

7.2.14 Urban Transition Buffer Regulations

(A) The Purpose and Intent of Urban Transition Buffers

Urban Transition Buffers (“UTBs” or “buffers”) provide a transition from waterbodies and environmentally sensitive areas associated with waterbodies to areas which are less fragile and appropriate for more intense uses and development. Some of the benefits of UTBs are minimizing danger to lives and properties from flooding, preserving the water carrying capacity of the waterbodies, providing open spaces, limiting intense uses adjacent to waterbodies and environmentally sensitive areas associated with waterbodies, and maintaining the aesthetic qualities and appearance of the Town. As part of the Town's Land Development Ordinance, UTBs implement many of the Town's responsibilities under State and Federal law and regulations regarding stormwater management and watershed preservation and are designed to work in conjunction with erosion and sedimentation control regulations. The Town's water utility system uses surface water to provide drinking water to its citizens and the preservation of this resource is important to the Town and its citizens. General UTBs are uniform and comprehensive zoning buffers which accomplish these important benefits and purposes as well as regulating and restricting the location of buildings, structures and land, providing yards and open spaces, all for the promotion of health, safety and the general welfare of the Town's citizens. Specialized UTBs exist to address concerns which are not present in the Town's entire zoning jurisdiction.

The following definitions apply to Section 7.2.14:

(1) EXEMPT

Uses designated as exempt are allowed within the Urban Transition Buffer provided that they adhere to the limitations of the activity as defined in subsection (E)(1) and Table 7.2-6 below. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.

(2) ALLOWABLE

Uses designated as allowable may proceed within the Urban Transition Buffer provided that there are no practical alternatives to the requested use as determined pursuant to Section 7.2.14(I). This includes construction, monitoring, and maintenance activities. These uses require written authorization from the Town of Cary.

(3) ALLOWABLE WITH MITIGATION

Uses designated as allowable with mitigation may proceed within the Urban Transition Buffer provided that there are no practical alternatives to the requested use as determined pursuant to Section 7.2.14(I) and a Mitigation Approval has been obtained pursuant to Section 7.2.14(L). These uses require written authorization from the Town of Cary.

(4) PROHIBITED

Uses designated as prohibited, or not designated as exempt, allowable, or allowable with mitigation, may not proceed within the Urban Transition Buffer unless a variance or modification is granted pursuant to this ordinance.

(B) Establishing General Urban Transition Buffers

(1) This Section 7.2.14 shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Section 7.2.14, upon:

(a) Cape Fear Basin/Jordan Watershed

1. A one hundred (100) foot wide buffer directly adjacent to all surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minutes} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

2. A fifty (50) foot wide buffer approximately adjacent to any surface waters (intermittent streams, perennial streams, lakes, reservoirs, and ponds) shown on the most recent version of the Soil Survey of Wake or Chatham County, North Carolina prepared by the Natural Resources Conservation Service of the United States Department of Agriculture and not shown on a USGS quadrangle topographic map, or shown on a map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission pursuant to 15A NCAC .0267.

3. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the UTB but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

(b) Neuse River Basin

A fifty foot (50') wide buffer beginning at the landward boundary of any Neuse River Riparian Buffer mandated by regulations adopted by the Environmental Management Commission of the State of North Carolina and established -adjacent to-surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minutes} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

(c) Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the UTB but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

(2) General UTBs are applied to specific properties as follows:

(a) Where the specific origination point of a stream regulated under subsection (B)(1)(a) is in question, upon request of the NC Division of Water Quality or another party, the Town shall make an on-site determination. A Town representative who has the training required by 15A NCAC 02B .0267 shall establish that point using the methods prescribed by 15A NCAC 02B .0267. Any disputes over said on-site determinations shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in

writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

(b) When a landowner or other affected party including the Division believes that the maps referenced in subsection (B)(1)(a) have inaccurately depicted surface waters, he or she shall consult the Town. Upon request, a Town representative who has the training required by 15A NCAC 02B .0267 shall make an on-site determination. Any disputes over said on-site determinations shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to these requirements if a site evaluation reveals any of the following cases:

1. Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. (A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.)

