

ARTICLE 9: ENVIRONMENTAL STANDARDS

Section 9.1 Flood Damage Prevention Ordinance

Section 9.1.1 Statutory Authorization, Findings of Fact, Purpose and Objective

A. Statutory Authorization

1. The Legislature of the State of North Carolina has in Part 6, Article 21 of chapter 143; parts 3,5 and 8 of Article 19 of Chapter 160A; and Article 8, of Chapter 160A of N.C. General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
2. The Legislature of the State of North Carolina has in Part 6, Article 21 of chapter 143; parts 3 and 4 of Article 18 of Chapter 153A; and Article 6, of Chapter 153A of N.C. General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
3. Therefore, the Board of Commissioners of the Town of Elm City, North Carolina does ordain as follows:

B. Findings of Fact

1. The flood hazard areas of the Town of Elm City are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-protected, or otherwise unprotected from flood damages.

C. Statement of Purpose,

It is the purpose of this Ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2. require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. control the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
4. control filling, grading, dredging and other development which may increase erosion or flood damage, and;
5. prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

D. Objectives

The Objectives of this Ordinance are:

1. to protect human life and health;
2. to minimize expenditure of public money for costly flood control projects;
3. to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. to minimize prolonged business interruptions:
5. to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood plains;
6. to help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas, and;
7. to insure that potential home buyers are notified that property is in a flood area.

Section 9.1.2 Definitions

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Ordinance its most reasonable application.

1. "Accessory Structure (Appurtenant Structure)" means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.
2. "Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

3. "Appeal" means a request from a review of the local administrator's interpretation of any provision of this ordinance.
4. "Area of Shallow Flooding" means a designated AO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
5. "Area of Special Flood Hazard" See "Special Flood Hazard Area (SFHA)."
6. "Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.
7. "Base flood" means the flood having a one (1) percent chance of being equaled or exceed in any given year.
8. "Base Flood Elevation (BFE)" means a determination as published in the Flood Insurance Study of the water surface elevations of the base flood. This elevation combined with "Freeboard" creates the "Regulatory Flood Protection Elevation."
9. "Building" see "Structure"
10. "Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.
11. "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
12. "Disposal" defined as in NCGS 130A-290(a)(6).
13. "Elevated building" means a non-basement building which has its reference level raised above ground elevation by foundation walls, shear walls, posts, piers, pilings, or columns.
14. "Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
15. "Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, either final site grading or the pouring of

concrete pads, and the construction of streets) was completed before the original effective date of the floodplain management regulations adopted by the community.

16. "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 1. the overflow of inland or tidal waters; and/or
 2. the unusual and rapid accumulation of runoff of surface waters from any source.
17. "Flood Boundary and Floodway Map (FBFM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).
18. Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.
19. "Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.
20. "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.
21. "Flood Insurance Study (FIS)" means an examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.
22. "Floodplain" or "Flood Prone Area" means any land area susceptible to being inundated by water from any source.
23. "Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
24. "Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

25. "Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.
26. "Floodplain Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.
27. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.
28. "Flood Prone Area" see "Floodplain"
29. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
30. "Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
31. "Freeboard" means the additional amount of height added to the Base Flood Elevation (BFE) to account for uncertainties in the determination of flood elevations. The freeboard plus the Base Flood Elevation establishes the "Regulatory Flood Protection Elevation."
32. "Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
33. "Hazardous Waste Management Facility" means a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in NCGS Article 9 of Chapter 130A.
34. "Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.
35. "Historic Structure" means any structure that is:
 - a. listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by

