could include such things as additional stormwater measures in common areas (such as impervious surface pavers in a clubhouse parking lot, or rain gardens incorporated into passive open space).
6. On-Site Wastewater: Onsite systems disposal systems shall be operated and maintained in accordance with the Regulations Governing Sewage Treatment and Disposal Systems in Wake County (Regulations) adopted by the Wake County Board of Human and Environmental Services and enforced by Wake County. Onsite systems shall be inspected, permitted, repaired and/or professionally operated in accordance with the Regulations and in a manner to prevent adverse impacts on surface water and groundwater.

W. Built-Upon Area Standards.

1. BUA that is present at the time of the effective date of this ordinance, is considered "Existing BUA".
2. "Regulated BUA" will refer to all BUA in existence at the time of a development application, that was installed after the ordinance became effective, that was not vested at that time, and thus is subject to consideration under the Rule. Regulated BUA will have stormwater treatment already provided, will have been addressed by nutrient offsets, or will have been part of a development that did not exceed the Rule's nutrient loading rate targets or 24% BUA threshold (i.e., ≤24%).
3. "Cumulative BUA" will refer to all "Regulated BUA" plus any proposed net increase in BUA on a project site at the time of a development application. All Cumulative BUA is subject to consideration under the Rule, and it excludes all "Existing BUA".
4. Existing BUA requirements for added BUA after the adoption of this ordinance date (04-08-2024)

a. Individual residential lots and duplex lots with existing BUA at the time of the ordinance adoption any future additional BUA which accompanies land disturbance of 1 acre or more would require the calculation of all new BUA, any additional BUA beyond 5% of the lots total square footage would require onsite mitigation or the purchase of mitigation credits.

b. Commercial, Industrial, and multifamily with existing BUA at the time of the ordinance adoption any future additional BUA which accompanies land disturbance of .5 acre or more would require the calculation of all new BUA, any additional BUA of the lots total square footage would require onsite mitigation or purchase of mitigation credits.

X. Completion of Improvements and Maintenance.

1. Performance Security for Installation and Maintenance of Improvements: The town may, at its discretion, require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. If improvements are not installed prior to approval of a record plat, the town shall require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. This performance security is required in order to ensure that the Structural BMPs are:
    a. Installed by the permit holder as required by the approved stormwater management plan; and/or
    b. Maintained by the Owner as required by the operation and maintenance agreement.
2. Form and Amount of Installation Performance Security: The amount of an installation performance security must equal at least 125 percent of the estimated cost of the required improvements, including project management costs that have not been installed by the time of Record Plat submittal.
3. Form and Amount of Maintenance Performance Security: The amount of maintenance performance security must be at least 125 percent of the total estimated construction cost of the Engineered Stormwater control approved under the permit.
4. Uses of Performance Security for Installation.
    a. Forfeiture Provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or Owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
    b. Default. Upon default of the Owner to construct, maintain, repair and, if necessary, reconstruct any Engineered Stormwater control in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the Owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the town shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
    c. Costs in Excess of Performance Security. If the town acts upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

d. Refund. Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

5. Uses of Performance Security for Maintenance.
    a. Forfeiture Provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or Owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
    b. Default. Upon default of the Owner to construct, maintain, repair and, if necessary, reconstruct any Engineered Stormwater control in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the Owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of maintenance performance security, the town shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
    c. Costs in Excess of Performance Security. If the town acts upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
6. Maintenance of Improvements.
    a. Maintenance Required. All Engineered Stormwater controls must be maintained so they will continue to serve their intended functions.
    b. Parties Responsible for Maintenance of Engineered Stormwater control
        i. The developer must maintain Engineered Stormwater controls until accepted by a property owners' association or lot Owner. All Engineered Stormwater controls required for residential subdivisions, including those on individual lots, must be accepted for maintenance by a property owners' association. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan.
        ii. Before improvements are accepted for maintenance by the property owners' association or lot Owner, the developer or the developer's engineer or other representative, as authorized by Statute, must certify to the property owners' association or lot Owner and to the town that improvements are complete and functioning as designed.
            a. If a property owners' association or similar legal entity is to be responsible for the maintenance and control of Engineered Stormwater controls, it shall be established so that it has clear legal authority to maintain and exercise control over, including the power to compel contributions from subdivision property owners to cover their proportionate shares of the costs associated with the maintenance of the

BMPs. Such association shall be established prior to approval of the final plat.

b. Documents providing for the establishment of a homeowners' association or similar legal entity in accord with this ordinance shall be approved by the Stormwater Administrator before any plat is recorded.

7. Maintenance Plan.
    a. The developer must record, and reference on the record plat, a maintenance plan that instructs the property owners' association or lot Owner about the annual maintenance tasks and associated costs for at least a 20-year period.
    b. It will be the responsibility of the property owners' association or lot Owner to update the maintenance plan at least every ten years in perpetuity. The owner shall submit the update plan to the Town's Stormwater Administrator.
8. Maintenance Agreement.
    a. The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners' association's or lot Owner's continuing responsibilities for maintenance
    b. The maintenance agreement must provide that the association and its individual members are jointly and severally liable for maintenance.
    c. The maintenance agreement shall grant to the town a right of entry if the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the Structural and Non-Structural BMPs; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the Structural and Non-Structural BMPs.
9. Maintenance Easement. The developer must record easements for access, maintenance and inspections by any property owners' association and by the town.
10. Dedication of BMPs, Facilities, & Improvements

    The Town of Wendell may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.
11. Annual inspection reports are due by June 30 of each year. The first annual report is due by June 30 following one year after approval of the as-built plan. For Structural BMPs located on properties subject to property owners' association agreements, the property owners' association is responsible for collecting and submitting information on all individual lot Structural BMPs installed pursuant to this ordinance on an annual basis. The inspection report shall contain all the following:
    a. The name and address of the landowner.
    b. The recorded book and page number of the lot of each Engineered Stormwater controls
    c. A statement that an inspection was made of all Engineered Stormwater control
    d. The date the inspection was made.
    e. A statement that all inspected Engineered Stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance.
    f. And the original signature and seal of the engineer, surveyor, or landscape architect.

i. All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator by June 30 following the issuance of a certificate of occupancy. Subsequent annual reports shall be due on June 30 each year.

12. Inspection Program.
    a. Inspections and inspection programs by the town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in Engineered Stormwater control evaluating the condition of Engineered Stormwater control; and inspecting low-density permitted projects. In exercising this power, the Stormwater Administrator is authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.
    b. If the Owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to N.C.G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties, including inspections on private property. Refusal of Owner or occupant of any property to permit such inspection is a violation of this ordinance.
13. Signage. Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, Engineered Stormwater controls shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained to remain visible and legible.
14. Records of Installation and Maintenance Activities. The Owner of each Engineered Stormwater control shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.
15. Nuisance. The Owner of each stormwater BMP, whether Structural or Non-Structural BMP, shall maintain it so as not to create or result in a nuisance condition.

Y. Enforcement and Violations.
1. General.
    a. Authority to Enforce: The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Wendell. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Wendell.
    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 or redevelopment 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 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 section, responsible person(s) shall include but not be limited to:

   i. 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.

   ii. 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, development or redevelopment of the property.

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

   a. Remedies:

      i. Withholding of Building Permit: The Stormwater Administrator or other authorized agent may refuse to issue a building permit for a building or other improvements constructed or being constructed on any development site and served by the Engineered Stormwater control 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.

      ii. 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.

      iii. 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 Wendell Board of Commissioners may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, for the land on which the violation occurs.

      iv. Injunction, Abatements, etc.: The Stormwater Administrator, with the written authorization of the Town Manager, 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.

v. Correction as Public Health Nuisance, Costs as Lien, etc.: If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. 160A-193, the Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

vi. Stop Work Order: The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, or first-class mail. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

b. Civil Penalties: Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Wendell is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

c. Criminal Penalties: Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3. Procedures

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

b. Inspection: The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

c. Notice of Violation and Order to Correct: When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner and the holder of the development approval, if the property owner is not the holder of the development approval. 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 shall deliver the notice of violation and correction order personally, by the Town of Wendell Police Department or the Town of Wendell Code Enforcement Officer, certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

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

d. Extension of Time: A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 14 days. The Stormwater Administrator may grant seven-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.

e. Enforcement after Time to Correct: After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

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

g. Variances:

    i. Any person may petition the Town for a variance granting permission to use the persons land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all the following:

        a. Unnecessary hardships would result from strict application of this ordinance.

b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

c. The hardships did not result from actions taken by the petitioner.

d. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

ii. The Town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

iii. Statutory Exceptions: Notwithstanding subdivision a. of this section, exceptions from the Riparian Buffer Zone and Flood Protection Zone requirements as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

Z. Illicit Discharges and Connections

1. Illicit Discharges

a. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

i. Water line and fire hydrant flushing;

ii. Landscape irrigation;

iii. Temporarily diverted stream flows;

iv. Rising groundwaters;

v. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));

vi. Uncontaminated pumped ground water;

vii. Discharges from uncontaminated potable water sources;
viii. Town of Wendell Chapter 6 – Environmental Protection Standards
ix. Foundation drains;
x. Residential or commercial air conditioning condensate;
xi. Irrigation water;
xii. Springs;
xiii. Water from crawl space pumps;
xiv. Footing drains;
xv. Lawn watering;
xvi. Individual residential car washing;
xvii. Flows from riparian habitats and wetlands;
xviii. Dechlorinated swimming pool discharges;
xix. Flows from active firefighting activities/Street wash water; and
xx. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

b. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

2. Illicit Connections
   a. Single-family detached and attached uses shall be prohibited from establishing direct connections to a stormwater conveyance or stormwater conveyance system, unless a permit is issued by the Town in accordance with the standards set forth in the Stormwater Management Manual.
   b. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exemptions in Section 9.4 (A)(4)(c), are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
   c. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other regulation prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this article. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
   d. Where it is determined that said connection:
      i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
      ii. Was made in violation of any applicable regulation or ordinance other than this section, the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

a. The quantity and complexity of the work,
b. The consequences of delay,
c. The potential harm to the environment, to the public health, and to public and private
d. property, and
e. The cost of remedying the damage.

3. Spills
    a. Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
    b. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under State and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.
4. Nuisance. Illicit discharges and illicit connections which exist within the Town are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Section 6.6 (Y)(5) below.
5. Enforcement
    a. Authority to Enter. Any authorized Town personnel shall be permitted to enter upon public or private property for the purposes of observation, inspection, sampling, monitoring, testing, surveying, and measuring compliance. No person shall obstruct, hamper, or interfere with any such representative while carrying out his official duties.
    b. Civil and Criminal Penalties.
        i. Illicit Discharges. Any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this article shall be subject to civil penalties as follows:
            a. For first time offenders, if the quantity of the discharge is equal to or less than five gallons and consists of domestic or household products in quantities considered ordinary for household purposes, or for any quantity of yard waste or litter, said person shall be assessed a civil penalty of $100.00 per violation or per day for any continuing violation and if the quantity of discharge is greater than five gallons or contains non-domestic substances, including but not limited to process wastewater, or if the person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a civil penalty of $1,000.00 per violation or per day for any continuing violation.
            b. For repeat offenders, the amount of the penalty shall be double the amount assessed for the previous penalty, not to exceed $10,000.00 per violation for any continuing violation.

ii. Illicit Connections. Any person found with an illicit connection in violation of this article and any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an illicit connection in violation of this article shall be subject to civil penalties as follows:

a. First time offenders shall be subject to a civil penalty of $500.00 per day of continuing violation.

b. Repeat offenders shall be subject to a civil penalty of $1,000.00 per day of continuing violation.

iii. Procedures for Assessing Civil Penalties. Said penalties shall be assessed by the Town manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violation with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which such measures must be completed. The notice shall warn that failure to correct the violation within the specified time period will result in the assessment of additional civil penalties.

iv. Payment/Collection Procedures. Penalties shall be assessed by the Town Manager or his designee after proper notice has been served as described in subsection (b)(iii) above. The Town Manager or designee shall make written demand for payment upon the person in violation. If payment is not received within thirty (30) days after demand for payment is made, the matter shall be referred to the Town Attorney for possible institution of a civil action in the name of the Town for recovering the penalty.

v. Criminal Penalties. Any person who knowingly or willfully violates any provision of this article or any order duly adopted or issued pursuant to this article shall be guilty of a misdemeanor, punishable by a fine not to exceed $500.00 or imprisonment for not longer than thirty (30) days. Each violation shall be a separate offense.

c. Suspension of MS4 Access.

i. Suspension due to Illicit Discharges in Emergency Situations. The Stormwater Administrator may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the U.S. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the U.S., or to minimize danger to persons.

ii. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

iii. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

d. Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Stormwater Administrator prior to the allowing of discharges to the MS4.

e. Monitoring of Discharges.

i. Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

ii. Access to Facilities.

a. The Stormwater Administrator shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Stormwater Administrator.

b. Facility operators shall allow the Stormwater Administrator ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

c. The Stormwater Administrator shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Administrator to conduct monitoring and/or sampling of the facility's stormwater discharge.

d. The Stormwater Administrator has the right to require the discharger to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Administrator and shall not be replaced. The costs of clearing such access shall be borne by the operator.

f. Unreasonable delays in allowing the Stormwater Administrator access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Administrator reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

g. If the Stormwater Administrator has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this

ordinance, or that 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 the Administrator may seek issuance of a search warrant from any court of competent jurisdiction.

f. Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of BMP/SCMs. The Stormwater Administrator will adopt requirements identifying BMP/SCMs 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. 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 municipal storm drain system or watercourses through the use of these structural and nonstructural BMP/SCMs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs or SCMs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMP/SCMs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

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

h. Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S.; said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Stormwater Administrator in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Stormwater Administrator within three (3) business days of the phone 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 for at least three (3) years.

6.7 – Stream Corridor Buffers (Stream Protection)

A. Purpose and Intent. Stream corridor buffers protect water quality by filtering pollutants from runoff, controlling soil erosion, enhancing fish and wildlife habitat and reducing flooding.

1. The Buffer Zone shall extend 50 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either of the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). An exception to this requirement may be allowed when surface waters area not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology. The Buffer Zone shall remain undisturbed unless permitted by this section.

   The Flood Protection Zone shall extend throughout the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA. The Flood Protection Zone shall remain undisturbed unless otherwise permitted by this section.

   Where the Buffer Zone and the Flood Protection Zone both are present adjacent to surface waters, the more restrictive shall apply.

   The base distance for the Buffer Zone is calculated at 50 feet plus two feet per one percent of slope. Wetlands, slopes greater than 25 percent and impervious surfaces do not count toward the buffer width. See graphic below for an example of the application of the buffer guidelines to a hypothetical riparian landscape.

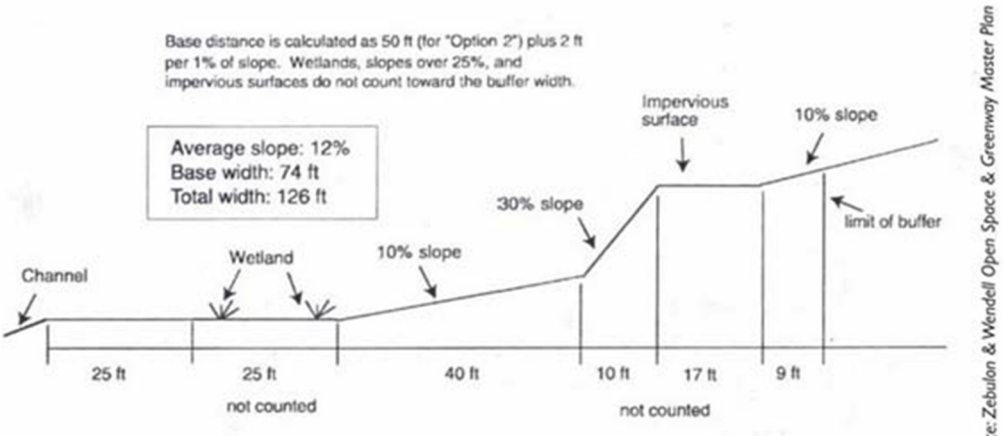


Figure 10. Example of the Application of Buffer Guidelines to a Hypothetical Riparian Landscape.

Base distance is calculated as 50 ft (for "Option 2") plus 2 ft per 1% slope. Wetlands, slopes over 25%, and impervious surfaces do not count toward the buffer width.

B. General Provisions.

1. Buffer areas must be clearly delineated on all site plans, including construction plans, grading and clearing plans, and erosion and sediment control plans.
2. Buffer boundaries must be marked on site prior to any land disturbing activities.
3. Buffer areas as well as all buffer requirements must be specified on the recorded plat, on individual deeds, and in property association documents.
4. Public infrastructure such as road crossings and utility lines are allowed where no practical alternative exists, but these activities should minimize impervious surface area and avoid large amounts of vegetation removal by crossing the buffer at a minimum 75-degree angle.

6.8 – Flood Damage Protection Ordinance

A. Statutory Authorization. The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D-923 of enacted legislation; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of the Town of Wendell, North Carolina, does ordain as follows:

B. Findings of Fact.
   1. The flood prone areas within the jurisdiction of The Town of Wendell are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
   2. Those flood losses are caused by the cumulative effect of obstructions by materials such as trees, limbs, sediment, construction debris, etc. in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

C. Statement of Purpose. It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas and provisions designed to:
   1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities.
   2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
   3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.
   4. Control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,
   5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

D. Objectives. The objectives of this Ordinance are:
   1. To protect human life and health.
   2. To minimize expenditure of public money for costly flood control projects.
   3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public.
   4. To minimize prolonged business losses and interruptions.
   5. To minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are in flood prone areas.
   6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,
   7. To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

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

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

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

An administrator is the individual appointed to administer and enforce the floodplain management regulations.