2. Ephemeral streams.

3. The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.

4. Ditches or other man-made water conveyances, other than modified natural streams.

(3) General UTBs shall have zones as follows:

General UTBs may have as many as three regulatory zones. The purpose of the different regulatory zones is to provide transition within General UTBs from the most fragile areas to less fragile areas and to provide some flexibility to the Town in administering of the UTBs. The regulatory zones shall be:

(a) Cape Fear River Basin/Jordan Watershed

1. UTBs established pursuant to Section 7.2.14(B)(1)(a)1 shall have three (3) zones:

a. Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. The location of Zone One shall be as follows: For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.

b. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. Zone Two shall begin at the outer edge of Zone One and

extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water.

c. Zone Three shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. Zone Three shall begin at the outer edge of Zone Two and extend landward 50 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One, Two and Three shall be 100 feet on all sides of the surface water.

2. UTBs established pursuant to Section 7.2.14(B)(1)(a)2 shall have two (2) zones:

a. Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. The location of Zone One shall be as follows: For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.

b. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water..

3. Diffuse Flow Requirement. Diffuse flow of runoff shall be maintained in the UTBs established pursuant to Section 7.2.14(B)(1) by dispersing concentrated flow prior to its entry into Zone Three and reestablishing vegetation as follows:

a. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Three;

b. Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies; and

c. No new stormwater conveyances are allowed through the UTBs except for those specified in subsection (E) and Table 7.2-6 addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.

(b) Neuse River Basin

1. General UTBs established pursuant to Section 7.2.14(B)(1)(b)1 shall have one (1) zone:

a. Zone Three shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection (E) and Table 7.2-6. Zone Three shall begin at the outer edge of the Neuse Riparian Buffer and extend landward 50 feet as measured horizontally on a line perpendicular to the surface water. The combined width of the Neuse Riparian Buffer and Zone Three shall be 100 feet on all sides of the surface water..

(C) Establishing Specialized Urban Transition Buffers

(1) Property within Watershed Protection Overlay

In addition to the General UTBs established above, Specialized UTBs are required by the Town's Watershed Protection Overlay (Section 4.4.6). Specialized UTBs shall overlay General UTBs, as opposed to being situated adjacent to General UTBs. The Specialized UTBs are as follows:

(a) Low Density Development Option

In the event the Landowner elects to develop his property under the Low Density Development Option, as provided in Section 4.4.6(F)(1), a Specialized UTB thirty (30) feet wide shall be established adjacent to all surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minutes} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

(b) High Density Development Option

In the event the Landowner elects to develop his property under the High Density Development Option, as provided in Section 4.4.6(F)(2), a Specialized UTB one hundred feet (100') wide shall be established adjacent to all surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minutes} quadrangle topographic maps prepared by the United States Geological Survey (USGS)

(2) Uses Allowed Within Specialized UTBs

All Specialized UTBs shall be vegetative buffers. No new development shall be allowed in the Specialized UTBs except for (1) water-dependent structures or other structures such as flag poles, signs and security lights, which result in only de minimus increases in impervious area, and (2) public projects such as road crossings and greenways where no practicable alternative exists. In any case, new development within a Specialized UTB shall minimize built-upon surface area, direct runoff away from surface waters and shall maximize the utilization of Water Quality Best Management Practices.

(3) Measurement of Specialized UTBs

Specialized UTBs shall be measured from a point perpendicular to the bank of the perennial waters.

(D) Overlap or Conflict between Urban Transition Buffers established by the Town and buffers established by State of North Carolina or Federal Regulations

(1) In the event of an overlap or conflict between a General UTB and a Specialized UTB, the more restrictive buffer shall govern. It is the intent of the Town that General UTBs shall provide the minimum urban transition buffer for all properties located in the Town's zoning jurisdiction.

(2) In the event of an overlap or conflict between any buffer established by this Section 7.2.14 and any buffer or other requirement established by another law, rule or regulation administered by the State of North Carolina or the Federal Government, the more restrictive law, rule or regulation shall govern.

