

**A RESOLUTION CONTINUING A PUBLIC HEARING ON AN ORDINANCE AMENDING  
THE CARRBORO LAND USE ORDINANCE TO REFLECT TECHNICAL CORRECTIONS  
MADE TO THE JORDAN RULES BY THE EMC ON JULY 14, 2011  
Draft Resolution No.78/2011-12**

**WHEREAS, the Carrboro Board of Aldermen seeks to provide ample opportunities for the public to consider modifications to existing policies and regulations.**

**NOW, THEREFORE BE IT RESOLVED that the Board of Aldermen continues a public hearing on its consideration of the adoption of "AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REFLECT TECHNICAL CORRECTIONS MADE TO THE JORDAN RULES BY THE EMC ON JULY 14, 2011" to February 21, 2012.**

A RESOLUTION ADOPTING A  
STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S REASONS FOR  
ADOPTING AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND USE  
ORDINANCE

Draft Resolution No. 74/2011-12

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REFLECT TECHNICAL CORRECTIONS MADE TO THE JORDAN RULES BY THE EMC ON JULY 14, 2011

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is consistent with revisions to the Jordan Lake rule as approved by the Environmental Management Commission.

Section 2. The Board concludes that its adoption of the above described amendment is reasonable and in the public interest because the Town seeks to remain consistent with controlling legislation and rules.

Section 3. This resolution becomes effective upon adoption.

A RESOLUTION ADOPTING A  
STATEMENT EXPLAINING THE BOARD OF ALDERMEN'S REASONS FOR  
REJECTING AN AMENDMENT TO THE TEXT OF THE CARRBORO LAND USE  
ORDINANCE

Draft Resolution No. 74/2011-12

WHEREAS, an amendment to the text of the Carrboro Land Use Ordinance has been proposed, which amendment is described or identified as follows: AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REFLECT TECHNICAL CORRECTIONS MADE TO THE JORDAN RULES BY THE EMC ON JULY 14, 2011

NOW THEREFORE, the Board of Aldermen of the Town of Carrboro Resolves:

Section 1. The Board concludes that the above described amendment is not consistent with Town policies and regulations.

Section 2. The Board concludes that its rejection of the above described amendment is reasonable and in the public interest because existing regulations are appropriate.

Section 3. This resolution becomes effective upon adoption.

**ATTACHMENT C**  
**AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REFLECT**  
**TECHNICAL CORRECTIONS MADE TO THE JORDAN RULES BY THE EMC ON JULY**  
**14, 2011**

\*\*DRAFT 1-19-2012\*\*

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-269.5 (d), Table of Exempt and Allowable Activities of the Carrboro Land Use Ordinance is amended by the addition of the following information to the table, between the entries related to Ponds and Scientific Studies and Stream Gauging under the heading "Drainage, Stormwater, Erosion Control, and other Water-Based Activity:

Activity	Exempt	Allowable	Allowable with mitigation
<i>Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of this section is established adjacent to the new channel. [Ponds that are not in a natural drainage way are not subject to the buffer requirements of this part.]</i>	X		

Section 2. Subsection 15-269.5(f) is hereby repealed.

Section 3. Section 15-261 is amended by the addition of a new subsection (c) that reads as follows:

Drainage or filling in of existing ponds, under circumstances where the requirements of Section 15-263 are not applicable, shall only be allowed if the stormwater management benefits of the pond are otherwise provided for through installation of other stormwater management devices or practices deemed suitable by the Administrator.

Section 4. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 5. This ordinance shall become effective when it is adopted by the Carrboro Board of Aldermen and approved by the Environmental Management Commission as provided in 15A NCAC 2B.0265.



**[Model Local] Riparian Buffer Protection  
Ordinance [for Lands within the  
Jordan Watershed]**

[Municipality/County], North Carolina  
Adopted [Date]

2008 Version

Use	Exempt *	Allowable *	Allowable with Mitigation*
Dam maintenance activities: <ul style="list-style-type: none"> <li>• 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</li> <li>• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3</li> </ul>	X	X	

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.

Use	Exempt *	Allowable *	Allowable with Mitigation*
<p>Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:</p> <ul style="list-style-type: none"> <li>• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances 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.</li> <li>• 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.</li> <li>• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer</li> <li>• 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.</li> </ul>	X	<p>X</p> <p>X</p>	X

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.

been approved pursuant to Section 9.(C). These uses require written authorization from the [Municipality/County].

