**TOWN OF RIVER BEND**

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# River Bend Town Council Agenda

**Work Session**
**May 14, 2020**
**River Bend Town Hall**
**5:00 P.M.**

1. Discussion - Flood Damage Prevention Ordinance Amendment and Public Hearing

2. **Vote** - Designate FEMA Agent for COVID-19

3. Discussion - Budget Amendment 19-B-09

4. Discussion - Renew Contracts (3) with KA Jones Design and Management
   a. Landscaping
   b. Mowing
   c. Leaf and Limb
   d. Old Leaf and Limb

5. Discussion - Pamlico Sound Regional Hazard Mitigation Plan

6. **Vote** - Set Date/Process for Public Hearing for Budget

7. Discussion – Alternate Egress Resolution

8. Closed Session – NCGS 143-328.11(a)(6)

Pledge: Councilman Van Slyke

**TOWN OF RIVER BEND**
**PLANNING BOARD**

**RESOLUTION ADVISING THAT THE PROPOSED AMENDMENTS TO THE CODE OF ORDINANCES ARE IN ACCORDANCE WITH ALL OFFICIALLY ADOPTED PLANS, INCLUDNG THE COMPREHENSIVE LAND USE PLAN; ARE REASONABLE; AND ARE IN THE PUBLIC INTEREST.**

WHEREAS, the North Carolina General Assembly has given the Town of River Bend ("Town") the authority to adopt and amend zoning and development regulation ordinances for the purpose of promoting health, safety, morals and the general welfare of its citizens.

WHEREAS, N.C.G.S. § 160A-383 requires the Town of River Bend Planning Board ("Board") to advise the Town of River Bend Town Council by written statement describing whether the proposed amendments to the Town's Code of Ordinances as related to zoning are consistent with all officially adopted plans, including the comprehensive land use plan.

WHEREAS, the Board has in fact met to consider and evaluate the proposed amendments to Chapter 16.01of the Code of Ordinances.

NOW THEREFORE, BE IT HEREBY RESOLVED, that the Board finds that the proposed amendments to the Code of Ordinances are in accordance with and consistent with all officially adopted Town plans, including any comprehensive land use plan, and therefore recommends adoption by the Town Council.

This Resolution is effective upon its adoption this 7th day of May, 2020.

**TOWN OF RIVER BEND**
**PLANNING BOARD**

Egon Lipper, Chairman

ATTEST:

Allison McCollum, Secretary

# TITLE XVI: FLOOD DAMAGE PREVENTION

Chapter

## 16.01. FLOOD DAMAGE PREVENTION

KEY FOR THIS DOCUMENT

~~SAMPLE TEXT~~ → ELIMINATED LANGUAGE

SAMPLE TEXT → NEW LANGUAGE

~~SAMPLE TEXT~~ → LANGUAGE THAT HAS BEEN RELOCATED WITHIN THE DOCUMENT

SAMPLE TEXT → NEW LOCATION OF RELOCATED, BUT UNCHANGED LANGUAGE

# CHAPTER 16.01 FLOOD PLAIN DAMAGE PREVENTION

*Added 02/21/08*

## FLOOD DAMAGE PREVENTION

Non-Coastal Regular Phase

Adopted ~~8-21-85.~~August 21st, 1985
~~Amended 9-18-85, 7-15-87, 9-16-87, 4-21-93, 6-16-93, 7-21-93, 7-21-99, 7-18-01, 12-19-02 & 4-21-04~~

Amended: September 18th, 1985, July 15th, 1987, September 16th, 1987, April 21st, 1993, June 16th, 1993, July 21st, 1993, July 21st, 1999, July 18th, 2001, December 19th, 2002, & April 21st, 2004

Codified ~~02/21/08~~February 21st, 2008

Section

*General Provisions*

16.01.001 Statutory Authorization
16.01.002 Definitions
16.01.003 General Provisions
16.01.004 Administration
16.01.005 Provisions for Flood Hazard Reduction
16.01.006 Legal Status Provisions
16.01.007 Addendum

## § 16.01.001 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

(A) STATUTORY AUTHORIZATION.

**Municipal:** 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; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(B) FINDINGS OF FACT.

(1) The flood prone areas within the jurisdiction of the Town of River Bend 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. *Amended 4-21-04*

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(C) STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone 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, flood heights or velocities;

(2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,

(5) prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(D) OBJECTIVES.

The objectives of this ordinance are:

(1) to protect human life and health;

(2) to minimize expenditure of public money for costly flood control projects;

(3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) to minimize prolonged business losses and interruptions;

(5) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

~~(6)~~ (6) to minimize damage to private and public property due to flooding;

(7) to make flood insurance available to the community through the National Flood Insurance Program;

(8) to maintain the natural and beneficial functions of the floodplains;

(9) 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)~~ 10) to ~~insure~~ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

## § 16.01.002 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.

"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. *Amended 4-1-04*

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure. *Amended 4-21-04*

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance. *Amended 4-21-04*

"Area of Shallow Flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be 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. ~~*Amended 4-21-04*~~

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)" *Amended 4-21-04*
~~"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.~~
~~*Amended 4-21-04*~~

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination ~~as published in the Flood Insurance Study~~ of the water surface elevations of the base flood~~.~~ as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation."

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides. *Amended 4-21-04*

"Breakaway Wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

"Building" see "Structure" *Amended 4-21-04*

"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. *Added 4-21-04*

"Coastal Area Management Act (CAMA)" means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).

"Coastal A Zone (CAZ)" means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones. In a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs. (see Limit of Moderate Wave Action (LiMWA))

"Coastal Barrier Resources System (CBRS)" consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise Protected Areas (OPA).

"Coastal High Hazard Area" means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 3, Section 18-7 of this ordinance, as Zone VE.

"Design Flood" See "Regulatory Flood Protection Elevation"

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

~~"Disposal" defined as in NCGS 130A-290(a)(6).~~ "Development Activity" means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

"Digital Flood Insurance Rate Mate (DFIRM)" means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

"Disposal" defined as in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

~~*Added 4-21-04*~~"Elevated Building" means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. *Amended 4-21-04*

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a ~~floodplain~~special flood hazard area, which may impede or alter the flow capacity of a floodplain. ~~*Added 4-21-04*~~

"Existing Building" and "Existing Structure" means any building and/or structure for which the "start of construction" commenced before August 19th, 1986, the effective date of the initial FIRM.

"Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) ~~is pre-FIRM~~was completed before August 21, 1985, the initial effective date of the floodplain management regulations adopted by the community.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters; and/or,
(2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community, issued by the 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). *Amended 4-21-04*

"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 ~~AE~~A.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program. *Added 4-21-04*

"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. ~~*Amended 4-21-04*~~ (See also DFIRM).

"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. *Amended 4-21-04*

~~"Floodplain" or~~ "Flood Prone Area" see "Floodplain" *Added 4-21-04*

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Floodplain" means any land area susceptible to being inundated by water from any source. *Added 4-21-04*

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations. *Added 4-21-04*

"Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans. *Added 4-21-04*

~~"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations. *Added 4-21-04*~~

"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. ~~*Added 4-21-04*~~

"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. *Added 4-21-04*

~~*Added 4-21-04*~~

~~"Flood Prone Area" see "Floodplain" *Added 4-21-04*~~

"Flood-resistant Material" means any building product (material, component, or system) capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

"Floodway" means the channel of a river or other watercourse 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.

~~"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. *Added 4-21-04*~~

"Floodway Encroachment Analysis" means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

"Floor" see "Lowest Floor" *Amended 4-21-04*

"Freeboard" means the additional amount of height added to the Base Flood Elevation (BFE) to account for ~~uncertainties in the determination of flood elevations. See also…Regulatory Flood Protection Elevation. *Added 4-21-04*~~the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, storm surge or precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "Regulatory Flood Protection Elevation".

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities. *Amended 4-21-04*

"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. *Added 4-21-04*

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction~~,~~ immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

(a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
(b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) individually listed on a 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 by and approved state program as determined by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

~~(1) by an approved state program as determined by the Secretary of Interior, or~~
~~(2) directly by the Secretary of Interior in states without approved programs.~~

"Letter of Map Change (LOMC)" means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
(b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
(c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
(d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

"Light Duty Truck" means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

(a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
(b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
(c) Available with special features enabling off-street or off-highway operation and use.

"Limit of Moderate Wave Action (LiMWA)" means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

"Lowest Adjacent Grade (LAG)" means the lowest elevation of the ground, sidewalk, or patio slab~~, or deck support~~ immediately next to the building, or deck support, after completion of the building. ~~For Zone A and AO, use the natural grade elevation prior to construction.~~ ~~*Added 4-21-04*~~

"Lowest Floor" means the ~~subfloor, top of slab or grade~~lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance. ~~*Amended 4-21-04*~~

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map Repository" means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (http://fris.nc.gov/fris) is the map repository, and for historical flood hazard data the FloodNC website (http://floodnc.gov/ncflood) is the map repository.

"Market Value" means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values. *Added 4-21-04*

~~"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.~~
~~*Amended 4-21-04*~~

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the original version (dated 8-21-85) of this ordinance and includes any subsequent improvements to such structures. *Amended 4-21-04*

"Nonconforming Building or Development" means any legally existing building or development which fails to comply with the current provisions of this ordinance.

"Non-Encroachment Area" means the channel of a river or other watercourse including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.
~~*Added 4-21-04*~~

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream. *Added 4-21-04*

"Otherwise Protected Area (OPA)" see "Coastal Barrier Resources System (CBRS)."

"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, August 19, 1986. *Added 4-21-04 & Amended 6-18-09*

"Pre-FIRM" means construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area, August 19, 1986. *Added 4-21-04 & Amended 6-18-09*

"Primary Frontal Dune (PFD)" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin. *Added 4-21-04*

"Recreational Vehicle (RV)" means a vehicle, which is:

(a) built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;
(c) designed to be self-propelled or permanently towable by a light duty truck; and,
(d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use. *Amended 4-21-04*

"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 of such building. Within~~top of the lowest floor for structures within Special Flood Hazard Areas designated as ~~zones~~Zones A, AE, ~~A, A99~~AH, AO, ~~or AH, the~~A99. The reference level is the ~~top of the lowest floor. *Added 4-21-04*~~bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

"Regulatory Flood Protection Elevation" means the elevation to which all structures and other development located within the Special Flood Hazard Areas must be elevated or floodproofed, if non-residential. 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, all structures and other development must be elevated or floodproofed, if non-residential, to two (2) feet above the highest adjacent grade. *Added 4-21-04*

"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.

"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. *Added 7-21-99*

~~"Retrofitting" means measures, such as floodproofing, elevation, construction of small levees, and other modifications, taken on an existing building or its yard to protect it from flood damage.~~
~~*Added 4-21-04*~~

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. *Added 4-21-04*

"Salvage Yard" means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery. *Added 4-21-04*

~~"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. *Added 4-21-04*~~

"Sand Dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Shear Wall" means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

"Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35). *Added 4-21-04*

"Solid Waste Disposal Site" means, as defined ~~as~~ in NCGS 130A-290(a)(36~~). *Added 4-21-04*~~), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building. *Amended 4-21-04*

"Structure" means a walled and roofed building, a manufactured home, or a gas ~~or~~, liquid, or liquefied gas storage tank that is principally above ground. ~~*Amended 4-21-04*~~

"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~~it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". ~~*Amended 7-21-99,4-21-04 & 10/17/19*~~

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place within any two (2) 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: *Amended 1-15-09*

(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. *Amended 7-21-99 & 4-21-04*

"Technical Bulletin" and Technical Fact Sheet" means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

"Temperature Controlled" means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

"Variance" is a grant of relief from the requirements of this ordinance. *Amended 4-21-04*

"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 Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. *Added 4-21-04*

"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. *Added 4-21-04*

~~"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. *Added 4-21-04*~~

§ 16.01.003 GENERAL PROVISIONS.

(A) LANDS TO WHICH THIS ORDINANCE APPLIES. ~~*Amended 4-21-04*~~

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (~~ETJ) if applicable~~ETJs) as allowed by law, of the Town of River Bend~~ and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.~~ .

(B) BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS. ~~Amended 4-21-04~~

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 (~~FIS ~~) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) and/or the Flood Boundary Floodway Map(s) (FBFM), for the Town of River Bend~~ dated ~~July 2, 2004, which with accompanying supporting data,~~June 19, 2020 for Craven County and ~~any revision thereto~~associated DFIRM panels, including ~~Letters~~any digital data developed as part of ~~Map Amendment or Revision,~~ the FIS, which 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 or by governmental agencies, but which have~~, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not ~~yet been incorporated in the FIRM. This includes, but is not limited to, detailed flood~~change flood hazard data~~:~~

~~(1) generated as a requirement of Article 4, Section C(11 & 12) this Ordinance;~~

~~(2) preliminary FIRMs where more stringent than~~ within the ~~effective FIRM; or~~

~~(3) post-disaster Flood Recovery Maps.~~

~~**Municipal:** In addition, upon annexation to~~ jurisdictional authority of the Town of River Bend ~~or inclusion in the Extra-Territorial 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 Craven County, with accompanying maps and other supporting data, and any revision thereto,~~ are also adopted by reference and declared ~~to be~~ a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

(C) ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Article 3, Section B. *Amended 4-21-04*

(D) COMPLIANCE. *Amended 4-21-04*

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:

(a) considered as minimum requirements;
(b) liberally construed in favor of the governing body; and,
(c) deemed neither to limit nor repeal any other powers granted under State statutes

(G) WARNING AND DISCLAIMER OF LIABILITY. *Amended 4-21-04*

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 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 River Bend 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.

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 Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $~~50~~100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of River Bend from taking such other lawful action as is necessary to prevent or remedy any violation.

§16.01.004 ADMINISTRATION.

(A) DESIGNATION OF FLOODPLAIN ADMINISTRATOR. ~~Amended 12-19-01~~

The Zoning Administrator, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. *Amended 4-21-04*

(B) FLOODPLAIN DEVELOPMENT PERMIT AND ~~*CERTIFICATIO*~~CERTIFICATION REQUIREMENTS. ~~*Amended 4-21-04*~~

(1) Plans and 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.~~Special Flood Hazard 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 Article 3, Section 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 Article 3, Section B;

(iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;

(v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C(11 & 12); or Article 5, Sections 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) the boundary and designation date of the Coastal Barrier Resource System (CBRS) area or Otherwise Protected Areas (OPA), if applicable; and

~~(vii)~~(viii) preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

(b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

(i) ~~i)~~ Elevation in relation to ~~mean sea level~~NAVD 1988 of the proposed reference level (including basement) of all structures;

(ii) ~~ii)~~ Elevation in relation to ~~mean sea level~~NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be ~~flood-proofed;~~floodproofed; and

(iii) ~~iii)~~ Elevation in relation to ~~mean sea level~~NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;

~~(c) If floodproofing, a floodproofing certificate and back-up plans from a registered professional engineer or architect certifying that the non-residential flood-proofed development will meet the flood-proofing criteria in Article 5, Section B(2) and Section C(2).~~

(c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(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) ~~i)~~ Proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers);

(ii) ~~ii)~~ Should solid foundation perimeter walls be used in floodplains, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Article 5, Section B(4);

(iii) The following, in Coastal High Hazard Areas, in accordance with the provisions of Article 5, Section B(4)(e) and Article 5, Section G and (Article 5, Section H if applicable):

(1) V-Zone Certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs; In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.;

(2) Plans for open wood latticework or insect screening, if applicable; and

(3) Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

(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) Copy 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) If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure Article 5, Section B (6 & 7) of this code are met.