TABLE 7.2-5 TOWN OF CARY GENERAL AND SPECIALIZED UTBs					
Type of Buffers	General UTBs			Watershed Overlay Buffers	
Zones of Buffers	ZONE 1	ZONE 2	ZONE 3	Low Density Option	High Density Option
Cape Fear River Basin					
Not in Watershed overlay district					
Shown on USGS map	Yes	Yes	Yes	N/A	N/A
Shown on county soil map	Yes	Yes	No	N/A	N/A
In watershed overlay district					
Shown on USGS map	Yes	Yes	Yes	Yes[1]	Yes[2]
Shown on county soil map	Yes	Yes	No	N/A	N/A
Neuse River Basin					
Not in Watershed overlay district					
Shown on USGS map	No[3]	No[3]	Yes	N/A	N/A
Shown on county soil map	No[3]	No[3]	No	N/A	N/A
In watershed overlay district					
Shown on USGS map	No[3]	No[3]	Yes	Yes[1]	Yes[2]
Shown on county soil map	No[3]	No[3]	No	No	No
[1] Minimum thirty (30) foot wide vegetative buffer and other regulations apply. See Section 4.4.6 of the LDO.					
[2] Minimum one hundred (100) foot wide vegetative buffer and other regulations apply. See Section 4.4.6 of the LDO.					
[3] Regulated by State of North Carolina.					

(E) Activities Prohibited and Permitted in Urban Transition Buffers

(1) Any activity which disturbs the soil or vegetation within any Urban Transition Buffer is prohibited unless expressly permitted by this Section 7.2.14. Table 7.2-6 describes the uses permitted in each UTB established by this Section 7.2.14.

TABLE 7.2-6 TOWN OF CARY GENERAL AND SPECIALIZED UTBs				
Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Access Trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:				
Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in the removal of trees as defined in this Ordinance and no impervious surface is added to the UTB	X			
Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in the removal of trees as defined in this Ordinance or impervious surface is added to the UTB		X		
Airport facilities:				
Airport facilities that impact equal to or less than one hundred and fifty (150) linear feet		X		
Airport facilities that impact greater than one hundred and fifty (150) linear feet			X	
Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips) ¹		X		
Archaeological activities	X			
Bridges		X		
Canoe Access provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the UTB	X			
Dam maintenance activities:				
Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S Army Corps of Engineers Nationwide Permit No. 3	X			
Dam maintenance activities that do cause additional buffer disturbances beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3		X		
Drainage ditches, roadside ditches and stormwater conveyances through buffers				
New stormwater flows to existing drainage ditches, roadside ditches, and stormwater outfalls provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations		X		
New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the buffer		X		
New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed			X	
New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging through the UTB				X
Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch				X
Driveway crossings of streams and other surface waters subject to this Ordinance				
Driveway crossings on single family residential lots that disturb equal to or less than twenty-five (25) linear feet or 2,500 square feet of UTB	X			
Driveway crossings on single family residential lots that disturb greater than twenty-five (25) linear feet of UTB		X		
In a subdivision that cumulatively disturb equal to or less than one hundred and fifty (150) linear feet of UTB		X		
In a subdivision that cumulatively disturb greater than one hundred and fifty (150) linear feet of UTB			X	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X			
Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance		X		
Forest harvesting [refer to 15A NCAC 02B.0233 (11) and 02B.0267(14)]				
Fertilizer application:				
One-time fertilizer application to establish re-planted vegetation	X			
Ongoing fertilizer application				X

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Grading and revegetation in Zone 2 and 3 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized		X		
Greenway/hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical		X		
Historic preservation	X			
Landfills as defined by G.S. 130A-290	X			
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X		
Mining activities:				
Mining activities that are covered by the Mining Act provided that new UTBs that meet the requirements of 7.2.14(B)(3)(a) of this Ordinance are established adjacent to the relocated channels		X		
Mining activities that are not covered by the Mining Act OR where new UTBs that meet the requirements of 7.2.14(B)(3)(a) of this Ordinance are not established adjacent to the relocated channels			X	
Wastewater or mining dewatering wells with approved NPDES permit	X			
Non-electric utility lines:				
Impacts other than perpendicular crossings in Zones 2 and 3 only[3]		X		
Impacts other than perpendicular crossings in Zone 1[3]			X	
Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Ordinance:[3]				
Perpendicular crossings that disturb equal to or less than forty (40) linear feet of UTB with a maintenance corridor equal to or less than ten (10) feet in width	X			
Perpendicular crossings that disturb greater than forty (40) linear feet of UTB with a maintenance corridor greater than ten (10) feet in width		X		
Perpendicular crossings that disturb greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet of UTB with a maintenance corridor equal to or less than ten (10) feet in width		X		
Perpendicular crossings that disturb greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet of UTB with a maintenance corridor greater than ten (10) feet in width			X	

