

REQUEST FOR BOARD ACTION

ITEM NO. 23.

DATE OF REQUEST: February 5, 2009

REQUESTED BY: Staff, Planning and Community Development Department

SHORT TITLE: Pender County, applicant and owner, is requesting the approval of a Special Use Permit (SUP) for an industrial park.

BACKGROUND: Pender County, applicant and owner, is requesting approval of a Special Use Permit for the establishment of an Industrial Park on 378 acres. The property is zoned I-2, Industrial District (Heavy Industry) and is located along the southwest side of U.S. Highway 421 S., approximately ¼ mile north of the New Hanover County line. The property may be identified as PIN # 2291-76-4724-0000. Currently the Pender County Zoning Ordinance requires a Special Use Permit for Industrial Parks to be located in the Industrial (Heavy Industry) I-2 District.

SPECIFIC ACTION REQUESTED: Staff is requesting that the Board of Commissioners: Hold a Public Hearing for a request for a Special Use Permit for an industrial park, in the Industrial I-2 District.

PLANNING STAFF REPORT
Special Use Permit

SUMMARY:

Hearing Date: February 16, 2009
Case Number: 09-02-16-05
Applicant: Pender County
Property Owner: Pender County

Land Use Proposed: The applicant is proposing to develop a public industrial park, including a future publicly owned and operated water plant and sewer plant.

Property Record Number and Location: The property is identified by record number 2291-76-4724-0000 and is located west of U.S. Hwy 421 across from S.R. 1100 (Cowpen Landing Road) just north of the New Hanover/Pender County line.

Zoning District of Property: The property is zoned I-2 Industrial District (Heavy Industry).

PROJECT DESCRIPTION:

The applicant is requesting approval of a Special Use Permit for the development and operation of a publicly owned industrial park. Currently the property is undeveloped aside from 4 private water wells owned by BASF. These wells remain operational and are reserved by easement, and will have no impact on the development of the industrial sites or the water or sewer plants according to the applicant (see applicant's narrative).

The property consists of 378.195 acres located on southwest side of U.S. 421, just north of the New Hanover/Pender County line. The property is bounded by Corbett Industries on the northwest, Wiltak, Inc. on the southwest, and BASF Corporation on the southeast. Main access to the park will be provided via a main entrance from U.S. 421, aligned with existing S.R. 1100 (Cowpen Landing Road). A secondary access on U.S. 421 to the south of Cowpen Landing Road will serve as access to one lot as well as the water and wastewater treatment facilities. The draft master plan provides for 12 lots ranging from 11 to 20 acres in size with a total developed area of 280 acres, and access to the 12 lots will be provided by the main park road, with the exception of one lot accessed from the secondary entrance. A formal description of the proposed project's undeveloped areas can be found in the draft protective covenants.

The facilities and office buildings in the park will be served by future public water and sewer plants that are planned for development within the property. The water plant is expected to be operational by 2011, and will be owned and operated by Pender County. Options for the public sewer treatment facility are currently being explored by Pender County. Both the water plant and the wastewater treatment facility will require separate special use permits. In the case that an industrial client requires water and/or sewer services prior to the functional operation of the planned water and sewer treatment facilities, the County is prepared to meet those demands through the use of onsite wells and/or septic or package treatment plants. Other utilities to be provided include electricity through Progress Energy, telecommunications through AT&T (Bellsouth), and natural gas through Piedmont Natural Gas.

Pursuant to Section 15.5 of the Zoning Ordinance, a draft copy of the proposed protective covenants to be recorded on the park has been submitted with the special use application. The covenants will be recorded prior to the division or sale of any parcels and prior to issuance of any zoning permit for or within the park, and staff has coordinated the preparation of the final covenants to ensure there are no conflicts between the development ordinances and the industrial park restrictive covenants.

The proposed industrial park is projected to have a favorable effect on the local economy by providing job creation and opportunity, increased tax base, reduction in residents commuting out of the County for employment, among other positive impacts. The park will also provide a suitable location for much needed public water and sewer treatment facilities to serve the County, which will catalyze further development within the county that has previously been restricted due to the lack of sufficient water and sewer infrastructure.