(i) If a watercourse is proposed to be altered and/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 (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) ~~(2)~~ Permit Requirements. The Floodplain Development Permit ~~Data Requirements. The following information~~ shall include, but not be ~~provided at a minimum on the Floodplain Development Permit~~limited to ~~ensure compliance with this code.~~:

(a) ~~(a)~~ A complete description of all the development to be permitted under the floodplain development permit ~~issuance.~~(e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or

storage of equipment or materials, etc.).

(b) The Special Flood Hazard Area determination for the proposed development ~~per~~ in accordance with available data specified in Article 3, Section B.

(c) The ~~regulatory flood protection elevation~~Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

(d) The ~~regulatory flood protection elevation~~Regulatory Flood Protection Elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) ~~State~~A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse~~, if applicable~~ unless the requirements of Article 5, Section F have been met.

~~(3)~~ (g) The flood openings requirements, if in Zones A, AE, AH, AO, A99.

(h) Limitations of below BFE enclosure uses. (i.e., parking, building access and limited storage only).

(i) A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

(j) A statement, if in Zone VE, that there shall be no fill used for structural support.

(k) A statement, that all materials below BFE/RFPE must be flood resistant materials.

(3) Certification Requirements.

(a) Elevation Certificates

(i) An Elevation Certificate (FEMA Form ~~81-31) or Floodproofing Certificate (FEMA Form 81-65~~086-0-33) is required ~~after the reference level is completed. Within twenty-one (21) calendar days of establishment of the reference level elevation, or floodproofing, by whatever~~prior to the actual start of any new construction~~ means, whichever is applicable, it~~. It shall be the duty of the permit holder to submit to the ~~floodplain administrator~~Floodplain Administrator a certification of the elevation of the reference level, ~~or floodproofed elevation, whichever is applicable~~ in relation to ~~mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said 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 twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator~~NAVD 1988. 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.~~the beginning of construction. Failure to submit the certification or failure to make ~~said~~required corrections ~~required~~ shall be cause to ~~issue a stop-work order for the project.~~ deny a floodplain development permit.

(ii) ~~(b)~~ A ~~Final As-Built~~final Finished Construction Elevation Certificate (FEMA Form ~~*81-31) or Floodproofing Certificate (FEMA Form 81-65*~~086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the ~~floodplain administrator~~Floodplain Administrator a certification of final as-built construction of

the elevation ~~or floodproofed elevation~~ of the reference level and all attendant utilities. ~~Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator~~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 ~~said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy~~required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

(b) ~~(c)~~ Floodproofing Certificate

(i) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

~~(a)~~(c) If a manufactured home is placed within ~~an~~Zones A, AE, AH, AO, ~~or AE zone~~A99 and the elevation of the chassis is ~~above~~more than 36 inches in height above grade, an engineered foundation certification is required ~~per~~in accordance with the provisions of Article 5, Section B(3)(b).

(d) 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.

(e) 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 Article 5, Section B(6)(a);

(ii) Temporary Structures meeting requirements of Article 5, Section B(7); and

(iii) Accessory Structures ~~less than~~of 150 square feet or less or $5,000 or less and meeting requirements of Article 5, Section B (8).

(4) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

(C) DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

~~*Amended 12-19-01& 4-21-04*~~

Duties of the floodplain administrator shall include, but not be limited to:

(1) ~~(1)~~ Review all floodplain development applications and issue permits for all proposed development with in flood prone areas to assure that the 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.~~

(2) ~~(3)~~ Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(4) ~~(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) ~~(5)~~ Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section E are met.

(6) ~~(6)~~ Obtain actual elevation (in relation to ~~mean sea level~~NAVD 1988) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Article 4, Section B(3).

(7) ~~(7)~~ Obtain the actual elevation (in relation to ~~mean sea level~~NAVD 1988) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with Article 4, Section B(3).

(8) ~~(8)~~ Obtain actual elevation (in relation to ~~mean sea level~~NAVD 1988) of all public utilities, in accordance with Article 4, Section B(3).

(9) ~~(9)~~ When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Article 4, Section B(3) and Article 5, Section B(2).

(10) ~~(10)~~ Where interpretation is needed as to the exact location of boundaries of the 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) ~~(11)~~ When Base Flood Elevation (BFE) data has not been provided in accordance with Article 3, Section 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, including data developed pursuant to Article 5, Section C(4), in order to administer the provisions of this ordinance.

(12) ~~(12)~~ When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Article 3, Section 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) ~~(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) ~~(14)~~ Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

(15) ~~(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) ~~(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) ~~(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) ~~(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) ~~(19)~~ Follow through with corrective procedures of Article 4, Section D.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

(D) CORRECTIVE PROCEDURES. ~~Added 4-21-04~~

(1) Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law 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 to the matter; and,
(c) that following the hearing, the floodplain 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 make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days~~.~~, nor more than one hundred eighty (180) days. Where the floodplain 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 the order to the local elected governing body by giving notice of appeal in writing to the floodplain 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) ~~(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~~for which no appeal has been ~~taken,~~made or fails to comply with an order of the governing body following an appeal, ~~he~~the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished ~~in~~at the discretion of the court.

(E) VARIANCE PROCEDURES. ~~Amended 4-21-04~~

(1) The Board of Adjustment as established by the Town of River Bend, hereinafter referred to as the "appeal board", shall hear and decide 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) ~~(3)~~ Variances may be issued for ~~the~~:

(a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and 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, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
(c) Any other type of development provided is meets the requirements of 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 floodplain 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 increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(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.
(f) Variances shall only be issued prior to development permit approval.

(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 Floodplain Development permit may be issued for such development only if a variance is granted.

(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 River Bend has 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.

## §16.01.005 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) GENERAL STANDARDS. ~~Amended 4-21-04~~

In all Special Flood Hazard Areas the following provisions are required:

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

(3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) 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, electric outlets/switches.

(a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
(b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(6) 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.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or 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.

(9) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. 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.

(10) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas. 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 Article 4, Section B(3) of this code.

(11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

(15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

(B) SPECIFIC STANDARDS. ~~Amended 4-21-04~~

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 4, Section 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. *Amended 7-18-01 & 4-21-04*

(2) Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in A, AE, AH, AO, ~~AE~~ and ~~A1-30~~A99 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. 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 Article 4, Section B(3).

~~*Amended 6-16-93, 7-21-93, 7-18-01 & 4-21-04*~~

(3) Manufactured Homes. *Amended 6-16-93, 7-21-93, 7-18-01 & 4-21-04*

(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.
(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 Article 5, Section 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 floodplain administrator and the local Emergency Management coordinator.

(4) Elevated Buildings. ~~New~~Fully enclosed area, of new construction ~~or substantial improvements of elevated buildings that include fully enclosed areas that are~~and substantially improved structures, which is below the ~~regulatory flood protection elevation shall~~lowest floor or below the lowest horizontal structural member in VE zones:

(a) Shall not be designed ~~to be~~or used for human habitation, but shall ~~be designed to~~only be used ~~only~~ for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises~~, be constructed entirely of flood resistant materials below the regulatory flood protection level in A, AO, AE, and A1-30 zones and meet the following design criteria:~~
~~*Amended 4-21-04*~~

~~(a) Measures for complying with this requirement shall be designed 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 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 enclosed 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, or other opening coverings or devices provided they permit the automatic flow of floodwaters in both directions.~~

~~vi) Foundation enclosures:~~

~~1) *Vinyl or sheet metal skirting is not considered an enclosure for regulatory and flood insurance rating purposes. Therefore such skirting does not require hydrostatic openings as outlined above.*~~

~~2) *Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires hydrostatic openings as outlined above to comply with this ordinance.*~~

~~(b)~~. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment ~~used in connection with the premises~~ (standard exterior door~~)~~), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned ~~or finished~~ into separate rooms, except to enclose storage areas~~.~~;

(b) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and

(c) Shall include, in Zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;

(iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
(iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
(v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
(vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(d) Shall, in Coastal High Hazard Areas (Zone VE), meet the requirements of Article 5, Section G.

(5) Additions/Improvements. ~~*Added 4-21-04*~~

(a) Additions and/or improvements to pre-FIRM structures ~~whereas~~when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) ~~are not~~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~~A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition ~~and/or improvements~~ must comply with the standards for new construction.

(b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures ~~whereas~~when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) ~~are not~~Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

(ii) ~~are a~~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.~~

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

(ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational Vehicles. ~~Recreation~~Recreational vehicles ~~placed on sites within a Special Flood Hazard Area~~ shall either:

(a) ~~(a) be~~Temporary Placement

(i) Be on site for fewer than 180 consecutive days ~~and be~~; or

(ii) Be fully licensed and ready for highway use ~~(a~~. (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~~.)

~~(a)~~(b) ~~(b)~~ Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction~~, including anchoring and elevation requirements of Article 4, Section B and Article 5, Sections A and B(3).~~.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:

(a) Applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information: *Added 4-21-04*

(i) a specified time period for which the temporary use will be permitted;

(ii) the name, address, and phone number of the individual responsible for the removal of the temporary structure;

(iii) the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(iv) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(v) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

(b) The above information shall be submitted in writing to the floodplain administrator for review and written approval.

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

(a) Accessory structures shall not be used for human habitation (including ~~work~~working, sleeping, living, cooking or restroom areas);
~~*Amended 4-21-04*~~
(b) Accessory structures shall not be temperature-controlled;
(c) Accessory structures shall be designed to have low flood damage potential;

~~(c~~(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters; ~~*Amended 4-21-04*~~

~~(d~~(e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A (1);

~~(e~~(f) Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in V and VE Zones;
(g) All service facilities such as electrical ~~and heating equipment~~ shall be installed in accordance with the provisions of Article 5, Section A (4); and
~~*Amended 4-21-04*~~

~~Openings~~(h) Flood openings to ~~relieve~~facilitate automatic equalization of hydrostatic ~~pressure during a~~ flood forces shall be provided below ~~regulatory flood protection elevation~~Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(~~a~~d).

~~*Added 4-21-04*~~

~~(g)~~ An accessory structure with a footprint less than 150 square feet ~~does not require an~~or that is a minimal investment of $5,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing ~~certificate.~~standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B~~(3).~~
~~*Added 4-21-04*~~ (3).

(9) Tanks. When gas

~~(C) SUBDIVISIONS, MANUFACTURED HOME PARKS AND MAJOR DEVELOPMENTS.~~
~~*Amended 4-21-04*~~

~~*All subdivision, manufactured home park*~~ and ~~*major development proposals located*~~liquid storage tanks are to be placed within a Special Flood Hazard ~~*Areas*~~Area, the following criteria shall be met:

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Article 5, Section B (2) of this ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.

(b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and

watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

(d) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall protected to the Regulatory Flood Protection Elevation as required for commercial structures.

(C) ~~(1) be consistent with the need to minimize flood damage;~~

~~(2) have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;~~

~~(3) have adequate drainage provided to reduce exposure to flood hazards; and,~~

~~(4) have Base Flood Elevation (BFE) data provided if development is greater than the lesser of five (5) acres or fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Article 3, Section B to be utilized in implementing this code.~~

RESERVED.

(D) STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS. ~~Amended 4-21-04~~

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no ~~Base Flood Elevation (~~BFE~~)~~ data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) 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) ~~If Article 5, Section G(1) is satisfied and Base~~The BFE used in determining the Regulatory Flood Protection Elevation ~~(~~shall be determined based on the following criteria:

(a) When 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 Article 4, Section G(11 & 12). When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source, the reference level, including basement, shall be elevated at least two (2) feet above the highest adjacent grade.~~ standards in Article 5, Sections A and B.

(b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.

(c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.

(d) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

(E) STANDARDS FOR RIVERINE FLOODPLAINS WITH ~~*BFE*~~ BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED ~~*FLOODWAYSOR*~~FLOODWAYS OR NON-ENCROACHMENT AREAS. ~~Added 4-21-04~~

Along rivers and streams where ~~Base Flood Elevation (~~BFE~~)~~ data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of Article 5, Sections A and B; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point ~~within the community~~.

(F) FLOODWAYS AND NON-ENCROACHMENT AREAS. ~~Added 4-21-04~~

~~*Located*~~Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article 3, Section B ~~*are areas designated as floodways or non-encroachment areas*~~. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Article 5, Sections A and B, 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.~~:

~~(3~~(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or

(b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.

(2) If Article 5, Section F (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(~~4) No manufactured~~3) Manufactured homes ~~shall~~may be permitted~~, except replacement manufactured homes in an existing manufactured home park or subdivision~~ provided the following provisions are met:

(a) ~~the~~The anchoring and the elevation standards of Article 5, Section B (3); and

(b) ~~the no~~The encroachment standards of Article 5, Section F (1~~)~~).

(G) COASTAL HIGH HAZARD AREA (ZONE VE).

Coastal High Hazard Areas are Special Flood Hazard Areas established in Article 3, Section 18-7, and designated as Zones VE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions in addition to the provisions of Article 5, Sections 18-40 and 18-41:

(1) All new construction and substantial improvements shall:

(a) Be located landward of the reach of mean high tide;
(b) Comply with all applicable CAMA setback requirements.

(2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal High Hazard Areas to satisfy the regulatory flood protection elevation requirements.

(3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion

of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met~~.~~:

(a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
(b) Insect screening; or
(c) Breakaway walls shall meet the following design specifications:

(1) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or

(2) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(4) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

(a) Water loading values used shall be those associated with the base flood.

(b) Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

(5) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

(a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
(b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and
(c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
(d) Pad thickness shall not exceed 4 inches; or
(e) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

(6) For swimming pools and spas, the following is required:

(a) Be designed to withstand all flood-related loads and load combinations.
(b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or
(c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
(d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
(e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.
(f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

(7) All elevators, vertical platform lifts, chair lifts, etc., the following is required:

(a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.
(b) Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.
(c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.
(d) Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.
(e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.
(f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

(8) Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

(9) Fill/Grading

(a) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
(b) The fill material must be similar and consistent with the natural soils in the area.

(c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(d) Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(10) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

(11) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this Section have been satisfied.

(12) Recreational vehicles may be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Article 5, Section 18-41(6)(a).

(13) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Article 4, Section 18-26, (3)(f).

(14) A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(15) In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(a) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;

(b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.

(c) Docks, piers, and similar structures.

(16) No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

(H) STANDARDS FOR COASTAL A ZONES (ZONE CAZ) LiMWA

Structures in CAZs shall be designed and constructed to meet V Zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

(1) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.

(2) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

(a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
(b) Insect screening; or
(c) Breakaway walls shall meet the following design specifications:

(1) Breakaway walls shall have flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in Article 5, Section 18-41(4)(d); and
(2) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or
Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The

water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(3) Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of Article 5, Section 18-43.1 (5).

(4) All new construction and substantial improvements shall meet the provisions of Article 5, Section 18-43.1 (3).

(5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section 18-26 and Article 5, Section 18-43.1 (3) and (4), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form.

(6) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the Recreational Vehicle criteria of Article 5, Section 18-41(6)(a).

(7) Fill/Grading must meet the provisions of Article 5, Section 18-43.1 (9).

(8) Decks and patios must meet the provisions of Article 5 Section 18-43.1 (13) and (14).

(9) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of Article 5, Section 18-43.1 (15).

(I) STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Article 3, Section 18-7, 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. In addition to Article 5, Sections 18-40 and 18-41, all new construction and substantial improvements shall meet the following requirements:

(1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 2 feet, above the highest adjacent grade; or at least 2 feet above the highest adjacent grade if no depth number is specified.

(2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section 18-43.3 (1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article 4, Section 18-26 (3) and Article 5, Section 18-41 (2).