- the Secretary of Interior as meeting the requirements for individual listing on the National Register;
- b. certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. individually listed on a State inventory of historic places;
 - d. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified
 - i. by an approved state program as determined by the Secretary of Interior, or
 - ii. directly by the Secretary of Interior in states without approved programs.
36. "Lowest Adjacent Grade (LAG)" means the elevation of the ground, sidewalk, patio slab, or deck support immediately next to the building after completion of the building. For Zone A and AO, use the natural grade elevation prior to construction.
37. "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or floor resistant enclosure, usable solely for parking of vehicles, building access or limited storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.
38. "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without permanent foundation when connected to the required utilities. The term "Manufactured home" does not include a "recreational vehicle".
39. "Market Value" means the building value, excluding the land established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values.
40. "Mean Sea Level" means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988 or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.
41. "New construction" means structures for which the "start of construction" commenced on or after the effective date of the original version of this Ordinance and includes any subsequent improvements to such structures.
42. "Nonconforming Building or Development" means any legally existing building or development which fails to comply with the current provisions of this ordinance.

43. "Non-Encroachment Area" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.
44. "Post-FIRM" means construction or other development which started on or after the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.
45. "Pre-FIRM" means construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area, whichever is later.
46. "Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.
47. "Recreational Vehicle" means a vehicle which is:
- a. built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. designed to be self-propelled or permanently towable by a light duty truck; and
 - d. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
48. "Reference Level" is the portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within all Special Flood Hazard Areas, the reference level is the top of the lowest floor or bottom of the lowest horizontal structural member or bottom of lowest attendant utility including ductwork, whichever is lower.
49. "Regulatory Flood Protection Elevation" means the elevation, in relation to mean sea level, to which the reference level of all structures and other development located within the Special Flood Hazard Areas must be protected. Within areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.
50. "Remedy a violation" means to bring the structure or other development into compliance with State or community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the Ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

51. "Repetitive Loss" means flood-related damages sustained by a structure on two (2) separate occasions during any 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five percent (25%) of the market value of the structure before the damage occurred.
52. "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
53. "Salvage Yard" means property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.
54. "Special Flood Hazard Area (SFHA)" is the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section B of this ordinance.
55. "Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).
56. "Solid Waste Disposal Site" defined as in NCGS 130A-290(a)(36).
57. "Start of construction" includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvements was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.
58. "Structure" means a walled and roofed building, a manufactured home, a gas or liquid storage tank, that is principally above ground.
59. "Substantial Damage" means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on

the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. See definition of “substantial improvement.”

60. "Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one year period whereby the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either:
- a. any correction of existing violations of State or Community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,
 - b. any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
61. "Variance" is a grant of relief from the requirements of this Ordinance.
62. "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 9.1.4 and 5 is presumed to be in violation until such time as that documentation is provided.
63. “Watercourse” means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
64. “Water Surface Elevation (WSE)” means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Section 9.1.3 General Provisions

A. Lands to Which This Ordinance Applies

This Ordinance shall apply to all areas of special flood hazard within the jurisdiction of Elm City and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

B. Basis for Establishing the Areas of Special Flood Hazard

1. The Special Flood Hazard Areas are those identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study and its accompanying

flood maps such as the Flood Insurance Rate Map(s) and/or the Flood Boundary Floodway Map(s) (FBFM), for Wilson County dated November 3, 2004 which with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this Ordinance. The Special Flood Hazard Areas also include those defined through standard engineering analysis for private developments of by governmental agencies, but which have not yet been incorporated in the FIRM. This included, but is not limited to, detailed flood data:

- a. generated as a requirement of Section 9.1.4.C (11 & 12) this Ordinance;
 - b. preliminary FIRMs where more stringent than the effective FIRM; or
 - c. post-disaster Flood Recovery Maps.
2. In addition, upon annexation to the Town of Elm City or inclusion in the Extraterritorial Jurisdiction (ETJ), the Special Flood Hazard Areas identified by the Federal Emergency Management Agency (FEMA) and/or produced under the Cooperating Technical State agreement between the State of North Carolina and FEMA as stated above for the Unincorporated Areas of Wilson County, with accompanying maps and other supporting data, and any revision thereto, are adopted by reference and declared to be a part of this ordinance.

C. Establishment of Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Section 9.1.3.B.

D. Compliance

No structure or land shall hereafter be located, extended, converted, altered or developed in any way without full compliance with the terms of this Ordinance and other applicable regulations.