Appeal means a request for a review of the Administrator's interpretation of any provision of this ordinance.

Area of Special Flood Hazard. See "Special Flood Hazard Area (SFHA)."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

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

Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood based on current conditions hydrology as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area," it may be obtained from engineering studies available from a Federal or State other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the "Regulatory Flood Protection Elevation" in Special Flood Hazard Areas.

Building. See "Structure."

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

Current Conditions Hydrology means the flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical flood study information is published in the Flood Insurance Study.

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

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

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

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

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

Flood or **Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

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

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

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

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

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

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

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

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

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

Freeboard means the height added to the Base Flood Elevation (BFE) or the Future Conditions Flood Elevation to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation."

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

Future Conditions Flood means the flood having a one percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

Future Conditions Flood Elevation means a determination of the water surface elevations of the one percent annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

Future Conditions Flood Hazard Area means the land area that would be inundated by the one percent annual chance flood based on future conditions hydrology as determined in Article 3, Section B of this ordinance.

Future Conditions Hydrology means the flood discharges associated with projected land-use conditions based Wake County's current countywide equivalent zoning classification data on the Town of Wendell's current Zoning Map and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

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

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

Historic Structure means any structure that is:

Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register.

Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.

Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or

Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program." Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

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

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

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

Market Value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

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

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

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

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

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

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

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

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

Built on a single chassis.

400 square feet or less when measured at the largest horizontal projection.

Designed to be self-propelled or permanently towable by a light duty truck; and,

Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference Level is the top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, A99 or X (Future).

Regulatory Flood Protection Elevation means the elevation above mean sea level to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus three feet of freeboard.

In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least three feet above the highest adjacent grade.

In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus three feet of freeboard.

Remedy a Violation means to bring the structure or other development into compliance with State or Community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure

or other affected development from flood damages, implementing the enforcement provisions of the ordinance, or otherwise deterring future similar violations, or reducing Federal financial exposure regarding the structure or other development.

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

Salvage Yard means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

Shear Walls contains the vertical elements of the horizontal wall resisting system, typically wood covered with a structural sheathing material like plywood. When properly installed the shear wall will have the strength and stiffness to resist the horizontal forces.

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

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

Special Flood Hazard Area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year based on current conditions hydrology, as determined in Section F.2 of this ordinance.

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

Structure means a walled and roofed building, a manufactured home.

Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "Substantial Improvement." Substantial Damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "Substantial Damage," regardless of the actual repair work performed. The term does not, however, include either:

Any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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

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

Water Surface Elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or ravine areas.

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

F. General Provisions.

1. Applicable Lands. This ordinance shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions if applicable, of the Town of Wendell and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.
2. Basis for Establishing the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM) which are adopted by reference and declared to be a part of this ordinance.
3. Establishment of a Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas determined in Section F.2.
4. Compliance. No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this section and other applicable regulations.
5. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
6. Interpretation. In the interpretation and application of this ordinance, all provisions shall be:
    a. Considered as minimum requirements.
    b. Liberally construed in favor of the governing body; and,
    c. Deemed neither to limit nor repeal any other powers granted under NC statutes.
7. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall

not create liability on the part of the Town of Wendell or by any officer or employee thereof for any flood damage that results from reliance on this ordinance, or any administrative decision lawfully made hereunder.

8. Penalties for Violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Wendell from taking such other lawful action as is necessary to prevent or remedy any violation.

G. Provisions for Flood Hazard Reduction.

1. General Standards. All developments and redevelopments shall be in accordance with the following provisions:

    a. No development or redevelopment is permitted within the Special Flood Hazard Area or Neuse River Buffer Zone except for stream bank or shoreline restoration or stabilization, water dependent structures, and public or private projects such as greenways, parks, and their accessory uses.

    b. Permitted activities within the Flood Protection Zones shall minimize impervious coverage and direct runoff away from surface waters.

    c. All development and/or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

    d. All development and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

    e. All development and substantial improvements shall be constructed by methods and practices that minimize flood damages.

    f. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.

    g. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

    h. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

    i. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

    j. This ordinance shall prevent the repair, reconstruction, or replacement of a building or structure, as allowed under G.1.a., and in existence on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

k. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be in a Special Flood Hazard Area or Future Conditions Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section J.2. of this ordinance.

l. All subdivision and other development proposals shall be constructed to minimize flood damage.

    i. All subdivision and development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

m. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

n. All subdivision and development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

2. Specific Standards. In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where Future Conditions Flood Elevations data has been provided, as set forth in Section F.2, or Section J.3.k and l, the following provisions, in addition to those provisions in Section 6.8.G.1, are required:

    a. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance.

    b. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance. Structures located in Zones A, AE, AH, AO, A99, and X (Future) may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section K.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section M.2.c. along with the operational plan and the inspection and maintenance plan.

    c. Manufactured Homes.

        i. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section E of this ordinance.

        ii. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted

by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

iii. All enclosures or skirting below the lowest floor shall meet the requirements of Section G.2.d. of this ordinance iv.

iv. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

d. Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

i. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclosed storage areas.

ii. Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation.

iii. Shall include, in Zones A, AE and X (Future), flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria.

a. A minimum of two flood openings on different sides of each enclosed area subject to flooding.

b. The total net area of all flood openings must be at least 1 square inch for each square foot of enclosed area subject to flooding.

c. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit.

d. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade.

e. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

f. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

e. Additions/Improvements:

i. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

a. Not a substantial improvement, shall be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
b. No substantial improvements are permitted within the flood hazard area.

ii. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

iii. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
a. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
c. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

f. Recreational Vehicles: Recreation vehicles shall either:
i. Temporary Placement
a. Be on site for fewer than 180 consecutive days; or
b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions).

ii. Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

g. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
i. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;
ii. The name, address, and phone number of the individual responsible for the removal of the temporary structure;
iii. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
iv. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
v. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, to which the temporary structure will be moved.

h. Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:
    i. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
    ii. Accessory structures shall not be temperature-controlled
    iii. Accessory structures shall be designed to have low flood damage potential;
    iv. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
    v. Accessory structures shall be firmly anchored in accordance with the provisions of Section G.1.c.;vi.All service facilities such as electrical shall be installed in accordance with the provisions of Section G.1.f.; and
    vi. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section G.2.d.iv.
    vii. An accessory structure with a footprint less than 144 square feet or that is a minimal investment of $3,000.00 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Section G.2.b. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section M.2.c.

i. Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:
    i. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
    ii. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
    iii. Above-ground tanks not elevated. Above-ground tanks that do not meet the elevation requirements of Section G.2.b of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.
    iv. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
    v. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
    vi. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

j. Other Development.

i. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section J of this ordinance.

ii. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section J of this ordinance.

iii. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section J of this ordinance.

H. Standards for Floodplains without Established Base Flood Elevations. Within the Special Flood Hazard Areas designated as Approximate Zone A and established Section F.2, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Sections G.1 and G.2, shall apply:

1. No encroachments, including fill, new development, or substantial improvements shall be permitted within a distance of 50 feet each side from top of bank or five times the width of the stream on each side whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

a. If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections J.3.k and l.

b. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section F.2 to be utilized in implementing this ordinance.

c. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Section F.2.

I. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

1. Standards of Sections G.1 and G.2; and
2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the

water surface elevation of the base flood more than one foot at any point within the community.

J. Floodways and Non-Encroachment Areas. Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section F.2. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections G.1 and G.2, shall apply to all development within such areas:
   1. No encroachments, including fill, new construction, substantial improvements and other developments in accordance with G.1.a. shall be permitted unless it has been demonstrated that:
      a. The proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Administrator prior to issuance of floodplain development permit, or
      b. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.
   2. If Section I.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
   3. No new or additional manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:
      a. The anchoring and the elevation standards of Section G.2.c; and
      b. The no encroachment standard of Section I.1.

K. Standards for Areas of Shallow Flooding (Zone AO). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:
   1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of three feet, above the highest adjacent grade; or at least four feet above the highest adjacent grade if no depth number is specified.
   2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section K.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section M.2.c and Section G.2.b.
   3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

L. Standards for Areas of Shallow Flooding (Zone AH). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one to three feet. Base Flood Elevations are derived from detailed

hydraulic analyses are shown in this zone. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:

1. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

M. Administration.

1. Designation of Administrator. The Administrator or his or her designee is hereby appointed to administer and implement the provisions of this ordinance.
2. Floodplain Development Permit and Certification Requirements.
    a. Plans and Application Requirements. Application for a Floodplain Development Permit shall be made to the floodplain administrator prior to any development activities located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:
        i. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
            a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development.
            b. The boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section F.2, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Area.
            c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section F.2.
            d. The boundary of the floodway(s) or non-encroachment area(s) as determined in Section F.2.
            e. The Base Flood Elevation (BFE) or Future Conditions Flood Elevation where provided as set forth in Sections F.2; J.3.k and l; and G.2;
            f. The old and new location of any watercourse that will be altered or relocated because of proposed development.
            g. Certification of the plot plan by a registered land surveyor or professional engineer.
        ii. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:
            a. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures.
            b. Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or X (Future) will be flood-proofed; and
            c. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
        iii. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

iv. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
    a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls).
    b. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section G.2, when solid foundation perimeter walls are used in Zones A, AE and X (future).
v. Usage details of any enclosed areas below the regulatory flood protection elevation.
vi. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
vii. Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
viii. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section G.2.c and g of this ordinance are met.
ix. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

b. Permit Requirements. The Floodplain Development permit shall include, but not be limited to:
    i. A description of the development to be permitted under the floodplain development permit.
    ii. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Section F.2.
    iii. The regulatory flood protection elevation required for the reference level and all attendant utilities.
    iv. The regulatory flood protection elevation required for the protection of all public utilities.
    v. All certification submittal requirements with timelines.
    vi. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
    vii. The flood openings requirements, if in Zones A, AE or X (Future).
    viii. Limitations of below BFE enclosure uses, if applicable (i.e., Parking, Building Access and Limited Storage only).
    ix. A statement that all materials below BFE/RFPE must be flood resistant materials.

c. Certification Requirements:

i. Elevation Certificates

a. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

b. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

c. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/ Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

ii. Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

iii. If a manufactured home is placed within Zone A, AE or X (Future) and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section G.2.c.

iv. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

v. Certification Exemptions. The following structures, if located within Zone A, AE or X (Future), are exempt from the elevation/floodproofing certification requirements specified in items (1) and (2) of this subsection:

a. Recreational Vehicles meeting requirements of Section G.2.c.i;

b. Temporary Structures meeting requirements of Section G.2.

c. Accessory Structures that are 144 square feet or less or $3,000.00 or less and meeting requirements of Section G.2.h.

d. Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

i. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

ii. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

iii. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

iv. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

3. Duties and Responsibilities of the Administrator. Duties of the Administrator shall include, but not be limited to:

a. Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of this ordinance have been satisfied.

b. Advise applicant that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.

c. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

d. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

e. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions are met.

f. Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Section J.2.c.

g. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with Section J.2.c.

h. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Section J.2.c.

i. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section J.2.c and Section G.2.

j. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

k. When Base Flood Elevation (BFE) data has not been provided in accordance with Section F.2, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section G.3.b. in order to administer the provisions of this ordinance.

l. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section F.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

m. When the lowest ground elevation of a parcel or structure located within Zone AE is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

n. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

o. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progress, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of

proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

p. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing/authorizing/financing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

q. Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

r. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

s. Follow through with corrective procedures of Section J.4.

t. Review, provide input, and make recommendations for variance requests.

u. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section F.2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

v. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

4. Corrective Procedures.

   a. Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

   b. Actions in Event of Failure to Take Corrective Action. If the owner of a building or property shall fail to take prompt corrective action, the Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

      i. That the building or property is in violation of the Flood Damage Prevention Ordinance.

ii. That a hearing will be held before the Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

iii. That following the hearing, the Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

c. Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days nor more than 180 calendar days. Where the Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

d. Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

e. Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

5. Variance Procedures.

a. The Zoning Board of Adjustment, as established by the Town of Wendell, shall hear and decide requests for variances from the requirements of this ordinance.

b. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

c. Variances may be issued for:

i. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

ii. Functionally dependent facilities if determined to meet the definition as stated in this ordinance, provided provisions of Section J.5.i.(ii), (iii), and (iv) have been satisfied, and such facilities are protected by methods that minimize flood damages.

d. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

i. The danger that materials may be swept onto other lands to the injury of others.

ii. The danger to life, property, and environment (plant and animal life) due to flooding or erosion damage.

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

iv. The importance of the services provided by the proposed facility to the community.

v. The necessity to the facility of a waterfront location, where applicable.

vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

vii. The compatibility of the proposed use with existing and anticipated development.

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles.

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

xi. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

e. A written report addressing each of the above factors shall be submitted with the application for a variance.

f. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

g. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

h. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

i. Conditions for Variances:

i. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

ii. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

iii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

iv. Variances shall only be issued prior to development permit approval.

v. Variances shall only be issued upon:

a. A showing of good and sufficient cause.

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

j. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are in Special Flood Hazard Areas or Future Conditions Flood Areas if all the following conditions are met.

i. The use serves a critical need in the community.

ii. No feasible location exists for the use outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area.

iii. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level.

iv. The use complies with all other applicable federal, state and local laws.

v. The Town of Wendell has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

N. Legal Status

1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance. This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 23, 2007, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of The Town of Wendell enacted on April 23, 2007, as amended, which are not reenacted herein are repealed.
2. Effect Upon Outstanding Floodplain Development Permits. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.
3. Severability. If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.
4. Effective Date. This ordinance shall become effective upon adoption.

SECTION 2. That all laws and clauses of law in conflict herewith are hereby repealed to the extent of said conflict.

SECTION 3. That if this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this ordinance which can be given separate effect and to the end the provisions of this ordinance are declared to be severable.

SECTION 4. That the proposed text amendments to Chapter 6 – ENVIRONMENTAL PROTECTION of the Town of Wendell Unified Development Ordinance are found to be consistent with the Wendell comprehensive plan Blueprint Wendell 2030 since they support the following recommendations:

- Growth Management – Goal GM3.3 Amend or Rewrite the Unified Development Ordinance
- Natural Resource Conservation – Goal N1.9 Enact Stormwater Low-Impact Design Best Practices

SECTION 5. That this ordinance has been adopted following a duly advertised public hearing of the Town Board and following recommendation by the Planning Board.

SECTION 6. That this ordinance shall be enforced as provided in G.S. 160A-175 or as provided for in the Wendell Town Code.

SECTION 7. That this ordinance shall become effective upon its adoption by the Wendell Board of Commissioners.

DULY ADOPTED the 8th day of April 2024.

(Town Seal)

_____
Virginia R. Gray, Mayor

ATTEST:

_____
Mary Beth Tew, Town Clerk

APPROVED AS TO FORM:

_____
James P. Cauley III, Town Attorney

Chapter 6 ENVIRONMENTAL PROTECTION

6.1 Purpose and Intent

A primary and fundamental element of this Ordinance is the protection of our existing environmental resources including floodplains and other stream corridors, wetlands, watersheds and groundwater recharge areas, soils, forest stands, specimen trees and other significant vegetation and wildlife. These elements are of economic value to the Town and make it a desirable place to live and visit.

6.2 Land Suitability

Land subject to flood hazard, improper drainage, erosion or that is for topographical or other reasons unsuitable for development as determined by the Town of Wendell, shall not be platted or developed for residential use nor for any other uses that will continue or increase the danger to health, safety, or property unless the hazards can be and are corrected.

A. Demolition Landfill Development: Areas that have been used for the disposal of solid waste shall not be subdivided into commercial or residential building sites. This includes areas that have been used for the disposal of trash, demolition waste, construction debris, stumps, and other waste materials.

6.3 Neuse River Basin Riparian Buffers (NRBs)

A. Both the corporate limits and the Extra Territorial Jurisdiction (ETJ) of the Town of Wendell fall completely within the Neuse River basin and are therefore subject to the riparian buffer rules as governed by North Carolina Administrative Code (NCAC), Title 15A, Chapter 2, Sub-Chapter B as amended.

B. NRBs are a form of open space, and as such, may only be retained in private ownership if the necessary conservation easements are recorded with the Wake County Register of Deeds. Otherwise, NRBs shall be separately deeded to a homeowner's association, a non-profit land trust or conservancy, Wake County, or the Town of Wendell (upon approval by the Town Council).

6.4 Sedimentation and Erosion Control

In order to prevent soil erosion and sedimentation pollution, the developer shall comply with all requirements of the North Carolina Sedimentation Pollution Control Act of 1973, as amended. A Sedimentation and Erosion Control Plan approved by Wake County Environmental Services (or other agencies having jurisdiction) shall be in place prior to any land disturbing activity.

A. General Requirements. All new development and redevelopment shall be required to take measures to minimize erosion during construction and after development. All new development and redevelopment shall comply with the provisions of the latest adopted amendment to Town of Wendell Environmental

Protection Ordinance. A land disturbance permit or exemption shall be obtained from Wake County prior to issuance of a construction improvement permit (CIP) for a subdivision, or part thereof.

B. Residential Clearing and Grading. In order to promote land development practices that minimize disturbance to vegetation and soils, limit alteration of the natural topography, minimize surface water and ground water runoff and diversion, minimize the need for additional storm drainage facilities, reduce sedimentation in surrounding waters and promote land development and site planning practices that are responsive to the town's scenic character without preventing the reasonable development of land; the initial clearing and grading of all residential major subdivisions shall be limited to dedicated public rights-of-way and easements for the installation of streets, utilities, and other infrastructure. All grading activities shall be done in accordance with all applicable federal, state and local laws, rules and regulations; including those pertaining to air and water pollution and noise control.