(3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(J) STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AH).

Located within the Special Flood Hazard Areas established in Article 3, Section 18-7, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to Article 5, Sections 18-40 and 18-41, all new construction and substantial improvements shall meet the following requirements:

(1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

## §16.01.006 LEGAL STATUS PROVISIONS. *Added 4-21-04*

(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 August 21, 1985 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 River Bend enacted on August 21, 1985, 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 upon adoption.

(D) ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the Town Council of the Town of River Bend, North Carolina, on the ~~21st~~11th day of ~~April, 2004~~June, 2020.

## ~~ADDENDUM TO~~
## ~~THE FLOOD DAMAGE PREVENTION ORDINANCE~~
## ~~OF THE TOWN OF RIVER BEND~~

~~The intent of this addendum is to spell out the details of administration for the Ordinance to which this document is attached. The Ordinance was adopted by the Town at its regular meeting on April 21, 2004. This Ordinance obligates the Town to take very specific actions as related to floodplain management. This Addendum spells out specific details of administration and is incorporated as a part of the base ordinance.~~

~~THEREFORE, BE IT ORDAINED by the Town Council of the Town of River Bend that the Flood Damage Prevention Ordinance be amended as follows:~~

~~a. The Town Council specifically designates the Town Manager as the Town's Flood Plain Administrator and the incumbent is responsible for all elements of Ordinance administration and for details of future amendments to this ordinance.~~

~~b. A FLOODPLAIN PERMIT form is attached to this addendum. This form is a multi-copy form and one copy shall be placed in the subject property file folder and shall remain under the control of the administrator at all times.~~

~~c. The fee for the issuing and administration of this program shall be 40% of the fee for the Town's zoning permit and shall be additional to the zoning permit fee.~~

~~d. The Town will administer this permit program while Craven County shall continue to issue building permits and conduct inspections for compliance with requirements contained in the building permit. The Craven County Inspections Department shall continue to issue required certificates of occupancy. The Town Zoning Official and Floodplain Administrator is the Town Manager and he shall provide a copy of all FLOODPLAIN PERMITS and ZONING PERMITS issued for River Bend development to the Craven County Inspections Department for their information and use prior to issuing any building permits.~~

~~e. Should the Town be required to issue an Order of Corrective Actions/Notice of Violation to a property owner, the property owner must correct any cited violations immediately in accordance with such notification letter. See excerpt of this ordinance provided below for easy reference.~~

~~f. The Floodplain Administrator shall require all permits issued to existing structures located in the floodplain to be upgraded to compliance with the requirements of this ordinance when the permit for alteration is issued as mandated by the following:~~

~~1. If any provision of this Addendum should be in conflict with mandates of the base ordinance, the provisions of the ordinance shall have precedence.~~

~~2. Any permit issued shall mandate the retrofitting of hydrostatic vents.~~

~~3. If a modification and/or repair of the structure amounts to 50% of the market value of the structure, the structure shall require full compliancy with this current ordinance including an elevation equal to the BFE plus the Town's mandated two-foot freeboard requirement. The applicant shall not be permitted to "split the project" and thus receive more than one permit to avoid this requirement.~~

~~4. When structures are damaged by flooding events, the administrator shall require a FLOODPLAIN PERMIT that shall insure that replacement elements covered by the loss settlement are restored in a fashion that shall prevent future loss of the items being replaced. Should such damages equal or exceed 50% of the market value of the structure prior to such flood damage, the entire structure must meet the same criteria as outlined in item #3 above regardless of the amount of repairs made to the structure.~~

~~g. The administrator shall give particular attention to the requirements related to hydrostatic venting and utility compliancy in connection with all permits issued.~~

~~Ordinance Excerpt Referenced Above:~~

~~**§16.01.004, SECTION D. CORRECTIVE PROCEDURES.**~~

~~(1) Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law 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 to the matter; and,~~

~~(c) that following the hearing, the floodplain 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 make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days. Where the floodplain 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 the order to the local elected governing body by giving notice of appeal in writing to the floodplain 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.~~

~~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.~~

# TITLE XVI: FLOOD DAMAGE PREVENTION

Chapter

## 16.01. FLOOD DAMAGE PREVENTION

PROPOSED

# CHAPTER 16.01 FLOOD PLAIN DAMAGE PREVENTION

*Added 02/21/08*

## FLOOD DAMAGE PREVENTION

Non-Coastal Regular Phase

Adopted August 21st, 1985

Amended: September 18th, 1985, July 15th, 1987, September 16th, 1987, April 21st, 1993, June 16th, 1993, July 21st, 1993, July 21st, 1999, July 18th, 2001, December 19th, 2002, & April 21st, 2004

Codified February 21st, 2008

Section

*General Provisions*

16.01.001 Statutory Authorization
16.01.002 Definitions
16.01.003 General Provisions
16.01.004 Administration
16.01.005 Provisions for Flood Hazard Reduction
16.01.006 Legal Status Provisions
16.01.007 Addendum

## § 16.01.001 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES.

(A) STATUTORY AUTHORIZATION.

**Municipal:** 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; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective January 1, 2021) of the North Carolina General Statutes, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(B) FINDINGS OF FACT.

(1) The flood prone areas within the jurisdiction of the Town of River Bend 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. *Amended 4-21-04*

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(C) STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone 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, flood heights or velocities;

(2) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of flood waters;

(4) control filling, grading, dredging, and all other development which may increase erosion or flood damage; and,

(5) prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(D) OBJECTIVES.

The objectives of this ordinance are:

(1) to protect human life and health;

(2) to minimize expenditure of public money for costly flood control projects;

(3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) to minimize prolonged business losses and interruptions;

(5) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

(6) to minimize damage to private and public property due to flooding;

(7) to make flood insurance available to the community through the National Flood Insurance Program;

(8) to maintain the natural and beneficial functions of the floodplains;

(9) 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,

(10) to ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

## § 16.01.002 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.

"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. *Amended 4-1-04*

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure. *Amended 4-21-04*

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance. *Amended 4-21-04*

"Area of Shallow Flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be 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. *Amended 4-21-04*

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)" *Amended 4-21-04*

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation."

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides. *Amended 4-21-04*

"Breakaway Wall" means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

"Building" see "Structure" *Amended 4-21-04*

"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. *Added 4-21-04*

"Coastal Area Management Act (CAMA)" means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).

"Coastal A Zone (CAZ)" means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones. In a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs. (see Limit of Moderate Wave Action (LiMWA))

"Coastal Barrier Resources System (CBRS)" consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise Protected Areas (OPA).

"Coastal High Hazard Area" means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high

velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Article 3, Section 18-7 of this ordinance, as Zone VE.

"Design Flood" See "Regulatory Flood Protection Elevation"

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Development Activity" means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

"Digital Flood Insurance Rate Mate (DFIRM)" means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

"Disposal" defined as in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Elevated Building" means a non-basement building which has its reference level raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. *Amended 4-21-04*

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain. *Added 4-21-04*

"Existing Building" and "Existing Structure" means any building and/or structure for which the "start of construction" commenced before August 19th, 1986, the effective date of the initial FIRM.

"Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 21, 1985, the initial effective date of the floodplain management regulations adopted by the community.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters; and/or,
(2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community, issued by the 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). *Amended 4-21-04*

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program. *Added 4-21-04*

"Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (See also DFIRM). *Amended 4-21-04*

"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. *Amended 4-21-04*

"Flood Prone Area" see "Floodplain" *Added 4-21-04*

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Floodplain" means any land area susceptible to being inundated by water from any source. *Added 4-21-04*

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations. *Added 4-21-04*

"Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans. *Added 4-21-04*

"Floodplain Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage. *Added 4-21-04*

"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. *Added 4-21-04*

"Flood-resistant Material" means any building product (material, component, or system) capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-

resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

"Floodway" means the channel of a river or other watercourse 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.

"Floodway Encroachment Analysis" means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirement of the National Flood Insurance Program.

"Floor" see "Lowest Floor" *Amended 4-21-04*

"Freeboard" means the additional amount of height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, storm surge or precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "Regulatory Flood Protection Elevation".

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities. *Amended 4-21-04*

"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. *Added 4-21-04*

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

(a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
(b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
(c) individually listed on a 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 by and approved state program as determined

by the Secretary of Interior, or directly by the Secretary of Interior in states without approved programs.

"Letter of Map Change (LOMC)" means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
(b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
(c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
(d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

"Light Duty Truck" means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

(a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
(b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
(c) Available with special features enabling off-street or off-highway operation and use.

"Limit of Moderate Wave Action (LiMWA)" means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

"Lowest Adjacent Grade (LAG)" means the lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

"Lowest Floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map Repository" means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data, the NC FRIS website (http://fris.nc.gov/fris) is the map repository, and for historical flood hazard data the FloodNC website (http://floodnc.gov/ncflood) is the map repository.

"Market Value" means the building value, excluding the land (as agreed to between a willing buyer and seller), as established by what the local real estate market will bear. Market value can be established by independent certified appraisal, replacement cost depreciated by age of building (Actual Cash Value) or adjusted assessed values. *Added 4-21-04*

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the original version (dated 8-21-85) of this ordinance and includes any subsequent improvements to such structures. *Amended 4-21-04*

"Nonconforming Building or Development" means any legally existing building or development which fails to comply with the current provisions of this ordinance.

"Non-Encroachment Area" means the channel of a river or other watercourse including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report. *Added 4-21-04*

"Obstruction" includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream. *Added 4-21-04*

"Otherwise Protected Area (OPA)" see "Coastal Barrier Resources System (CBRS)."

"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, August 19, 1986. *Added 4-21-04 & Amended 6-18-09*

"Pre-FIRM" means construction or other development which started before the effective date of the initial Flood Insurance Rate Map for the area, August 19, 1986. *Added 4-21-04 & Amended 6-18-09*

"Primary Frontal Dune (PFD)" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin. *Added 4-21-04*

"Recreational Vehicle (RV)" means a vehicle, which is:

(a) built on a single chassis;
(b) 400 square feet or less when measured at the largest horizontal projection;
(c) designed to be self-propelled or permanently towable by a light duty truck; and,
(d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use. *Amended 4-21-04*

"Reference Level" is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

"Regulatory Flood Protection Elevation" means the elevation to which all structures and other development located within the Special Flood Hazard Areas must be elevated or floodproofed, if non-residential. 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, all structures and other development must be elevated or floodproofed, if non-residential, to two (2) feet above the highest adjacent grade. *Added 4-21-04*

"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.

"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. *Added 7-21-99*

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc. *Added 4-21-04*

"Salvage Yard" means property used for the storage, collection, and/or recycling of any type of equipment whatsoever, whether industrial or noncommercial, and including but not limited to vehicles, appliances and related machinery. *Added 4-21-04*

"Sand Dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Shear Wall" means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

"Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

"Solid Waste Disposal Site" means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Article 3, Section B of this ordinance.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building. *Amended 4-21-04*

"Structure" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one year period whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". *Amended 7-21-99, 4-21-04 & 10-17-19*

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place within any two (2) 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: *Amended 1-15-09*

(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. *Amended 7-21-99 & 4-21-04*

"Technical Bulletin" and Technical Fact Sheet" means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

"Temperature Controlled" means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

"Variance" is a grant of relief from the requirements of this ordinance. *Amended 4-21-04*

"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 Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas. *Added 4-21-04*

"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. *Added 4-21-04*

§ 16.01.003 GENERAL PROVISIONS.

(A) LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) as allowed by law, of the Town of River Bend.

(B) BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS.

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated June 19, 2020 for Craven County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto after January 1, 2021. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of the Town of River Bend are also adopted by reference and

declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted within 3 months.

(C) ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas as determined in Article 3, Section B. *Amended 4-21-04*

(D) COMPLIANCE. *Amended 4-21-04*

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:

(a) considered as minimum requirements;
(b) liberally construed in favor of the governing body; and,
(c) deemed neither to limit nor repeal any other powers granted under State statutes

(G) WARNING AND DISCLAIMER OF LIABILITY. *Amended 4-21-04*

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 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 River Bend 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.

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 Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of River Bend from taking such other lawful action as is necessary to prevent or remedy any violation.

§16.01.004 ADMINISTRATION.

(A) DESIGNATION OF FLOODPLAIN ADMINISTRATOR. *Amended 12-19-01*

The Zoning Administrator, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this ordinance. *Amended 4-21-04*

(B) FLOODPLAIN DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS. *Amended 4-21-04*

(1) Plans and 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 Special Flood Hazard 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 Article 3, Section 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 Article 3, Section B;
(iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Article 3, Section B;
(v) the Base Flood Elevation (BFE) where provided as set forth in Article 3, Section B; Article 4, Section C(11 & 12); or Article 5, Sections 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) the boundary and designation date of the Coastal Barrier Resource System (CBRS) area or Otherwise Protected Areas (OPA), if applicable; and
(viii) preparation of the plot plan by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

(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 NAVD 1988 of the proposed reference level (including basement) of all structures;

(ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and
(iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be

elevated or floodproofed;

(c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(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) Should solid foundation perimeter walls be used in floodplains, details of sufficient openings to facilitate the unimpeded movements of floodwaters in accordance with Article 5, Section B(4);

(iii) The following, in Coastal High Hazard Areas, in accordance with the provisions of Article 5, Section B(4)(e) and Article 5, Section G and (Article 5, Section H if applicable):

(1) V-Zone Certification with accompanying plans and specifications verifying the engineered structure and any breakaway wall designs; In addition, prior to the Certificate of Compliance/Occupancy issuance, a registered professional engineer or architect shall certify the finished construction is compliant with the design, specifications and plans for VE Zone construction.;

(2) Plans for open wood latticework or insect screening, if applicable; and

(3) Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the BFE or otherwise cause adverse impacts by wave ramping and deflection on to the subject structure or adjacent properties.

(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) Copy 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) If floodplain development permit is issued for placement of Recreational Vehicles and/or Temporary Structures, documentation to ensure Article 5, Section B (6 & 7) of this code are met.

(i) If a watercourse is proposed to be altered and/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 (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 complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

(b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Article 3, Section 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 or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Article 5, Section F have been met.

(g) The flood openings requirements, if in Zones A, AE, AH, AO, A99.

(h) Limitations of below BFE enclosure uses. (i.e., parking, building access and limited storage only).

(i) A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase potential flood damage.

(j) A statement, if in Zone VE, that there shall be no fill used for structural support.

(k) A statement, that all materials below BFE/RFPE must be flood resistant materials.

(3) Certification Requirements.

(a) Elevation Certificates

(i) An Elevation Certificate (FEMA Form 086-0-33) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

(ii) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the

elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy. The Finished Construction Elevation Certificate certifier shall provide at least 2 photographs showing the front and rear of the building taken within 90 days from the date of certification. The photographs must be taken with views confirming the building description and diagram number provided in Section A. To the extent possible, these photographs should show the entire building including foundation. If the building has split-level or multi-level areas, provide at least 2 additional photographs showing side views of the building. In addition, when applicable, provide a photograph of the foundation showing a representative example of the flood openings or vents. All photographs must be in color and measure at least 3" × 3". Digital photographs are acceptable.

(b) Floodproofing Certificate

(i) A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

(c) If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Article 5, Section B(3)(b).

(d) 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.

(e) 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 Article 5, Section B(6)(a);

(ii) Temporary Structures meeting requirements of Article 5, Section B(7); and

(iii) Accessory Structures of 150 square feet or less or $5,000 or less and meeting requirements of Article 5, Section B (8).