E. Abrogation and Greater Restrictions

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Interpretation

In the interpretation and application of this Ordinance all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under state statutes.

G. Warning and Disclaimer of Liability

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Actual flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of the Town of Elm City or by any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

H. Penalties for Violation and Remedies

1. Violation of the provisions of this Ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Elm City from taking such other lawful action as is necessary to prevent or remedy any violation.
2. In addition to, or in lieu of, any of the above remedies or penalties, this Ordinance may also be enforced by Wilson County or the Town of Elm City by any appropriate equitable remedy, injunction, or order of abatement as provided in NC General Statutes 153A-123(d) and (e) and NC General Statute 160A-175, and issuing from a court or competent jurisdiction.

Section 9.1.4 Administration

A. Designation of Local Administrator

The Town Clerk, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this Ordinance.

B. Development Permit and Certification Requirements.

Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

1. Application Requirements. Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

- a. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
 - i. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development;
 - ii. the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 9.1.3.B or a statement that the entire lot is within the Special Flood Hazard Area;
 - iii. flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 9.1.3.B;
 - iv. the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 9.1.3.B;
 - v. the Base Flood Elevation (BFE) where provided as set forth in Section 0.1.3.B; Section 9.1.4.C(11 & 12); or Sections 9.1.5.C, D and B.5;
 - vi. the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
 - vii. certification of the plot plan by a registered land surveyor or professional engineer
- b. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
 - i. Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
 - ii. Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed;
 - iii. Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood-proofed;
- c. If floodproofing, a Floodproofing Certificate with detailed back-up computations and operational plans that specify the location on a FIRM panel, and the entity responsible for maintenance and operation of such plans. Floodproofing certificate and back-up computations and operations shall be certified by a registered professional engineer or architect to ensure that the non-residential flood-proofed development will meet the floodproofing criteria in Section 9.1.5.B.2.
- d. A Foundation Plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 - i. Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);
 - ii. Openings to facilitate the unimpeded movements of floodwaters in accordance with Article 5, Section B(4), when solid foundation perimeter walls are used in A, AO, AE, and A1-30 zones.

- e. Usage details of any enclosed space below the regulatory flood protection elevation.
 - f. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
 - g. Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (i.e. Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
 - h. Documentation for placement of Recreational Vehicles and/or Temporary Structures, to ensure Section 9.1.5.B (6 & 7) of this code are met.
 - i. A description of proposed watercourse alteration or relocation, when applicable, an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
2. Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:
- a. A description of the development to be permitted under the floodplain development permit issuance.
 - b. The Special Flood Hazard Area determination for the proposed development per available data specified in Section 9.1.3.B.
 - c. The regulatory flood protection elevation required for the reference level and all attendant utilities.
 - d. The regulatory flood protection elevation required for the protection of all public utilities.
 - e. All certification submittal requirements with timelines
 - f. A statement that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, if applicable
 - g. A statement of the minimal foundation opening requirements if in an A, AO, AE or A1-30 zone.
 - h. A statement of the limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).
3. Certification Requirements.
- a. An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, or floodproofed elevation, in relation to mean sea level. Elevation certifications shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or

- failure to make required corrections shall be cause to deny a floodplain development permit.
- b. An Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after the reference level is complete. Within seven (7) calendar days of establishment of the reference level elevation, or floodproofing, by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level or floodproofed elevation, whichever is applicable in relation to mean sea level. Elevation certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the certification or failure to make required corrections required shall be cause to issue a stop-work order for the project.
 - c. A Final As-Built Elevation Certificate (FEMA Form 81-31) or Floodproofing Certificate (FEMA Form 81-65) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation or floodproofed elevation of the reference level and all attendant utilities. The Elevation certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. The Floodproofing Certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
 - d. If a manufactured home is placed within an A, AO, AE, or A1-30 zone and the elevation of the chassis is above 36 inches in height, an engineered foundation certification is required per Section 9.1.5.B.3.
 - e. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

- f. Certification Exemptions. The following structures, if located within A, AO, AE or A1-30 zones, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) above:
 - i. Recreational Vehicles meeting requirements of Section 9.1.5.B.6.a;
 - ii. Temporary Structures meeting requirements of Section 9.1.5.B.7; and
 - iii. Accessory Structures less than 150 square feet meeting requirements of Section 9.1.5.B.8.