## **Section 9. Permits Procedures, Requirements, and Approvals**

### **A. 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 [Municipality/County]. 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 their 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 riparian buffers associated with the activity, and the extent of riparian buffers 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 riparian buffer, 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 submission that addresses Section 9.(A)(2) , the [Municipality/County] shall review the entire project and make a finding of fact as to whether the criteria in Section 9.(A)(1) of this Section 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 [Municipality/County] determines that the applicant has failed to furnish requested information necessary to the [Municipality/County] 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 [Municipality/County]'s decision.
- 4. The [Municipality/County] may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Ordinance.
- 5. Any appeals of determinations regarding Authorization Certificates 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.

B. Variances

1. Requirements for Variances.

Persons who wish to undertake prohibited uses may pursue a variance. The [Municipality/County] may grant minor variances. For major variances, the [Municipality/County] shall prepare preliminary findings and submit them to the Division of Water Quality, 4 01 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 [Municipality/County] shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
  - i. 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 [Municipality/County] 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;
  - ii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
  - iii. 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;
  - iv. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
  - v. The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and
  - vi. 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.

2. Minor Variances

A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 9.(A)(1) through Section 9.(A)(3) by the [Municipality/County] pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The [Municipality/County] may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the [Municipality/County] shall be made in writing 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.

3. 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 the riparian buffer. If [Municipality/County] has determined that a major variance request meets the requirements in Section 9.(B)(1) through 8.(C)(3), 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 [Municipality/County], 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.

C. Mitigation

- 1. This item shall apply to persons who wish to impact a riparian buffer in the Jordan watershed when on of the following applies:
  - d. A person has received an Authorization Certificate pursuant to Section 9.(A) of this Ordinance for a proposed use that is designated as "allowable with mitigation;" or
  - e. A person has received a variance pursuant to Section 9.(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.
- 2. Issuance of the Mitigation Approval  
[Municipality/County] 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.

**[Model Local] Riparian Buffer Protection  
Ordinance [for Lands within the  
Jordan Watershed]**

[Municipality/County], North Carolina  
Adopted [Date]

Revised 9-20-11

Use	Exempt *	Allowable *	Allowable with Mitigation*
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Items (7) and (8) of this Rule is established adjacent to the new channel	X		
Driveway crossings of streams and other surface waters subject to this Ordinance: <ul style="list-style-type: none"> <li>• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer</li> <li>• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer</li> <li>• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>	X	X  X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Ordinance			X
Fences: <ul style="list-style-type: none"> <li>• Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Ordinance</li> <li>• Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance</li> </ul>	X	X	
Fertilizer application: one-time application to establish vegetation	X		
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		

\* To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 8.(C) of this Ordinance.



Uses designated as allowable with mitigation may proceed provided that there are no practical alternatives to the requested use pursuant to Section 9.(A) of this Section and an appropriate mitigation strategy has been approved pursuant to Section 9.(C). These uses require written authorization from the [Municipality/County].

## **Section 9. Permits Procedures, Requirements, and Approvals**

### **A. 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 [Municipality/County]. 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 their 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 riparian buffers associated with the activity, and the extent of riparian buffers 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 riparian buffer, 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 submission that addresses Section 9.(A)(2) , the [Municipality/County] shall review the entire project and make a finding of fact as to whether the criteria in Section 9.(A)(1) of this Section 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 [Municipality/County] determines that the applicant has failed to furnish requested information necessary to the [Municipality/County] 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 [Municipality/County]'s decision.
- 4. The [Municipality/County] may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Ordinance.
  - 5. Any appeals of determinations regarding Authorization Certificates 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.

**B. Variances**

- 1. Requirements for Variances.

Persons who wish to undertake prohibited uses may pursue a variance. The [Municipality/County] may grant minor variances. For major variances, the [Municipality/County] 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 [Municipality/County] shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
  - i. 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 [Municipality/County] 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;
  - ii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
  - iii. 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;
  - iv. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;

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

2. Minor Variances

A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 9.(B)(1) by the [Municipality/County] pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The [Municipality/County] may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the [Municipality/County] shall be made in writing 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.

3. 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 the riparian buffer. If [Municipality/County] has determined that a major variance request meets the requirements in Section 9.(B)(1) through 8.(C)(3), 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 [Municipality/County], 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.