(4) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

(C) DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR. *Amended 12-19-01& 4-21-04*

Duties of the floodplain administrator shall include, but not be limited to:

(1) Review all floodplain development applications and issue permits for all proposed development with in flood prone areas to assure that the requirements of this ordinance have been satisfied.

(2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood

Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(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 and non-encroachment areas unless the certification and flood hazard reduction provisions of Article 5, Section E are met.

(6) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with Article 4, Section B(3).

(7) Obtain the actual elevation (in relation to NAVD 1988) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with Article 4, Section B(3).

(8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities, in accordance with Article 4, Section B(3).

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Article 4, Section B(3) and Article 5, Section B(2).

(10) Where interpretation is needed as to the exact location of boundaries of the 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 3, Section 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, including data developed pursuant to Article 5, Section C(4), 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 Article 3, Section 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 Article 4, Section D.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of Article 3, Section B of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

(D) CORRECTIVE PROCEDURES. *Added 4-21-04*

(1) Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law 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 to the matter; and,
(c) that following the hearing, the floodplain 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 make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) days, nor more than one hundred eighty (180) days. Where the floodplain 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 the order to the local elected governing body by giving notice of appeal in writing to the floodplain 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 for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

(E) VARIANCE PROCEDURES. *Amended 4-21-04*

(1) The Board of Adjustment as established by the Town of River Bend, hereinafter referred to as the "appeal board", shall hear and decide 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 of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and 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, provided provisions of Article 4, Section E(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
(c) Any other type of development provided is meets the requirements of 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 floodplain 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 increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(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.
(f) Variances shall only be issued prior to development permit approval.

(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 Floodplain Development permit may be issued for such development only if a variance is granted.

(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 River Bend has 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.

## §16.01.005 PROVISIONS FOR FLOOD HAZARD REDUCTION.

(A) GENERAL STANDARDS. *Amended 4-21-04*

In all Special Flood Hazard Areas the following provisions are required:

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.

(3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) 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, electric outlets/switches.

(a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
(b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

(6) 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.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or 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.

(9) Non-conforming structures or other development may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this ordinance. 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.

(10) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas. 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 Article 4, Section B(3) of this code.

(11) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

(15) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

(16) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

(B) SPECIFIC STANDARDS. *Amended 4-21-04*

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Article 3, Section B, or Article 4, Section 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. *Amended 7-18-01 & 4-21-04*

(2) Non-Residential Construction. New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation. Structures located in A, AE, AH, AO, and A99 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. 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 Article 4, Section B(3). *Amended 6-16-93, 7-21-93, 7-18-01 & 4-21-04*

(3) Manufactured Homes. *Amended 6-16-93, 7-21-93, 7-18-01 & 4-21-04*

(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.
(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 Article 5, Section 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 floodplain administrator and the local Emergency Management coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor or below the lowest horizontal structural member in VE zones:

(a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
(b) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
(c) Shall include, in Zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;
(ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
(iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
(iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;
(v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
(vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood

underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(d) Shall, in Coastal High Hazard Areas (Zone VE), meet the requirements of Article 5, Section G.

(5) Additions/Improvements.

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) 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) A substantial improvement, with modifications/rehabilitations/improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.

(b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

(i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

(ii) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(6) Recreational Vehicles. Recreational vehicles shall either:

(a) Temporary Placement

(i) Be on site for fewer than 180 consecutive days; or

(ii) 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.)

(b) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the following requirements must be met:

(a) Applicants must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information: *Added 4-21-04*

(i) a specified time period for which the temporary use will be permitted;

(ii) the name, address, and phone number of the individual responsible for the removal of the temporary structure;

(iii) the time frame prior to the event at which a structure will be removed (i.e. minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(iv) a copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and

(v) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

(b) The above information shall be submitted in writing to the floodplain administrator for review and written approval.

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

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
(b) Accessory structures shall not be temperature-controlled;
(c) Accessory structures shall be designed to have low flood damage potential;
(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
(e) Accessory structures shall be firmly anchored in accordance with the provisions of Article 5, Section A (1);
(f) Accessory structures, regardless of the size or cost, shall not be placed below elevated buildings in V and VE Zones;
(g) All service facilities such as electrical shall be installed in accordance with the provisions of Article 5, Section A (4); and
(h) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Article 5, Section B(4)(d).

An accessory structure with a footprint less than 150 square feet or that is a minimal investment of $5,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing standards of Article 5, Section B (2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Article 4, Section B (3).

(9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Article 5, Section B (2) of this ordinance shall not be permitted in V or VE Zones. Tanks may be permitted in other flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers

designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article 5, Section F of this ordinance.

(b) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article 5, Section F of this ordinance.

(d) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall protected to the Regulatory Flood Protection Elevation as required for commercial structures.

(C) RESERVED.

(D) STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Article 3, Section B, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Article 5, Section A, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) 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 BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

(a) When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Article 5, Sections A and B.

(b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Article 5, Sections B and F.

(c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Article 3, Section B and utilized in implementing this ordinance.

(d) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Article 5, Section B shall also apply.

(E) STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of Article 5, Sections A and B; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point.

(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, in addition to standards outlined in Article 5, Sections A and B, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or
(b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.

(2) If Article 5, Section F (1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(3) Manufactured homes may be permitted provided the following provisions are met:

(a) The anchoring and the elevation standards of Article 5, Section B (3); and

(b) The encroachment standards of Article 5, Section F (1).

(G) COASTAL HIGH HAZARD AREA (ZONE VE).

Coastal High Hazard Areas are Special Flood Hazard Areas established in Article 3, Section 18-7, and designated as Zones VE. These areas have special flood hazards associated with high velocity waters from storm surges or seismic activity and, therefore, all new construction and substantial improvements shall meet the following provisions in addition to the provisions of Article 5, Sections 18-40 and 18-41:

(1) All new construction and substantial improvements shall:

(a) Be located landward of the reach of mean high tide;
(b) Comply with all applicable CAMA setback requirements.

(2) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal High Hazard Areas to satisfy the regulatory flood protection elevation requirements.

(3) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

(a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
(b) Insect screening; or

(c) Breakaway walls shall meet the following design specifications:

(1) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or

(2) Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(4) All new construction and substantial improvements shall be securely anchored to pile or column foundations. All pilings and columns and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components.

(a) Water loading values used shall be those associated with the base flood.

(b) Wind loading values used shall be those required by the current edition of the North Carolina State Building Code.

(5) For concrete pads, including patios, decks, parking pads, walkways, driveways, pool decks, etc. the following is required:

(a) Shall be structurally independent of the primary structural foundation system of the structure and shall not adversely affect structures through redirection of floodwaters or debris; and
(b) Shall be constructed to breakaway cleanly during design flood conditions, shall be frangible, and shall not produce debris capable of causing damage to any structure. (The installation of concrete in small segments (approximately 4 feet x 4 feet) that will easily break up during the base flood event, or score concrete in 4 feet x 4 feet maximum segments is acceptable to meet this standard); and
(c) Reinforcing, including welded wire fabric, shall not be used in order to minimize the potential for concreted pads being a source of debris; and
(d) Pad thickness shall not exceed 4 inches; or
(e) Provide a Design Professional's certification stating the design and method of construction to be used meet the applicable criteria of this section.

(6) For swimming pools and spas, the following is required:

(a) Be designed to withstand all flood-related loads and load combinations.
(b) Be elevated so that the lowest horizontal structural member is elevated above the RFPE; or

(c) Be designed and constructed to break away during design flood conditions without producing debris capable of causing damage to any structure; or
(d) Be sited to remain in the ground during design flood conditions without obstructing flow that results in damage to any structure.
(e) Registered design professionals must certify to local officials that a pool or spa beneath or near a VE Zone building will not be subject to flotation or displacement that will damage building foundations or elevated portions of the building or any nearby buildings during a coastal flood.
(f) Pool equipment shall be located above the RFPE whenever practicable. Pool equipment shall not be located beneath an elevated structure.

(7) All elevators, vertical platform lifts, chair lifts, etc., the following is required:

(a) Elevator enclosures must be designed to resist hydrodynamic and hydrostatic forces as well as erosion, scour, and waves.
(b) Utility equipment in Coastal High Hazard Areas (VE Zones) must not be mounted on, pass through, or be located along breakaway walls.
(c) The cab, machine/equipment room, hydraulic pump, hydraulic reservoir, counter weight and roller guides, hoist cable, limit switches, electric hoist motor, electrical junction box, circuit panel, and electrical control panel are all required to be above RFPE. When this equipment cannot be located above the RFPE, it must be constructed using flood damage-resistant components.
(d) Elevator shafts/enclosures that extend below the RFPE shall be constructed of reinforced masonry block or reinforced concrete walls and located on the landward side of the building to provide increased protection from flood damage. Drainage must be provided for the elevator pit.
(e) Flood damage-resistant materials can also be used inside and outside the elevator cab to reduce flood damage. Use only stainless steel doors and door frames below the BFE. Grouting in of door frames and sills is recommended.
(f) If an elevator is designed to provide access to areas below the BFE, it shall be equipped with a float switch system that will activate during a flood and send the elevator cab to a floor above the RFPE.

(8) Accessory structures, regardless of size or cost, shall not be permitted below elevated structures.

(9) Fill/Grading

(a) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
(b) The fill material must be similar and consistent with the natural soils in the area.
(c) The placement of site-compatible, non-structural fill under or around an elevated building is limited to two (2) feet. Fill greater than two (2) feet must include an analysis prepared by a qualified registered design professional demonstrating no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.
(d) Nonstructural fill with finished slopes that are steeper than five (5) units horizontal to one (1) unit vertical shall be permitted only if an analysis prepared by a qualified registered

design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated buildings and structures.

(10) There shall be no alteration of sand dunes or mangrove stands which would increase potential flood damage.

(11) No manufactured homes shall be permitted except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of this Section have been satisfied.

(12) Recreational vehicles may be permitted in Coastal High Hazard Areas provided that they meet the Recreational Vehicle criteria of Article 5, Section 18-41(6)(a).

(13) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the Regulatory Flood Protection Elevation and any supporting members that extend below the Regulatory Flood Protection Elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck. The increased loads must be considered in the design of the primary structure and included in the V-Zone Certification required under Article 4, Section 18-26, (3)(f).

(14) A deck or patio that is located below the Regulatory Flood Protection Elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.

(15) In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(a) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
(b) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters.
(c) Docks, piers, and similar structures.

(16) No more than four (4) electrical outlets and no more than four (4) electrical switches may be permitted below RFPE unless required by building code.

(H) STANDARDS FOR COASTAL A ZONES (ZONE CAZ) LiMWA

Structures in CAZs shall be designed and constructed to meet V Zone requirements, including requirements for breakaway walls. However, the NFIP regulations also require flood openings in walls surrounding enclosures below elevated buildings in CAZs (see Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures). Breakaway walls used in CAZs must have flood openings that allow for the automatic entry and exit of floodwaters to minimize damage caused by hydrostatic loads. Openings also function during smaller storms or if anticipated wave loading does not occur with the base flood.

(1) All new construction and substantial improvements shall be elevated so that the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) is no lower than the regulatory flood protection elevation. Floodproofing shall not be utilized on any structures in Coastal A Zones to satisfy the regulatory flood protection elevation requirements.

(2) All new construction and substantial improvements shall have the space below the bottom of the lowest horizontal structural member of the lowest floor either be free of obstruction or constructed with breakaway walls, open wood latticework or insect screening, provided they are not part of the structural support of the building and are designed so as to breakaway, under abnormally high tides or wave action without causing damage to the elevated portion of the building or supporting foundation system or otherwise jeopardizing the structural integrity of the building. The following design specifications shall be met:

(a) Material shall consist of open wood or plastic lattice having at least 40 percent of its area open, or
(b) Insect screening; or
(c) Breakaway walls shall meet the following design specifications:

(1) Breakaway walls shall have flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the design criteria in Article 5, Section 18-41(4)(d); and
(2) Design safe loading resistance shall be not less than 10 nor more than 20 pounds per square foot; or
Breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the breakaway wall will collapse from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the base flood. The wind loading values used shall be those required by the North Carolina State Building Code.

(3) Concrete pads, including patios, decks, parking pads, walkways, driveways, etc. must meet the provisions of Article 5, Section 18-43.1 (5).

(4) All new construction and substantial improvements shall meet the provisions of Article 5, Section 18-43.1 (3).

(5) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in compliance with the provisions of Article 4, Section 18-26 and Article 5, Section 18-43.1 (3) and (4), on the current version of the North Carolina V-Zone Certification form or a locally developed V-Zone Certification form.

(6) Recreational vehicles may be permitted in Coastal A Zones provided that they meet the Recreational Vehicle criteria of Article 5, Section 18-41(6)(a).

(7) Fill/Grading must meet the provisions of Article 5, Section 18-43.1 (9).

(8) Decks and patios must meet the provisions of Article 5 Section 18-43.1 (13) and (14).

(9) In coastal high hazard areas, development activities other than buildings and structures must meet the provisions of Article 5, Section 18-43.1 (15).

(I) STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AO).

Located within the Special Flood Hazard Areas established in Article 3, Section 18-7, 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. In addition to Article 5, Sections 18-40 and 18-41, all new construction and substantial improvements shall meet the following requirements:

(1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 2 feet, above the highest adjacent grade; or at least 2 feet above the highest adjacent grade if no depth number is specified.

(2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Article 5, Section 18-43.3 (1) so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with Article 4, Section 18-26 (3) and Article 5, Section 18-41 (2).

(3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(J) STANDARDS FOR AREAS OF SHALLOW FLOODING (ZONE AH).

Located within the Special Flood Hazard Areas established in Article 3, Section 18-7, are areas designated as shallow flooding areas. These areas are subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are one (1) to three (3) feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In

addition to Article 5, Sections 18-40 and 18-41, all new construction and substantial improvements shall meet the following requirements:

(1) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

## §16.01.006 LEGAL STATUS PROVISIONS. *Added 4-21-04*

(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 August 21, 1985 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 River Bend enacted on August 21, 1985, 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 upon adoption.

(D) ADOPTION CERTIFICATION.

I hereby certify that this is a true and correct copy of the flood damage prevention ordinance as adopted by the Town Council of the Town of River Bend, North Carolina, on the 11th day of June, 2020.

# North Carolina Department of Public Safety
## Division of Emergency Management

APPLICANT: Town of River Bend DISASTER: COVID-19

FEMA- 4487 -DR-NC

PUBLIC ASSISTANCE **CFDA# 97.036**

## STATE – APPLICANT DISASTER ASSISTANCE AGREEMENT

This Agreement made by and between the State of North Carolina, Dept. of Public Safety, Division of Emergency Management ("the State") and Town of River Bend ("the Applicant") shall be effective on the date signed by the State and the Applicant. It shall apply to all disaster assistance funds provided by or through the State to the Applicant as a result of the disaster called COVID-19, and pursuant to the Disaster Declaration made by the President of the United States numbered FEMA - 4487 - DR-NC.

The designated representative of the Applicant (Applicant's Agent) certifies that:

1. He/She has legal authority to apply for assistance on behalf of the Applicant pursuant to a resolution duly adopted or passed by the Applicant's governing body.

2. The Applicant shall provide all necessary financial and managerial resources to meet the terms and conditions of receiving Federal and State disaster grant assistance.

3. The applicant shall use disaster assistance funds solely for the purpose for which these funds are provided and as approved by the Governor's Authorized Representative (GAR).

4. The Applicant is aware of and shall comply with cost-sharing requirements of Federal and State disaster assistance: specifically that Federal assistance is limited to 75% of eligible expenditures, and that State assistance is limited to 25% of the eligible costs. Alternate projects selected by the Applicant may be eligible for only 75% of the approved Federal share of estimated eligible costs.