1. Infrastructure. Grading for infrastructure improvements (streets, sidewalks, curb, gutter, water, sewer, utilities, stormwater, spoil and borrow areas, etc.) shall be phased according to the Master Plan. Prior to proceeding to another phase, the developer shall stabilize the present phase with adequate ground cover sufficient to restrain erosion and have all infrastructure installed.

2. Lots. Grading of individual lots within the major subdivision shall not begin without having first obtained a building permit from the Town of Wendell and shall be limited to those areas comprising the building footprint, driveway and a minimal area surrounding the building footprint to accommodate construction equipment.

3. Exemptions. Exemptions to the requirements of Section 6.4 (B) are as follows:

a. Grading and clearing in emergency situations involving immediate danger to life or property or substantial fire hazards.

6.5 Pre-Development Site Grading

Pre-development site grading may commence only with a permit issued in accordance with the provisions of Section 6.6, Stormwater Runoff Provisions. Predevelopment site grading, for the purpose of this ordinance, is any land disturbing activity of one acre or more that is not regulated by a site plan previously approved by the Board of Commissioners.

The grading may be considered a "low impact" or "high impact" activity based on the table below. If one or more of the high impact activities exist, the grading is considered high impact.

Low Impact Activity	High Impact Activity
1. Land disturbing activity is more than 100 feet from a residential district.	1. Land disturbing activity is 100 feet or less from a residential district.
2. Land disturbing activity will not intrude into either the Street Yard landscaping area or Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*	2. Land disturbing activity will intrude into either the Street Yard area or the Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*
3. The steepness of the proposed slope at clearing limit is 3:1 (horizontal: vertical) or flatter.	3. The steepness of the proposed slope at clearing limit is greater (steeper) than 3:1 (horizontal: vertical)
4. The height of the proposed grade change (cut or fill) is less than or equal to 3 feet.	4. The height of the proposed grade change is greater than 3 feet.

6.6 Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance

General Provisions

Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development and redevelopment sites.

It is further determined that the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this Ordinance.

Additionally, the North Carolina Environmental Management Commission has identified and has promulgated rules that have been amended and affirmed by the North Carolina General Assembly (Neuse River Nutrient Management Strategy) to reduce the average annual loads of nitrogen and phosphorus delivered to the Neuse River from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction.

Therefore, the Town of Wendell establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge for development and redevelopment.

A. Purpose

1. The purpose of this article 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: increased post-development stormwater runoff, nitrogen; phosphorus, and total suspended solids in stormwater runoff; nonpoint and point source pollution associated with new development and redevelopment; and illicit discharges into municipal stormwater systems. ***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.***

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

a. Establishing decision-making processes for development and redevelopment that protects the integrity of watersheds and preserves the health of water resources.

b. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, stream bank erosion, nonpoint and point source.

c. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality; by requiring that new development not exceed export targets for nitrogen in stormwater runoff for the watershed through site layout, engineered stormwater controls, or permanent nutrient offset credits.

d. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space, riparian buffers, and other conservation areas to the maximum extent practicable.

e. Establishing design and review criteria for the construction, function, and use of structural stormwater best management practices (BMPs) and Stormwater Control Devices (SCMs) that may be used to meet the minimum post-development stormwater management standards.

f. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs and SCMs 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 engineered stormwater controls inspection and management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

h. Controlling illicit discharges into the municipal separate stormwater system.

i. Managing flooding and downstream impacts with an awareness of impending regional growth.

j. Establishing design and review criteria for the construction, function, and use of engineered stormwater controls that may be used to meet the minimum post-development stormwater management standards; See code of ordinance Article 6.6.

k. Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the municipal separate stormwater system and waters of the State.

B. Definitions

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.

Built-upon area (BUA) Means the same as defined in N.C.G.S. 143-214.7(b2) "built-upon area" means impervious surface and 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" does not include a wooden slatted deck, the water area of a swimming pool, or gravel.

Density means the calculation of the total impervious area of a project divided by the total project area. Surface water bodies shall be included in calculations of project density.

Department means the North Carolina Department of ***Environmental Quality***.

Design Manual means the North Carolina Department of ***Environmental Quality "Stormwater Design Manual"***

Development means any land disturbing activity that increases the amount of built-upon area or that decreases the infiltration of precipitation into the soil.

Division means the Division of Water Quality in the North Carolina Department of ***Environmental Quality***.

Engineered stormwater control means a physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property.

Engineered stormwater control measure inspection and maintenance plan written plan submitted by the owner for the required inspection, and maintenance of engineered stormwater control measures.

Erosion and Sediment control permit means the erosion and sedimentation control plan approval and land disturbance permit issued by Wake County for control of stormwater during land disturbing activities.

Flood Protection Zone means the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA.

High-Density Project. A project is a High-Density Project if it has 24 percent or more Built-upon Area (BUA) based on total project acreage for all residential and non-residential Development. Any project that exceeds the low-density threshold for a built-upon area.

Impervious Area. Impervious areas are those surfaces which prevent the infiltration of or impede the rate of infiltration of stormwater into the soil as compared with the natural conditions prior to development. Common areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, engineered and compacted gravel surfaces used for vehicular travel or parking and other surfaces which prevent or impede the natural infiltration of stormwater runoff that existed prior to development.

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

Low-Density project. A project is a Low-Density project if it has more than 15 percent Built-Upon Area (BUA) and no more 24 percent Built-Upon Area (BUA) based on total project acreage for all residential and non-residential development.

A project with an overall density at or below the relevant Low-Density threshold but containing areas with a density greater than the overall project density, may be considered low density if the project meets or exceeds the post-construction model practices for Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practical.

Non-Structural BMP means a best management practice that is intended to reduce the impacts of stormwater runoff by managing pollution at the source and that is not a physical device constructed to control or treat stormwater runoff. Examples of Non-Structural BMP's include reducing impervious areas, making use of existing natural features and system, reforestation, and cluster development.

A 1-year, 24-hour storm means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

Owner means 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.

Pre-existing Development means development in existing, or development review approved prior to the implementation date(s) of this ordinance.

Redevelopment means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Snap Tool means the most recent nutrient calculator approved by DEQ.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur:

Obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than ***21 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.

Ultra Low-Density Project. A project is an Ultra Low-Density project if it has 15 percent or less Built-Upon Area (BUA) and has less than one dwelling unit per acre for all residential and non-residential Development. A project with an overall density at or below the relevant Ultra Low-Density threshold but containing areas with a density greater than the overall project density, may be considered ultra low-density as long as the project meets or exceeds the post-construction model practices for Ultra Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

C. Applicability and Jurisdiction.

1. Beginning with and after its effective date, this ordinance shall be applicable to all development and redevelopment ***throughout the Town limits and Extra-Territorial Jurisdiction (ETJ) of the Town of Wendell***, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection 2 of this Section, Exemptions.

2. Exemptions:

   a. Single family and duplex residential and related recreational development and expansion of development that cumulatively disturbs less than 20,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance. This exemption does not relieve any development from applicable federal, state or local laws.

   b. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than 20,000 square feet and does not expand existing structures on a parcel is exempt from the provisions of this ordinance.

   c. ***Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than 20,000 sf and expands existing structures on a parcel but does not result in a cumulative built-upon area for the parcel exceeding 24 percent is exempt from the provisions***.

   d. Development and redevelopment that disturb less than 20,000 square feet are not exempt if such activities are part of a larger common plan of development or sale, and the larger common plan exceeds 20,000 square feet even though multiple, separate or distinct activities take place at different times on different schedules.

   e. Activities subject to requirements of the Neuse River Agriculture Rule, 15A NCAC 02B .0712 are exempt from the provisions of this ordinance.

   f. Development or expansion of development with a vested right per the standards of N.C.G.S. 160D-108 is exempt from the provisions of this ordinance.

      i. Development or expansion of development for which the permit application was submitted prior to adoption of this ordinance is optionally exempt from the provisions of this ordinance per the requirements of N.C.G.S. 143-755.

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

   h. Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) existing development or (ii) redevelopment activities that do not

remove or decrease existing stormwater controls. When an existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

3. No Development or Redevelopment until Compliance and Permit: No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

4. Map.

   a. The provisions of this ordinance shall apply within the areas designated on the "Corporate Limits" map. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

   b. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to consider 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.

D. Interpretation.

1. References to Statutes, Regulations, and Documents: Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the North Carolina Stormwater Best Management Practices Manual, hereinafter "the Design Manual"), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

E. Design Manual.

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

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

3. Relationship of Design Manual to Other Laws and Regulations: If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

4. Changes to Standards and Specifications: If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended after the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance regarding the application.

F. Relationship to Other Laws, Regulations and Private Agreements.

1. Conflict of Laws: This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards shall control.

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

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

H. Effective Date and Transitional Provisions.

1. The effective date of the stormwater ordinance is the date of adoption by the Board of Commissioners.

2. Final Approvals, Complete Applications: All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Wendell prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

3. 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: the type and intensity of use for a specific parcel or parcels. This shall include, at a minimum, the boundaries of the project and a subdivision plan that has been approved.

   b. For any subsequent phase of development: sufficient detail showing that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

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

Administration and Procedures

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

1. In addition to the powers and duties that may be conferred by other provisions of the Town of Wendell's Code of Ordinances and other laws, the Administrator shall have the following powers and duties under this ordinance:

a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

b. To make determinations and render interpretations of this ordinance.

c. To review and make recommendations to other Town staff and Town boards on applications for development or redevelopment approvals.

d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.

e. To maintain records, maps, forms and other official materials as they relate to the adoption, amendment, enforcement, and administration of this ordinance.

f. To designate appropriate other person(s) who shall carry out the powers and duties of the Administrator.

g. To take any other action necessary to administer the provisions of this ordinance.

J. Review Procedures.

1. A sediment and erosion control permit issued by Wake County is required for all development and redevelopment.

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

3. Notification of Submittal of Complete Application: A notification shall be sent to the Stormwater Administrator when a complete application pursuant to the Wake County Erosion and Sedimentation Control regulations has been submitted.

K. Applications for Approval.

1. Concept Plan and Consultation Meeting. Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the Zebulon and Wendell Open Space and Greenway Master Plan, the Framework Plan (as described in the Town of Wendell Comprehensive Plan), and other relevant resource protection plans should be consulted in the discussion of the concept plan. This plan is available at the Town of Wendell Planning department. To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

a. Existing Conditions/Proposed Site Plans: Existing conditions and proposed site layout sketch plans, which illustrate at a minimum:

i. existing and proposed topography;

ii. Perennial and Intermittent streams;

iii. mapping of predominant soils from soil surveys (if available);

iv. Stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements;

v. boundaries of existing predominant vegetation;

vi. proposed limits of clearing and grading;

vii. location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

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

c. Stormwater Management System Concept Plan: A written and graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed engineered stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

2. As-Built Plans and Final Approvals.

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

b. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. ***This shall also include;***

i. Any geotechnical surveys completed by an authorized representative

ii. Video inspection of pipe with the following;

a. Provided on a USB compatible device

b. Drainage location information matching plan sheet drainage numbering system

c. Pipe size and type

d. 360° footage of each joint

iii. Geographical Information System (GIS) files from all stormwater conveyances provided in one of the following formats;

a. .gdb

b. .shp

c. .dwg (with georeference included)

iv. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final

inspection and approval by the Stormwater Administrator shall occur before the release of plat and any performance securities.

L. Approvals.

1. Effect of Approval: Approval authorizes the applicant to go forward with only the specific plans and activity 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.

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

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

M. Appeals.

1. Right of Appeal: Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Administrator may file an appeal to the Zoning Board of Adjustment within 30 days.

2. Filing of Appeal and Procedures: Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the town. The Stormwater Administrator shall transmit to the town's Appeal Board all documents constituting the record on which the decision appealed from was taken.

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

4. Review by Superior Court: Every decision of the town's Appeal Board 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 30 days after the latter of the following:

a. The decision of the town's Appeal Board is filed; or

b. A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the (Chair or Secretary of the Board of Adjustment that will hear appeals) at the time of its hearing of the case.

General Standards

N. 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.

O. Downstream Impact Analysis: The Downstream Impact Analysis must be performed in accordance with the "ten percent rule," and a copy of the analysis must be provided with the permit application. The purpose of the Downstream Impact Analysis is to determine if the project will cause any unintentional additional impacts on flooding or channel degradation downstream of the project site. The analysis must include the assumptions, results and supporting calculations to show safe passage of post-development design flows downstream. This analysis shall be performed at the outlet(s) of the site, and downstream at each tributary junction to the point(s)

in the conveyance system where the area of the portion of the site draining into the system is less than or equal to ten percent of the total drainage area above that point.

1. The typical steps in the application of the ten percent rule are:

    a. Using a topographical map, determine the point downstream where the proposed site equals ten percent of the total drainage area, called ten percent point. Identify all tributary junctions between the downstream site boundary and the ten percent point. All points identified, as well as the outlet of the site, are known as ten percent rule comparison points.

    b. Using a hydraulic model with existing land uses, determine the pre-development peak runoff rate (cfs) for the ten-year design storm event at each comparison point.

    c. Insert the proposed site design and proposed BMP's into land uses and determine the post-development peak runoff rate for the ten-year design storm at each comparison point.

    d. If the ten-year post-development peak discharge rate is greater than the pre-development discharge rate at any comparison point, then one of the following actions must be taken:

        i. Revise the site plan for the proposed site to incorporate better use of natural features, design additional structural control facilities, reduce impervious cover, or alter timing of peak flows to lower post-Development flows at each comparison point to pre-Development levels.

        ii. Obtain a flow easement from downstream property owners through the ten percent point where the post-Development peak discharge rate is higher than the pre-Development peak discharge rate.

        iii. Work with the town to determine other acceptable approaches to reduce the peak discharge rate for the ten-year storm.

    For further information on the ten percent rule, refer to the *Georgia Stormwater Manual*.

P. Standards for Stormwater Control Measures.

1. Evaluation According to Contents of Design Manual: All stormwater control measures, and engineered stormwater controls (or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

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

3. Separation from Seasonal High Water Table: For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

4. Changes to Stormwater Plan Based on Emerging Technologies: Subject to the standards of this ordinance and other applicable law, a developer, in conjunction with the development's lot owners, may submit an

application to revise the approved stormwater plan so as to use new technologies or best management practices not available when the original stormwater plan was approved. Innovative technologies may be used on a demonstration basis for a period of one year while simultaneously collecting data on the effectiveness of the technology according to its design. If at the end of the demonstration period the technology is not performing according to its intended design functions as judged by the Stormwater Administrator, the developer must retrofit the site with standard technology.

Q. Control and Treatment of Runoff

1. ***All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (24) percent built-upon area, 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.***

2. ***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 volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary engineered stormwater control. These projects may utilize offsite Primary engineered stormwater control dedicated to treating an area encompassing the project.***

3. ***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).***

R. Additional Stormwater Management Measures: In some cases, the Stormwater Administrator may require more stringent stormwater management measures where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters or to minimize offsite damage from stormwater runoff in accordance with the purpose of this ordinance as defined in Section D.

S. Nitrogen Loading Rate Targets

1. ***The project shall meet either a nitrogen stormwater loading rate target of 3.6 pounds per acre per year (lb./ac/yr.) and or 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 than 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 load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen load reduction to meet nutrient targets by using the Snap tool.***

4. ***The nitrogen 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 and .0295.***

T. Methods to Meet Nutrient Control Requirements

1. ***Projects may reduce export of nitrogen through any combination of engineered stormwater controls treating runoff on the site, in an approved offsite regional engineered stormwater control, or through the acquisition of permanent nutrient offset credits. The developer shall calculate the nitrogen reduction provided by these controls using the North Carolina Department of Environmental Quality Snap Tool.***

2. ***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 nitrogen reduction needs for the project entirely using permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.***

U. Use of Permanent Nutrient Offset Credits

1. Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan. The Stormwater Administrator shall issue an approval letter for the development that documents the needed nitrogen credits and where the development is located relative to the Town of Wendell Rules geographic requirements. All permanent nutrient offset credits permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.

2. Permanent nutrient offset credits shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.

3. A developer subject to this ordinance may acquire permanent nutrient offset credits through one of the following methods:

a. Through a private nutrient bank.

b. Through offsite offset provided by the developer and approved by Town of Wendell.

c. Through an offset option provided by Town of Wendell.

d. Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.

4. Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

V. Low Impact Development (LID) Project Classifications.

1. Low Impact Development (LID) project classification is an optional, best management practice which is not required by any standards of this ordinance.

2. Classification as a Low Impact Development requires that the development mimic the pre-developed hydrologic conditions of the site, as defined as "woods in good condition" for the two-year, 24-hour storm, within ten percent. The pre-developed conditions shall include: its hydrologic balance; frequency distribution of high flows; magnitude, frequency, and duration of low flows; groundwater recharge (or infiltration), and flow length and pattern. The conditions shall be measured through the comparison between measures of the pre-developed and developed conditions including total runoff volume, time of concentration, curve number, and peak discharge. Mimicry of the pre-developed hydrologic conditions may be achieved through such techniques as the minimization of disturbed areas and the use of on-lot distributed retention storage.

3. The following techniques must be used to achieve LID classification:

   a. Natural site design in consultation with the Town.

   b. Site buildings, roads, and other disturbance in the least environmentally sensitive areas, pursuing steep slopes, naturally well-draining soils, and other hydrologically valuable features undisturbed.

4. In addition, one of the following two techniques must be used to achieve LID classifications:

   a. Bio-retention systems.

   b. On-site infiltration.