C. Mitigation

- 1. This item shall apply to persons who wish to impact a riparian buffer in the Jordan watershed when on of the following applies:
  - d. A person has received an Authorization Certificate pursuant to Section 9.(A) of this Ordinance for a proposed use that is designated as "allowable with mitigation;" or
  - e. A person has received a variance pursuant to Section 9.(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.
- 2. Issuance of the Mitigation Approval  
[Municipality/County] shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this

**PART II. STORM WATER MANAGEMENT**

**Section 15-261 Natural Drainage System Utilized to Extent Feasible (REWRITTEN 6/27/07).**

(a) To the extent practicable, all development shall conform to the natural contours of the land and natural drainage ways shall remain undisturbed.

(b) To the extent practicable, lot boundaries shall be made to coincide with natural drainage ways within subdivisions to avoid the creation of lots that can be built upon only by altering such natural drainage ways.

**Section 15-262 Development Must Drain Properly. (REWRITTEN 6/27/07)**

(a) All development shall be provided with a stormwater management system containing drainage facilities that are adequately designed and constructed to prevent the undue retention of surface water on the development site. Surface water shall not be regarded as unduly retained if:

- (1) The retention results from a technique, practice or device deliberately installed as part of an approved sedimentation or stormwater management plan, or
- (2) The retention is not substantially different in location or degree than that experienced by the development site in its pre-development stage, unless such retention presents a danger to health or safety.

(b) No surface water may be channeled or directed into the OWASA sanitary sewer system.

(c) Whenever practicable, the drainage system of a development shall coordinate with the drainage system or drainage ways on surrounding properties or streets.

(d) Use of drainage swales rather than curb and gutter and storm sewers in subdivisions is provided for in Section 15-216. Private roads and access ways within unsubdivided developments shall utilize curb and gutter and storm drains to provide adequate drainage if the grade of such roads or access ways is too steep to provide drainage in another manner or if other sufficient reasons exist to require such construction.

(e) The minimum design storm frequency for all drainage systems shall be the 10 year storm, except that those facilities crossing streets shall be designed for the 25 year storm.

(f) Drainage culverts and associated facilities shall be suitably sized to accommodate designated storm frequencies and shall be suitably constructed and installed to insure that the

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Table 1: Required Minimum Buffer Width (\*)

Waterbody type	Zone 1 width		Zone 2 width		Total width	
	Watershed	Outside of Watershed	Watershed	Outside of Watershed	Watershed	Outside of Watershed
Perennial Streams, Ponds, Lakes, Reservoirs	100'	50'	--	50'	100'	100'
Intermittent Streams, Ponds	60'	30'	--	30'	60'	60'
Ephemeral Streams, Ponds	--	--	30'	15'	30'	15'

\* "Watershed" means within the University Lake Watershed, and "Outside of watershed" means the remainder of the Town's planning jurisdiction. For streams, the width indicated is in one direction from the stream channel; the total width is therefore twice the width indicated.

- (4) Notwithstanding the other provisions of this section, in no case shall the width of any buffer be less extensive than the special flood hazard area for the same stream, pond, or lake drainage feature designated in accordance with the provisions of Part I of this article.

**Section 15-269.4 Diffuse Flow Requirement**

Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters the buffer, and maintained in the buffer by dispersing runoff that has concentrated into rills, gullies, and ditches, and reestablishing vegetation where concentrated flow has displaced vegetation. Corrective action to restore diffuse flow shall be taken if necessary to impede the formation or expansion of erosion rills or gullies. Where site conditions constrain the ability to ensure diffuse flow through both Zones 1 and 2, emphasis will be placed on ensuring diffuse flow through Zone 1, as provided for in 15-269.3. No new engineered stormwater devices or conveyances are allowed in the buffers except as provided for in Section 15-269.5.