5. The Applicant shall provide the following completed documentation to the State:

   - Designation of Applicant's Agent;
   - State-Applicant Disaster Assistance Agreement
   - Private Non-Profit Organization Certification (if required);
   - Summary of Documentation Form itemizing actual costs expended for large project payment requests;
   - Monthly Progress Reports;
   - Copies of Single Audit Reports as applicable.

**If the Applicant fails to provide any of the above documentation, the State will be under no obligation to reimburse the Applicant for eligible expenses.**

6. The Applicant shall establish and maintain a proper accounting system to record expenditures of disaster assistance funds in accordance with generally accepted accounting principals or as directed by the Governor's Authorized Representative. If applicable, the Applicant shall conduct audit(s) pursuant to the Single Audit Act of 1984, 31 U.S.C. ∋7501 et. seq., 44 C.F.R. Part 14, OMB Circular A-133, "Audits of States, Local Governments and Non-profit Organizations," and applicable North Carolina laws, rules and regulations.

7. The Applicant shall provide to the State monthly Progress Reports for all open large projects funded by State and Federal disaster assistance grants. The first Progress Report will be due on the 10th day of the first month following initiation of the project and subsequent Progress Reports will be due on the 10th day of each and every month thereafter until project completion. Forms and reporting requirements will be provided by the Governor's Authorized Representative.

8. The Applicant, its employees and agents, including consultants, contractors and subcontractors to be paid with funds provided under this Agreement, shall give State and Federal agencies designated by the Governor's Authorized Representative, full access to and the right to examine all records and documents related to the use of disaster assistance funds.

9. The Applicant shall return to the State, within thirty (30) days of a request by the Governor's Authorized Representative, any funds advanced to the Applicant that are not supported by audit or other Federal or State review of documentation maintained by the Applicant.

10. The Applicant shall comply with all applicable codes and standards in the completion of eligible work to repair or replace damaged public facilities.

11. The Applicant shall comply with all applicable provisions of Federal and State statutes, rules and regulations regarding the procurement of goods and services and regarding contracts for the repair and restoration of public facilities.

12. The Applicant shall begin and complete all items of work within the time limits established by the Governor's Authorized Representative and in accordance with applicable Federal and State statues, rules and regulations.

13. The Applicant shall request a final inspection within ninety (90) days after completion of each and every large project funded under this Agreement, or within ninety (90) days after the expiration of the time limit established for each project under Paragraph 12 above, whichever occurs first. Applicant shall present all supporting documentation to State and/or Federal inspectors at the time of final inspection. **The State, as Grantee, reserves the right to conduct a final inspection of any large project after expiration of the ninety- (90) day period and to reimburse Applicant only for costs documented at the time of final inspection.**

14. The Applicant shall comply with all applicable Federal and State statutes, rules and regulations for publicly financed or assisted contracts including, but not limited to, non-discrimination, labor standard, and access by the physically handicapped.

15. The Applicant's Designated Agent shall execute and comply with the Lobbying Prohibition document incorporated herein as Attachment A.

16. The Applicant's Designated Agent shall execute and comply with the Statement of Assurances (SF 424D) document incorporated herein as Attachment B.

17. The Applicant shall not enter into cost-plus-percentage-of-cost contracts for debris removal, emergency protective measures, or completion of disaster restoration or repair work.

18. The Applicant shall not enter into contracts for which payment is contingent upon receipt of State or Federal funds.

19. The Applicant shall not enter into any contract with any entity that is debarred or suspended from participation in Federal Assistance. The State and/or FEMA will not be under any obligation to reimburse Applicant for payments made to a debarred or suspended contractor. Applicant may search for debarred or suspended contractors on the "Excluded Parties List System" (EPLS) at the following website: www.sam.gov.

20. The Applicant shall comply with the provisions of 42 U.S.C. ∋5155 (Section 312 of the Stafford Act) which prohibits duplication of benefits. Applicant shall notify State immediately if any other source of funds is available to offset disaster assistance provided pursuant to this Agreement. Applicant agrees that eligible costs under this Agreement will be reduced by duplicate benefits received from any other source.

21. The Applicant shall comply with all uniform grant administration requirements required by State and Federal statutes, rules and regulations, including but not limited to, the Robert T. Stafford Disaster Relief and Emergency assistance Act, Public Law 93-288, as amended, Title 44 of the Code of Federal Regulations, applicable OMB Circulars, and policy guidance issued by the Federal Emergency Management Agency (FEMA).

22. If the Applicant pays contractors, subcontractors or consultants with funds provided through this Agreement then the Applicant shall include language in all contracts that binds the contractor, subcontractor or consultant to the terms and conditions of this Agreement with the State. Contractual arrangements with contractors, subcontractors or consultants shall in no way relieve the Applicant of its responsibilities to ensure that all funds provided through this Agreement are administered in accordance with all State and Federal requirements.

**FOR THE APPLICANT:**

4/14/2020
Date

BY: Amanda B Gilbert
Signature

Amanda B. Gilbert
Typed Name

Finance Assistant
Title

56-1291141
Applicant's Federal Tax I.D. Number (required)

**FOR THE STATE:**

BY: _____
Signature

_____
Date

_____
Typed Name

_____
Title

## ATTACHMENT A

## LOBBYING PROHIBITION

The undersigned certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence either directly or indirectly an officer or employee of any State or Federal agency, a member of the N.C. Legislature, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-L. "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all recipients of funds under this Agreement shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each failure.

Town of River Bend
Name of Applicant

BY: Amanda B Gilbert
Signature of Applicant's Designated Agent

# ATTACHMENT B-1

OMB Approval No. 0348-0042

## ASSURANCES-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington DC 20503

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of the project costs) to ensure proper planning, management and completion of the project described in this application

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply by the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. ∋∋4728-2763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ∋∋4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statures relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. ∋∋1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. ∋ 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. ∋∋ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) ∋∋523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. ∋∋290 dd-3 and 290 ee 3), as amended relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. ∋∋3601 et seq.), as amended relating to nondiscrimination in the sale, rental, or financing of housing ; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

## ATTACHMENT B-2

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. ∋∋1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S. C. ∋∋276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. ∋874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. ∋∋327-333) regarding labor standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L.93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514: (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ∋∋1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. ∋∋7401 et seq.); (g) protection of under ground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ∋∋1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. ∋470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ∋∋469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| Amanda B. Gilbert | Finance Assistant |
| **APPLICANT ORGANIZATION** | **DATE SUBMITTED** |
| Town of River Bend | 4/14/2020 |

# DESIGNATION OF APPLICANT'S AGENT AND APPLICANT ASSURANCES FOR PUBLIC ASSISTANCE

ORGANIZATION NAME (HEREAFTER NAMED ORGANIZATION)
Town of River Bend

| PRIMARY AGENT | SECONDARY AGENT |
|---|---|
| AGENT'S NAME: Amanda B. Gilbert | AGENT'S NAME: Margaret Theis |
| ORGANIZATION: Town of River Bend | ORGANIZATION: Town of River Bend |
| OFFICIAL POSITION: Finance Assistant | OFFICIAL POSITION: Finance Administrator |
| MAILING ADDRESS: 45 Shoreline Drive | MAILING ADDRESS: 45 Shoreline Drive |
| CITY, STATE, ZIP: River Bend, NC 28562 | CITY, STATE, ZIP: River Bend, NC 28562 |
| DAYTIME TELEPHONE: 252-638-3540 | DAYTIME TELEPHONE: 252-638-3870 ext. 5 |
| FACSIMILE NUMBER: 252-638-2580 | FACSIMILE NUMBER: 252-638-2580 |
| PAGER OR CELLULAR NUMBER: | PAGER OR CELLULAR NUMBER: |

THE ABOVE PRIMARY AND SECONDARY AGENTS ARE HEREBY AUTHORIZED TO EXECUTE AND FILE APPLICATION FOR PUBLIC ASSISTANCE ON BEHALF OF THE ORGANIZATION FOR THE PURPOSE OF OBTAINING CERTAIN STATE AND FEDERAL FINANCIAL ASSISTANCE UNDER THE ROBERT T. STAFFORD DISASTER RELIEF & EMERGENCY ASSISTANCE ACT, (PUBLIC LAW 93-288, AS AMENDED) OR OTHERWISE AVAILABLE. THIS AGENT IS AUTHORIZED TO REPRESENT AND ACT FOR THE ORGANIZATION IN ALL DEALINGS WITH THE STATE OF NORTH CAROLINA AND THE FEDERAL EMERGENCY MANAGEMENT AGENCY FOR MATTER PERTAINING TO SUCH DISASTER ASSISTANCE REQUIRED BY THE AGREEMENTS AND ASSURANCES PRINTED ON THE REVERSE SIDE HEREOF.

| CHIEF FINANCIAL OFFICER | CERTIFYING OFFICIAL |
|---|---|
| NAME: Irving "Bud" Van Slyke | OFFICIAL'S NAME: John Kirkland |
| ORGANIZATION: Town of River Bend | ORGANIZATION: Town of River Bend |
| OFFICIAL POSITION: Councilman/Finance officer | OFFICIAL POSITION: Mayor |
| MAILING ADDRESS: 45 Shoreline Drive | MAILING ADDRESS: 45 Shoreline Drive |
| CITY, STATE, ZIP: River Bend, NC 28562 | CITY, STATE, ZIP: River Bend, NC 28562 |
| DAYTIME TELEPHONE: 252-638-3870 ext. 204 | DAYTIME TELEPHONE: 252-638-3870 ext. 212 |
| FACSIMILE NUMBER: 252-638-2580 | FACSIMILE NUMBER: 252-638-2580 |
| PAGER OR CELLULAR NUMBER: | PAGER OR CELLULAR NUMBER: |

APPLICANT'S STATE COGNIZANT AGENCY FOR SINGLE AUDIT PURPOSES (IF A COGNIZANT AGENCY IS NOT ASSIGNED, PLEASE INDICATE):

APPLICANT'S FISCAL YEAR (FY) START — MONTH: July DAY: 1

APPLICANT'S FEDERAL EMPLOYER'S IDENTIFICATION NUMBER: 56-1291141

APPLICANT'S STATE PAYEE IDENTIFICATION NUMBER: 049-56710-00

CERTIFYING OFFICIAL'S SIGNATURE:

## APPLICANT ASSURANCES

The applicant hereby assures and certifies that he will comply with the FEMA regulations, policies, guidelines and requirements including OMB's Circulars No. A-95 and A-102, and FMC 74-4, as they relate to the application, acceptance and use of Federal funds for this Federally-assisted project. Also, the Applicant gives assurance and certifies with respect to and as a condition for the grant that:

1. It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
2. It will comply with the provisions of: Executive Order 11988, relating to Floodplain Management and Executive Order 11990, relating to Protection of Wetlands.
3. It will have sufficient funds available to meet the non-Federal share of the cost for construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purpose constructed.
4. It will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program(s) have been met.
5. It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Federal grantor agency may need.
6. It will operate and maintain the facility in accordance with the minimum standards as may be required or prescribed by the applicable Federal, State and local agencies for the maintenance and operation of such facilities.
7. It will give the grantor agency and the Comptroller General, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the grant.
8. It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1-1961, as modified (41 CFR 101-17-7031). The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.
9. It will cause work on the project to be commenced within a reasonable time after receipt of notification from the approving Federal agency that funds have been approved and will see that work on the project will be prosecuted to completion with reasonable diligence.
10. It will not dispose of or encumber its title or other interests in the site and facilities during the period of Federal interest or while the Government holds bonds, whichever is the longer.
11. It agrees to comply with Section 311, P.L. 93-288 and with Title VI of the Civil Rights Act of 1964 (P.L. 83-352) and in accordance with Title VI of the Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. If any real property or structure is provided or improved with the aid of Federal financial assistance extended to the Applicant, this assurance shall obligate the Applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.
12. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs.
14. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with OMB Circular A-102, P.L. 93-288 as amended, and applicable Federal Regulations.
15. It will comply with the provisions of the Hatch Act which limit the political activity of employees.
16. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of State and local governments.
17. (To the best of his knowledge and belief) the disaster relief work described on each Federal Emergency Management Agency (FEMA) Project Application for which Federal Financial assistance is requested is eligible in accordance with the criteria contained in 44 Code of Federal Regulations, Part 206, and applicable FEMA Handbooks.
18. The emergency or disaster relief work therein described for which Federal Assistance is requested hereunder does not or will not duplicate benefits received for the same loss from another source.
19. It will (1) provide without cost to the United States all lands, easements and rights-of-way necessary for accomplishments of the approved work; (2) hold and save the United States free from damages due to the approved work or Federal funding.
20. This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, reimbursements, advances, contracts, property, discounts of other Federal financial assistance extended after the date hereof to the Applicant by FEMA, that such Federal Financial assistance will be extended in reliance on the representations and agreements made in this assurance and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear on the reverse as authorized to sign this assurance on behalf of the applicant.
21. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director, Federal Emergency Management Agency as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.
22. It will comply with the insurance requirements of Section 314, PL 93-288, to obtain and maintain any other insurance as may be reasonable, adequate, and necessary to protect against further loss to any property which was replaced, restored, repaired, or constructed with this assistance.
23. It will defer funding of any projects involving flexible funding until FEMA makes a favorable environmental clearance, if this is required.
24. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic places that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.
25. It will, for any repairs or construction financed herewith, comply with applicable standards of safety, decency and sanitation and in conformity with applicable codes, specifications and standards; and, will evaluate the natural hazards in areas in which the proceeds of the grant or loan are to be used and take appropriate action to mitigate such hazards, including safe land use and construction practices.

## STATE ASSURANCES

The State agrees to take any necessary action within State capabilities to require compliance with these assurances and agreements by the applicant or to assume responsibility to the Federal government for any deficiencies not resolved to the satisfaction of the Regional Director.

(4)

**TOWN OF RIVER BEND**

**45 Shoreline Drive**
**River Bend, NC 28562**

T 252.638.3870
F 252.638.2580

www.riverbendnc.org

"A"

## LANDSCAPING

**THIS PROFESSIONAL SERVICES AGREEMENT,** made and entered into this ___ day of _____, 2020 by and between the **TOWN OF RIVER BEND**, a body politic and corporate of the State of North Carolina ("Town"); and **K.A. JONES DESIGN AND MANAGEMENT** ("Contractor").

**WITNESSETH:**

WHEREAS, the Town desires to employ Contractor for those matters contained in this Agreement and Contactor desires to render said services to Town.

NOW, THEREFORE, BE IT RESOLVED by the parties as follows:

### ARTICLE 1

### Responsibilities of Contractor

**1.1** During the term of this Agreement, and subject to the conditions and terms contained herein, Contractor agrees to provide those services, and other obligations as more fully set forth in Attachment "A".

**1.2** Contractor shall provide its services hereunder in a timely manner, using that degree of care and professionalism as exercised by similar entities providing such services.

**1.3** Contractor shall, at its own expense, maintain and carry workers' compensation, (if statutorily required), commercial general liability, and automobile liability insurance. Contractor shall provide the Town with Certificates of Insurance before services commence.

### ARTICLE 2

### Responsibilities of Town

**2.1** Town agrees to perform all of its obligations, including compensating Contractor, as more particularly set forth in Section 2.4 and Attachment "A". To the extent there is any conflict between the provisions of Section 1.1 and Attachment "A", Section 1.1 shall control.

**2.2** Town shall provide reasonable assistance to Contractor in the performance of Contractor's duties contained herein.