5. In additions, at least one of the following techniques must be used to achieve LID:

   a. Retention of 50 percent of vegetated area, including open space, landscaping, or forests.

   b. Installation of tree-box filters for all residential street trees.

c. Installation of driveway runners (in lieu of fully paved driveways) for all residential driveways.

d. Installation of a Disconnected Impervious Surface (DIS) system on all residential lots (in accordance with the NCDENR Stormwater BMP manual), with all yards fully sodded:

i. Installation shall be confirmed prior to Certificate of Occupancy, but no easement shall be required.

e. Use of Permeable pavement for private driveways, private roads, or parking areas in accordance with the North Carolina Stormwater Best Management Practices Design Manual.

f. Installation of one underground rain cistern per lot.

g. Installation of vegetated roofs.

h. Increasing all buffers in the Riparian Buffer Zone or the Flood Protection Zone, whichever is greater, by 50 feet, in accordance with Section 6.7 A.

i. Use of reclaimed water for all buildings in accordance with State and local laws.

j. Use of innovative LID techniques subject to the approval of the Town. For residential projects, this could include such things as additional stormwater measures in common areas (such as impervious surface pavers in a clubhouse parking lot, or rain gardens incorporated into passive open space).

6. On-Site Wastewater: Onsite systems disposal systems shall be operated and maintained in accordance with the *Regulations Governing Sewage Treatment and Disposal Systems in Wake County (Regulations)* adopted by the Wake County Board of Human and Environmental Services and enforced by Wake County. Onsite systems shall be inspected, permitted, repaired and/or professionally operated in accordance with the Regulations and in a manner to prevent adverse impacts on surface water and groundwater.

W. Built-Upon Area Standards.

1. BUA that is present at the time of the effective date of this ordinance, is considered "Existing BUA".

2. "Regulated BUA" will refer to all BUA in existence at the time of a development application, that was installed after the ordinance became effective, that was not vested at that time, and thus is subject to consideration under the Rule. Regulated BUA will have stormwater treatment already provided, will have been addressed by nutrient offsets, or will have been part of a development that did not exceed the Rule's nutrient loading rate targets or 24% BUA threshold (i.e., ≤24%).

3. "Cumulative BUA" will refer to all "Regulated BUA" plus any proposed net increase in BUA on a project site at the time of a development application. All Cumulative BUA is subject to consideration under the Rule, and it excludes all "Existing BUA".

4. Existing BUA requirements for added BUA after the adoption of this ordinance date (##-##-####)

a. Individual residential lots and duplex lots with existing BUA at the time of the ordinance adoption any future additional BUA which accompanies land disturbance of 1 acre or more would require the calculation of all new BUA, any additional BUA beyond 5% of the lots total square footage would require onsite mitigation or the purchase of mitigation credits.

b. Commercial, Industrial, and multifamily with existing BUA at the time of the ordinance adoption any future additional BUA which accompanies land disturbance of .5 acre or more would require the calculation of all new BUA, any additional BUA of the lots total square footage would require onsite mitigation or purchase of mitigation credits.

X. Completion of Improvements and Maintenance.

1. Performance Security for Installation and Maintenance of Improvements: The town may, at its discretion, require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. If improvements are not installed prior to approval of a record plat, the town shall require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. This performance security is required in order to ensure that the Structural BMPs are:

    a. Installed by the permit holder as required by the approved stormwater management plan; and/or

    b. Maintained by the Owner as required by the operation and maintenance agreement.

2. Form and Amount of Installation Performance Security: The amount of an installation performance security must equal at least 125 percent of the estimated cost of the required improvements, including project management costs that have not been installed by the time of Record Plat submittal.

3. Form and Amount of Maintenance Performance Security: The amount of maintenance performance security must be at least 125 percent of the total estimated construction cost of the Engineered Stormwater control approved under the permit.

4. Uses of Performance Security for Installation.

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

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

    c. Costs in Excess of Performance Security. If the town acts upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

    d. Refund. Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

5. Uses of Performance Security for Maintenance.

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

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

c. Costs in Excess of Performance Security. If the town acts upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

6. Maintenance of Improvements.

   a. Maintenance Required. All Engineered Stormwater controls must be maintained so they will continue to serve their intended functions.

   b. Parties Responsible for Maintenance of Engineered Stormwater control

      i. The developer must maintain Engineered Stormwater controls until accepted by a property owners' association or lot Owner. All Engineered Stormwater controls required for residential subdivisions, including those on individual lots, must be accepted for maintenance by a property owners' association. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan.

      ii. Before improvements are accepted for maintenance by the property owners' association or lot Owner, the developer or the developer's engineer or other representative, as authorized by Statute, must certify to the property owners' association or lot Owner and to the town that improvements are complete and functioning as designed.

         a. If a property owners' association or similar legal entity is to be responsible for the maintenance and control of Engineered Stormwater controls, it shall be established so that it has clear legal authority to maintain and exercise control over, including the power to compel contributions from subdivision property owners to cover their proportionate shares of the costs associated with the maintenance of the BMPs. Such association shall be established prior to approval of the final plat.

         b. Documents providing for the establishment of a homeowners' association or similar legal entity in accord with this ordinance shall be approved by the Stormwater Administrator before any plat is recorded.

7. Maintenance Plan.

   a. The developer must record, and reference on the record plat, a maintenance plan that instructs the property owners' association or lot Owner about the annual maintenance tasks and associated costs for at least a 20-year period.

   b. It will be the responsibility of the property owners' association or lot Owner to update the maintenance plan at least every ten years in perpetuity. The owner shall submit the update plan to the Town’s Stormwater Administrator.

8. Maintenance Agreement.

   a. The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners' association's or lot Owner's continuing responsibilities for maintenance

b. The maintenance agreement must provide that the association and its individual members are jointly and severally liable for maintenance.

c. The maintenance agreement shall grant to the town a right of entry if the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the Structural and Non-Structural BMPs; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the Structural and Non-Structural BMPs.

9. Maintenance Easement. The developer must record easements for access, maintenance and inspections by any property owners' association and by the town.

10. Dedication of BMPs, Facilities, & Improvements

    The Town of Wendell may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

11. Annual inspection reports are due by June 30 of each year. The first annual report is due by June 30 following one year after approval of the as-built plan. For Structural BMPs located on properties subject to property owners' association agreements, the property owners' association is responsible for collecting and submitting information on all individual lot Structural BMPs installed pursuant to this ordinance on an annual basis. The inspection report shall contain all the following:

    a. The name and address of the landowner.

    b. The recorded book and page number of the lot of each Engineered Stormwater controls

    c. A statement that an inspection was made of all Engineered Stormwater control

    d. The date the inspection was made.

    e. A statement that all inspected Engineered Stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance.

    f. And the original signature and seal of the engineer, surveyor, or landscape architect.

        i. All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator by ***June 30*** following the issuance of a certificate of occupancy. Subsequent annual reports shall be due on ***June 30*** each year.

12. Inspection Program.

    a. Inspections and inspection programs by the town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in Engineered Stormwater control evaluating the condition of Engineered Stormwater control; and inspecting low-density permitted projects. In exercising this power, the Stormwater Administrator is authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

    b. If the Owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to N.C.G.S. 15-27.2

or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties, including inspections on private property. Refusal of Owner or occupant of any property to permit such inspection is a violation of this ordinance.

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

14. Records of Installation and Maintenance Activities. The Owner of each Engineered Stormwater control shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

15. Nuisance. The Owner of each stormwater BMP, whether Structural or Non-Structural BMP, shall maintain it so as not to create or result in a nuisance condition.

Y. Enforcement and Violations.

1. General.

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

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 or redevelopment 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 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 section, responsible person(s) shall include but not be limited to:

i. 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.

ii. 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, development or redevelopment of the property.

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

   a. Remedies:

      i. Withholding of Building Permit: The Stormwater Administrator or other authorized agent may refuse to issue a building permit for a building or other improvements constructed or being constructed on any development site and served by the Engineered Stormwater control 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.

      ii. 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.

      iii. 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 Wendell Board of Commissioners may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, for the land on which the violation occurs.

      iv. Injunction, Abatements, etc.: The Stormwater Administrator, with the written authorization of the Town Manager, 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.

      v. Correction as Public Health Nuisance, Costs as Lien, etc.: If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. 160A-193, the Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

      vi. Stop Work Order: The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, or first-class mail. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the order was delivered, and that certificate shall be deemed conclusive in the absence of fraud. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

   b. Civil Penalties: Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Wendell is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

   c. Criminal Penalties: Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3. Procedures.

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

   b. Inspection: The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

   c. Notice of Violation and Order to Correct: When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner and the holder of the development approval, if the property owner is not the holder of the development approval. 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 shall deliver the notice of violation and correction order personally, by the Town of Wendell Police Department or the Town of Wendell Code Enforcement Officer, certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

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

   d. Extension of Time: A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 14 days. The Stormwater Administrator may grant seven-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.

   e. Enforcement after Time to Correct: After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

   f. Emergency Enforcement: If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare,

then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this section.

g. Variances:

i. Any person may petition the Town for a variance granting permission to use the persons land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all the following:

a. Unnecessary hardships would result from strict application of this ordinance.

b. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

c. The hardships did not result from actions taken by the petitioner.

d. The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

ii. The Town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

iii. Statutory Exceptions: Notwithstanding subdivision a. of this section, exceptions from the Riparian Buffer Zone and Flood Protection Zone requirements as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

b. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

c. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

Z. Illicit Discharges and Connections

1. Illicit Discharges

a. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

i. Water line and fire hydrant flushing;

ii. Landscape irrigation;

iii. Temporarily diverted stream flows;
iv. Rising groundwaters;
v. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));
vi. Uncontaminated pumped ground water;
vii. Discharges from uncontaminated potable water sources;
viii. Town of Wendell Chapter 6 – Environmental Protection Standards
ix. Foundation drains;
x. Residential or commercial air conditioning condensate;
xi. Irrigation water;
xii. Springs;
xiii. Water from crawl space pumps;
xiv. Footing drains;
xv. Lawn watering;
xvi. Individual residential car washing;
xvii. Flows from riparian habitats and wetlands;
xviii. Dechlorinated swimming pool discharges;
xix. ***Flows from active firefighting activities***/Street wash water; and
xx. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

b. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

2. Illicit Connections

a. Single-family detached and attached uses shall be prohibited from establishing direct connections to a stormwater conveyance or stormwater conveyance system, unless a permit is issued by the Town in accordance with the standards set forth in the Stormwater Management Manual.

b. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exemptions in Section 9.4 (A)(4)(c), are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

c. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other regulation prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this article. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

d. Where it is determined that said connection:

i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or

ii. Was made in violation of any applicable regulation or ordinance other than this section, the Stormwater Administrator shall designate the time within which the connection shall be removed.

In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

a. The quantity and complexity of the work,

b. The consequences of delay,

c. The potential harm to the environment, to the public health, and to public and private

d. property, and

e. The cost of remedying the damage.

3. Spills

   a. Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

   b. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under State and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or otherlaw.

4. Nuisance. Illicit discharges and illicit connections which exist within the Town are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Section 6.6 (Y)(5) below.

5. Enforcement

   a. Authority to Enter. Any authorized Town personnel shall be permitted to enter upon public or private property for the purposes of observation, inspection, sampling, monitoring, testing, surveying, and measuring compliance. No person shall obstruct, hamper, or interfere with any such representative while carrying out his official duties.

   b. Civil and Criminal Penalties.

      i. Illicit Discharges. Any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this article shall be subject to civil penalties as follows:

         a. For first time offenders, if the quantity of the discharge is equal to or less than five gallons and consists of domestic or household products in quantities considered ordinary for household purposes, or for any quantity of yard waste or litter, said person shall be assessed a civil penalty of $100.00 per violation or per day for any continuing violation and if the quantity of discharge is greater than five gallons or contains non-domestic substances, including butnot limited to process wastewater, or if the person cannot provide clear and convincing evidence of the volume and nature of the substance discharged, said person shall be assessed a civil penalty of $1,000.00 per violation or per day for any continuing violation.

         b. For repeat offenders, the amount of the penalty shall be double the amount assessed for the previous penalty, not to exceed $10,000.00 per violation for any continuing violation.

ii. Illicit Connections. Any person found with an illicit connection in violation of this article and any designer, engineer, contractor, agent, or any other person who allows, acts in concert, participates, directs, or assists directly or indirectly in the establishment of an illicit connection in violation of this article shall be subject to civil penalties as follows:

a. First time offenders shall be subject to a civil penalty of $500.00 per day of continuing violation.

b. Repeat offenders shall be subject to a civil penalty of $1,000.00 per day of continuing violation.

iii. Procedures for Assessing Civil Penalties. Said penalties shall be assessed by the Town manager or his designee. No penalty shall be assessed until the person alleged to be in violation is served written notice of the violation by registered, certified mail-return receipt requested, or personal service. Refusal to accept the notice shall not relieve the violator of the obligation to pay the penalty. The notice shall describe the violation with particularity and specify the measures needed to come into compliance. The notice shall designate the time within which such measures must be completed. The notice shall warn that failure to correct the violation within the specified time period will result in the assessment of additional civil penalties.

iv. Payment/Collection Procedures. Penalties shall be assessed by the Town Manager or his designee after proper notice has been served as described in subsection (b)(iii) above. The Town Manager or designee shall make written demand for payment upon the person in violation. If payment is not received within thirty (30) days after demand for payment is made, the matter shall be referred to the Town Attorney for possible institution of a civil action in the name of the Town for recovering the penalty.

v. Criminal Penalties. Any person who knowingly or willfully violates any provision of this article or any order duly adopted or issued pursuant to this article shall be guilty of a misdemeanor, punishable by a fine not to exceed $500.00 or imprisonment for not longer than thirty (30) days. Each violation shall be a separate offense.

c. Suspension of MS4 Access.

i. Suspension due to Illicit Discharges in Emergency Situations. The Stormwater Administrator may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or Waters of the U.S. If the violator fails to comply with a suspension order issued in an emergency, the authorized enforcement agency may take such steps as deemed necessary to prevent or minimize damage to the MS4 or Waters of the U.S., or to minimize danger to persons.

ii. Suspension due to the Detection of Illicit Discharge. Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The authorized enforcement agency will notify a violator of the proposed termination of its MS4 access. The violator may petition the authorized enforcement agency for a reconsideration and hearing.

iii. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the authorized enforcement agency.

d. Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Stormwater Administrator prior to the allowing of discharges to the MS4.

e. Monitoring of Discharges.

i. Applicability. This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.

ii. Access to Facilities.

a. The Stormwater Administrator shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the Stormwater Administrator.

b. Facility operators shall allow the Stormwater Administrator ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.

c. The Stormwater Administrator shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Administrator to conduct monitoring and/or sampling of the facility's stormwater discharge.

d. The Stormwater Administrator has the right to require the discharger to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

e. Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Administrator and shall not be replaced. The costs of clearing such access shall be borne by the operator.

f. Unreasonable delays in allowing the Stormwater Administrator access to a permitted facility is a violation of a stormwater discharge permit and of this ordinance. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the Administrator reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

g. If the Stormwater Administrator has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that 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 the Administrator may seek issuance of a search warrant from any court of competent jurisdiction.

f. Requirement to Prevent, Control and Reduce Stormwater Pollutants by the Use of BMP/SCMs. The Stormwater Administrator will adopt requirements identifying BMP/SCMs 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. 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 municipal storm drain system or watercourses through the use of these structural and nonstructural BMP/SCMs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to

implement, at said person's expense, additional structural and non-structural BMPs or SCMs to prevent the further discharge of pollutants to the municipal separate storm sewer system. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section. These BMP/SCMs shall be part of a stormwater pollution prevention plan (SWPP) as necessary for compliance with requirements of the NPDES permit.

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

h. ***Notification of Spills. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S.; said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Stormwater Administrator in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Stormwater Administrator within three (3) business days of the phone 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 for at least three (3) years.***

6.7 Stream Corridor Buffers (Stream Protection)

A. Purpose and Intent. Stream corridor buffers protect water quality by filtering pollutants from runoff, controlling soil erosion, enhancing fish and wildlife habitat and reducing flooding.

1. The Buffer Zone shall extend 50 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either of the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). An exception to this requirement may be allowed when surface waters area not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology. The Buffer Zone shall remain undisturbed unless permitted by this section.

   The Flood Protection Zone shall extend throughout the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA. The Flood Protection Zone shall remain undisturbed unless otherwise permitted by this section.

   Where the Buffer Zone and the Flood Protection Zone both are present adjacent to surface waters, the more restrictive shall apply.

The base distance for the Buffer Zone is calculated at 50 feet plus two feet per one percent of slope. Wetlands, slopes greater than 25 percent and impervious surfaces do not count toward the buffer width. See graphic below for an example of the application of the buffer guidelines to a hypothetical riparian landscape.

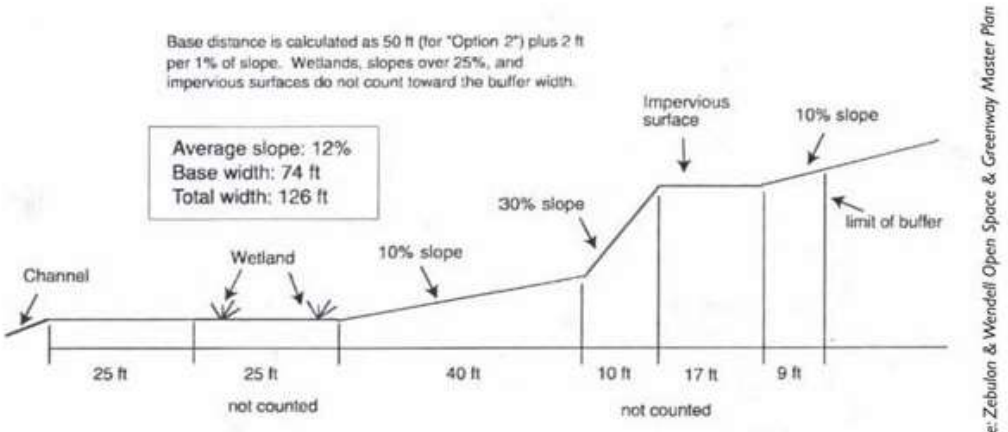


Figure 10. Example of the Application of Buffer Guidelines to a Hypothetical Riparian Landscape.