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Perpendicular crossings that disturb greater than one hundred and fifty (150) linear feet of UTB			X	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines:				
Impacts other than perpendicular crossings in Zones 2 and 3 only[3]		X		
Impacts other than perpendicular crossings in Zone 1[1,2,3]			X	
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Ordinance[3]		X		
Perpendicular crossings that disturb equal to or less than one hundred and fifty (150) linear feet of UTB[1]	X			
Perpendicular crossings that disturb greater than one hundred and fifty (150) linear feet of UTB[1,2]		X		
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical		X		
Playground equipment:				
Playground equipment on single family lots provided that installation and use does not result in removal of vegetation	X			
Playground equipment installed on lands other than single-family lots or that requires removal of vegetation		X		
Ponds created by impounding streams and not used as stormwater BMP's:				
New ponds provided that an UTB that meets the requirements of 7.2.14(B)(3)(a) of this Ordinance is established adjacent to the pond		X		
New ponds where an UTB that meets the requirements of 7.2.14(B)(3)(a) of this Ordinance is NOT established adjacent to the pond			X	
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the UTB or the stream channel		X		
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance			X	
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance:				
Railroad crossings that impact equal to or less than forty (40) linear feet of UTB	X			
Railroad crossings that impact greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) feet of UTB		X		
Railroad crossings that impact greater than one hundred and fifty (150) linear feet of UTB			X	

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Recreational and accessory structures in the UTB				X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X			
Road impacts other than crossings of streams and other surface waters subject to this Ordinance			X	
Road crossings of streams and other surface waters subject to this Ordinance:				
Road crossings that impact equal to or less than forty (40) linear feet of UTB	X			
Road crossings that impact greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet of UTB		X		
Road crossings that impact greater than one hundred and fifty (150) linear feet of UTB			X	
Road Relocation: Road Relocation of existing private access roads associated with public road projects where necessary for public safety				
Relocations that are less than or equal to 25 linear feet of UTB width		X		
Relocations that are more than 25 linear feet of UTB width			X	
Scientific studies and stream gauging	X			
Stormwater BMP's:				
Wet detention, bioretention, and constructed wetlands in Zone Two and Three if diffuse flow of discharge is provided		X		
Wet detention, bioretention, and constructed wetlands in Zone One			X	
Stream restoration		X		
Streambank or shoreline stabilization		X		
Temporary roads:				
Temporary roads that disturb less than or equal to 25 linear feet of UTB provided that vegetation is restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of 5 years the restored UTB shall comply with the restoration criteria of section (L) below	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Temporary roads that disturb greater than 25 linear feet of UTB provided that vegetation is restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of 5 years the restored UTB shall comply with the restoration criteria of section (L) below		X		
Temporary roads used for culvert installation or bridge construction or replacement provided that to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of 5 years the restored UTB shall comply with the restoration criteria of section (L) below		X		
Temporary sediment and erosion control devices:				
In Zone 2 and 3 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of 5 years the restored UTB shall comply with the restoration criteria of section (L) below	X			
In Zones 1, 2, and 3 to control impacts associated with uses approved b the division or that have received a variance provided that sediment and erosion control for upland areas is addressed to maximum extent practical outside the UTB to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of 5 years the restored UTB shall comply with the restoration criteria of section (L) below		X		
In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act	X			
In-stream temporary erosion and sediment control measures for work within a stream channel		X		
Underground electric utility lines:				
Impacts other than perpendicular crossings in Zone 2 and Zone 3 only[3]	X			
Impacts other than perpendicular crossings in Zone 1[3,4]	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Ordinance:[3]				
Perpendicular crossings that disturb less than or equal to forty (40) linear feet of UTB[3,4]	X			
Perpendicular crossings that disturb greater than forty (40) linear feet of UTB[3,4]		X		
Vegetation management:				
Emergency fire control measures provided that topography is restored	X			
Periodic mowing and harvesting of plant products in Zone 2 and 3 only	X			
Planting vegetation to enhance the UTB	X			
Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life or are immediately endangering stability of the streambank	X			
Removal of poison ivy	X			
Removal of invasive exotic vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X			
Vehicular access roads leading to water dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width no exceeding 10 feet		X		
Water dependent structures as defined in 15A NCAC 2B.0202 where installation and use result in disturbance of UTB		X		
Water supply reservoirs:				
New reservoirs provided that an UTB that meets the requirements of 7.2.14(B)(3)(a) of this Ordinance is established adjacent to the reservoir		X		
New reservoirs where an UTB that meets the requirements of 7.2.14(B)(3)(a) of this Ordinance is NOT established adjacent to the reservoir			X	
Single family residential wells	X			
All other Water wells		X		
Wetland, stream and buffer restoration that results in impacts to the UTB				
Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification	X			
Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification		X		
Wildlife passage structures		X		
Wooden slatted decks and associated steps in the UTB, provided the use meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance				