C. Duties and Responsibilities of the Local Administrator.

The floodplain administrator shall perform the following duties but not be limited to:

1. Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the permit requirements of this Ordinance have been satisfied;
2. Advise permittee that additional Federal or State permits (i.e., Wetlands, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and if specific Federal or State permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.
3. Notify adjacent communities and the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
5. Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of Section 9.1.5.E are met.
6. Obtain the actual elevation (in relation to mean sea level) of the reference level (including basement) of all new or substantially improved structures, in accordance with Section 9.1.4.B.3.
7. Obtain actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been flood-proofed, in accordance with Section 9.1.4.B.3.
8. Obtain actual elevation (in relation to mean sea level) of all public utilities, in accordance with Section 9.1.4.B.3.
9. When Floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 9.1.4.B.3 and Section 9.1.5B.2.

10. Where interpretation is needed as to the exact location of boundaries of the areas of Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
11. When Base Flood Elevation (BFE) data has not been provided in accordance with Article 9.1.3.B, obtain, review and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data, and/or non-encroachment area data available from a federal, state or other source, in order to administer the provisions of this Ordinance.
12. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 9.1.3.B, obtain, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
13. When the exact location of boundaries of the Special Flood Hazard Areas conflict with the current, natural topography information at the site, the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by the floodplain administrator in the floodplain development permit file.
14. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.
15. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
16. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
17. Revocation of floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the

approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

18. Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

19. Follow through with corrective procedures of Section 9.1.4.D.

D. Corrective Procedures.

1. Violations to be Corrected

When the local administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall each immediately remedy each of the violations of law pertaining to their property.

2. Actions in Event of Failure to Take Corrective Action

If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating.

- a. That the building or property is in violation of the Flood Damage Prevention Ordinance;
- b. That a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining the matter; and,
- c. That following the hearing, the local administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

3. Order to take Corrective Action

If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation, within such period, not less than sixty (60) days, not more than one hundred-twenty (120) days. Where the

administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

4. Appeal

Any owner who has received an order to take corrective action may appeal from the order to the local elected governing body by giving notice of appeal in writing to the administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

5. Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

D. Variance Procedures

1. The Board of Adjustment as established by the Board of Commissioners of the Town of Elm City shall hear and decide appeals and requests for variances from the requirements of this Ordinance.
2. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
3. Variances may be issued for:
 - a. the repair or rehabilitation or restoration of historic upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - b. functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance.
 - c. any other type of development, provided it meets the requirements stated in this section.
4. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance, and:
 - a. the danger that materials may be swept onto other lands to the injury of others;
 - b. the danger to life and property due to flooding or erosion damage;
 - c. the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. the importance of the services provided by the proposed facility to the community;

- e. the necessity to the facility of a waterfront location, where applicable;
 - f. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - g. the compatibility of the proposed use with existing and anticipated development;
 - h. the relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - i. the safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. the expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
 - k. the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
5. A written report addressing each of the above factors shall be submitted with the application for a variance.
 6. Upon consideration of the factors listed above and the purposes of this Ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.
 7. Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.
 8. Conditions for Variances:
 - a. Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
 - b. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - c. Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship, and; (iii) a determination that the granting of a variance will not result in increase flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or Ordinances.
 - d. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.
 - e. The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency management Agency and the State of North Carolina upon request.
 9. A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities

that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

- a. The use serves a critical need in the community.
- b. No feasible location exists for the use outside the Special Flood Hazard Area.
- c. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection level.
- d. The use complies with all other applicable federal, state and local laws.
- e. The Town of Elm City as notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) days prior to granting the variance.