Base distance is calculated as 50 ft (for "Option 2") plus 2 ft per 1% slope. Wetlands, slopes over 25%, and impervious surfaces do not count toward the buffer width.

B. General Provisions.

1. Buffer areas must be clearly delineated on all site plans, including construction plans, grading and clearing plans, and erosion and sediment control plans.
2. Buffer boundaries must be marked on site prior to any land disturbing activities.
3. Buffer areas as well as all buffer requirements must be specified on the recorded plat, on individual deeds, and in property association documents.
4. Public infrastructure such as road crossings and utility lines are allowed where no practical alternative exists, but these activities should minimize impervious surface area and avoid large amounts of vegetation removal by crossing the buffer at a minimum 75-degree angle.

6.8 Flood Damage Protection Ordinance

A. Statutory Authorization. The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Chapter 160D-923 of enacted legislation; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of the Town of Wendell, North Carolina, does ordain as follows:

B. Findings of Fact.

1. The flood prone areas within the jurisdiction of The Town of Wendell are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. Those flood losses are caused by the cumulative effect of obstructions by materials such as trees, limbs, sediment, construction debris, etc. in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

C. Statement of Purpose. It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas and provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities.

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters.

4. Control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,

5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters, or which may increase flood hazards to other lands.

D. Objectives. The objectives of this Ordinance are:

1. To protect human life and health.

2. To minimize expenditure of public money for costly flood control projects.

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public.

4. To minimize prolonged business losses and interruptions.

5. To minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are in flood prone areas.

6. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,

7. To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

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

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

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

An administrator is the individual appointed to administer and enforce the floodplain management regulations.

Appeal means a request for a review of the Administrator's interpretation of any provision of this ordinance.

Area of Special Flood Hazard. See "Special Flood Hazard Area (SFHA)."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

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

Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood based on current conditions hydrology as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area," it may be obtained from engineering studies available from a Federal or State other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the "Regulatory Flood Protection Elevation" in Special Flood Hazard Areas.

Building. See "Structure."

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

Current Conditions Hydrology means the flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical flood study information is published in the Flood Insurance Study.

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

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

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

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

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

Flood or **Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

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

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

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

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

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

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

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

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

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

Freeboard means the height added to the Base Flood Elevation (BFE) or the Future Conditions Flood Elevation to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation."

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

Future Conditions Flood means the flood having a one percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

Future Conditions Flood Elevation means a determination of the water surface elevations of the one percent annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

Future Conditions Flood Hazard Area means the land area that would be inundated by the one percent annual chance flood based on future conditions hydrology as determined in Article 3, Section B of this ordinance.

Future Conditions Hydrology means the flood discharges associated with projected land-use conditions based Wake County's current countywide equivalent zoning classification data on the Town of Wendell's current Zoning Map and without consideration of projected future construction of flood detention structures or projected

future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

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

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

Historic Structure means any structure that is:

Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register.

Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.

Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or

Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program." Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

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

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

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

Market Value means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.

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

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

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

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

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

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

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

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

Built on a single chassis.

400 square feet or less when measured at the largest horizontal projection.

Designed to be self-propelled or permanently towable by a light duty truck; and,

Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference Level is the top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, A99 or X (Future).

Regulatory Flood Protection Elevation means the elevation above mean sea level to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus three feet of freeboard.

In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least three feet above the highest adjacent grade.

In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus three feet of freeboard.

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

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

Salvage Yard means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery.

Shear Walls contains the vertical elements of the horizontal wall resisting system, typically wood covered with a structural sheathing material like plywood. When properly installed the shear wall will have the strength and stiffness to resist the horizontal forces.

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

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

Special Flood Hazard Area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year based on current conditions hydrology, as determined in Section F.2 of this ordinance.

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

Structure means a walled and roofed building, a manufactured home.

Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "Substantial Improvement." Substantial Damage also means flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "Substantial Damage," regardless of the actual repair work performed. The term does not, however, include either:

Any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

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

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

Water Surface Elevation (WSE) means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or ravine areas.

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

F. General Provisions.

1. Applicable Lands. This ordinance shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions if applicable, of the Town of Wendell and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

2. Basis for Establishing the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM) which are adopted by reference and declared to be a part of this ordinance.

3. Establishment of a Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas determined in Section F.2.

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

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

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

   a. Considered as minimum requirements.

   b. Liberally construed in favor of the governing body; and,

   c. Deemed neither to limit nor repeal any other powers granted under NC statutes.

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

8. Penalties for Violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Wendell from taking such other lawful action as is necessary to prevent or remedy any violation.

G. Provisions for Flood Hazard Reduction.

1. General Standards. All developments and redevelopments shall be in accordance with the following provisions:

a. No development or redevelopment is permitted within the Special Flood Hazard Area or Neuse River Buffer Zone except for stream bank or shoreline restoration or stabilization, water dependent structures, and public or private projects such as greenways, parks, and their accessory uses.

b. Permitted activities within the Flood Protection Zones shall minimize impervious coverage and direct runoff away from surface waters.

c. All development and/or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

d. All development and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

e. All development and substantial improvements shall be constructed by methods and practices that minimize flood damages.

f. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.

g. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

h. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

i. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

j. This ordinance shall prevent the repair, reconstruction, or replacement of a building or structure, as allowed under G.1.a., and in existence on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

k. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be in a Special Flood Hazard Area or Future Conditions Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section J.2. of this ordinance.

l. All subdivision and other development proposals shall be constructed to minimize flood damage.

    i. All subdivision and development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

m. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

n. All subdivision and development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

2. Specific Standards. In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where Future Conditions Flood Elevations data has been provided, as set forth in Section F.2, or Section J.3.k and l, the following provisions, in addition to those provisions in Section 6.8.G.1, are required:

a. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance.

b. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance. Structures located in Zones A, AE, AH, AO, A99, and X (Future) may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section K.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section M.2.c. along with the operational plan and the inspection and maintenance plan.

c. Manufactured Homes.

    i. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section E of this ordinance.

    ii. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

    iii. All enclosures or skirting below the lowest floor shall meet the requirements of Section G.2.d. of this ordinance iv.

    iv. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

d. Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

    i. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclosed storage areas.

    ii. Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation.

    iii. Shall include, in Zones A, AE and X (Future), flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement,

the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria.

a. A minimum of two flood openings on different sides of each enclosed area subject to flooding.

b. The total net area of all flood openings must be at least 1 square inch for each square foot of enclosed area subject to flooding.

c. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit.

d. The bottom of all required flood openings shall be no higher than one foot above the adjacent grade.

e. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

f. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

e. Additions/Improvements:

i. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

a. Not a substantial improvement, shall be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

b. No substantial improvements are permitted within the flood hazard area.

ii. Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

iii. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

a. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

b. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

c. Where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

f. Recreational Vehicles: Recreation vehicles shall either:

i. Temporary Placement

a. Be on site for fewer than 180 consecutive days; or

b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions).

ii. Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

g. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

   i. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

   ii. The name, address, and phone number of the individual responsible for the removal of the temporary structure;

   iii. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

   iv. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

   v. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, to which the temporary structure will be moved.

h. Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

   i. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

   ii. Accessory structures shall not be temperature-controlled

   iii. Accessory structures shall be designed to have low flood damage potential;

   iv. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

   v. Accessory structures shall be firmly anchored in accordance with the provisions of Section G.1.c.;vi.All service facilities such as electrical shall be installed in accordance with the provisions of Section G.1.f.; and

   vi. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section G.2.d.iv.

   vii. An accessory structure with a footprint less than 144 square feet or that is a minimal investment of $3,000.00 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Section G.2.b. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section M.2.c.

i. Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

   i. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

   ii. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

iii. Above-ground tanks not elevated. Above-ground tanks that do not meet the elevation requirements of Section G.2.b of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

iv. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

a. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

b. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

j. Other Development.

i. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section J of this ordinance.

ii. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section J of this ordinance.

iii. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section J of this ordinance.

H. Standards for Floodplains without Established Base Flood Elevations. Within the Special Flood Hazard Areas designated as Approximate Zone A and established Section F.2, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Sections G.1 and G.2, shall apply:

1. No encroachments, including fill, new development, or substantial improvements shall be permitted within a distance of 50 feet each side from top of bank or five times the width of the stream on each side whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

a. If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections J.3.k and l.

b. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section F.2 to be utilized in implementing this ordinance.

c. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Section F.2.

I. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

1. Standards of Sections G.1 and G.2; and

2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

J. Floodways and Non-Encroachment Areas. Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section F.2. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections G.1 and G.2, shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments in accordance with G.1.a. shall be permitted unless it has been demonstrated that:

   a. The proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Administrator prior to issuance of floodplain development permit, or

   b. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

2. If Section I.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

3. No new or additional manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

   a. The anchoring and the elevation standards of Section G.2.c; and

   b. The no encroachment standard of Section I.1.

K. Standards for Areas of Shallow Flooding (Zone AO). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of three feet, above the highest adjacent grade; or at least four feet above the highest adjacent grade if no depth number is specified.

2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section K.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section M.2.c and Section G.2.b.

3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

L. Standards for Areas of Shallow Flooding (Zone AH). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one to three feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:

1. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

M. Administration.

1. Designation of Administrator. The Administrator or his or her designee is hereby appointed to administer and implement the provisions of this ordinance.

2. Floodplain Development Permit and Certification Requirements.

a. Plans and Application Requirements. Application for a Floodplain Development Permit shall be made to the floodplain administrator prior to any development activities located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

i. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development.

b. The boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section F.2, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Area.

c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section F.2.

d. The boundary of the floodway(s) or non-encroachment area(s) as determined in Section F.2.

e. The Base Flood Elevation (BFE) or Future Conditions Flood Elevation where provided as set forth in Sections F.2; J.3.k and l; and G.2;

f. The old and new location of any watercourse that will be altered or relocated because of proposed development.

g. Certification of the plot plan by a registered land surveyor or professional engineer.

ii. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:

a. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures.

b. Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or X (Future) will be flood-proofed; and

c. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.

iii. If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

iv. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

a. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls).

b. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section G.2, when solid foundation perimeter walls are used in Zones A, AE and X (future).

v. Usage details of any enclosed areas below the regulatory flood protection elevation.

vi. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

vii. Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)

viii. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section G.2.c and g of this ordinance are met.

ix. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

b. Permit Requirements. The Floodplain Development permit shall include, but not be limited to:

i. A description of the development to be permitted under the floodplain development permit.

ii. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Section F.2.

iii. The regulatory flood protection elevation required for the reference level and all attendant utilities.

iv. The regulatory flood protection elevation required for the protection of all public utilities.

v. All certification submittal requirements with timelines.

vi. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

vii. The flood openings requirements, if in Zones A, AE or X (Future).

viii. Limitations of below BFE enclosure uses, if applicable (i.e., Parking, Building Access and Limited Storage only).

ix. A statement that all materials below BFE/RFPE must be flood resistant materials.

c. Certification Requirements:

i. Elevation Certificates

a. An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by

such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

b. An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

c. A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/ Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

ii. Floodproofing Certificate. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

iii. If a manufactured home is placed within Zone A, AE or X (Future) and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section G.2.c.

iv. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

v. Certification Exemptions. The following structures, if located within Zone A, AE or X (Future), are exempt from the elevation/floodproofing certification requirements specified in items (1) and (2) of this subsection:

a. Recreational Vehicles meeting requirements of Section G.2.c.i;

b. Temporary Structures meeting requirements of Section G.2.

c. Accessory Structures that are 144 square feet or less or $3,000.00 or less and meeting requirements of Section G.2.h.

d. Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

i. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

ii. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

iii. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

iv. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

3. Duties and Responsibilities of the Administrator. Duties of the Administrator shall include, but not be limited to:

a. Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of this ordinance have been satisfied.

b. Advise applicant that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.

c. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

d. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

e. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions are met.

f. Obtain actual elevation ***(in relation to mean sea level)*** of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Section J.2.c.

g. Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with Section J.2.c.

h. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Section J.2.c.

i. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section J.2.c and Section G.2.

j. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

k. When Base Flood Elevation (BFE) data has not been provided in accordance with Section F.2, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section G.3.b. in order to administer the provisions of this ordinance.

l. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section F.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

m. When the lowest ground elevation of a parcel or structure located within Zone AE is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

n. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

o. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progress, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

p. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing/authorizing/financing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

q. Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

r. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

s. Follow through with corrective procedures of Section J.4.

t. Review, provide input, and make recommendations for variance requests.

u. Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section F.2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

v. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

4. Corrective Procedures.

a. Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

b. Actions in Event of Failure to Take Corrective Action. If the owner of a building or property shall fail to take prompt corrective action, the Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

i. That the building or property is in violation of the Flood Damage Prevention Ordinance.

ii. That a hearing will be held before the Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

iii. That following the hearing, the Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

c. Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days nor more than 180 calendar days. Where the Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

d. Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

e. Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

5. Variance Procedures.

a. The Zoning Board of Adjustment, as established by the Town of Wendell, shall hear and decide requests for variances from the requirements of this ordinance.

b. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

c. Variances may be issued for:

i. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and

that the variance is the minimum necessary to preserve the historic character and design of the structure.

ii. Functionally dependent facilities if determined to meet the definition as stated in this ordinance, provided provisions of Section J.5.i.(ii), (iii), and (iv) have been satisfied, and such facilities are protected by methods that minimize flood damages.

d. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

i. The danger that materials may be swept onto other lands to the injury of others.

ii. The danger to life, property, and environment (plant and animal life) due to flooding or erosion damage.

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.

iv. The importance of the services provided by the proposed facility to the community.

v. The necessity to the facility of a waterfront location, where applicable.

vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

vii. The compatibility of the proposed use with existing and anticipated development.

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles.

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

xi. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

e. A written report addressing each of the above factors shall be submitted with the application for a variance.

f. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

g. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

h. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

i. Conditions for Variances:

i. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

ii. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

iii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

iv. Variances shall only be issued prior to development permit approval.

v. Variances shall only be issued upon:

a. A showing of good and sufficient cause.

b. A determination that failure to grant the variance would result in exceptional hardship; and

c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

j. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are in Special Flood Hazard Areas or Future Conditions Flood Areas if all the following conditions are met.

i. The use serves a critical need in the community.

ii. No feasible location exists for the use outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area.

iii. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level.

iv. The use complies with all other applicable federal, state and local laws.

v. The Town of Wendell has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

N. Legal Status Provisions.

1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance. This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 23, 2007, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of The Town of Wendell enacted on April 23, 2007, as amended, which are not reenacted herein are repealed.

2. Effect Upon Outstanding Floodplain Development Permits. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

3. Severability. If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

4. Effective Date. This ordinance shall become effective upon adoption.

Planning

Staff Analysis

Item Title: Public Hearing on Zoning Text Amendment (ZTA24-01) Update of UDO Chapter 6 – Environmental Protection

Summary:

The current UDO Chapter 6 is not up to date with the new North Carolina Administrative Code, Session Laws, and requirements for the MS4 permit. The proposed updates to UDO Chapter 6 are as follows:

- Section 6.3 Neuse River Riparian Buffers
    - NCAC 15A 2B
    - Buffers are a form of open space. This describes how they are to be deeded.
    - NC Department of Environmental Quality requires this to be adopted in order to renew our MS4 permit.
- Section 6.6 Stormwater Runoff Provisions - Administration and Procedures
    - Requirements added for video pipe inspection and GIS files for the final approval of new stormwater systems.
    - This requirement allows staff to see pipe failures before they are accepted and can be remedied without the use of Town funds.
- Section 6.6 Stormwater Runoff Provisions - General Standards
    - NCAC 15A 02H.0703, NCAC 15A 02H.1002, and NCAC 15A 02H.1003
    - Explains stormwater system design requirements for the control and treatment of runoff.
    - States requirements for Nitrogen Loading Rate Targets.
    - Explains methods to meet the nutrient control requirements.
    - Gives rules for the nutrient offset credits and how they can be acquired.
    - Defines Built-Upon Area Standards.
    - Gives details on Illicit Discharge enforcement, monitoring of discharges, and suspension of MS4 access.

Statement of Plan Consistency:

Any recommended change to the zoning text should be accompanied by a statement explaining how the change is consistent with the comprehensive plan, Blueprint Wendell 2030. This text amendment furthers the goals listed below:

- Growth Management – Goal GM3.3 Amend or Rewrite the Unified Development Ordinance
- Natural Resource Conservation – Goal N1.9 Enact Stormwater Low-Impact Design Best Practices

Staff Recommendation

The proposed text amendments and consistent with Blueprint Wendell 2030 and consistent with state regulations and therefore Staff recommends approval of ZTA24-01, Update of UDO Chapter 6 – Environmental Protection.

Chapter 6 ENVIRONMENTAL PROTECTION

6.1 Purpose and Intent

A primary and fundamental element of this Ordinance is the protection of our existing environmental resources including floodplains and other stream corridors, wetlands, watersheds and groundwater recharge areas, soils, forest stands, specimen trees and other significant vegetation and wildlife. These elements are of economic value to the Town and make it a desirable place to live and visit.