**2.3** Invoices submitted to Town by Contractor shall be due and payable no more than thirty (30) days after completion of the services described by this Agreement, subject to the Town's satisfaction, which shall not be unreasonably withheld.

**2.4** In no event shall Town be required to reimburse Contractor if the project contemplated hereunder is not awarded and fully funded by the appropriate governmental agency. Furthermore, in no event shall the compensation identified in Section 2.1 exceed **$15,620.**

## ARTICLE 3

## Term

The term of this Agreement is for a period starting **July 1, 2020** and ending **June 30, 2022.** This Agreement may be terminated by either party at any time for cause upon 30 days advance written notice. If the Town is the party terminating this Agreement for cause, Contractor shall be entitled to no further compensation. Otherwise, either party may terminate this Agreement without cause upon 60 days advance written notice. In the event of termination without cause, Contractor shall be entitled to compensation for all services provided through the date of termination of the contract.

## ARTICLE 4

## Independent Contractor

In the performance of services hereunder, the Contractor and its agents shall at all times act as an independent contractor practicing their profession and not as employees of the Town. Contractor and its agents shall not have any claim under this Agreement or otherwise against Town for vacation pay, sick leave, retirement benefits, social security, worker's compensation, disability benefits, unemployment insurance benefits, or employee benefits of any other kind.

## ARTICLE 5

**Indemnification; Limitation of Liability**

**5.1** Each party shall defend, indemnify and hold harmless the other party from and against claims, damages, losses and expenses resulting from the negligent acts or omissions of malfeasance of the indemnifying party under this Agreement. The obligation of indemnity hereunder shall not include special, indirect, incidental or consequential damages, including but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays or claims of customers or third parties for any damages, however caused, whether based on warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incidental or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law.

**5.2** Notwithstanding anything herein, in no event shall a party be liable, under any circumstances, for special, indirect, incidental or consequential damages, whether in warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, including, but not limited to loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers or other third parties for any damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incident or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law. Notwithstanding anything herein, each party's aggregate liability for any and all claims whether in agreement, warranty, tort, negligence, strict liability, or any otherwise for any loss or damages arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or

furnished under this Agreement, or from any services rendered in connection therewith or related to the subject matter hereof, shall in no case exceed the contract price of this Agreement.

## ARTICLE 6

## Force Majeure

**6.1** Contractor shall neither be liable for loss, damages, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared) or terrorism, acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority, including the Town, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery or installation will be extended by a period equal to the delay plus a reasonable time to resume delivery or installation.

## ARTICLE 7

## Miscellaneous

**7.1 Entire Agreement; Modification:** This Agreement (including all exhibits and schedules attached hereto), contain all of the terms and conditions agreed to by the Parties, and no other contract, document or agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any Party hereto or to vary any of the terms contained in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

**7.2 Severability:** If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the Parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the Parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

**7.3 Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

**7.4 Assignment:** Except as may otherwise be expressly provided herein, no party may assign any right, obligation, or liability arising hereunder without the other party's prior written consent. Any such assignment or attempted assignment shall be null and void.

**7.5 Headings:** Headings in this Agreement are for convenience and reference only and shall not be used to interpret or construe its provisions.

**7.6 Duplicate Originals:** This Agreement shall be executed in duplicate originals, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## ARTICLE 8

## Amendment

**8.1 Intentionally left blank for future amendments**

**IN TESTIMONY WHEREOF**, the parties hereto have duly executed this Agreement in duplicate originals, a copy of which is retained by each of the parties, the day and year first above written.

**TOWN OF RIVER BEND**

By: _____
John R. Kirkland
Mayor

ATTEST:

_____
Ann Katsuyoshi
Town Clerk

**K.A. JONES**
**DESIGN AND MANAGEMENT**

_____

*This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

By: _____ _____
Irving J. Van Slyke, Jr. Date
Finance Officer

**ATTACHMENTS:**
A – General Provisions

**ATTACHMENT A**

## LANDSCAPE MAINTENANCE CONTRACT
## GENERAL PROVISIONS

Perform a full clean-up on or before March 31 of each year to include mulching and weeding as described below.

Perform additional mid-season clean-ups as follows in order to maintain the appearance of the town's property: during the second week of May; during the last week of June; and during the last week of August.

Clean up shall include removing trash, limbs, leaves, weeds, vines, and other debris from shrub/flower beds, trees, and other property as described herein, and removing all such material from the site. Weeding shall mean removing weeds with their roots, and not cutting them near or at the surface.

Contractor shall notify the Director of Public Works at the beginning of each work cycle and submit an invoice detailing work performed at the end of each cycle to the Director of Public Works.

Contractor warrants that it shall perform its services described in this Agreement in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent professionals practicing in the same or similar locality as the Agreement, and in accordance with the practice of the industry, exercising competent professional knowledge, judgment and skill. Failure to timely perform, or to meet such standards, shall be sufficient grounds for Town to terminate this Agreement for cause. In the alternative, the Town may withhold any compensation due to Contractor until such standard is met and all terms of the Agreement are complied with by Contractor.

6. Cost and payments: **$7,810** per year, payable in two equal payments of **$3,905** the first being paid after the completion of the March clean-up and the second after completion of the August clean-up.

**Mulching/Weeding:**

1. Weed and mulch flower beds surrounding Town Hall and Town Hall parking lot, including the center island in the Town Hall parking lot, the Memorial Garden adjacent to the gazebo and the bed adjacent to the playground and one (1) flower bed in dog park near statue. These beds are to be mulched with non-colored bark mulch, not pine straw or compost. Mulching only to be done during the first clean-up of each year.

2. Weed and mulch shrub bed in "Town Commons". This bed is to be mulched with non-colored bark mulch, not pine straw or compost. Mulching only to be done during the first clean-up of each year.

3. Weed and mulch shrub beds adjacent to the caboose in Town Commons. These beds are to be mulched with non-colored bark mulch, not pine straw or compost. Mulching only to be done during the first clean-up of each year.

4. Remove vines, wildbrush, sweet gum sprouts, pine, oak, weeds, grasses etc., growing among Junipers along all berms, especially and specifically berms along Shoreline Drive from Lochbridge Drive to water tower and continuing to Brick Road. These areas to be mulched with ground organic mulch (available from the Tuscarora Landfill). Any substitution for this mulch is subject to the approval of the Director of Public Works.

5. Weed and mulch shrub beds at Police Station. These beds are to be mulched with non-colored bark mulch, not pine straw or compost. Mulching only to be done during the first clean-up of each year.

6. Weed and mulch around large Wildwood Property sign at roadside. These beds are to be mulched with non-colored bark mulch, not pine straw or compost. Mulch and maintain one shrub bed at northwest front corner of two-story barn. Mulching only to be done during the first clean-up of each year.

7. Edge and keep weed free three (3) flower beds in the Channel Run park

8. Weed and clean out wooded copses at the front entrance on both the pond and "wall" sign sides of Shoreline Drive.

9. Remove vines and weeds growing on any trees on Town property (including roadway medians).

**Pruning:**

1. Prune all shrubs once per year in March, except azaleas, which are to be pruned one to two (1-2) weeks after flowering. Prefer that abelia be pruned during the June clean-up (shortly before July 4th).

2. Remove suckers from the base of five (5) crepe myrtles at northeast end of storage building at Wildwood property. Crepe myrtles are not to be topped, shaped or pruned.

3. Remove suckers from all crepe myrtles on all Town property. This includes on the north side of Shoreline Drive (right side of road leaving Town); from Gentry Cove to Brick Road; south side of Shoreline Drive (left side of road leaving Town) between the roadside and the top of the berm from Town Hall to Old Pollocksville Road; and the Plantation Drive median. Crepe myrtles are not to be topped, shaped or pruned.

4. Trim all trees and shrubs around Town Hall including the island in the parking lot and the area adjacent to the playground. However, **no** pruning or trimming is to be done on shrubs and tree in that area marked as being the Memorial Garden.

5. Trim all trees and shrubs Shoreline Drive (between the roadside and the top of the berm), and along roadway medians. Growth should not interfere with vehicular traffic or pedestrians. Medians included are as follows:

    a. All of the median on Anchor Way.
    b. Plantation Drive median from Gull Pointe southwest to intersection of Shoreline Drive.
    c. Plantation Drive median from Shoreline Drive at Town Hall east to small bridge at the Quarterdecks.
    d. Small median island beside 244 Shoreline Drive which is in center of cul-de-sac.
    e. Median island off Gangplank Road

**TOWN OF RIVER BEND**

**45 Shoreline Drive**
**River Bend, NC 28562**

T 252.638.3870
F 252.638.2580

www.riverbendnc.org

"B"

**MOWING**

**THIS PROFESSIONAL SERVICES AGREEMENT,** made and entered into this ___ day of _____, 2020 by and between the **TOWN OF RIVER BEND**, a body politic and corporate of the State of North Carolina ("Town"); and **K.A. JONES DESIGN AND MANAGEMENT** ("Contractor").

**WITNESSETH:**

WHEREAS, the Town desires to employ Contractor for those matters contained in this Agreement and Contactor desires to render said services to Town.

NOW, THEREFORE, BE IT RESOLVED by the parties as follows:

## ARTICLE 1

### Responsibilities of Contractor

**1.1** During the term of this Agreement, and subject to the conditions and terms contained herein, Contractor agrees to provide those services, and other obligations as more fully set forth in Attachment "A".

**1.2** Contractor shall provide its services hereunder in a timely manner, using that degree of care and professionalism as exercised by similar entities providing such services.

**1.3** Contractor shall, at its own expense, maintain and carry workers' compensation, (if statutorily required), commercial general liability, and automobile liability insurance. Contractor shall provide the Town with Certificates of Insurance before services commence.

## ARTICLE 2

### Responsibilities of Town

**2.1** Town agrees to perform all of its obligations, including compensating Contractor, as more particularly set forth in Section 2.4 and Attachment "A". To the extent there is any conflict between the provisions of Section 1.1 and Attachment "A", Section 1.1 shall control.

**2.2** Town shall provide reasonable assistance to Contractor in the performance of Contractor's duties contained herein.

**2.3** Invoices submitted to Town by Contractor shall be due and payable no more than thirty (30) days after completion of the services described by this Agreement, subject to the Town's satisfaction, which shall not be unreasonably withheld.

2.4 In no event shall Town be required to reimburse Contractor if the project contemplated hereunder is not awarded and fully funded by the appropriate governmental agency. Furthermore, in no event shall the compensation identified in Section 2.1 exceed **$40,400.**

## ARTICLE 3

## Term

The term of this Agreement is for a period starting **July 1, 2020** and ending **June 30, 2022**. This Agreement may be terminated by either party at any time for cause upon 30 days advance written notice. If the Town is the party terminating this Agreement for cause, Contractor shall be entitled to no further compensation. Otherwise, either party may terminate this Agreement without cause upon 60 days advance written notice. In the event of termination without cause, Contractor shall be entitled to compensation for all services provided through the date of termination of the contract.

## ARTICLE 4

## Independent Contractor

In the performance of services hereunder, the Contractor and its agents shall at all times act as an independent contractor practicing their profession and not as employees of the Town. Contractor and its agents shall not have any claim under this Agreement or otherwise against Town for vacation pay, sick leave, retirement benefits, social security, worker's compensation, disability benefits, unemployment insurance benefits, or employee benefits of any other kind.

## ARTICLE 5

**Indemnification; Limitation of Liability**

**5.1** Each party shall defend, indemnify and hold harmless the other party from and against claims, damages, losses and expenses resulting from the negligent acts or omissions of malfeasance of the indemnifying party under this Agreement. The obligation of indemnity hereunder shall not include special, indirect, incidental or consequential damages, including but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays or claims of customers or third parties for any damages, however caused, whether based on warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incidental or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law.

**5.2** Notwithstanding anything herein, in no event shall a party be liable, under any circumstances, for special, indirect, incidental or consequential damages, whether in warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, including, but not limited to loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers or other third parties for any damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incident or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law. Notwithstanding anything herein, each party's aggregate liability for any and all claims whether in agreement, warranty, tort, negligence, strict liability, or any otherwise for any loss or damages arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or

furnished under this Agreement, or from any services rendered in connection therewith or related to the subject matter hereof, shall in no case exceed the contract price of this Agreement.

## ARTICLE 6

## Force Majeure

**6.1** Contractor shall neither be liable for loss, damages, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared) or terrorism, acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority, including the Town, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery or installation will be extended by a period equal to the delay plus a reasonable time to resume delivery or installation.

## ARTICLE 7

## Miscellaneous

**7.1 Entire Agreement; Modification:** This Agreement (including all exhibits and schedules attached hereto), contain all of the terms and conditions agreed to by the Parties, and no other contract, document or agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any Party hereto or to vary any of the terms contained in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

**7.2 Severability:** If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the Parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the Parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

**7.3 Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

**7.4 Assignment:** Except as may otherwise be expressly provided herein, no party may assign any right, obligation, or liability arising hereunder without the other party's prior written consent. Any such assignment or attempted assignment shall be null and void.

**7.5 Headings:** Headings in this Agreement are for convenience and reference only and shall not be used to interpret or construe its provisions.

**7.6 Duplicate Originals:** This Agreement shall be executed in duplicate originals, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## ARTICLE 8

## Amendment

**8.1 Intentionally left blank for future amendments**

**IN TESTIMONY WHEREOF**, the parties hereto have duly executed this Agreement in duplicate originals, a copy of which is retained by each of the parties, the day and year first above written.

**TOWN OF RIVER BEND**

**K.A. JONES**
**DESIGN AND MANAGEMENT**

By: _____
John R. Kirkland
Mayor

_____

ATTEST:

_____
Ann Katsuyoshi
Town Clerk

*This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

By: _____ _____
Irving J. Van Slyke, Jr. Date
Finance Officer

**ATTACHMENTS:**

A – General Provisions
B – Grass Mowing & Trim in Town Parks & Adjoining Roadside Shoulders
C – Water Resources Department Grass Maintenance Locations
D – Mowing Operations that Border on Lakes and Ponds

**ATTACHMENT A**

## MAJOR GRASS, LAWN, PARK GROUNDS MAINTENANCE CONTRACT GENERAL PROVISIONS

1. Maintain a ten calendar day mowing schedule (unless otherwise noted herein) beginning services with a spring cleanup on or about March 15 and continue every ten days through October 31 with one cleanup prior to and close to Thanksgiving and one additional cleanup prior to and close to Christmas. A detailed description of areas to be maintained is contained in *Attachments B and C.*

2. Police all mowing areas for trash, limbs, cans, paper, etc., and package for removal prior to each mowing.

3. Use bagger, or other effective method to keep clippings out of the water, around all waterways/lakes. *See Attachment D.*

4. Contractor shall notify the Director of Public Works at the beginning of each mowing cycle and submit an invoice detailing work performed at the end of each mowing cycle to the Director of Public Works.

5. Contractor warrants that it shall perform its services described in this Agreement in a professional manner, using that degree of care and skill ordinarily exercised by and consistent with the standards of competent professionals practicing in the same or similar locality as the Agreement, and in accordance with the practice of the industry, exercising competent professional knowledge, judgment and skill. Failure to timely perform, or to meet such standards, shall be sufficient grounds for Town to terminate this Agreement for cause. In the alternative, the Town may withhold any compensation due to Contractor until such standard is met and all terms of the Agreement are complied with by Contractor.

6. Cost and payments: **$20,200** per contract year, paid at a rate of **$2,525** per month beginning April of each year and ending in November of each year.