Section 9.1.5 Provisions for Flood Hazard Reduction

A. General Standards.

1. In all Special Flood Hazard Areas the following provisions are required:
 - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structures resulting from hydrodynamic hydrostatic loads including the effects of buoyancy.
 - b. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
2. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;
3. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.) hot water heaters, electrical outlets/switches).
4. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
5. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
6. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and
7. Any alteration, repair, reconstruction of improvements to a structure which is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this Ordinance.

8. Provided, however, nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
9. New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas, except by variance as specified in Section 9.1.4.E.9. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 9.1.4.B.3 of this code.
 - a. All development proposals shall be consistent with the need to minimize flood damage.
 - b. All development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
 - c. All development proposals shall have adequate drainage provide to reduce exposure to flood hazards.

B. Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Sections 9.1.3.B or Section 9.1.4.C(11 & 12), the following provisions are required:

1. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 9.1.2, Definitions.

2. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential structure shall have the reference level including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 9.1.2, Definitions. Structures located in A, AE and A1-30 zones may be flood-proofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are water tight with walls substantially impermeable to the passage of water, using structural components

having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in Section 9.1.4.B.3.

3. Manufactured Homes.

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Section 9.1.2, Definitions.
- b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to NCGS §143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- c. All foundation enclosures or skirting shall be in accordance with Section 9.1.5.B.4.
- d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the zoning administrator and the local Emergency Management Coordinator.

4. Elevated Buildings

New construction or substantial improvements of elevated buildings that include fully enclosed areas below the regulatory flood protection elevation:

- a. shall not be designed to be used for human habitation, but shall be designed to be used only for the parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed areas shall not be partitioned or finished into separate rooms, except to enclose storage areas.
- b. Shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation.
- c. Shall include, in A, AO, AE, and A1-30 zones, measures to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. To meet this requirement, the foundation must either be

certified by a professional engineer or architect or meet the following minimum design criteria.

- i. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding.
- ii. The total net area of all openings must be at least one (1) square inch for each square foot of each area subject to flooding.
- iii. If a building has more than one enclosed area, each area must have openings on exterior walls to allow floodwater to directly enter;
- iv. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade; and
- v. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
- vi. Foundation enclosures made of vinyl or other flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

5. Additions/Improvements.

- a. Additions and/or improvements to pre-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
 - i. are not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - ii. are a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- b. Additions to post-FIRM structures with no modifications to the existing structure shall require only the addition to comply with the standards for new construction.
- c. Additions and/or improvements to post-FIRM structures whereas the addition and/or improvements in combination with any interior modifications to the existing structure
 - i. are not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - ii. are a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Where a fire wall or independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction.

6. Recreational Vehicles

Recreation vehicles placed on sites within a Special Flood Hazard Area shall either:

- a. be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions); or
- b. meet all the requirements for new construction, including anchoring and elevation requirements of Section 9.1.4.B and Sections 9.1.5.A and B.3.

7. Temporary Structures

Prior to the issuance of a floodplain development permit for a temporary structure, applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricanes, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval:

- a. A specified time period for which the temporary use will be permitted. The time period should be minimal with total time on site not to exceed one year;;
- b. the name, address and phone number of the individual responsible for the removal of the temporary structure;
- c. the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- d. a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and
- e. designation, accompanied by documentation, or a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

8. Accessory Structure

When accessory structures (sheds, detached garages, etc.) are to be placed in Special Flood Hazard Area, the following criteria shall be met:

- a. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- b. Accessory structures shall be designed to have low flood damage potential;
- c. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- d. Accessory structures shall be firmly anchored in accordance with Article 5, Section A(1); and
- e. All service facilities such as electrical and hearing equipment shall be elevated in accordance with Section 9.1.5.A.4.
- f. Openings to relieve hydrostatic pressure during a flood shall be provided below regulatory flood protection elevation in conformance with Article 5 Section B(4)(a).
- g. An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 9.1.4.B.3.