6.2 Land Suitability

Land subject to flood hazard, improper drainage, erosion or that is for topographical or other reasons unsuitable for development as determined by the Town of Wendell, shall not be platted or developed for residential use nor for any other uses that will continue or increase the danger to health, safety, or property unless the hazards can be and are corrected.

A. *Demolition Landfill Development:* Areas that have been used for the disposal of solid waste shall not be subdivided into commercial or residential building sites. This includes areas that have been used for the disposal of trash, demolition waste, construction debris, stumps, and other waste materials.

6.3 Sedimentation and Erosion Control

In order to prevent soil erosion and sedimentation pollution, the developer shall comply with all requirements of the North Carolina Sedimentation Pollution Control Act of 1973, as amended.

A Sedimentation and Erosion Control Plan approved by Wake County Environmental Services (or other agencies having jurisdiction) shall be in place prior to any land disturbing activity.

6.4 Pre-Development Site Grading

Pre-development site grading may commence only with a permit issued in accordance with the provisions of Section 6.5, Stormwater Runoff Provisions. Predevelopment site grading, for the purpose of this ordinance, is any land disturbing activity of one acre or more that is not regulated by a site plan previously approved by the Board of Commissioners.

The grading may be considered a "low impact" or "high impact" activity based on the table below. If one or more of the high impact activities exist, the grading is considered high impact.

Low Impact Activity	High Impact Activity
1. Land disturbing activity is more than 100 feet from a residential district.	1. Land disturbing activity is 100 feet or less from a residential district.
2. Land disturbing activity will not intrude into either the Street Yard landscaping area or Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*	2. Land disturbing activity will intrude into either the Street Yard area or the Planting Yard landscaping area *(see Chapter 8, Tree Protection and Landscaping)*
3. The steepness of the proposed slope at clearing limit is 3:1 (horizontal: vertical) or flatter.	3. The steepness of the proposed slope at clearing limit is greater (steeper) than 3:1 (horizontal: vertical)

4. The height of the proposed grade change (cut or fill) is less than or equal to 3 feet.	4. The height of the proposed grade change is greater than 3 feet.

6.5 Stormwater Runoff Provisions: Post-Construction Stormwater Ordinance

~~A. Title: This section and related sections shall officially be known as the "Post-Construction Stormwater Ordinance."~~

~~B. Authority: The Town of Wendell is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; the municipal Charter of the Town of Wendell; G.S. 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185, Chapter 160D-925, Stormwater Control [as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)]; [Article 21, Part 6 (Floodway Regulation)]; [Chapter 160D]; as well as Chapter 160D related to statutory authority for planning and regulation of development, including particularly but not limited to G.S. 160D-404 (enforcement), G.S. 160D Article 8 (subdivision), G.S. 160D Article 7 (zoning).~~

~~C. Findings. It is hereby determined that:~~

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

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

~~Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Post-Construction Stormwater Rules promulgated under it compel the Town to adopt the minimum stormwater controls such as those included in this ordinance.~~

~~Therefore, the Town of Wendell establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.~~

D. Purpose.

1. ~~General:~~ 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 increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems.

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

   a. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, stream bank erosion, nonpoint and point source;

   b. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

   c. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable;

d. Establishing provisions for the long-term responsibility for and maintenance of Structural and Non-Structural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

e. 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;

f. Managing flooding and downstream impacts with an awareness of impending regional growth.

E. Definitions: 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.

Built-upon area (BUA) means that portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or permeable pavement that meets the standards outlined in the North Carolina Division of Water Quality Stormwater Best Management Practices Manual.

Density means the calculation of the total impervious area of a project divided by the total project area. Surface water bodies shall be included in calculations of project density.

Department means the North Carolina Department of ~~Environment and Natural Resources~~.

Design Manual means the North Carolina Department of ~~Environment and Natural Resources Stormwater Best Practices Manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the Design Manual are to the latest published edition or revision.~~

Development means any land disturbing activity that increases the amount of built-upon area or that decreases the infiltration of precipitation into the soil.

Division means the Division of Water Quality in the North Carolina Department of ~~Environment and Natural Resources.~~

Flood Protection Zone means the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA.

High-Density Project. A project is a High-Density Project if it has 24 percent or more Built-upon Area (BUA) based on total project acreage for all residential and non-residential Development. Any project that exceeds the low density threshold for built-upon area.

Impervious Area. Impervious areas are those surfaces which prevent the infiltration of or impede the rate of infiltration of stormwater into the soil as compared with the natural conditions prior to development. Common areas include, but are not limited to, rooftops, sidewalks, walkways, patio areas, driveways, parking lots, storage areas, engineered and compacted gravel surfaces used for vehicular travel or parking and other surfaces which prevent or impede the natural infiltration of stormwater runoff that existed prior to development.

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

Low-Density project. A project is a Low-Density project if it has more than 15 percent Built-Upon Area (BUA) and no more 24 percent Built-Upon Area(BUA) based on total project acreage for all residential and non-residential development.

A project with an overall density at or below the relevant Low-Density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practical.

Non-Structural BMP means a practice that is intended to reduce the impacts of stormwater runoff by managing pollution at the source and that is not a physical device constructed to control or treat stormwater runoff. Examples of Non-Structural BMP's include reducing impervious areas, making use of existing natural features and system, reforestation, and cluster development.

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

Owner means 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.

Redevelopment means any rebuilding activity other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Structural BMP means a physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur:

(1) Obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than ~~30 days~~; or

(2) 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.

Ultra Low-Density Project. A project is an Ultra Low-Density project if it has 15 percent or less Built-Upon Area (BUA) and has less than one dwelling unit per acre for all residential and non-residential Development.

A project with an overall density at or below the relevant Ultra Low-Density threshold, but containing areas with a density greater than the overall project density, may be considered ultra low-density as long as the project meets or exceeds the post-construction model practices for Ultra Low-Density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

F. Applicability and Jurisdiction.

1. ~~General:~~ Beginning with and ~~subsequent to~~ its effective date, this ordinance shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection 2 of this Section, Exemptions.

2. Exemptions:

a. ~~Development that cumulatively disturbs less than 20,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance. This exemption does not relieve any development from Neuse Buffer Rules or other applicable federal, state or local laws.~~

b. ~~Redevelopment that cumulatively disturbs less than 20,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance. This exemption does not relieve any development from Neuse Buffer Rules or other applicable federal, state or local laws.~~

c. Development and redevelopment that disturb less than 20,000 square feet are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

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

e. Stormwater runoff rules and programs shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

3. No Development or Redevelopment until Compliance and Permit: No development or redevelopment shall occur except in compliance with the provisions of this ordinance or unless exempted. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

4. ~~Map: The provisions of this ordinance shall apply within the areas designated as the municipal incorporated area and exterritorial jurisdiction on the town's official zoning map, which is adopted simultaneously herewith. The Zoning Map shall be kept on file by the town and shall be to included changes in the land area covered by this ordinance and the geographic location of all Structural BMPs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.~~

G. Interpretation.

1. References to Statutes, Regulations, and Documents: Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the North Carolina Stormwater Best Management Practices Manual, hereinafter "the Design Manual"), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

2. ~~Additional Rules of Interpretation: Additional questions of interpretation shall follow the provisions laid out in Section 1.10 of this UDO.~~

H. ~~North Carolina Stormwater Best Management Practices~~ Design Manual.

1. Reference to Design Manual: The Stormwater Administrator or his/her designee shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance ~~of Structural and Non-Structural stormwater BMPs~~.

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

2. Relationship of Design Manual to Other Laws and Regulations: If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

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

I. Relationship to Other Laws, Regulations and Private Agreements.

1. Conflict of Laws: This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards shall control.

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

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

K. Effective Date and Transitional Provisions.

1. Effective Date: The effective date of the stormwater ordinance is the date of adoption by the Board of Commissioners.

2. Final Approvals, Complete Applications: All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Wendell prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

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: the type and intensity of use for a specific parcel or parcels. This shall include, at a minimum, the boundaries of the project and a subdivision plan that has been approved.

b. For any subsequent phase of development: sufficient detail showing that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

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

L. Administration and Procedures.

1. Review and Decision Making Entities.

a. Stormwater Administrator:

i. Designation: A Stormwater Administrator shall be designated by the Town of Wendell to administer and enforce this ordinance.

ii. Powers and Duties: In addition to the powers and duties that may be conferred by other provisions of the Town of Wendell's Code of Ordinances and other laws, the Administrator shall have the following powers and duties under this ordinance:

a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

b. To make determinations and render interpretations of this ordinance.

c. To enforce the provisions of this ordinance in accordance with its enforcement provisions.

d. To maintain records, maps, forms and other official materials as they relate to the adoption, amendment, enforcement, and administration of this ordinance.

e. To designate appropriate other person(s) who shall carry out the powers and duties of the Administrator.

f. To take any other action necessary to administer the provisions of this ordinance.

2. Review Procedures.

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

b. Effect of Permit: A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including Structural BMPs and elements of site design for stormwater management other than Structural BMPs.

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

~~c. Authority to File Applications: All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.~~

~~d. Establishment of Application Requirements, Schedule, and Fees:~~

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

ii. Submission Schedule: The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications shall be submitted for the purpose of ensuring that there is adequate time to review applications and that the various stages in the review process are accommodated.

iii. Permit Review Fees: Permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

iv. Administration Manual: For applications required under this Code, the Stormwater Administrator shall compile the requirements and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

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

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

f. Review. Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

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

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

iii. Revision and Subsequent Review: A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

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

3. Applications for Approval.

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

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

i. Existing Conditions/Proposed Site Plans: Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; Perennial and Intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

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

iii. Stormwater Management System Concept Plan: A written and graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

~~b. Stormwater Management Permit Application.~~

~~i. Purpose: The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section N, Standards.~~

~~ii. Downstream Impact Analysis: As part of the permit application, all development and redevelopment shall perform a Downstream Impact Analysis as specified in Section N.1.~~

~~iii. Plan Certification: All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and~~

~~practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.~~

~~The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section L.2.D.~~

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

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

4. Approvals.

a. Effect of Approval: Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

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

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

5. Appeals.

a. Right of Appeal: Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Administrator may file an appeal to the Zoning Board of Adjustment within 30 days.

b. Filing of Appeal and Procedures: Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the town. The Stormwater Administrator shall transmit to the town's Appeal Board all documents constituting the record on which the decision appealed from was taken.

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

c. Review by Superior Court: Every decision of the town's Appeal Board 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 30 days after the latter of the following:

i. The decision of the town's Appeal Board is filed; or

ii. A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the (Chair or Secretary of the board that will hear appeals) at the time of its hearing of the case.

M. Standards Based on Project Density.

1. Development Standards for Ultra-Low and Low-Density Projects: Ultra-Low and Low-Density projects shall comply with each of the following standards, in addition to the general standards found in Section B in this Section:

a. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

b. All Development and Redevelopment shall be located outside the Riparian Buffer Zone and Flood Protection Zone.

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

d. Reserved.

e. For Ultra Low-Density Projects only, pervious portions of the site must be utilized to the maximum extent practicable to convey and control stormwater runoff.

f. For Low-Density Projects only, Structural and Non-Structural BMPs shall control and treat the difference in the stormwater runoff peak discharge rate leaving the project site between the pre- and post-development conditions for, at a minimum, the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

g. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.

h. Developers must manage residential runoff so that after Development the site will not exceed the Target Curve Numbers in the table in Section M.2.

i. Ultra-Low Density Projects and Low-Density Projects may be eligible for target curve number credits, as described found in Section M.3, below.

2. Maximum Curve Number after Development: Developers must manage residential runoff so that after development the site will not exceed the following composite curve numbers, in accordance with procedures specified in the United States Department of Agriculture, Natural Resource Conservation Service, Technical Release 55, *Urban Hydrology for Small Watersheds.*

Project Density	Maximum Composite Curve Number, by Soil Group			
	A	B	C	D
Ultra-Low	43	63	76	81
Low	48	66	78	83
High	n/a	n/a	n/a	n/a

3. Target Curve Number Credits.

a. Purpose: The purpose of establishing a stormwater credit system is to provide incentives to implement better site design and locate new development in a manner that causes less impact to aquatic resources. Certain development practices reduce the generation of stormwater from the

site; thereby reducing the size and cost of stormwater storage. In addition, these practices can provide partial removal of many pollutants. The credit system directly translates into cost savings and better protection of water resources.

b. Disconnected Impervious Surfaces: Disconnected impervious surfaces, included permeable pavers, are encouraged. Runoff from these disconnected surfaces must be spread over pervious areas as sheet flow. As a credit, these disconnected impervious surfaces will be assigned the lower curve number specified by procedures of the United States Department of Agriculture, Natural Resources Conservation Service, Technical Release 55, *Urban Hydrology for Small Watersheds.*

c. Reforestation: The planting of trees and shrubs is encouraged as a means of reducing runoff. As a credit for such practices, reforested areas will be assigned the curve number for woods in good condition per procedures in the United States Department of Agriculture, Natural Resources Conservation Service (NRCS), Technical Release 55, *Urban Hydrology for Small Watersheds*. Areas planted with trees or shrubs must meet the following standards to qualify for the credit.

i. Tree/Shrub Density and Spacing: Planted trees or shrubs must meet the minimum density and spacing standards of the NRCS, as specified in the Field Office Technical Guide. Existing trees or shrubs may be used towards meeting the planting standard.

ii. Mulching: An initial application of mulch is required for the area designated for reforestation. Mulching must meet applicable standards of the NRCS, as specified in the Field Office Technical Guide. Existing groundcover may be used towards meeting the mulching standard.

d. Cluster and Open Space Subdivisions: Cluster and open space subdivisions are encouraged. In applying curve number calculations to such developments, calculations must take into account the lots' proportionate share of right-of-way and permanent open space.

e. Calculations Regarding Ponds, Lakes, and Streams: Surface water bodies may not be assigned a curve number for impervious surfaces. Instead, such water bodies will be removed from calculations so that developments are not penalized for their presence. Surface water bodies shall be included in calculations of project density.

4. Development Standards for High-Density Projects: High-density projects shall implement stormwater control measures that comply with each of the following standards, in addition to the general standards found in subsection N of this chapter.

a. The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

b. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85 percent average annual removal for Total Suspended Solids (TSS).

c. Reserved.

d. Structural and Non-Structural BMPs shall be used to ensure there is no net increase in peak flow leaving the site from the pre- and post-development conditions for the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

e. General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.

f. All development and redevelopment shall be located outside the Riparian Buffer and Flood Protection Zone. These zones shall be in accordance with the following provisions:

i. Except where other applicable buffer standards are more restrictive, the Riparian Buffer Zone shall extend a minimum of 50 feet landward of all Perennial and Intermittent Surface Waters. The most restrictive standards shall apply.

ii. The Riparian Buffer Zone shall remain undisturbed unless otherwise permitted by this section.

iii. The Flood Protection Zone shall extend throughout the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA. The Flood Protection Zone shall remain undisturbed unless otherwise permitted by this section.

iv. No Development or Redevelopment is permitted within the Riparian Buffer Zone or the Flood Protection Zone except for stream bank or shoreline restoration or stabilization, water dependent structures, and public or private projects such as road crossings and installations, utility crossings and installations, and greenways, where no practical alternatives exist.

v. Permitted activities within the Riparian Buffer Zone and the Flood Protection Zone shall minimize impervious coverage, direct runoff away from surface waters to achieve diffuse flow, and maximize the utilization of Non-Structural BMPs.

vi. Where the Riparian Buffer Zone and the Flood Protection Zone both are present adjacent to surface waters, the more restrictive shall apply.

g. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future Development and Redevelopment maintains the site consistent with the approved project plans. Buffer widths and locations shall be clearly delineated on all plans, final plat, and as-builts.

N. General Standards.

1. Downstream Impact Analysis: The Downstream Impact Analysis must be performed in accordance with the "ten percent rule," and a copy of the analysis must be provided with the permit application. The purpose of the Downstream Impact Analysis is to determine if the project will cause any unintentional additional impacts on flooding or channel degradation downstream of the project site. The analysis must include the assumptions, results and supporting calculations to show safe passage of post-development design flows downstream. This analysis shall be performed at the outlet(s) of the site, and downstream at each tributary junction to the point(s) in the conveyance system where the area of the portion of the site draining into the system is less than or equal to ten percent of the total drainage area above that point.

   The typical steps in the application of the ten percent rule are:

   a. Using a topographical map, determine the point downstream where the proposed site equals ten percent of the total drainage area, called ten percent point. Identify all tributary junctions between the downstream site boundary and the ten percent point. All points identified, as well as the outlet of the site, are known as ten percent rule comparison points.

   b. Using a hydraulic model with existing land uses, determine the pre-development peak runoff rate (cfs) for the ten-year design storm event at each comparison point.

   c. Insert the proposed site design and proposed BMP's into land uses and determine the post-development peak runoff rate for the ten-year design storm at each comparison point.

   d. If the ten-year post-development peak discharge rate is greater than the pre-development discharge rate at any comparison point, then one of the following actions must be taken:

i. Revise the site plan for the proposed site to incorporate better use of natural features, design additional structural control facilities, reduce impervious cover, or alter timing of peak flows to lower post-Development flows at each comparison point to pre-Development levels.

ii. Obtain a flow easement from downstream property owners through the ten percent point where the post-Development peak discharge rate is higher than the pre-Development peak discharge rate.

iii. Work with the town to determine other acceptable approaches to reduce the peak discharge rate for the ten-year storm.