**Section 15-269.5 Exempt and Allowable Activities**

- (a) The table set forth in subsection (d) below sets out the activities and their designation under this part as exempt, allowable, or allowable with mitigation, except as provided for in 15-269.2. All activities not designated as exempt,

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

- allowable, or allowable with mitigation are prohibited within the buffer unless a variance is granted pursuant to Section 15-269.8.
- (b) Activities designated in the table below as exempt, allowable, and allowable with mitigation shall be subject to the following requirements. All activities shall be designed, constructed and maintained to minimize soil and vegetation disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. Activities designated in the table as allowable and allowable with mitigation require written authorization from the Town.
- (1) Exempt. Activities designated as exempt are allowed within the buffer. In addition, exempt uses shall meet the requirements listed in the table and the accompanying notes for the specific use.
  - (2) Allowable. Activities designated as allowable are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6.
  - (3) Allowable With Mitigation. Activities designated as allowable with mitigation are permissible within the buffer provided that there are no practical alternatives to the requested use as determined in accordance with Section 15-269.6, and an appropriate mitigation strategy has been approved pursuant to Section 15-269.7.
- (c) For public utilities as defined in this Article, the activities and their designation as set forth in the table in subsection (d) apply to expansions and extensions. The requirements do not apply to routine or emergency maintenance and repairs.

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**(d) Table of Exempt and Allowable Activities in Water Quality Buffers**

Activity	Exempt	Allowable	Allowable with Mitigation
<b>Drainage, Stormwater, Erosion Control, and other Water-based activities</b>			
<p>Dam maintenance activities:</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3</li> </ul>	X	X	
<p>Drainage ditches, roadside ditches and stormwater conveyances through buffers:</p> <ul style="list-style-type: none"> <li>• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided that 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 surface waters</li> <li>Realignment of 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.</li> <li>• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer.</li> <li>• New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topographic constraints provided that other practicable BMPs have been employed.</li> </ul>	X	X	X  X

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**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Activity	Exempt	Allowable	Allowable with Mitigation
Water dependent structures where installation and use result in disturbance to riparian buffers.		X	
Water wells Single family residential water wells • All other water wells	X	X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: Wetland, stream and buffer restoration that requires DWQ approval for the use of a 401 Water Quality Certification Wetland, stream and buffer restoration that does not require DWQ approval for the use of a 401 Water Quality Certification	X	X	
<b>Miscellaneous</b>			
Archaeological activities	X		
Fences: Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in Section 15-316 Fences provided that disturbance is minimized and installation results in removal of trees as defined in Section 15-316	X	X	
Grading and revegetation in Zone 2 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized until they are revegetated		X	
Maintenance access on modified natural streams: a grassed travel way on one side of the water body where 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	

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Activity	Exempt	Allowable	Allowable with Mitigation
<p>Mining activities:</p> <p>Mining activities that are covered by the Mining Act provided that new buffers that meet the requirements of this section are established adjacent to the relocated channels</p> <p>Mining activities that are not covered by the Mining Act OR where new buffers that meet the requirements of this section are not established adjacent to the relocated channels</p> <p>Wastewater or mining dewatering wells with approved NPDES permit</p>	X	X	X
Preservation or maintenance of historic or cultural sites	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Removal of previous fill or debris provided that diffuse flow is maintained, a stabilizing ground cover sufficient to restrain erosion is established, and any woody vegetation removed is restored		X	
Wildlife passage structures		X	
<b>Recreation</b>			
<p>Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:</p> <p>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 removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.</p> <p>Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Section or impervious surface is added to the buffer.</p>	X	X	
Canoe Access provided that installation and use does not result in removal of trees as defined in Section 15-316 and no impervious surface is added to the buffer.	X		

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Activity	Exempt	Allowable	Allowable with Mitigation
Greenway / hiking trails <sup>1</sup> 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	
Playground equipment: <ul style="list-style-type: none"> <li>• Playground equipment on single family lots provided that installation and use does not result in removal of vegetation</li> <li>• Playground equipment installed on lands other than single-family lots or that requires removal of vegetation</li> </ul>	X	X	
<b>Transportation</b>			
Bridges		X	
Driveway crossings of streams and other surface waters subject to this Section: Individual driveway crossings that disturb equal to or less than 25 linear feet or 2,500 square feet of buffer Individual driveway crossings that disturb greater than 25 linear feet or 2,500 square feet of buffer Multiple driveway crossings in any development that cumulatively disturbs equal to or less than 150 linear feet or one-third of an acre of buffer Multiple driveway crossings in any development that cumulatively disturbs greater than 150 linear feet or one-third of an acre of buffer Driveway impacts other than crossing of a stream or other surface waters subject to this Section	X	X    X	    X
Railroad impacts other than crossings of streams and other surface waters subject to this Part.			X
Railroad crossings of streams and other surface water drainage features subject to this Part: <ul style="list-style-type: none"> <li>• Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer</li> <li>• Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>	X	X	X