EVALUATION:

- A) Public Notifications:** Advertisements for the proposal have been placed in the Topsail Voice and Pender Post. Adjacent property owners were notified by first class mail.
- B) Basis for Granting SUP:** See Attachment A for approval procedures (15.3 of Zoning Ordinance) and revocation procedures (15.4b of Zoning Ordinance).
- C) Zoning Ordinance Compliance:** The property is zoned I-2, Industrial District (Heavy Industry), and industrial parks are permitted via Special Use Permit (see attached zoning map).
- D) 2005 Land Use Plan Compliance:** The current CAMA Land Use Plan classifies the subject property as Rural Area and Conservation Area II. It is specifically noted under the classification description of Rural Area in the CAMA Land Use Plan that the Southern US 421 Corridor (area of proposed development) has characteristics that are conducive to industrial and transportation related land uses. The proposed development is particularly consistent with Chapter II Section E, Industrial and Business Development, of the current CAMA Land Use Plan, and no development is proposed to be undertaken on the portions of the subject property classified as Conservation Area II.
- E) Existing Land Use in Area:** The parcel to the north is owned by Corbett Industries and is undeveloped and used for timber agriculture. The parcel to the west is owned by BASF Corporation and is largely undeveloped. The parcel to the south is also owned by BASF Corporation, and is developed consisting of a vitamin manufacturing facility. The parcels across the U.S. 421 corridor from the subject property are largely undeveloped.
- F) Site Access Conditions:** Access to the site will be provided a main entrance from U.S. 421 in alignment with existing S.R. 1100 (Cowpen Landing Road).
- G) Conditions Governing Special Use Permit Approval:**
1. The park and all individual uses shall comply with and be maintained in accord with all provisions of all applicable sections of Pender County Ordinances and all state and federal regulations
 2. A separate Zoning Permit must be obtained for any proposed signs. Signs shall be in accord with Section 16 of the Pender County Zoning Ordinance.
 3. The right-of-way of the former Seaboard Coastline Railroad, which runs parallel to US 421 as depicted on MB 42 Page 113 of the Pender County Registry, shall remain reserved and undeveloped to preserve its use as a future "rail-to-trail" corridor, or for use as a future rail corridor. Owners of property adjacent to the right-of-way shall endeavor to cooperate with local government, state government, non-profits, and others in the future use and improvement of the rail corridor.
Staff has received nine letters of endorsement from organizations including the Cape Fear Area Rural Planning Organization, the Wilmington Urban Area Metropolitan Planning Organization Transportation Advisory Committee, the National Park Service at Moores Creek National Battlefield, the National Rails to Trails Conservancy, and the Sampson County Department of Parks and Recreation, among others.
 4. Staff is allowed to grant reasonable extensions of the special use permit expiration period so long as the applicant is actively obtaining all of the necessary local, state, and federal permits associated with the project.

RESOLUTION: NOW, THEREFORE, BE IT RESOLVED, that on February 16, 2009 the Pender County Board of Commissioners (approved, modified, denied) a special use permit for the operation of a public industrial park, as described herein, and Jimmy T. Tate, Chairman to the Board, is authorized to execute the order implementing this resolution and provide notice to the applicant of the action taken herein.

PLANNING AND COMMUNITY DEVELOPMENT

PLANNING • CODE ENFORCEMENT • BUILDING INSPECTIONS • CENTRAL PERMITTING



SPECIAL USE PERMIT APPLICATION

THIS SECTION FOR OFFICE USE			
Application No.	SUP 09-02-16-05	Date	01-02-09
Permit Fee		Receipt No.	
APPLICANT INFORMATION			
Applicant Name Rick Benton, County Manager		Owner Name County of Pender	
Address: PO Box 5 Burgaw, NC 28425		Address: Same	
Phone No: 910-259-1200		Phone No:	
Legal relationship of applicant to owner: Pender County Manager			
PROJECT INFORMATION			
Property tax record No. 2291-76-4724-0000		Total property acreage: 378	
Zoning Designation: I2		Acreage to be disturbed: 280	
Acreage to be used for project: 280			
Project location and address: US 421 at Pender/New Hanover County Line			
Describe activities to be undertaken on project site: Public Industrial Park			
SIGNATURES			
Applicant: <i>Rick Benton</i>	Date: 1-2-09	Owner: <i>Jimmy T. Tate</i>	Date: 1-2-09
NOTICE TO APPLICANT			
<ol style="list-style-type: none"> 1. Applicant must also submit the information described on page two of this form. 2. Applicant or agent authorized in writing must attend the public hearing. 3. Once the public hearing has been advertised, the case will be heard unless the applicant withdraws the application or unless the Board of Commissioners or other authorized person agrees to table or delay the hearing. 4. Applicant may wish to review the required findings for approval of a Special Use Permit (p. 3). 5. Permit will become void after 12 months if a final zoning permit is not obtained, unless specifically requested at the time of public hearing. 			