C. Reserved

D. Standards for Floodplains Without Established Base Flood Elevations and/or Floodways

Within the Special Flood Hazard Areas established in Section 9.1.3.B, where no Base Flood Elevation (BFE) has been provided, the following provisions apply:

1. No encroachments, including fill material, substantial improvements, or new development shall be permitted within a distance of twenty feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. The regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:
 - a. If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with elevations established in accordance with Section 9.1.4.C(11 & 12).
 - b. All subdivision, manufactured home park and other development proposals located within Special Flood Hazard Areas shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section 9.1.3.B to be utilized in implementing this ordinance.
 - c. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level, including basement, shall be elevated at least two (2) feet above the highest adjacent grade (natural grade if known).

E. Standards for Floodplains with BFE but without Established Floodways or Non-Encroachment Areas

Along rivers and streams where Base Flood Elevation (BFE) data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

F. Floodways and Non-Encroachment Areas

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the floodplain administrator prior to issuance of floodplain development permit.
2. If Section 9.1.5.1 is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.
3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision provided the following provisions are met:
 - a. the anchoring and the elevation standards of Section 9.1.5.B.3; and
 - b. the no encroachment standards of Section 9.1.5.F.1 are met.

G. Standards for Areas of Shallow Flooding (AO Zones)

1. Located within the Special Flood Hazard Areas established in Section 9.1.3.B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following provisions shall apply within such areas:
2. All new construction and substantial improvements of all structures shall have the lowest floor, including basement, elevated to the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least to the regulatory flood protection elevation as defined for the Special Flood Hazard Areas where no BFE has been established.
3. All new construction and substantial improvements of non-residential structures shall have the option to, in lieu of elevation, be completely floodproofed together with attendant utilities and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If no depth number is specified, the lowest floor, including basement, shall be elevated

at least to the regulatory flood protection elevation as defined for the Special Flood Hazard Areas where no BFE has been established. Certification is required as per Section 9.1.4.B.3 and Section 9.1.5.B.2.

Section 9.1.6. Legal Status Provisions

A. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted October 21, 1999 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Elm City enacted on October 21, 1999, as amended, which are not reenacted herein, are repealed.

B. Effect Upon Outstanding Building Permits

Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the floodplain administrator or his authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this ordinance or any revision thereto, construction or use shall be in conformity with the provisions of this ordinance.

C. Effective Date

This ordinance shall become effective November 3, 2004.

Section 9.2 Sedimentation and Erosion Control

Section 9.2.1 Acknowledgement

In recognition of the NC Sedimentation Pollution Control Act of 1973 as set forth in NC General Statute 113A and as administered by the NC Department of Environment and Natural Resources, Division of Land Resources (Raleigh Regional Office, 3800 Baret Drive, Raleigh, NC 27699-1628, Phone 919.791-4200), the Town of Elm City, although not authorized to enforce this law, acknowledges the public interest and importance of controlling erosion of soil and other materials into waters of the State as a result of improper land disturbing activities. The Town of Elm City Board of Commissioners supports the State's efforts to enforce minimal standards that allow development to continue with the least detrimental effects from erosion.

Section 9.2.2 Erosion Control Plan Requirements and Town Action

- A. Where development or construction within the jurisdiction of the Town of Elm City qualify under NC GS 113 or amendments thereto as land disturbing activities that require approval of a Sedimentation Control Plan by the State, the owner of the property or agent authorized by the owner of the property is responsible for insuring that a Sedimentation Control Plan is submitted to the State for their approval consideration.
- B. Where more than one (1) acre of land will be disturbed or the land disturbing activity is in proximity to a lake or water course and a zoning permit, site plan, subdivision plan or special use permit is required, evidence that a Sedimentation Control Plan has been submitted to the State for their approval consideration or that a Sedimentation Control Plan is not necessary shall be required by the Town of Elm City prior to release of a permit, approval of a site or subdivision plan, or as a condition of approval of such permit or plan. Land disturbing activities on more than one (1) acre of the land or along any water course shall not occur until such time that the Sedimentation Control Plan is approved and implemented on the site.
- C. The owner of the property or agent authorized by the owner of the property is responsible for insuring an approved Sedimentation Control Plan is properly implemented and maintained on the site in accord with the State Law prior to construction or land disturbing activities.
- D. The Town of Elm City will report any evidence of potential violations to the State regarding the Sedimentation Pollution Control Act. Failure to properly implement or maintain the Sedimentation Control Plan subjects the property owner to State civil and/or criminal proceedings and may also involve violations of this Ordinance.