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Deck at least 8 feet in height and no vegetation removed		X		
Deck less than 8 feet in height and vegetation removed			X	
<p>[1] Provided that, in Zone 1, all of the following WQ BMPs for overhead utility lines are used. If all of these WQ BMPs are not used then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality.</p> <p>A minimum zone of ten (10) feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or as the potential to grow tall enough to interfere with the line is removed. Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.</p> <p>Vegetation root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.</p> <p>Rip rap shall not be used unless it is necessary to stabilize a tower.</p> <p>No fertilizer shall be used other than a one (1) time application to re-establish vegetation.</p> <p>Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.</p> <p>Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.</p> <p>In wetlands, mats shall be utilized to minimize soil disturbance.</p>				
<p>[2] Provided that poles or towers shall not be installed within ten (10) feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.</p>				
<p>[3] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.</p>				
<p>[4] Provided that, in Zone 1, all of the following WQ BMPs for underground utility lines are used. If all of these WQ BMPs are not used then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality.</p>				
<p>Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.</p>				
<p>Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.</p>				
<p>Underground cables shall be installed by vibratory plow or trenching.</p>				
<p>The trench shall be backfilled with the excavated soil material immediately following cable installation.</p>				
<p>No fertilizer shall be used other than a one (1) time application to re-establish vegetation.</p>				
<p>Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.</p>				
<p>Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.</p>				
<p>In wetlands, mats shall be utilized to minimize soil disturbance.</p>				

(F) Description of Buffers on Site and/or Subdivision Plans

All UTBs shall be shown on all site plans and subdivision plats submitted for approval within the Town's planning jurisdiction. In addition to UTBs, State of North Carolina and U.S. Army Corps of Engineers' jurisdictional wetlands waters and buffers shall be shown on the inventory of natural resources required as part of site and/or subdivision plan approval.

(G) Exclusion of Urban Transition Buffer from Lots

Generally, no single-family lots created through a site and/or subdivision plan may encroach upon any required or established UTB. However, single-family lots may encroach upon a required or established UTB when all of the following conditions are met:

(1) The total area of a parcel under single ownership is not greater than five (5) acres and the Landowner establishes that he/she is unable to use any cluster development option that may be available;

(2) The proposed subdivision consists of fewer than ten (10) lots and has no homeowners association;

(3) There is no other reason for the formation of a homeowners association (e.g., covenant, other common areas, common facilities, engineered stormwater control structures);

(4) The area of the UTB is subject to a permanent conservation easement or other legal instrument dedicated to a not-for-profit conservation entity approved by the Town. All documents required for such a conveyance to a not-for-profit conservation entity shall be provided to and approved by the Town, in writing on such instruments, prior to recording any plat showing property proposed to be conveyed.

(H) Exemption when Existing Uses are Present and Ongoing

This Section 7.2.14 shall not apply to uses that are existing and ongoing; however, this Section 7.2.14 shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

(1) It was present within the UTB as of July 21, 2001 and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the UTB occupied by the footprint of the existing use is exempt from this Section. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of July 21, 2001, and existing diffuse flow is maintained.

(2) Projects or proposed development that are determined by the Town to meet at least one of the following criteria:

(a) Project requires a 401 Certification/404 Permit and these were issued prior to July 21, 2001;

(b) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to July 21, 2001;

(c) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by July 21, 2001; or

(d) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Town prior to July 21, 2001.