**Pender County
Pender Commerce Park
Special Use Permit**

Application Narrative and Required Findings Support

The Pender County Board of Commissioners acquired a 378 acre tract in 2006 located on the US 421 corridor, adjacent to the BASF Corporation and the New Hanover/Pender County line for the development of an industrial park, and including the location of a future publicly owned and operated water plant and sewer plant. Unemployment in Pender County is increasing. While there is some industry in the county, industry represents a small fraction of the total county employment base. The County acquired the property in an effort to stimulate and facilitate industrial development in Pender County to create jobs and tax base to improve the quality of life and standard of living for its citizens, as well as a site to build future water and sewer plants to serve continued future growth in Pender County. The industrial park project is being undertaken in partnership with Wilmington Industrial Development (WID), the County's economic development partner.

The industrial park fronts US 421, with access via a main entrance in alignment with existing S.R. 1100 (Cowpen Landing Road). An industrial corridor runs along US 421 in northern New Hanover County into Pender County. The proposed industrial park conforms to the existing established land uses in the area. The current zoning is I-2, which permits industrial parks and uses.

The master plan provides for 12 lots (157 acres) for industrial client development, ranging from 11 to 20 acres in size, all being accessed by the main park road. The remaining developable land is reserved for the future public water and sewer plants. Of the total 378 acres, 280 will be developed. The remainder entails 9 acres of railroad right-of-way, 22 acres of power company right-of-way, 56 acres of wetlands, and 11 acres of US 421 right-of-way. The Seaboard Coastline Railroad corridor right-of-way is to be reserved for future rail-to-trail or rail development.

The following evaluations/reports have been accomplished and are available for public inspection:

- a. Wetland Delineation
- b. Environmental Report for Water Plant
- c. Endangered Species Report
- d. Phase I Environmental
- e. Geotechnical Borings
- f. Boundary Survey

No findings have been made that would preclude the land from being developed as an industrial park. The site contains 4 private water wells owned by BASF, and they remain operational and are reserved by easement. They will have no impact on development of the industrial sites or the water or sewer plants.

The County is prepared to undertake design and engineering of the water/sewer/street/storm water infrastructure once the Special Use Permit is approved. When completed, the industrial park will qualify to be certified under the NC Department of Commerce site certification program. The park and infrastructure will be developed in compliance with all federal and state codes, including Pender County building and land use codes. In addition, the park will be governed by restrictive covenants approved and enforced by the County, which shall govern plan approval including components related to lighting, landscaping, parking, storage, storm water management, buffering, construction, environmental matters, utilities, setbacks, fencing, and so forth.

The industrial park is anticipated to serve manufacturing and distribution facilities, and office buildings. The facilities will be served by public water and sewer services, which will be provided within the park via the new public water and sewer plants being planned. The water plant will be owned and operated by Pender County, and is expected to be operational in 2011. The County is exploring alternatives including various partnerships for the provision of a public sewer plant. Should an industrial client be ready for utility services in the interim period prior to the water and sewer plants becoming operational, the County can meet those demands via wells, and either on-site septic or package plant treatment for sewer. Of course the plants will require state approval and permitting, as well as local health department approval. Infrastructure development will require state approval and permitting, including erosion and sedimentation control & management plans.

With respect to other utility providers: Progress Energy is the electric provider; AT&T (BellSouth) is the telecommunications provider; and Piedmont Natural Gas is the natural gas provider.