For further information on the ten percent rule, refer to the *Georgia Stormwater Manual*, www.georgiastormwater.com.

2. Standards for Stormwater Control Measures.

a. Evaluation According to Contents of Design Manual: All stormwater control measures and stormwater treatment practices (or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

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

c. Separation from Seasonal High Water Table: For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

d. Changes to Stormwater Plan Based on Emerging Technologies: Subject to the standards of this ordinance and other applicable law, a developer, in conjunction with the development's lot owners, may submit an application to revise the approved stormwater plan so as to use new technologies or best management practices not available when the original stormwater plan was approved. Innovative technologies may be used on a demonstration basis for a period of one year while simultaneously collecting data on the effectiveness of the technology according to its design. If at the end of the demonstration period the technology is not performing according to its intended design functions as judged by the Stormwater Administrator, the developer must retrofit the site with a standard technology.

3. Additional Stormwater Management Measures: In some cases, the Stormwater Administrator may require more stringent stormwater management measures where it is determined that additional measures are required to protect water quality and maintain existing and anticipated uses of these waters or to minimize offsite damage from stormwater runoff in accordance with the purpose of this ordinance as defined in Section D.

4. Dedication of BMPS, Facilities and Improvements: The town may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

5. Low Impact Development (LID) Project Classifications.

    a. Low Impact Development (LID) project classification is an optional, best management practice which is not required by any standards of this ordinance.

    b. Classification as a Low Impact Development requires that the development mimic the pre-developed hydrologic conditions of the site, as defined as "woods in good condition" for the two-year, 24-hour storm, within ten percent. The pre-developed conditions shall include: its hydrologic balance; frequency distribution of high flows; magnitude, frequency, and duration of low flows; groundwater recharge (or infiltration), and flow length and pattern. The conditions shall be measured through the comparison between measures of the pre-developed and developed conditions including: total runoff volume, time of concentration, curve number, and peak discharge. Mimicry of the pre-developed hydrologic conditions may be achieved through such techniques as the minimization of disturbed areas and the use of on-lot distributed retention storage as described in more detail on Wake County's Stormwater Web Site under Low Impact Development.

    c. The following techniques must be used to achieve LID classification:

        i. Natural site design in consultation with the Town;

        ii. Site buildings, roads, and other disturbance in the least environmentally sensitive areas, pursuing steep slopes, naturally well draining soils, and other hydrologically valuable features undisturbed.

    d. In addition, one of the following two techniques must be used to achieve LID classifications:

        i. Bio-retention systems;

        ii. On-site infiltration;

    e. In additions, at least one of the following techniques must be used to achieve LID:

        i. Retention of 50 percent of vegetated area, including open space, landscaping, or forests;

        ii. Installation of tree-box filters for all residential street trees;

        iii. Installation of driveway runners (in lieu of fully paved driveways) for all residential driveways;

        iv. Installation of a Disconnected Impervious Surface (DIS) system on all residential lots (in accordance with the NCDENR Stormwater BMP manual), with all yards fully sodded:

            a. Installation shall be confirmed prior to CO, but no easement shall be required.

        v. Use of Permeable pavement for private driveways, private roads, or parking areas in accordance with the North Carolina Stormwater Best Management Practices Design Manual;

        vi. Installation of one underground rain cistern per lot;

        vii. Installation of vegetated roofs;

viii. Increasing all buffers in the Riparian Buffer Zone of the Flood Protection Zone, whichever is greater, by 50 feet, in accordance with Section M.1 for Low-Density Development and Ultra Low Density projects and Section M.4 for High-Density Projects;

ix. Use of reclaimed water for all buildings in accordance with State and local laws;

x. Use of innovative LID techniques subject to the approval of the Town. For residential projects, this could include such things as additional stormwater measures in common areas (such as impervious surface pavers in a clubhouse parking lot, or rain gardens incorporated into passive open space).

~~f. For Development and Redevelopment projects achieving classification as LID Projects, the Stormwater Administrator shall waive the stormwater permit fee if stipulated in the fee schedule duly adopted by the applicable governing board.~~

~~g. Wake County will expedite the permitting process for Development and Redevelopment projects achieving classification as an LID Project.~~

6. On-Site Wastewater: Onsite systems disposal systems shall be operated and maintained in accordance with the *Regulations Governing Sewage Treatment and Disposal Systems in Wake County (Regulations)* adopted by the Wake County Board of Human and Environmental Services and enforced by Wake County. Onsite systems shall be inspected, permitted, repaired and/or professionally operated in accordance with the Regulations and in a manner to prevent adverse to prevent adverse impacts on surface water and groundwater. ~~The Town of Wendell and WCES shall collaborate on identification of areas of high risks for system failures and associated need for environmental surveys, system repairs and possible service by municipal utilities.~~

O. Completion of Improvements and Maintenance.

1. Performance Security for Installation and Maintenance of Improvements: The town may, at its discretion, require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. If improvements are not installed prior to approval of a record plat, the town shall require the submittal of a performance bond, letter of credit from, or cash escrow account with a local bank prior to issuance of a permit. This performance security is required in order to ensure that the Structural BMPs are:

   a. Installed by the permit holder as required by the approved stormwater management plan; and/or

   b. Maintained by the Owner as required by the operation and maintenance agreement.

2. Form and Amount of Installation Performance Security: The amount of an installation performance security must equal at least 125 percent of the estimated cost of the required improvements, including project management costs that have not been installed by the time of Record Plat submittal.

3. Form and Amount of Maintenance Performance Security: The amount of a maintenance performance security must be at least 125 percent of the total estimated construction cost of the Structural BMPs approved under the permit.

4. Uses of Performance Security for Installation.

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

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

c. Costs in Excess of Performance Security. If the town takes action upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

d. Refund. Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

5. Uses of Performance Security for Maintenance.

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

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

c. Costs in Excess of Performance Security. If the town takes action upon such failure by the applicant or Owner or property owners' association, the town may collect from the applicant or Owner or property owners' association the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

6. As-Built Plans and Final Approval. Upon completion of a project, 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 in both digital file (one copy) and mylar formats (three mylars) for all stormwater management facilities or practices after final construction is completed.

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

final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

No certificate of compliance or occupancy shall be issued without final as-built plans and a final inspection, or performance guarantees, and approval by the Stormwater Administrator.

7. Maintenance of Improvements.

    a. Maintenance Required. All Structural and Non-Structural BMPs must be maintained so they will continue to serve their intended functions.

    b. Parties Responsible for Maintenance of Structural BMPs.

        i. The developer must maintain Structural and Non-Structural BMPs until accepted by a property owners' association or lot Owner. All Structural BMPs required for residential subdivisions, including those on individual lots, must be accepted for maintenance by a property owners' association. The developer must disclose which party will be responsible for continued maintenance on the record plat and on the stormwater management plan.

        ii. Before improvements are accepted for maintenance by the property owners' association or lot Owner, the developer or the developer's engineer or other representative, as authorized by Statute, must certify to the property owners' association or lot Owner and to the town that improvements are complete and functioning as designed.

        iii. If a property owners' association or similar legal entity is to be responsible for the maintenance and control of BMPs, it shall be established so that it has clear legal authority to maintain and exercise control over, including the power to compel contributions from subdivision property owners to cover their proportionate shares of the costs associated with the maintenance of the BMPs. Such association shall be established prior to approval of the final plat.

        iv. Documents providing for the establishment of a homeowners' association or similar legal entity in accord with this ordinance shall be approved by the Stormwater Administrator before any plat is recorded.

8. Maintenance Plan.

    a. The developer must record, and reference on the record plat, a maintenance plan that instructs the property owners' association or lot Owner about the annual maintenance tasks and associated costs for at least a 20-year period.

    b. It will be the responsibility of the property owners' association or lot Owner to update the maintenance plan at least every ten years in perpetuity.

9. Maintenance Agreement.

    a. The developer must record, and reference on the record plat, a maintenance agreement, or restrictive covenant that sets forth the property owners' association's or lot Owner's continuing responsibilities for maintenance, including specifying how cost will be apportioned among lot owners served.

    b. The maintenance agreement must provide that the association and its individual members are jointly and severally liable for maintenance.

    c. The maintenance agreement shall grant to the town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair or reconstruct the Structural and Non-Structural BMPs; however, in no case shall

the right of entry, of itself, confer an obligation on the town to assume responsibility for the Structural and Non-Structural BMPs.

10. Maintenance Easement. The developer must record easements for access, maintenance and inspections by any property owners' association and by the town.

11. Annual Maintenance Inspection and Report. The person or entity responsible for maintenance of any Structural and Non-Structural BMPs installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance.

    Annual inspection reports are due by June 30 of each year. The first annual report is due by June 30 following one year after approval of the as-built plan. For Structural BMPs located on properties subject to property owners' association agreements, the property owners' association is responsible for collecting and submitting information on all individual lot Structural BMPs installed pursuant to this ordinance on an annual basis. The inspection report shall contain all of the following:

    a. The name and address of the land Owner;

    b. The recorded book and page number of the lot of each Structural and Non-Structural BMPs;

    c. A statement that an inspection was made of all Structural and Non-Structural BMPs;

    d. The date the inspection was made;

    e. A statement that all inspected Structural and Non-Structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance;

    f. And the original signature and seal of the engineer, surveyor, or landscape architect.

    All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator by the ***first day of July*** following the issuance of a certificate of occupancy. Subsequent annual reports shall be due on the ***first day of July*** each year.

12. Inspection Program. Inspections and inspection programs by the town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs. In exercising this power, the Stormwater Administrator is authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured. If the Owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties, including inspections on private property. Refusal of Owner or occupant of any property to permit such inspection is a violation of this ordinance.

13. Signage. Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, Structural BMPs shall be posted with a conspicuous sign stating who is

responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

14. Records of Installation and Maintenance Activities. The Owner of each Structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

15. Nuisance. The Owner of each stormwater BMP, whether Structural or Non-Structural BMP, shall maintain it so as not to create or result in a nuisance condition.

P. Enforcement and Violations.

1. General.

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

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 or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

c. Each Day a Separate Offense: Each day that a violation continues shall constitute a separate and distinct violation or offense.

d. Responsible Persons/Entities: Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, 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 section, responsible person(s) shall include but not be limited to:

i. 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.

ii. 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, development or redevelopment of the property.

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

a. Remedies:

i. Withholding of Building Permit: The Stormwater Administrator or other authorized agent may refuse to issue a building permit for a building or other improvements constructed or being constructed on any development site and served by the Structural BMP 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.

ii. 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.

iii. 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 Wendell Board of Commissioners may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, for the land on which the violation occurs.

iv. Injunction, Abatements, etc.: The Stormwater Administrator, with the written authorization of the Town Manager, 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.

v. Correction as Public Health Nuisance, Costs as Lien, etc.: If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. 160A-193, the Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

vi. Stop Work Order: The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery, or first-class mail. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

b. Civil Penalties: Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Wendell is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

c. Criminal Penalties: Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3. Procedures.

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

b. Inspection: The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

c. Notice of Violation and Order to Correct: When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner and the holder of the development approval, if the property owner is not the holder of the development approval. 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 shall deliver the notice of violation and correction order personally, by the Town of Wendell Police Department or The Wendell Planning Department Code Enforcement Officer, certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure. Electronic delivery may also be used but not as the sole means of communication. The Stormwater Administrator shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.

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

d. Extension of Time: A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 14 days. The Stormwater Administrator may grant seven-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.

e. Enforcement after Time to Correct: After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

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

g. Variances:

i. Any person may petition the Town for a variance granting permission to use the persons land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

(a) Unnecessary hardships would result from strict application of this ordinance.

(b) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(c) The hardships did not result from actions taken by the petitioner.

(d) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

ii. The Town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

iii. Statutory Exceptions: Notwithstanding subdivision a. of this section, exceptions from the Riparian Buffer Zone and Flood Protection Zone requirements as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

(a) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(b) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(c) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

Q. Illicit Discharges and Connections.

1. Illicit Discharges.

    a. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

        i. Water line flushing;

        ii. Landscape irrigation;

        iii. Diverted stream flows;

        iv. Rising ground waters;

        v. Uncontaminated ground water infiltration;

        vi. Uncontaminated pumped ground water;

        vii. Discharges from potable water sources;

        viii. Foundation drains;

        ix. Air conditioning condensation;

        x. Irrigation water;

        xi. Springs;

        xii. Water from crawl space pumps;

        xiii. Footing drains;

        xiv. Lawn watering;

        xv. Residential ~~and charity~~ car washing;

        xvi. Flows from riparian habitats and wetlands;

        xvii. Dechlorinated swimming pool discharges;

        xviii. Street wash water;

        xix. Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town of Wendell.

    b. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

2. Illicit Connections.

    a. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section Q.1.a. above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

    b. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one-year

following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

c. Where it is determined that said connection:

i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or

ii. Was made in violation of any applicable regulation or ordinance, other than this section;

the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

i. The quantity and complexity of the work,

ii. The consequences of delay,

iii. The potential harm to the environment, to the public health, and to public and private property, and

iv. The cost of remedying the damage.

3. Spills. Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Wendell Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

4. Nuisance. Illicit discharges and illicit connections which exist within the Town limits or ETJ are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Sections 10-106 and 10-107 of the Code of the Town of Wendell.

(Ord. No. O-2-2017 , §§ 1—4, 1-9-2017; Ord. No. O-08-2018 , §§ 1—4, 6-11-2018; Ord. No. O-06-2019 , § 1, 4-8-2019; Ord. No. O-07-2021 , § 2, 2-22-2021; Ord. No. O-16-2021 , § 1, 4-26-2021)

6.6 Stream Corridor Buffers (Stream Protection)

A. Purpose and Intent. Stream corridor buffers protect water quality by filtering pollutants from runoff, controlling soil erosion, enhancing fish and wildlife habitat and reducing flooding.

The Buffer Zone shall extend 50 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either of the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). An exception to this requirement may be

allowed when surface waters area not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology. The Buffer Zone shall remain undisturbed unless permitted by this section.

The Flood Protection Zone shall extend throughout the FEMA 100-year floodplain as identified on the current Flood Insurance Rate Map (FIRM) published by FEMA. The Flood Protection Zone shall remain undisturbed unless otherwise permitted by this section.

Where the Buffer Zone and the Flood Protection Zone both are present adjacent to surface waters, the more restrictive shall apply.

The base distance for the Buffer Zone is calculated at 50 feet plus two feet per one percent of slope. Wetlands, slopes greater than 25 percent and impervious surfaces do not count toward the buffer width. See graphic below for an example of the application of the buffer guidelines to a hypothetical riparian landscape.

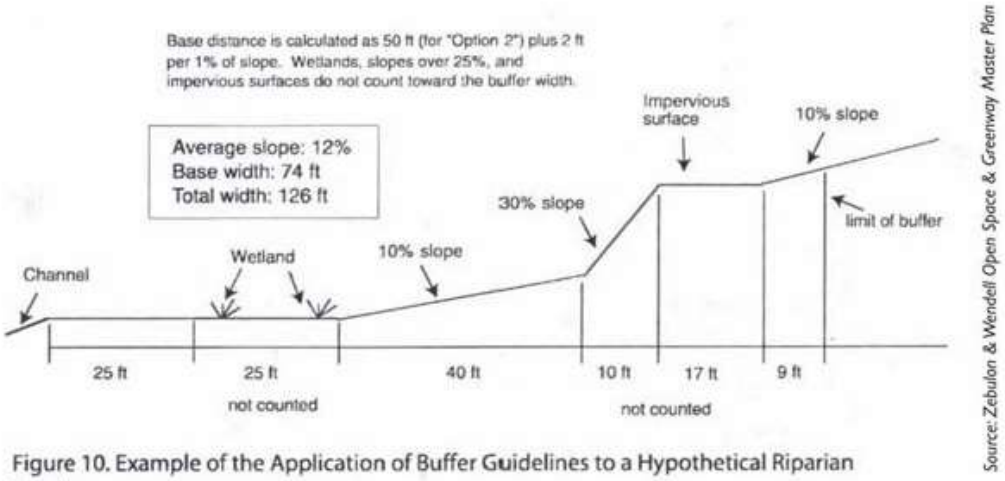


Figure 10. Example of the Application of Buffer Guidelines to a Hypothetical Riparian Landscape.

Base distance is calculated as 50 ft (for "Option 2") plus 2 ft per 1% slope. Wetlands, slopes over 25%, and impervious surfaces do not count toward the buffer width.

B. General Provisions.

1. Buffer areas must be clearly delineated on all site plans, including construction plans, grading and clearing plans, and erosion and sediment control plans.
2. Buffer boundaries must be marked on site prior to any land disturbing activities.
3. Buffer areas as well as all buffer requirements must be specified on the recorded plat, on individual deeds, and in property association documents.
4. Public infrastructure such as road crossings and utility lines are allowed where no practical alternative exists, but these activities should minimize impervious surface area and avoid large amounts of vegetation removal by crossing the buffer at a minimum 75 degree angle.

6.7 Flood Damage Protection Ordinance

A. Statutory Authorization. The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 7, 9, and 11 of Chapter 160D; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations

designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Board of Commissioners of the Town of Wendell, North Carolina, does ordain as follows:

B. Findings of Fact.

1. The flood prone areas within the jurisdiction of the Town of Wendell are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

2. Those flood losses are caused by the cumulative effect of obstructions by materials such as trees, limbs, sediment, construction debris, etc. in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or other hazards.