(I) Determination of No Practical Alternatives / Request for Authorization Certificate

(1) Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a “no practical alternatives” determination to the Town Engineer. The applicant shall certify that the project meets all the following criteria for finding “no practical alternatives”:

(a) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

(b) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(c) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(2) The applicant shall also submit at least the following information in support of its assertion of “no practical alternatives”:

(a) The name, address and phone number of the applicant;

(b) The nature of the activity to be conducted by the applicant;

(c) The location of the activity, including the jurisdiction;

(d) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in UTBs associated with the activity, and the extent of UTBs on the land;

(e) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the UTB, preserve aquatic life and habitat and protect water quality; and

(f) Plans for any best management practices proposed to be used to control the impacts associated with the activity.

(3) Within 60 days of a complete submission, the Town shall review the entire project and make a finding of fact as to whether the criteria of this Section 7.2.14(I) have been met. A finding of “no practical alternatives” shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of “no practical alternatives” and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:

(a) The applicant agrees, in writing, to a longer period;

- (b) The Town determines that the applicant has failed to furnish requested information necessary to the Town's decision;
- (c) The final decision is to be made pursuant to a public hearing; or
- (d) The applicant refuses access to its records or premises for the purpose of gathering information necessary to the Town's decision.

(4) The Town may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this section 7.2.14.

(5) Any appeals of determinations regarding Authorization Certificates for activities in Zones One and Two shall be referred to the Director of the Division of Water Quality, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4. Any appeals of determinations regarding Authorization Certificates for activities taking place only in Zone Three shall be pursuant to Sections 3.21 and 11.2 of this Ordinance.

(J) Modification of Urban Transition Buffers as part of Approving Development Plans
 UTBs are part of the Town's overall zoning, land subdivision and land use regulations. The Town has collected these regulations together in the Town's Land Development Ordinance (LDO). UTBs are intended to assist the Town in accomplishing the broad and important purposes of the LDO stated in 1.3 of the LDO as well as the specific purposes stated in Sections 1.3.1-1.3.12 and 7.2.14(A). In any specific development plan, the Town reviews the entire proposed development and determines whether the proposed development in its entirety satisfies the LDO. The Town recognizes that UTBs will affect different property and projects differently and that all circumstances or applications of UTBs cannot be foreseen. Therefore, the Town has established a process by which the width of Zone Three of UTBs may be modified in certain limited circumstances based upon review and approval of an applicant's application for modification which shall include the overall site development plan or subdivision plan. Any modification granted shall be conditioned upon the implementation of the related site or subdivision plan and shall be conditioned upon the applicant providing mitigation as set forth below.

(1) Town Council

The Town Council, after receiving comment from various Town departments which review the proposed development plan pursuant to the LDO, may reduce the total area of Zone Three, after establishing the following at a quasi-judicial hearing:

- (a) The reduction will have a minimal impact upon the purposes of the General UTBs stated in Section 7.2.14(A) and is consistent with general purposes of the LDO stated in Section 1.3 and
- (b) The mitigation of impacts offered by the applicant as part of the proposed development plan significantly outweigh the impacts of the reduction to the General UTBs proposed by the applicant, and
- (c) The impact of the reduction in the General UTB is balanced by compensatory mitigation, as required by section 7.2.14(L).

Notwithstanding the foregoing, in the event Landowner provides written evidence that the State of North Carolina has granted Landowner a variance to the riparian buffer required by the State of North Carolina, or if the Town has granted a minor variance as described below in section 7.2.14(K), then and in such event, the Town Council, shall grant a modification to the UTBs applicable to such Landowner sufficient to permit such Landowner to utilize the State variance granted.

In addition to the mitigation required and the considerations provided above, the Town Council may consider other factors such as the following:

- (a) Whether a substantial conflict exists between the General UTBs and other provisions and provisions of the LDO (e.g., the appropriate layout of streets in a proposed development conflicts with the location of the General UTBs);
- (b) Whether approvals of other governmental agencies impede the effectiveness of the General UTBs or otherwise impact the layout or development of the proposed development; or
- (c) Any other information which may be relevant to the Town Council's determination that the development plan otherwise satisfies the purposes and goals of the LDO.

(K) Variances

(1) Except where General UTBs are modified pursuant to Section 7.2.14(J) above, General UTBs shall not be modified or varied unless the applicant is granted a variance pursuant to this subsection (K) and Section 3.20 of the LDO.

(2) Requirements for Variances.