<sup>1</sup> To the extent practicable, greenway easements shall be located a minimum of 10 feet from the top of bank; surfaces shall be a minimum of 15 feet from the top of bank

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Activity	Exempt	Allowable	Allowable with Mitigation
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: <ul style="list-style-type: none"> <li>• Less than or equal to 2,500 square feet of buffer impact</li> <li>• Greater than 2,500 square feet of buffer impact</li> </ul>		X	X
Temporary roads, provided that restoration activities, including re-establishment of pre-construction topographic and hydrologic conditions and replanting with comparable vegetation occur immediately after construction. Tree planting may occur during the dormant season; the restored buffer shall comply with Section 15-269.7(g) within five years: <ul style="list-style-type: none"> <li>• Less than or equal to 2,500 square feet of buffer disturbance</li> <li>• Greater than 2,500 square feet of buffer disturbance</li> <li>• Associated with culvert installation of bridge construction or replacement</li> </ul>	X	X  X	
Transportation (vehicular, bike) crossings of streams and other surface waters subject to this Section: <ul style="list-style-type: none"> <li>• Transportation crossings that impact equal to or less than 40 linear feet of riparian buffer</li> <li>• Transportation crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer</li> <li>• Transportation crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>	X	X	X
Transportation impacts other than crossings of streams and other surface waters subject to this Section			X
Vehicle access roads and boat ramps leading to the surface water, docks, fishing piers, and other water dependent activities, but not crossing the surface water and having a minimum practicable width of not more than 10 feet.		X	

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Utilities			
Electric utility, aerial, perpendicular crossings <sup>2,3,4</sup> : • Disturb equal to or less than 100 linear feet of buffer • Disturb greater than 100 linear feet of buffer	X	X	
Electric utility, aerial, other than perpendicular crossings <sup>3</sup> : • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters <sup>2,4,5</sup>	X	X	X
Electric utility, underground, perpendicular crossings <sup>3,4,6</sup> : • Disturb less than or equal to 40 linear feet of buffer • Disturb greater than 40 linear feet of buffer	X	X	

<sup>2</sup> Provided that within 30 feet of surface waters, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the Administrator as defined in Section 15-269.6.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has 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.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 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.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

<sup>3</sup> Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

<sup>4</sup> Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the Administrator completes a no practical alternative evaluation as defined in Section 15-269.6

<sup>5</sup> Provided that:

- No heavy equipment is used within 30 feet of surface waters.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- The condition and use of the area within 50 feet of surface waters is consistent with Sections 15-269.3 and 15-269.4.

<sup>6</sup> Provided that, within 30 feet of surface water, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the Administrator, as defined in Section 15-269.6.

**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

Electric utility, underground, other than perpendicular crossings <sup>3,6</sup> : • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters <sup>5</sup>	X	X	X
Non-electric utility, perpendicular crossings <sup>3,5</sup> : • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb equal to or less than 40 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor equal to or less than 10 feet in width • Disturb greater than 40 linear feet but equal to or less than 150 linear feet of buffer with a maintenance corridor greater than 10 feet in width • Disturb greater than 150 linear feet of buffer	X	X  X	X  X
Non-electric utility, other than perpendicular crossings <sup>3,5</sup> : • Impacts greater than 50 feet from surface waters • Impacts within 30-50 feet of surface waters • Impacts within 30 feet of surface waters	X	X	X
<b>Vegetation Management</b>			
Forest harvesting – See Section 15-319.1			

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed. • Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench created for the line installation.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- 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.
  - In wetlands, mats shall be utilized to minimize soil disturbance.



**Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION**

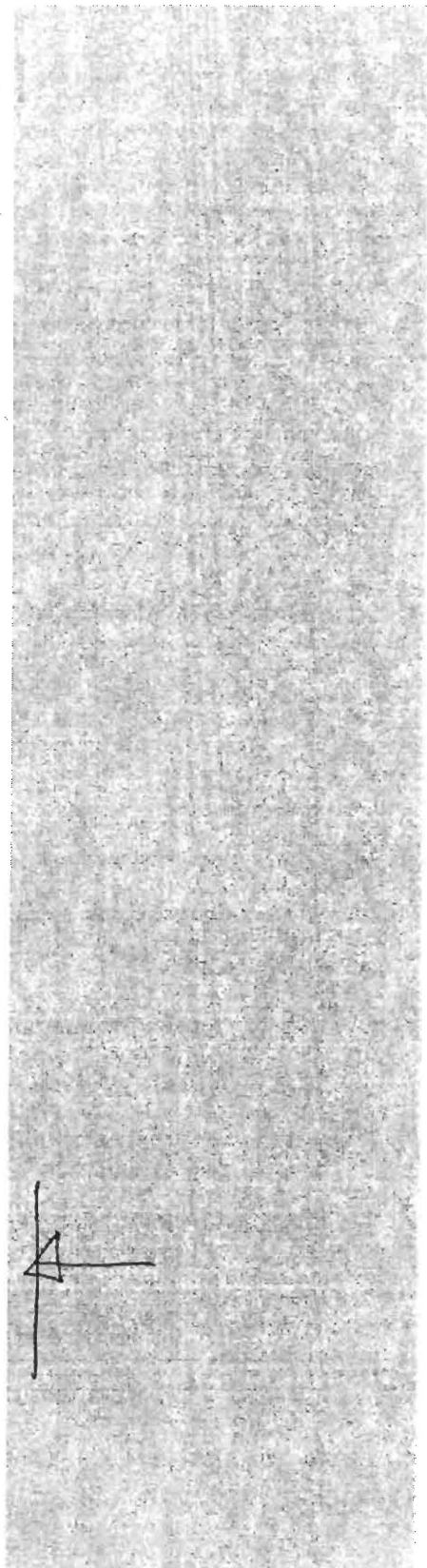
Fertilizer application: One-time fertilizer application to establish vegetation	X		
Vegetation management: • Emergency fire control measures provided that topography is restored • Mowing and harvesting of plant products in Zone 2 only • Planting vegetation to enhance the riparian buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are dead, diseased, or damaged, are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering the stability of the streambank • Removal of poison ivy • Removal of invasive exotic vegetation as defined in Smith, Cherri L., 1998 <i>Exotic Plant Guidelines</i> . DENR, Division of Parks and Recreation. Raleigh, N.C. Guideline # 30, or a more recent version or alternative reference approved by the NC EMC.	X X X X X X X		

(e) Additional Setback Requirements for Specific Water Pollution Hazards

The following activities are designated as potential water pollution hazards, and must be set back from any stream or waterbody by the required buffer width provided in 15-269.3 or the distance indicated below, whichever is greater:

Activity	Setback
Above or below ground storage of hazardous substances, petroleum or biofuels	150 feet
Animal feedlot operations	250 feet
Land application of biosolids	100 feet
Solid waste landfills or junkyards	300 feet

- (f) Because it is not the intent of this part to render undevelopable lots of record on the effective date of this part, intrusions into the protective buffer are permitted in the event that a lot of record would otherwise be made undevelopable by the provisions of this part, to the extent necessary for the lot in question to be developed as permitted by the underlying zoning designation and in such a manner as to minimize the disruption of the protective buffer.
- (g) No new lot may be created through a major or minor subdivision process that would be undevelopable under the provisions of this part because of the amount or dimensions of protective buffer land included in it, unless such lot has already been



**Catherine Wilson**

---

**From:** Perdita Holtz <pholtz@co.orange.nc.us>  
**Sent:** Wednesday, January 04, 2012 10:26 AM  
**To:** Patricia J. McGuire  
**Cc:** Frank Clifton; Craig Benedict  
**Subject:** RE: Carrboro Land Use Ordinance Amendment

Hi Trish,

We have reviewed the Ordinance amendment and find no inconsistency with the adopted *Joint Planning Area Land Use Plan*. Thanks for the opportunity to review.

Perdita Holtz, AICP  
Planning Systems Coordinator  
Orange County (NC) Planning Department  
131 W. Margaret Lane, 2nd Floor (physical)  
P.O. Box 8181 (mail)  
Hillsborough, NC 27278  
Phone: (919) 245-2578

-----Original Message-----

From: Patricia J. McGuire [<mailto:PMcGuire@ci.carrboro.nc.us>]  
Sent: Friday, December 30, 2011 4:22 PM  
To: Frank Clifton; Craig Benedict  
Cc: Perdita Holtz  
Subject: Carrboro Land Use Ordinance Amendment

Dear Mr. Clifton and Mr. Benedict,

Please see the attached materials pertaining to a proposed amendment to the Carrboro Land Use Ordinance.