C. Statement of Purpose. It is the purpose of this section to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas and provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities;

2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

4. Control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,

5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

D. Objectives. The objectives of this Ordinance are:

1. To protect human life, safety and health;

2. To minimize expenditure of public money for costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. To minimize prolonged business losses and interruptions;

5. To minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

6. Minimize damage to private and public property due to flooding;

7. Make flood insurance available to the community through the National Flood Insurance Program;

8. Maintain the natural and beneficial functions of floodplains;

9. To help maintain a stable tax base by providing for the sound use and development of flood prone areas; and,

10. To ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

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

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

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

Alteration of a watercourse means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

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

Area of Special Flood Hazard. See "Special Flood Hazard Area (SFHA)."

Area of Future-Conditions Flood Hazard means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

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

Base Flood Elevation (BFE) means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area," it may be obtained from engineering studies available from a Federal, State or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the "Regulatory Flood Protection Elevation."

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Building. See "Structure."

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

Current Conditions Hydrology means the flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical flood study information is published in the Flood Insurance Study.

Design Flood. See "Regulatory Flood Protection Elevation."

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

Development Activity means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

Digital Flood Insurance Rate Map (DFIRM) means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

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

Elevated Building means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

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

Existing building and existing structure means any building and/or structure for which the "start of construction" commenced before April 23, 2007, the initial effective date of the floodplain management regulations adopted by the community.

Existing Manufactured Home Park or Manufactured Home Subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before April 23, 2007,the original effective date of the floodplain management regulations adopted by the community.

Flood or **Flooding** means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; and/or the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Boundary and Floodway Map (FBFM) means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

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

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

Flood Insurance Study (FIS) means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

Flood Prone Area. See "Floodplain."

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

Floodplain means any land area susceptible to being inundated by water from any source.

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

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

Floodplain Management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain,

including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

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

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

Flood-resistant material means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

Floodway means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floodway encroachment analysis means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

Freeboard means the height added to the Base Flood Elevation (BFE) or the Future Conditions Flood Elevation to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation."

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

Future Conditions Flood means the flood having a one percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

Future Conditions Flood Elevation means a determination of the water surface elevations of the one percent annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

Future Conditions Flood Hazard Area means the land area that would be inundated by the one percent annual chance flood based on future conditions hydrology as determined in Section F.2 of this ordinance.

Future Conditions Hydrology means the flood discharges associated with projected land-use conditions based on the Town of Wendell's 2030 Comprehensive Plan and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other

waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

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

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

Historic Structure means any structure that is:

a. Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

b. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

c. Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or

d. Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program." Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

Letter of Map Change (LOMC) means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

a. Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

b. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

c. Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

d. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light Duty Truck means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

a. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

b. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

c. Available with special features enabling off-street or off-highway operation and use.

Lowest Adjacent Grade (LAG) means the lowest elevation of the ground, sidewalk, patio slab, or deck support immediately next to the building after completion of the building.

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

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

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

Map Repository means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (http://FRIS.NC.GOV/FRIS) is the map repository, and for historical flood hazard data the Flood NC website (http://FLOODNC.GOV/NCFLOOD) is the map repository.

Market Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value) or adjusted tax assessed values.

New Construction means structures for which the "start of construction" commenced on or after April 23, 2007, the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

Non-Conversion Agreement means a document stating that the owner will not convert or alter what has been constructed and approved. Violation of the agreement is considered a violation of the ordinance and, therefore, subject to the same enforcement procedures and penalties. The agreement must be filed with the recorded deed for the property. The agreement must show the clerk's or recorder's stamps and/or notations that the filing has been completed.

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

Post-FIRM means construction or other development for which the "start of construction" occurred on or after May 2, 2006, the effective date of the initial Flood Insurance Rate Map for the area.

Pre-FIRM means construction or other development for which the "start of construction" occurred before May 2, 2006, the effective date of the initial Flood Insurance Rate Map for the area.

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

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

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

a. Built on a single chassis;

b. 400 square feet or less when measured at the largest horizontal projection;

c. Designed to be self-propelled or permanently towable by a light duty truck;

d. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and

e. Is fully licensed and ready for highway use.

Reference Level is the top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, AH, AO, A99 or Zone X (Future).

Regulatory Flood Protection Elevation means the "Base Flood Elevation" plus the "Freeboard".

a. In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus three feet of freeboard.

b. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least three feet above the highest adjacent grade.

c. In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus three feet of freeboard.

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

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

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

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

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

Special Flood Hazard Area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year based on current conditions hydrology, as determined in Section F.2 of this ordinance.

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

ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

Structure means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

Substantial Damage means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "Substantial Improvement."

Substantial Improvement means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "Substantial Damage," regardless of the actual repair work performed. The term does not, however, include either:

a. Any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

b. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section M.5 of this ordinance

Technical Bulletin and Technical Fact Sheet means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

Temperature Controlled means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

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

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

Water Surface Elevation (WSE) means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

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

F. General Provisions.

1. Applicable Lands. This ordinance shall apply to all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) if applicable, of the Town of Wendell.

2. Basis for Establishing the Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The Special Flood Hazard Areas and Future Conditions Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) dated July 19, 2022, for Wake County and associated DFIRM panels, including any digital data developed as part of the FIS, and any revision thereto, which are adopted by reference and declared a part of this ordinance.

3. Establishment of a Floodplain Development Permit. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas determined in Section F.2 of this ordinance.

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

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

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

    a. Considered as minimum requirements;

    b. Liberally construed in favor of the governing body; and,

    c. Deemed neither to limit nor repeal any other powers granted under NC statutes.

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

8. Penalties for Violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Wendell from taking such other lawful action as is necessary to prevent or remedy any violation.

G. Provisions for Flood Hazard Reduction.

1. General Standards. In all Special Flood Hazard Areas and Future Conditions Flood Hazard Areas the following provisions are required:

    a. No development or redevelopment is permitted within the Special Flood Hazard Area or Neuse River Buffer Zone except for stream bank or shoreline restoration or stabilization, water

dependent structures, and public or private projects such as greenways, parks, and their accessory uses.

b. Permitted activities within the Flood Protection Zones shall minimize impervious coverage and direct runoff away from surface waters.

c. All new construction and/or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

d. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

e. All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

f. All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be located at or above RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.

    i. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.

    ii. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

g. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

h. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

i. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

j. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure as allowed under G.1.a., and in existence on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

k. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section M.5.j. of this ordinance. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area or Future Conditions Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified according to Section M.2. of this ordinance.

l. All subdivision and other development proposals shall be consistent with the need to minimize flood damage.

m. All subdivision and development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

n. All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

o. All subdivision and development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

p. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

q. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

2. Specific Standards. In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where Future Conditions Flood Elevations data has been provided, as set forth in Section F.2, or Sections M.3.k. and J, the following provisions, in addition to those provisions in Section 6.7.G.1, are required:

a. Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance.

b. Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section E. of this ordinance. Structures located in Zones A, AE, AH, AO, A99, and X (Future) may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section K.2. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section M.2.c. along with the operational plan and the inspection and maintenance plan.

c. Manufactured Homes.

i. New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Section E of this ordinance.

ii. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by

reinforced piers or engineered foundation. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

iii. All enclosures or skirting below the lowest floor shall meet the requirements of Section G.2.d. of this ordinance

iv. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

d. Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

i. Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

ii. Shall not be temperature-controlled or conditioned;

iii. Shall be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and

iv. Shall include, in Zones A, AE, AH, AO, A99, and X (Future), flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;

(a) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all flood openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

(d) The bottom of all required flood openings shall be no higher than one foot above the higher of the interior or exterior adjacent grade;

(e) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(f) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

e. Additions/Improvements:

i. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

(b) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.

ii. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

iii. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(a) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

(b) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

iv. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(a) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

(b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

f. Recreational Vehicles: Recreation vehicles shall either:

i. Temporary Placement

(a) Be on site for fewer than 180 consecutive days; or

(b) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions).

ii. Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

g. Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

i. A specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

ii. The name, address, and phone number of the individual responsible for the removal of the temporary structure;

iii. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

iv. A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

v. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, to which the temporary structure will be moved.

h. Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

i. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

ii. Accessory structures shall not be temperature-controlled;

iii. Accessory structures shall be designed to have low flood damage potential;

iv. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

v. Accessory structures shall be firmly anchored in accordance with the provisions of Section G.1.c.;

vi. All service facilities such as electrical shall be installed in accordance with the provisions of Section G.1.f.; and

vii. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section G.2.d.iv.

An accessory structure with a footprint less than 144 square feet or that is a minimal investment of $3,000.00 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Section G.2.b. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section M.2.c.

i. Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

i. Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

ii. Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

iii. Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section G.2.b of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

iv. Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(a) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(b) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

j. Other Development.

i. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section J of this ordinance.

ii. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section J of this ordinance.

iii. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section J of this ordinance.

H. Standards for Floodplains without Established Base Flood Elevations. Within the Special Flood Hazard Areas designated as Approximate Zone A and established Section F.2, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Sections G.1 and G.2, shall apply:

1. No encroachments, including fill, new construction, new development, or substantial improvements shall be permitted within a distance of 20 feet each side from top of bank or five times the width of the stream on each side whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on one of the following criteria:

a. When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections M.3.k and l.

b. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections G.2. and I.

c. All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five acres or has more than 50 lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section F.2 to be utilized in implementing this ordinance.

d. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Section E. All other applicable provisions of Section G.2 shall also apply.

I. Standards for Riverine Floodplains with Base Flood Elevations but Without Established Floodways or Non-Encroachment Areas. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

1. Standards of Sections G.1 and G.2; and

2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

J. Floodways and Non-Encroachment Areas. Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section F.2. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections G.1 and G.2, shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments in accordance with G.1.a. shall be permitted unless:

a. It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or

b. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.

2. If Section J.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

3. Manufactured homes may be permitted provided the following provisions are met:

a. The anchoring and the elevation standards of Section G.2.c; and

b. The encroachment standards of Section J.1.

K. Standards for Areas of Shallow Flooding (Zone AO). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas have special flood

hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of three feet, above the highest adjacent grade; or at least four feet above the highest adjacent grade if no depth number is specified.

2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section K.1 so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Section M.2.c and Section G.2.b.

3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

L. Standards for Areas of Shallow Flooding (Zone AH). Located within the Special Flood Hazard Areas established in Section F.2, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one to three feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Sections G.1 and G.2, all new construction and substantial improvements shall meet the following requirements:

1. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

M. Administration.

1. Designation of Floodplain Administrator. The Planning Director or his or her designee is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

2. Floodplain Development Application, Permit and Certification Requirements.

   a. Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

      i. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

         (a) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

         (b) The boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section F.2, or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Area;

(c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section F.2;

(d) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section F.2;

(e) The Base Flood Elevation (BFE) or Future Conditions Flood Elevation where provided as set forth in Sections F.2; M.3.k and l; and G.2;

(f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

(g) Certification of the plot plan by a registered land surveyor or professional engineer.

ii. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:

(a) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;

(b) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones AE, A, AH, AO, A99 or Zone X (Future) will be flood-proofed; and

(c) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;

iii. If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

iv. A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

(a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

(b) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section G.2, when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99 and Zone X (future).

v. Usage details of any enclosed areas below the lowest floor.

vi. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

vii. Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

viii. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section G.2.f and g of this ordinance are met.

ix. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

b. Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

i. A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

ii. The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Section F.2.

iii. The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

iv. The Regulatory Flood Protection Elevation required for the protection of all public utilities.

v. All certification submittal requirements with timelines.

vi. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Section J have been met.

vii. The flood openings requirements, if in Zones A, AE, AH, AO, A99 or Zone X (Future).

viii. Limitations of below BFE enclosure uses, if applicable (i.e., Parking, Building Access and Limited Storage only).

ix. A statement that all materials below BFE/RFPE must be flood resistant materials.

c. Certification Requirements:

i. Elevation Certificates.

(a) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(b) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(c) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities.

The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/ Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least two photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section M.1. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least two additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

ii. Floodproofing Certificate.

(a) If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

iii. If a manufactured home is placed within Zones A, AE, AH, AO, A99 or Zone X (Future) and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section G.2.c.

iv. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

v. Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99 or Zone X (Future), are exempt from the elevation/floodproofing certification requirements specified in items (i) and (ii) of this subsection:

(a) Recreational Vehicles meeting requirements of Section G.2.f;

(b) Temporary Structures meeting requirements of Section G.2.

(c) Accessory Structures that are 144 square feet or less or $3,000.00 or less and meeting requirements of Section G.2.h.

d. Determinations for existing buildings and structures. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

i. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

ii. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

iii. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

iv. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

3. Duties and Responsibilities of the Floodplain Administrator. The Floodplain Administrator shall perform, but not be limited to the following duties:

a. Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

b. ~~Review all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.~~

c. Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

d. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

e. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions are met.

f. Obtain actual elevation ~~(in relation to NAVD 1988)~~ of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with Section M.2.c.

g. Obtain the actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and all utilities have been floodproofed, in accordance with Section M.2.c.

h. Obtain actual elevation (in relation to NAVD 1988) of all public utilities, in accordance with Section M.2.c.

i. When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section M.2.c and Section G.2.

j. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

k. When Base Flood Elevation (BFE) data has not been provided in accordance with Section F.2, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section H.2 in order to administer the provisions of this ordinance.

l. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section F.2, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

m. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel or structure in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

n. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

o. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement

action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

p. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing/authorizing/financing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

q. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

r. Make periodic inspections throughout all Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

s. Follow through with corrective procedures of Section M.4.

t. Review, provide input, and make recommendations for variance requests.

u. Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with Section F.2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

v. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

4. Corrective Procedures.

a. Violations to be Corrected: When the Floodplain Administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

b. Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

i. That the building or property is in violation of the floodplain management regulations;

ii. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

iii. That following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as applicable.

c. Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 calendar days nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

d. Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

e. Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

5. Variance Procedures.

a. The Zoning Board of Adjustment as established by the Town of Wendell, shall hear and decide requests for variances from the requirements of this ordinance.

b. Any person aggrieved by the decision of the Board of Adjustment may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

c. Variances may be issued for:

i. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

ii. Functionally dependent facilities if determined to meet the definition as stated in this ordinance, provided provisions of Section M.5.i.(ii), (iii), and (iv) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or

iii. Any other type of development provided it meets the requirements of this Section.

d. In passing upon variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life, property, and environment (plant and animal life) due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, as defined under Section E of this ordinance as a functionally dependent facility, where applicable;

vi. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

xi. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

e. A written report addressing each of the above factors shall be submitted with the application for a variance.

f. Upon consideration of the factors listed above and the purposes of this ordinance, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.

g. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation may result in increased premium rates for flood insurance up to $25.00 per $100.00 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

h. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

i. Conditions for Variances:

i. Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

ii. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

iii. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

iv. Variances shall only be issued prior to development permit approval.

v. Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

j. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas or Future Conditions Flood Areas provided that all of the following conditions are met.

i. The use serves a critical need in the community.

ii. No feasible location exists for the use outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area.

iii. The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Level.

iv. The use complies with all other applicable federal, state and local laws.

v. The Town of Wendell has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

N. Legal Status Provisions.

1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance. This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 23, 2007, as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of The Town of Wendell enacted on April 23, 2007, as amended, which are not reenacted herein are repealed.

2. Effect Upon Outstanding Floodplain Development Permits. Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

3. Severability. If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

4. Effective Date. This ordinance shall become effective upon adoption.

(Ord. No. O-4-2017 , § 4, 1-9-2017; Ord. No. O-07-2021 , § 2, 2-22-2021; Ord. No. O-16-2021 , § 1, 4-26-2021; Ord. No. O-17-2022 , § 1, 6-13-2022)

WENDELL

Planning Department

Wendell Planning Board Recommendation to the Wendell Board of Commissioners

ZTA24-01:
Update of UDO Chapter 6 – Environmental Protection.

Case Description:

Amendment Summary:

The current UDO Chapter 6 is not up to date with the new North Carolina Administrative Code, Session Laws, and requirements for the MS4 permit. The proposed updates to UDO Chapter 6 are as follows:

- Section 6.3 Neuse River Riparian Buffers
    - NCAC 15A 2B
    - Buffers are a form of open space. This describes how they are to be deeded.
    - NC Department of Environmental Quality requires this to be adopted in order to renew our MS4 permit.
- Section 6.6 Stormwater Runoff Provisions - Administration and Procedures
    - Requirements added for video pipe inspection and GIS files for the final approval of new stormwater systems.
    - This requirement allows staff to see pipe failures before they are accepted and can be remedied without the use of Town funds.
- Section 6.6 Stormwater Runoff Provisions - General Standards
    - NCAC 15A 02H.0703, NCAC 15A 02H.1002, and NCAC 15A 02H.1003
    - Explains stormwater system design requirements for the control and treatment of runoff.
    - States requirements for Nitrogen Loading Rate Targets.
    - Explains methods to meet the nutrient control requirements.
    - Gives rules for the nutrient offset credits and how they can be acquired.

- Defines Built-Upon Area Standards.
- Gives details on Illicit Discharge enforcement, monitoring of discharges, and suspension of MS4 access.

Planning Board Action:

At their March 18, 2024 meeting, the Planning Board voted 7-0 on the motion to recommend approval of the rezoning.

Voting in Favor: Benjamin Griffin, Bradley Taylor, Phil Veasley, Tevis High, Matthew Meinig, Brad Jordan and Tina Cheek

Voting Against: none

Absent: Adam King and J. Harold Broadwell

Statement of Plan Consistency:

The proposed ordinance amendment is consistent with Blueprint Wendell 2030 since it furthers the goals listed below:

- Growth Management – Goal GM3.3 Amend or Rewrite the Unified Development Ordinance
- Natural Resource Conservation – Goal N1.9 Enact Stormwater Low-Impact Design Best Practices

Approved by the Planning Board Chairman

Planning Board Chairman **Date** 2 APR 2024