Persons who wish to undertake prohibited uses may pursue a variance. For major variances, the Town shall prepare preliminary findings and submit them to the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor for approval by the Environmental Management Commission. The variance request procedure shall be as follows:

(a) For any variance request, the Town shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the UTB requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

1. If the applicant complies with the provisions of this Ordinance, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Town shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that shall make reasonable use of the property possible;
2. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
3. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;

4. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;

5. The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and

6. The hardship is rare or unique to the applicant's property.

(b) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and this Ordinance and preserves its spirit; and

(c) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(3) Minor Variances

A minor variance request pertains to activities that will impact Zone Two of the UTB. Minor variance requests shall be reviewed and approved based on the criteria in Section 7.2.14(K)(2) by the Town pursuant to G.S. 160A-Article 19. The Town may attach conditions to the variance approval that support the purpose, spirit and intent of the UTB program. Request for appeals to decisions made by the Town shall be made in writing to Board of Adjustment pursuant to Section 3.20 of the LDO.

(4) Major Variances

A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of UTB. If Town has determined that a major variance request meets the requirements in Section 7.2.14(K)(2), then it shall prepare a preliminary finding and submit it to the NC Environmental Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor, for approval. Within 90 days after receipt by Town, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.

(5) Any use allowed by a variance which requires mitigation as a condition of variance approval shall not be undertaken until a Mitigation Approval is issued pursuant to Section 7.2.14(L).

(L) Mitigation

(1) This item shall apply to persons who wish to impact a UTB when one of the following applies:

(a) A person has received an Authorization Certificate pursuant to Section 7.2.14(I) for a proposed use that is designated as "allowable with mitigation;" or

(b) A person has received a variance pursuant to Section 7.2.14(K) and is required to perform mitigation as a condition of a variance approval; or

(c) A person has requested a modification pursuant to Section 7.2.14(J).

(2) Issuance of the Mitigation Approval

The Town Engineer shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.

(3) Options for Meeting the Mitigation Requirement

The mitigation requirement may be met through one of the following options:

- (a) Payment of a compensatory mitigation fee pursuant to 15A NCAC 2B .0269 for impacts to Zone 1 and Zone 2 of the UTB only;
- (b) Donation of real property or of an interest in real property pursuant to Section 7.2.14(L)(6); or
- (c) Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Section 7.2.14(L)(7).

(4) The Area of Mitigation

The Town shall determine the required area of mitigation, which shall apply to all mitigation options identified in Section 7.2.14(K)(3) and as further specified in the requirements for each option set out in this Section, according to the following:

(a) The impacts in square feet to each zone of the UTB shall be determined by Town by adding the following:

- 1. The area of the footprint of the use causing the impact to the UTB;
- 2. The area of the boundary of any clearing and grading activities within the UTB necessary to accommodate the use; and
- 3. The area of any ongoing maintenance corridors within the UTB associated with the use.

(b) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Section 7.2.14(K)(3)(a) of this Ordinance to each zone of the UTB:

- 1. Impacts to Zone One of the UTB shall be multiplied by three;
- 2. Impacts to Zone Two or Three of the UTB shall be multiplied by one and one-half; and
- 3. Impacts to wetlands within the UTB that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

(5) The Location of Mitigation

(a) For any option chosen for impacts in the Jordan watershed, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible.

Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the impact and mitigation. Additional location requirements for the property donation option are enumerated in Section 7.2.14(6)(c)1.

(b) For any option chosen for impacts in the Neuse River Basin, the mitigation shall be located within the Neuse River Basin and within the corporate limits of the Town.

(6) Donation of Property

Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

(a) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0273 for impacts to Zone 1 and Zone 2. The value of the property interest shall be determined by an appraisal performed in accordance with Section 7.2.14(L)(6)(d)4. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0273, the applicant shall pay the remaining balance due.

(b) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.