Section 9.3 Tar-Pamlico River Basin Buffer Requirements

Section 9.3.1 Acknowledgement

- A. In recognition of the Tar-Pamlico Buffer Protection Rules (15A NCAC 2B.0259) (15A NCAC 2B.0260) and (15A NCAC 2B.0261) as authorized in NC GS 143-215 and 282 set forth in the NC Administrative Code administered by the NC Department of Environment and Natural Resources, Division of Water Resources Land Resources (512 N. Salisbury Street, Raleigh, NC 27604, Phone 919-733-7015), the Town of Elm City, although not authorized to enforce this law, acknowledges the public interest and importance of protecting and preserving existing riparian buffers to maintain their nutrient removal functions within in the entire Tar-Pamlico River Basin which includes the jurisdiction of Elm City.
- B. The Town of Elm City Board of Commissioners supports the State's efforts to require existing vegetated riparian buffers in the Tar-Pamlico River Basin be protected and maintained within a fifty (50) foot wide area along both sides of intermittent and perennial streams, lakes, ponds, and estuarine waters.

Section 9.3.2 Identification of Intermittent and Perennial Streams, Lakes, Ponds, and Estuarine Waters and Application of Rules

- A. The intermittent and perennial streams, lakes, ponds, and estuarine waters that are protected under the Tar-Pamlico Buffer Protection Rules are identified on Soil Survey Maps of the Wilson County area prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or on the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps of the Wilson County area prepared by the United States Geologic Survey (USGS).
- B. The Tar-Pamlico Buffer Protection Rules require that existing vegetation along these watercourses be protected within a fifty (50) foot wide area along both sides of intermittent and perennial streams, lakes, ponds, and estuarine waters with the first thirty (30) feet nearest the watercourses left undisturbed except for certain uses and the remaining twenty (20) foot buffer planted with vegetation with only certain uses allowed as set forth in the rules.

Section 9.3.3 Authorization Certificate Required, Uses Permitted, and Town Action

- A. In accord with the Tar-Pamlico Buffer Protection Rules only certain uses are allowed within the required buffer area. If not exempted by the rules, approval for these uses requires an Authorization Certificate from NC Department of Environment and Natural Resources as set forth in the NC Administrative Code 15A NCAC 02B .0259 TAR-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection And Maintenance of Existing Riparian Buffers.
- B. Where development will occur in the Jurisdiction of the Town of Elm City within the first fifty (50) feet adjacent a stream or water course covered by the Tar-Pamlico Buffer Protection Rules such that existing vegetation will be disturbed and a zoning permit, site plan, subdivision plan or special use permit is required, evidence that a request for an Authority Certificate has been submitted to the State for their approval consideration or that a Authorization Certificate is not necessary shall be required by the Town of Elm City prior to release of a permit, approval of a site or subdivision plan, or as a condition of approval of such permit or plan. Development of the land within the fifty (50) foot buffer area shall not occur until such time that the Authorization Certificate has been approved for a particular use or if exempted the owner of the property or agent authorized by the owner of the property has met the requirements for an exempted use as set forth in the NC Administrative Code.
- C. The Town of Elm City will report any evidence of potential violations to the State regarding the Tar-Pamlico Buffer Protection Rules. Failure to properly secure an Authorization Certification or maintain the proper buffer area subjects the property owner to State civil and/or criminal proceedings and may also involve violations of this Ordinance.