Don't hesitate to contact me if you need additional information. Thanks for your time and attention to this matter.

Trish McGuire

Patricia J. McGuire, AICP, CZO  
Planning Director  
Town of Carrboro  
301 W. Main Street  
Carrboro, North Carolina 27510  
35° 54' 41", -79° 04' 39"

919-918-7327 (T)/919-918-4454 (F)

[pmcguire@ci.carrboro.nc.us](mailto:pmcguire@ci.carrboro.nc.us)<<mailto:pmcguire@ci.carrboro.nc.us>> <http://townofcarrboro.org><<http://townofcarrboro.org>>  
g/>

[Centennial Logo Sm BW22]





## TOWN OF CARRBORO

NORTH CAROLINA

### MEMORANDUM

**To:** Frank Clifton, Orange County Manager  
Craig Benedict, Planning Director

**From:** Patricia J. McGuire, Planning Director

**Date:** December 30, 2011

**Subject:** Carrboro Land Use Ordinance Text Amendment

### 2 PAGES DELIVERED VIA EMAIL

An amendment to the Town's Land Use Ordinance has been proposed. A public hearing on the amendment is scheduled for January 24, 2012. The amendment is described below:

*Making technical corrections to Jordan Lake-rule related buffer provisions, per action of the Environmental Management Commission on July 14, 2011. The Town was notified of the EMC's action and is amending buffer use provisions as needed for consistency with the adopted rule.*

The full text of the draft ordinance that will amend the Town's Land Use Ordinance is attached. Please submit any comments on the draft ordinances by or before January 24, 2012. Should you anticipate any problems with this request, please notify us as soon as possible. We look forward to receiving your comments, and appreciate your attention. If you have any questions or need additional information, don't hesitate to call.

Attachment

Xc: Perdita Holtz

AN ORDINANCE AMENDING THE CARRBORO LAND USE ORDINANCE TO REFLECT  
TECHNICAL CORRECTIONS MADE TO THE JORDAN RULES BY THE EMC ON JULY  
14, 2011

\*\*DRAFT 10-4-2011\*\*

THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO ORDAINS:

Section 1. Subsection 15-269.5 (d), Table of Exempt and Allowable Activities of the Carrboro Land Use Ordinance is amended by the addition of the following information to the table, between the entries related to Ponds and Scientific Studies and Stream Gauging:

Activity	Exempt	Allowable	Allowable with mitigation
<i>Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of this section is established adjacent to the new channel.</i>	X		

Section 2. Subsection 15-269.5(f) is hereby repealed.

Section 3. All provisions of any town ordinance in conflict with this ordinance are repealed.

Section 4. This ordinance shall become effective when it is adopted by the Carrboro Board of Aldermen and approved by the Environmental Management Commission as provided in 15A NCAC 2B.0265.

## TOWN OF CARRBORO

*301 West Main Street, Carrboro, North Carolina 27510***R E C O M M E N D A T I O N****THURSDAY, JANUARY 19, 2012****LAND USE ORDINANCE TEXT AMENDMENTS TO REFLECT TECHNICAL  
CORRECTIONS TO WATER QUALITY BUFFER REQUIREMENTS AS APPROVED  
BY THE ENVIRONMENTAL MANAGEMENT COMMISSION ON JULY 14, 2011**

Motion was made by Chaney and seconded by Barton that the Planning Board recommends that the Board of Aldermen revise section 3 of the draft ordinance to change "filling" to "filling in" and adopt the revised ordinance.

**VOTE:****AYES: (6) Barton, Chaney, Clinton, Jaimeyfield, Poulton, Seils****ABSENT/EXCUSED: (3) Hunt, Killeen****NOES: (0)****ABSTENTIONS: (0)****Associated Findings**

By a unanimous show of hands, the Planning Board membership also indicated that no members have any financial interests that would pose a conflict of interest to the adoption of this amendment.

Furthermore, the Planning Board of the Town of Carrboro finds that the proposed text amendment is consistent with the Town's obligation to make its regulations consistent with State rules.

Motion in support of this finding was made by Chaney and seconded by Poulton.

**VOTE:****AYES: (6) Barton, Chaney, Clinton, Jaimeyfield, Poulton, Seils****ABSENT/EXCUSED: (3) Hunt, Killeen****NOES: (0)****ABSTENTIONS: (0)****Damon Seils, Chair****January 19, 2012**