(c) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

1. In addition to the location requirements of Section 7.2.14(L)(5), for impacts in the Jordan watershed, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin developed by NC Division of Water Quality pursuant to G.S. 143-214.10;

2. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Section 7.2.14(L)(7)(d);

3. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

4. The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Section 7.2.14(L)(4);

5. Restoration shall not require removal of man-made structures or infrastructure;

6. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;

7. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;

8. The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;

9. The property shall not contain any hazardous substance or solid waste;

10. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;

11. The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and

12. The property shall not have any encumbrances or conditions on the transfer of the property interests.

(d) At the expense of the applicant or donor, the following information shall be submitted to the Town with any proposal for donations or dedications of interest in real property:

1. Documentation that the property meets the requirements laid out in Section 7.2.14(L)(6)(c);

2. US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;

3. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;

4. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and

5. A title certificate.

(7) Riparian Buffer Restoration or Enhancement

Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

(a) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

1. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Section 7.2.14(L)(4) of this Ordinance; or

2. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Section 7.2.14(L)(4) of this Ordinance;

(b) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Section 7.2.14(L)(5) of this Ordinance;

(c) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

(d) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, defined as greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, defined as less than 100 trees per acre, a buffer may be restored;

(e) The applicant shall submit a restoration or enhancement plan for approval by the Town

(1) after receiving an Authorization Certificate for the proposed use according to the requirements of Section 7.2.14(I); after receiving a variance for the proposed use according to the requirements of Section 7.2.14(K); or prior to requesting a modification for the proposed use according to the requirements of 7.2.14(J). The restoration or enhancement plan shall contain the following:

1. A map of the proposed restoration or enhancement site;

2. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;

3. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;

4. A fertilization plan; and

5. A schedule for implementation.

(f) Within one year after the Town has approved the restoration or enhancement plan, the applicant shall present proof to Town that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's riparian buffer protection program and this Ordinance;

(g) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and

(h) The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

(M) Site Inspections

Agents, officials, or other qualified persons authorized by the Town may periodically inspect UTBs to ensure compliance with this ordinance. Notice of the right to inspect shall be included in the letter of approval of each variance and authorization certificate. Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any property, public or private, for the purpose of investigating and inspecting the site of any UTB. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the Town, while that person is inspecting or attempting to inspect a UTB nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. The Town shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance.

(N) Violations

Any person who fails to comply with any provision of this Section 7.2.14 shall be in violation of this Ordinance for each occurrence or non-compliance. In addition, the Town of Cary may assess civil penalties in accordance with the LDO. Each day that the violation continues shall constitute a separate offense.

(O) Definitions

For the purpose of Section 7.2.14, these terms shall be defined as follows:

- A. Access Trails means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails and signage.
- B. Airport Facilities means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases "air navigation facility", "airport", or "airport protection privileges" under G.S 63-1; the definition of "aeronautical facilities" in G.S 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); and the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons,

marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation and maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of “airport facilities”:

1. Satellite parking facilities
 2. Retail and commercial development outside of the terminal area, such as rental car facilities; and
 3. Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special government entity such as an airport authority, in which case they are included in the definition of “airport facilities”.
- C. Channel means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.
- D. “DBH” means the diameter at breast height of a tree measured at 4.5 feet above ground level surface.
- E. “Development” means the same as defined in Rule 15A NCAC 2B .0202(23).
- F. “Ditch or canal” means a man made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.
- G. “Ephemeral Stream” means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.
- H. “Existing Development” means development, other than that associated with agricultural or forest management activities, that meets one of the following criteria:
1. It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule

- 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or
2. It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase built-upon area.
- I. “Greenway / Hiking Trails” means pedestrian trails constructed of pervious or impervious surface and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.
 - J. “High Value Tree” means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.
 - K. “Intermittent Stream” means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.
 - L. “Jordan Nutrient Strategy” or “Jordan water supply nutrient strategy” means the set of Rules 15A NCAC 2B .0262 through .0273 and .0311(p).
 - M. “Jordan Reservoir” means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan Nutrient strategy rule in Rule 15A NCAC 2B .0262(4).
 - N. “Jordan watershed” means all lands and waters draining to B. Everett Jordan Reservoir.
 - O. “New Development” means any development project that does not meet the definition of existing development set out in 7.2.14..
 - P. “Perennial Stream” means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.
 - Q. “Perennial waterbody” means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State’s riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).
 - R. “Referenced / reference reach” means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.
 - S. “Shoreline stabilization” is the in-place stabilization of an eroding shoreline. Stabilization techniques which include “soft” methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist of “hard” engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.
 - T. “Stream restoration” is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed

conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.

- U. "Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.
- V. "Stump diameter" means the diameter of a tree measured at six inches above the ground surface level.
- W. "Surface Waters" means all waters of the state as defined in G.S. 143-212 except underground waters.
- X. "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.
- Y. "Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures or to maintain public traffic during construction.