**ATTACHMENT B**

## GRASS MOWING AND TRIM WORK IN TOWN PARKS AND ON ADJOINING ROADSIDE SHOULDERS CONTRACTED TO LAWN SERVICE

**Area 1: Includes Town Hall lawn, Town Hall park, picnic area and all of Ritter Field**

Cut, mow, and trim all grass beginning at corner where Shoreline Drive and Plantation Extension intersect. *See Attachment D.*

This area includes all the grass around Town Hall and the area between the Town Hall pond and Plantation Road from the Town Hall to the wetlands area at the west end of Ritter Field.

Trim under any picnic tables, swings, statue, flower bed ,fences, and around man-made and natural obstacles. Edge cement walk at Town Hall leading to door steps and the Town Hall parking area facing Plantation Drive.

**Area 2: Shoreline Drive right of way on left hand side of road leaving Town**

Beginning at the large culvert running under Shoreline Drive from Town Hall lake, go all the way to the "Brick Road" maintaining a parallel line 55 feet from the center of Shoreline Drive. This line includes the regular road shoulder, or right of way, plus an additional 25 feet of adjoining Town land and basically runs up to the top of all existing berms.

The 25 foot strip of land adjoining this right of way is planted in Pines, Juniper, and Crepe Myrtles with pine straw mulch. However, there are three small sections which have grass to cut and/or be trimmed. The first section starts at the same culvert under Shoreline Drive and runs about 200 feet to Lochbridge Drive. The second section is about 100 feet in length and is in front of the water tower. The third section begins at Lakemere Drive and continues past Lakemere Drive culvert under Shoreline Drive for a total of about 190 feet.

At Town Hall Lake, edge mouth of large Shoreline Drive culvert, and trim grass with weed eater down to water. *See Attachment D.*

When pine cones are present in this area, accomplish mowing in a fashion that will harvest the pine cones and remove them from this area when mowing operations are completed.

**Area 3:** **Entrance Park on Highway 17 at traffic signal**

The park area on the left-hand side of Shoreline Drive leaving Town includes the brick "River Bend" town "wall" sign.

Beginning at Brick Road corner by Shoreline Drive and follow to Highway 17. Turn west following a straight line on 17 to a point marked by Town staff. Turn south-southeast and follow irregular curving line beside vacant grown up field back to Brick Road 35 mph speed limit sign. Turn north-northeast along Brick Road to Shoreline Drive beginning point. Cross Old Pollocksville Rd. Turn west at fire hydrant and maintain approx. 200 ft. to metal light pole.

The other part of this park area is on right-hand side of Shoreline Drive leaving Town and joins the "River Bend Baptist Church" on the Town's north side. It is a rectangular parcel of land containing a 3/4 acre lake. Unless otherwise directed by town or regulatory agency, trim grass with weed eater down to water.

Beginning at the Brick Road by Shoreline Drive stop sign, proceed north down Brick Road about 50 feet past the lake. Turn 90 degrees left at a point marked by Town staff and face straight forward Highway 17 for approximately 350 feet to another point marked by Town staff stake at Highway 17 right-of-way. Turn left 90 degrees and face traffic light on Highway 17. Travel approximately 200 feet to Shoreline Drive at traffic light. Turn left 90 degrees and follow Shoreline Drive back to beginning point on Brick Road. *See Attachment D.*

Beginning at the southeast corner of Shoreline Drive and the Brick Road, proceed south along Shoreline Drive approximately 500 feet to the land maintained by Gentry Cove mowing between the roadway and the tree line.

**Area 5:** **Town Commons and Park area**

Town Commons Park land bordered on east side by Shoreline Drive; on south side by Wildwood Drive; on north side by Plantation Drive and bordered on west side by a ditch line. The Northern border is Plantation Drive beside River Bend Town Hall and is marked with permanent stakes. Approximately 4.7 acres. Includes road shoulder on three sides and along the ditch line at the west end of the recreational field. Trim around rocked area near caboose, around parking bumpers, fence, under any picnic tables, benches, around volleyball court and around other man-made and natural obstacles.

**Area 6:** **Wildwood Property**

Two small grass areas at Police Station. Cut grass area in front of two-story barn and at storage facility. Also around large Wildwood Property sign at roadside. Cut grass on southeast side and rear of this barn. Cut grass on all four sides of storage building at southeast side of property adjoining two-story barn. Cut grass in and around the boat/RV storage area. Cut front back, and both ends from street edge on Wildwood Drive to large swale on east side and to large open ditch on southern side of the storage building.

**Area 7:** **Channel Run Town Park**

Common area (2.28 acres) located in Channel Run Subdivision at the intersection of Channel Run Drive and west side of Starboard Drive.

**Area 8:** **Springdale Town Park**

Common area (1.15 acres) located in Springdale Subdivision on Barbara Drive.

**Area 9:** **Medians**

All of the median on Anchor Way.

Plantation Drive median from Gull Pointe southwest to intersection of Shoreline Drive.

Small median island beside 244 Shoreline Drive which is in center of cul-de-sac.

Median island from Shoreline Drive at Town Hall east to small bridge at the Quarterdecks.

Median island off Gangplank Road.

Median island on Lakemere Drive.

**Area 10:** **Highway 17 Median**

On a twenty-day cycle, mow Highway 17 median from a location, as marked, south of Shoreline Drive, north to Pirates Road, and from Pirates Road, north a location, as marked, north of Norbury Road.

**Leaves:**

Leaves after the fall (at a time mutually agreed by the Director of Public Works and the Contractor) are to be removed from the Towns' medians, Town Hall lawn and parking lot. All other areas can be mulched but must not be cast into roadways, waterways, or onto sidewalks.

**Fertilizer**

No fertilizer application is contemplated or approved by this contract.

**ATTACHMENT C**

## WATER RESOURCES DEPARTMENT GRASS MAINTENANCE LOCATIONS

**Area 1-W: Contains Well House No. 3, garage and water tower on Shoreline Drive at intersection of Pirates Road.**

This is a rectangular tract which has about 215 feet fronting Shoreline Drive and is approximately 330 feet deep. Standing at Shoreline Drive and facing southwest toward back end of this tract, the top of berm on the right constitutes the property line and is planted in trees and shrubs. The back property line is part of the same berm and gives way to a wooded lot. Still standing with your back to Shoreline Drive, the property line on the left-hand side is bordered by River Bend water tower, a board fence and a tree line continuing about 300 feet to southwest corner. Trim grass and weeds inside fence.

**Area 2-W: Lift Station on Lochbridge Drive**

Maintain grass on small island lift station and trim around telephone pedestal, CP&L electric pedestal and several shrubs. Edge median and trim any grass in cracks in street around median as needed.

**Area 3-W: Well Site No. 1**

This is a triangular tract or lot. It joins the eastern end of River Bend Professional Center which sits in the corner of Shoreline Drive and Plantation Drive intersection diagonally opposite River Bend Town Hall.

Beginning at the intersection of Wildwood Drive and Shoreline Drive and facing northeast, one corner of this triangle touches Shoreline Drive at a Progress Energy light pole and continues beside a dirt berm approximately 240 feet to a small lake behind Well House No. 1. Turning left and north, this back property line runs beside the lake about 250 feet to a corner of Linksider rental building, then left again, and south about 270 feet to the beginning point of triangle at CP&L light pole on Shoreline Drive at intersection with Wildwood Drive.

Maintain all grass between these points that surround Well House No. 1 storage building.

**Area 4-W: Water Tower No. 2**

This is approximately ½ acre site, roughly triangular in shape (175' x 230' x 280'). The area is bordered on one side by a drainage ditch and on the other two sides by woods. The water tower is enclosed by a chain link fence. Mow the entire area inside and outside of the fence including the sloped area along the drainage ditch and out to the wooded area. Trim ditch on both ends of entrance driveway to tower.

**ATTACHMENT D**

## MOWING OPERATIONS THAT BORDER ON LAKES AND PONDS, STREETS AND PARKING LOT AREAS

In some areas there will be a ten (10) foot "buffer" of twelve-inch high grass that shall be maintained at this level. This cutting is to keep this "buffer area" managed and attractive.

In the areas of all ponds and drainage ways arrange mowing pattern so **clippings are cast up-slope**, and not into water.

In the areas by streets and parking lots, arrange mowing pattern so **clippings are cast into the grassy areas**, not the paved areas.

Review this operation with the Director of Public Works for clarification.

**TOWN OF RIVER BEND**

45 Shoreline Drive
River Bend, NC 28562

T 252.638.3870
F 252.638.2580

www.riverbendnc.org

"C"

**LEAF & LIMB**

**THIS PROFESSIONAL SERVICES AGREEMENT,** made and entered into this ___ day of _____, 2020 by and between the **TOWN OF RIVER BEND**, a body politic and corporate of the State of North Carolina ("Town"); and **K.A. JONES DESIGN AND MANAGEMENT** ("Contractor").

**WITNESSETH:**

WHEREAS, the Town desires to employ Contractor for those matters contained in this Agreement and Contactor desires to render said services to Town.

NOW, THEREFORE, BE IT RESOLVED by the parties as follows:

## ARTICLE 1

### Responsibilities of Contractor

**1.1** During the term of this Agreement, and subject to the conditions and terms contained herein, Contractor agrees to provide those services, and other obligations as more fully set forth in Attachment "A"..

**1.2** Contractor shall provide its services hereunder in a timely manner, using that degree of care and professionalism as exercised by similar entities providing such services.

**1.3** Contractor shall, at its own expense, maintain and carry workers' compensation, (if statutorily required), commercial general liability, and automobile liability insurance as identified in attachment "B". Contractor shall provide the Town with Certificates of Insurance before services commence.

**1.4** Contractor expressly acknowledges that this Agreement is non-exclusive, and that Town may retain the same services from other providers if it deems the same necessary.

## ARTICLE 2

## Responsibilities of Town

**2.1** Town agrees to perform all of its obligations, including compensating Contractor, as more particularly set forth in Section 2.4 and Attachment "A". To the extent there is any conflict between the provisions of Section 1.1 and Attachment "A", Section 1.1 shall control.

**2.2** Town shall provide reasonable assistance to Contractor in the performance of Contractor's duties contained herein.

**2.3** Invoices submitted to Town by Contractor shall be due and payable no more than thirty (30) days after completion of the services described by this Agreement, subject to the Town's satisfaction, which shall not be unreasonably withheld.

**2.4** In no event shall Town be required to reimburse Contractor if the project contemplated hereunder is not awarded and fully funded by the appropriate governmental agency. Furthermore, in no event shall the compensation identified in Section 2.1 exceed the agreed upon rates as specified in Attachment "A".

## ARTICLE 3

## Term

The term of this Agreement is for a period starting **July 1, 2020** and ending **June 30, 2022**. This Agreement may be terminated by either party at any time for cause upon 30 days advance written notice. If the Town is the party terminating this Agreement for cause, Contractor shall be entitled to no further compensation. Otherwise, either party may terminate this Agreement without cause upon 60 days advance written notice. In the event of termination without cause, Contractor shall be entitled to compensation for all services provided through the date of termination of the contract.

## ARTICLE 4

## Independent Contractor

In the performance of services hereunder, the Contractor and its agents shall at all times act as an independent contractor practicing their profession and not as employees of the Town. Contractor and its agents shall not have any claim under this Agreement or otherwise against Town for vacation pay, sick leave, retirement benefits, social security, worker's compensation, disability benefits, unemployment insurance benefits, or employee benefits of any other kind.

## ARTICLE 5

**Indemnification; Limitation of Liability**

**5.1** Each party shall defend, indemnify and hold harmless the other party from and against claims, damages, losses and expenses resulting from the negligent acts or omissions of malfeasance of the indemnifying party under this Agreement. The obligation of indemnity hereunder shall not include special, indirect, incidental or consequential damages, including but not limited to, loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays or claims of customers or third parties for any damages, however caused, whether based on warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incidental or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law.

**5.2** Notwithstanding anything herein, in no event shall a party be liable, under any circumstances, for special, indirect, incidental or consequential damages, whether in warranty, agreement, tort, negligence, strict liability or otherwise and whether or not a party is advised of the possibility of such damages, including, but not limited to loss of profits or revenue, loss of use of the equipment or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of customers or other third parties for any damages, and if this Agreement is governed by or interpreted in accordance with the laws of a jurisdiction that does not allow the exclusion or limitation of special, indirect, incident or consequential damages so that the foregoing limitation or exclusion does not apply, then such limitation or exclusion shall apply to the fullest extent allowable under applicable law. Notwithstanding anything herein, each party's aggregate liability for any and all claims whether in agreement, warranty, tort, negligence, strict liability, or any otherwise for any loss or damages arising out of, connected with, or resulting from this Agreement or the performance or breach thereof, or from the design, manufacture, sale, delivery, resale, repair, replacement, installation, technical direction of installation, inspection, operation or use of any equipment covered by or

furnished under this Agreement, or from any services rendered in connection therewith or related to the subject matter hereof, shall in no case exceed the contract price of this Agreement.

## ARTICLE 6

## Force Majeure

**6.1** Contractor shall neither be liable for loss, damages, detention or delay nor be deemed to be in default for failure to perform when prevented from doing so by causes beyond its reasonable control including but not limited to acts of war (declared or undeclared) or terrorism, acts of God, fire, strike, labor difficulties, acts or omissions of any governmental authority, including the Town, compliance with government regulations, insurrection or riot, embargo, delays or shortages in transportation or inability to obtain necessary labor, materials, or manufacturing facilities from usual sources or from defects or delays in the performance of its suppliers or subcontractors due to any of the foregoing enumerated causes. In the event of delay due to any such cause, the date of delivery or installation will be extended by a period equal to the delay plus a reasonable time to resume delivery or installation.

## ARTICLE 7

## Miscellaneous

**7.1 Entire Agreement; Modification:** This Agreement (including all exhibits and schedules attached hereto), contain all of the terms and conditions agreed to by the Parties, and no other contract, document or agreement, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any Party hereto or to vary any of the terms contained in this Agreement. This Agreement supersedes all prior agreements and understandings between the parties hereto relating to the subject matter hereof.

**7.2 Severability:** If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the Parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent of the Parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

**7.3 Binding Effect:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal representatives, successors, and assigns.

**7.4 Assignment:** Except as may otherwise be expressly provided herein, no party may assign any right, obligation, or liability arising hereunder without the other party's prior written consent. Any such assignment or attempted assignment shall be null and void.

**7.5 Headings:** Headings in this Agreement are for convenience and reference only and shall not be used to interpret or construe its provisions.

**7.6 Duplicate Originals:** This Agreement shall be executed in duplicate originals, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

## ARTICLE 8

## Amendment

**8.1 Intentionally left blank for future amendments**

**IN TESTIMONY WHEREOF**, the parties hereto have duly executed this Agreement in duplicate originals, a copy of which is retained by each of the parties, the day and year first above written.

**TOWN OF RIVER BEND**

**K.A. JONES**
**DESIGN AND MANAGEMENT**

By: _____
John R. Kirkland
Mayor

_____

ATTEST:

_____
Ann Katsuyoshi
Town Clerk

*This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.*

By: _____ _____
Irving J. Van Slyke, Jr. Date
Finance Officer

**ATTACHMENTS:**

A – Scope of Services to be Provided
B – Insurance Requirements
C – Emergency Equipment Requirements

**IRAN DIVESTMENT ACT CERTIFICATION**

**REQUIRED BY N.C.G.S. 143C-6A-5(a)**

---

As of the date listed below, the vendor, bidder or contractor listed above certifies that it/he/she is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143C-6A-4 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this contract which is listed on the Final Divestment List.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

Signature _____ Date _____

Printed Name _____ Title _____

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

## Services to be provided and Compensation

### EMERGENCY DEBRIS REMOVAL

Contractor agrees to serve Town immediately after a storm damage event that may require removal of trees and other debris from the Town. Contractor shall provide only those services as directed by the Town Manager or his designee. Contractor shall preposition equipment in the Town when a hurricane watch is posted by local authorities. Such equipment will be positioned at a location directed by the Town Manager or his designee. The parties expressly acknowledge that this preposition of equipment is necessary so that the equipment may be available in the Town, and will not be isolated at a remote site in the event that vehicular traffic is restricted. Contractor shall provide sufficient equipment and labor, and shall remove a minimum of ten (10) tons of debris per day. Contractor agrees to begin this process within forty-eight (48) hours of the storm damage event, and to remain in the Town continuously until the clean up work as directed by the Town Manager or his designee is completed.

Contractor further agrees, at the Town's direction, to provide heavy lift equipment and operators to clear passage through the Town's streets, commonly referred to as cut and toss, prior to commencing loading and transport operations. Contractor agrees to provide this service within twelve (12) hours of the storm damage event. When provided upon request, it shall be at the rate **$140.00 per ton** for the term of this contract. The Town Manager or his designee shall determine if the service is needed, and to what extent, and shall certify the tonnage removed.

For services related to emergency debris removal, Town shall pay Contractor a retainer fee of five hundred dollars ($500.00) per year, to be paid in advance yearly. Town shall pay any "tipping fees" related to disposal of such debris removed from the Town. The equipment to be used by the Contractor shall be one or more of those vehicles identified on Attachment "C." The Town shall certify the tonnage removed.

KAJ

JRK

**LEAF AND LIMB PICK-UP**

Contractor shall provide loading equipment, personnel and trucks to pick up and transport to a designated disposal site leaf and limbs within the Town, as may be defined by the Town from time to time. The pick up route shall be assigned by the Town Manager or his designee. These pick ups shall be conducted on an annual schedule, which schedule shall be provided to the Contractor at the beginning of each year that this Agreement is in effect. Contractor shall provide a daily progress report to the Town Manager, or his designee, while the Contractor is in Town providing the contracted services. Excluding extreme weather delays or written advance approval from the Town Manager or his designee, Contractor shall be penalized fifty percent (50%) of the per term fee if the scheduled start times are not followed. Contractor must provide sufficient equipment and labor, and remove a minimum of five (5) tons of leaf and limb per day. Contractor shall follow the requirements of the Town's ordinances, rules and regulations that may affect the services provided hereunder.

For these services, Contractor shall be compensated at a rate **$105.00 per ton** during the term of this agreement. The Town shall pay the tipping fees for leaf and limb pick up.

Town shall continue to review the best practice for removal of leaf and limb. Should Town modify the present practice of leaf and limb pick up, Contractor shall be notified at least thirty (30) days in advance of a scheduled pick up.

_____
KAJ

_____
JRK

**ATTACHMENT B**

## Insurance Requirements

Contractor shall maintain insurance in the kind and amounts set forth below during the term of this Agreement. All such insurance coverage shall name the Town as an additional insured, and shall provide that the coverage shall not be changed or cancelled without thirty (30) days advance written notice to the Town. Prior to performance hereunder, Contractor shall furnish to the Town, certificates of insurance, in a form satisfactory to Town's legal counsel, evidencing such insurance. The kind and amounts of insurance are as follows:

1. Worker's compensation insurance in an amount equal to the statutory minimum.

2. General liability insurance, including personal injuries, in an amount of not less than $1,000,000 per person/$1,000,000 per occurrence.

3. Automobile liability insurance coverage for all owned as well as non-owned and hired motor vehicles in limits of not less than a bodily injury liability of $1,000,000 per person/$1,000,000 per occurrence, and property damage liability of not less than $1,000,000.

_____
KAJ

_____
JRK

**ATTACHMENT C**

Equipment available to be used:

Emergency

2 -4 articulating excavators on tracks with manual "thumbs"
4- 6 Large capacity dump trucks

Routine

1 excavator
2 or more dump trucks and/or trailers

Other_____

Other_____

KAJ

JRK

"D"

NORTH CAROLINA

CRAVEN COUNTY

**SERVICES AGREEMENT**

**THIS SERVICES AGREEMENT**, made and entered into this ____ day of _____, 2016 by and between the **TOWN OF RIVER BEND**, a municipal corporation of the State of North Carolina ("Town"); and **KEVEN A. JONES, d/b/a K.A. JONES DESIGN AND MANAGEMENT**, an individual and resident of Onslow County, North Carolina ("Contractor").

**W I T N E S S E T H:**

WHEREAS, Contactor provides services related to leaf and limb pickup, and debris removal; and,

WHEREAS, Town desires to employ Contractor for those matters contained in this Agreement, and Contractor desires to render said services to Town.

NOW, THEREFORE, BE IT RESOLVED by the parties as follows:

## ARTICLE 1

## Responsibilities of Contractor

**1.1** During the term of this Agreement, and subject to the conditions and terms contained herein, Contractor agrees to provide those services which are more fully set forth in Attachment "A."

**1.2** Contractor shall provide its services hereunder in a timely fashion, using that degree of care and professionalism as exercised by similar professionals providing such services.

**1.3** Contractor expressly acknowledges that this Agreement is non-exclusive, and that Town may retain the same services from other providers if it deems the same necessary.

**1.4** Contractor shall maintain in full force and effect policies of insurance for the coverages and in the amounts as identified in attachment "B."

## ARTICLE 2

## Responsibilities of Town

**2.1** Town shall compensate Contractor as more particularly set forth in Attachment "A."

**2.2** Town shall provide reasonable assistance to Contractor in the performance of Contractor's duties contained herein.

## ARTICLE 3

## Term

Unless terminated by either party for cause, this Agreement shall begin in the 1st day of July, 2016 at 12.01 a.m. and end on June 30, 2018 at 12:00 midnight. Provided, however, that the Town has the unilateral right to terminate this Agreement without cause within sixty (60) days of the Contractor's first performance hereunder; and in such an event, Town and Contractor shall have no further responsibility to the other hereunder.

## ARTICLE 4

## Independent Contractor

In the performance of services hereunder, the Contractor and his agents shall at all times act as an independent contractor practicing their profession and not as employees of the Town. Contractor and its agents shall not have any claim under this Agreement or otherwise against Town for vacation pay, sick leave, retirement benefits, social security, worker's compensation, disability benefits, unemployment insurance benefits, or employee benefits of any other kind.

## ARTICLE 5

## Miscellaneous

**5.1** **Entire Agreement; Modification**: This Agreement supersedes all prior agreements and constitutes the entire agreement between the Parties hereto with regard to the compensation of Town. It may not be amended or modified except by an instrument executed by both Parties.

**5.2** **Severability**: If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be unconstitutional or unenforceable, the decision of such court shall not affect or impair any of the remaining provisions of this Agreement, and the Parties shall, to the extent they deem to be appropriate, take such actions as are necessary to correct any such unconstitutional or unenforceable provision. It is hereby declared to be the intent to the Parties to this Agreement that this Agreement would have been approved and executed had such an unconstitutional or unenforceable provision been excluded therefrom.

**5.3** **Binding Effect**: This Agreement shall be binding upon and inure to the Parties hereto and their respective legal representatives, successors and assigns.

**5.4** **Assignment**: Except as may otherwise be expressed provided herein, no party may assign any right, obligation, or liability arising hereunder without the other party's prior written consent. Any such assignment or attempted assignment shall be null and void.

**5.5** **Headings**: Headings in this Agreement are for convenience and reference only and shall not be used to interpret or construe its provisions.

**5.6** **Duplicate Originals**: This Agreement shall be executed in duplicate originals, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

RFP Number: _____
(if applicable)

Name of Vendor, Bidder,
or Contractor: _____

**IRAN DIVESTMENT ACT CERTIFICATION**

**REQUIRED BY N.C.G.S. 143C-6A-5(a)**

---

As of the date listed below, the vendor, bidder or contractor listed above certifies that it/he/she is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 143C-6A-4 (the "Final Divestment List"), and (ii) Seller will not utilize any subcontractor performing work under this contract which is listed on the Final Divestment List.

The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

_____

Signature Date

_____

Printed Name Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143C-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

**IN TESTIMONY WHEREOF**, the parties hereto have duly executed this Agreement in duplicate originals, a copy of which is retained by each of the parties, the day and year first above written.

**TOWN OF RIVER BEND**

_____

John R. Kirkland, Mayor

ATTEST:

_____

Ann H. Katsuyoshi, Town Clerk

**K.A. JONES DESIGN AND MANAGEMENT**

_____

Keven A. Jones

**WITNESS**:

_____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

_____

Irving Van Slyke, Jr., Finance Officer

## ATTACHMENT A

**Services to be provided and Compensation**

### EMERGENCY DEBRIS REMOVAL

Contractor agrees to serve Town immediately after a storm damage event that may require removal of trees and other debris from the Town. Contractor shall provide only those services as directed by the Town Manager or his designee. Contractor shall preposition equipment in the Town when a hurricane watch is posted by local authorities. Such equipment will be positioned at a location directed by the Town Manager or his designee. The parties expressly acknowledge that this preposition of equipment is necessary so that the equipment may be available in the Town, and will not be isolated at a remote site in the event that vehicular traffic is restricted. Contractor shall provide sufficient equipment and labor, and shall remove a minimum of ten (10) tons of debris per day. Contractor agrees to begin this process within forty-eight (48) hours of the storm damage event, and to remain in the Town continuously until the clean up work as directed by the Town Manager or his designee is completed.

Contractor further agrees to provide heavy lift equipment and operators to clear passage through the Town's streets prior to commencing loading and transport operations. Contractor agrees to provide this service within twelve (12) hours of the storm damage event. When provided upon request, it shall be at the rate $140.00 per ton for the term of this contract. The Town Manager or his designee shall determine if the service is needed, and to what extent, and shall certify the tonnage removed.

For services related to emergency debris removal, Town shall pay Contractor a retainer fee of five hundred dollars ($500.00) per year, to be paid in advance yearly. Town shall pay any "tipping fees" related to disposal of such debris removed from the Town. The equipment to be used by the Contractor shall be one or more of those vehicles identified on Attachment "C." The Town shall certify the tonnage removed.

### LEAF AND LIMB PICK-UP

Contractor shall provide loading equipment, personnel and trucks to pick up and transport to a designated disposal site leaf and limbs within the Town, as may be defined by the Town from time to time. The pick up route shall be assigned by the Town Manager or his designee. These pick ups shall be conducted on an annual schedule, which schedule shall be provided to the Contractor at the beginning of each year that this Agreement is in effect. Contractor shall provide a daily progress report to the Town Manager, or his designee, while the Contractor is in Town providing the contracted services. Excluding extreme weather delays or written advance approval from the Town Manager or his designee, Contractor shall be penalized fifty percent (50%) of the per term fee if the scheduled start times are not followed. Contractor must provide sufficient equipment and labor, and remove a minimum of five (5) tons of leaf and limb per day. Contractor shall follow the requirements of the Town's ordinances, rules and regulations that may affect the services provided hereunder.

KAJ

JRK

For these services, Contractor shall be compensated at a rate $95.00 per ton during the term of this agreement. The Town shall pay the tipping fees for leaf and limb pick up.

Town shall continue to review the best practice for removal of leaf and limb. Should Town modify the present practice of leaf and limb pick up, Contractor shall be notified at least thirty (30) days in advance of a scheduled pick up.

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## ATTACHMENT B

### Insurance Requirements

Contractor shall maintain insurance in the kind and amounts set forth below during the term of this Agreement. All such insurance coverage shall name the Town as an additional insured, and shall provide that the coverage shall not be changed or cancelled without thirty (30) days advance written notice to the Town. Prior to performance hereunder, Contractor shall furnish to the Town, certificates of insurance, in a form satisfactory to Town's legal counsel, evidencing such insurance. The kind and amounts of insurance are as follows:

1. Worker's compensation insurance in an amount equal to the statutory minimum.

2. General liability insurance, including personal injuries, in an amount of not less that $1,000,000 per person/$1,000,000 per occurrence.

3. Automobile liability insurance coverage for all owned as well as non-owned and hired motor vehicles in limits of not less than a bodily injury liability of $1,000,000 per person/$1,000,000 per occurrence, and property damage liability of not less than $1,000,000.

KAJ

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ATTACHMENT C

Equipment available to be used:

Emergency

2 -4 articulating excavators on tracks with manual "thumbs"
4- 6 Large capacity dump trucks

Routine

1 excavator
2 or more dump trucks and/or trailers

Other_____

Other_____

_____
KAJ

_____
JRK

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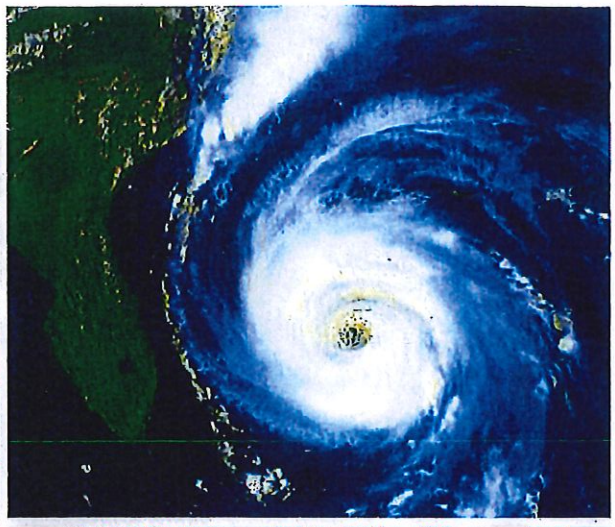
This document is 653 pages long. It is available on the town's webpage on the Floodplain Management tab.

# Pamlico Sound Regional Hazard Mitigation Plan



hcp HOLLAND CONSULTING PLANNERS

wood.

# 2020 JUNE

| SUN | MON | TUE | WED | THU | FRI | SAT |
|---|---|---|---|---|---|---|
| | 1 | 2 | 3 | 4 | 5 | 6 |
| 7 | 8 | 9 | 10 | 11 ✓ | 12 | 13 |
| 14 | 15 | 16 | 17 | 18 ✗ | 19 | 20 |
| 21 | 22 | 23 | 24 | 25 | 26 | 27 |
| 28 | 29 | 30 | | | | |

✓ = Budget Public Hearing

✗ = Budget Adoption

May 28- Budget Message & Proposed Budget Released

June 11- Budget Public Hearing
June 18- Budget Adoption



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**TOWN OF RIVER BEND RESOLUTUION**

**SUPPORTING SEARCH FOR ADDITONAL**

**EGRESS ROUTE FOR TOWN**

**WHEREAS,** the River Bend Town Council recognizes that a majority of its citizens utilize Shoreline Drive as their primary means of vehicular egress, and

**WHEREAS,** Shoreline Drive could become inaccessible during unusual or emergency situations, thus limiting access of both private and emergency vehicles to a large portion of the town, and

**WHEREAS,** there has been ongoing conversations about developing a plan to build an additional street through the area known as the Northwest Quadrant, and

**WHEREAS,** The Town Council is interested in officially researching options which would provide the land necessary to construct such an access route;

**NOW THEREFORE BE IT RESOLVED,** by the River Bend Town Council that the Town Manager is hereby authorized to contact private land owners in the Northwest Quadrant, or any other area that may provide additional egress, to inquire about the availability of land and the terms of such availability and to report his findings to the Council for their consideration.

**Adopted this the 21st day of May, 2020**

_____

John Kirkland, Mayor

ATTEST:

_____

Ann Katsuyoshi