There will be no negative impacts to the area or County as a result of this new industrial park. Since the park and the water & sewer plants are being developed publicly, the project will require considerable state oversight and permitting requirements, and compliance with all state, federal and local laws and regulations. In addition, future industrial clients will also have to meet state, local and federal permitting and regulatory requirements. Traffic generation and access onto US 421 will be regulated by NCDOT and will require encroachment permits.

The economic impact to Pender County will be significant. Pender County is a Tier 2 county as designated by the NC Department of Commerce. This means Pender County is not one of the most distressed counties in the state, but is not one of the most affluent either. Pender County's current unemployment rate is over 9% and increasing. The poverty rate is over 16%. Pender County wages are considerably lower than the Wilmington MSA, at 82% of the MSA average, and at 72% of the State average. Industrial and manufacturing employment is an insignificant sector of the Pender County economy, and over 60% of the Pender County workforce commute outside the county to work.

The industrial park will make a very positive economic impact in terms of job creation and opportunity, tax base, per capital and family income, reducing commuting time, and better distributing tax base among industry, commercial, governmental and residential sectors. Financially, if you were to assume 10 industries locate in the park, the potential economic impact to the county and its citizens will be significant, even considering modest levels of investment and job creation:

- Increase in Tax Base: \$350 million (\$35 million/site investment)
- Increase in Jobs 500 jobs (50 jobs per industry)
- Increase in Wages: \$16,952,000 (500 employees x \$652 [Average Weekly Manufacturing Wage])

These numbers do not include multiplier effects on the local economy. In addition to the direct economic impact, the water and sewer plants proposed will provide much needed water and sewer capacity to ensure quality and environmentally prudent growth and development throughout the county. Growth in the county is currently severely limited due to water and sewer limited capacity and availability. These plants will ensure capacity is available to meet further residential, commercial and industrial growth demands for the next 20 years or more.

The narrative and following responses support the following required findings of fact :

- A. The use requested is listed among the special uses in the district for which application is made; or is similar in character to those listed in that district.**

The industrial park is listed as a permitted use in the zoning ordinance table of permitted uses in the I-2 zoning district.

- B. The requested use will not impair the integrity or character of the surrounding or adjoining districts, nor adversely affect the safety, health, morals, or welfare of the community or of the immediate neighbors of the property.**

The industrial park will not impair the integrity or character of the area as it will conform to the industrial corridor in which it is located; and will not adversely affect public safety, health, morals or welfare of the area or neighbors as it will conform to other similar industrial uses and all uses on the site will meet all state, federal and local permitting and regulatory requirements.

- C. The proposed use will not constitute a nuisance or hazard.**

The industrial park will be designed and developed to meet all state, federal and local permitting and regulatory requirements and will not present a nuisance or hazard. In addition, restrictive covenants will be recorded which will govern land uses to prevent nuisances or hazards.

- D. The requested use will be in conformance with the land use plan.**

The industrial park is in conformity with the CAMA land use plan. It will reserve the old railroad corridor for future rail-to-trail development and will provide pedestrian friendly facilities. It will be accessible by a major thoroughfare and will be served by urban type infrastructure. The park will provide for buffers, landscaping, storm water management, and ensure compatible land use.

- E. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been or are being provided.**

The industrial park will be designed by professional engineers to provide adequate infrastructure including roads, utilities, storm water management, and other improvements to serve industrial uses. The infrastructure will be permitted through the appropriate agencies.

- F. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize the traffic congestion in the public roads.**

The industrial park entrance and service road, and their use thereof will be designed to public standards, evaluated and permitted by NCDOT.

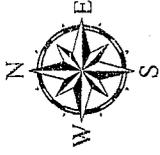
- G. That the special use shall, in all other aspects, conform to the applicable regulations of the district in which it is located.**

The industrial park will be designed and used in conformance with all applicable regulations of the I-2 zoning district and all other land use codes.

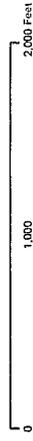
- H. The proposed use shall not adversely affect surrounding uses and shall be placed on a lot of sufficient size to satisfy the space requirements of each use.**

The industrial park will not adversely affect surrounding uses and all site development will meet zoning, building and land use code requirements. In addition in many cases the restrictive covenants will be more restrictive than the land use codes.

Thank you.

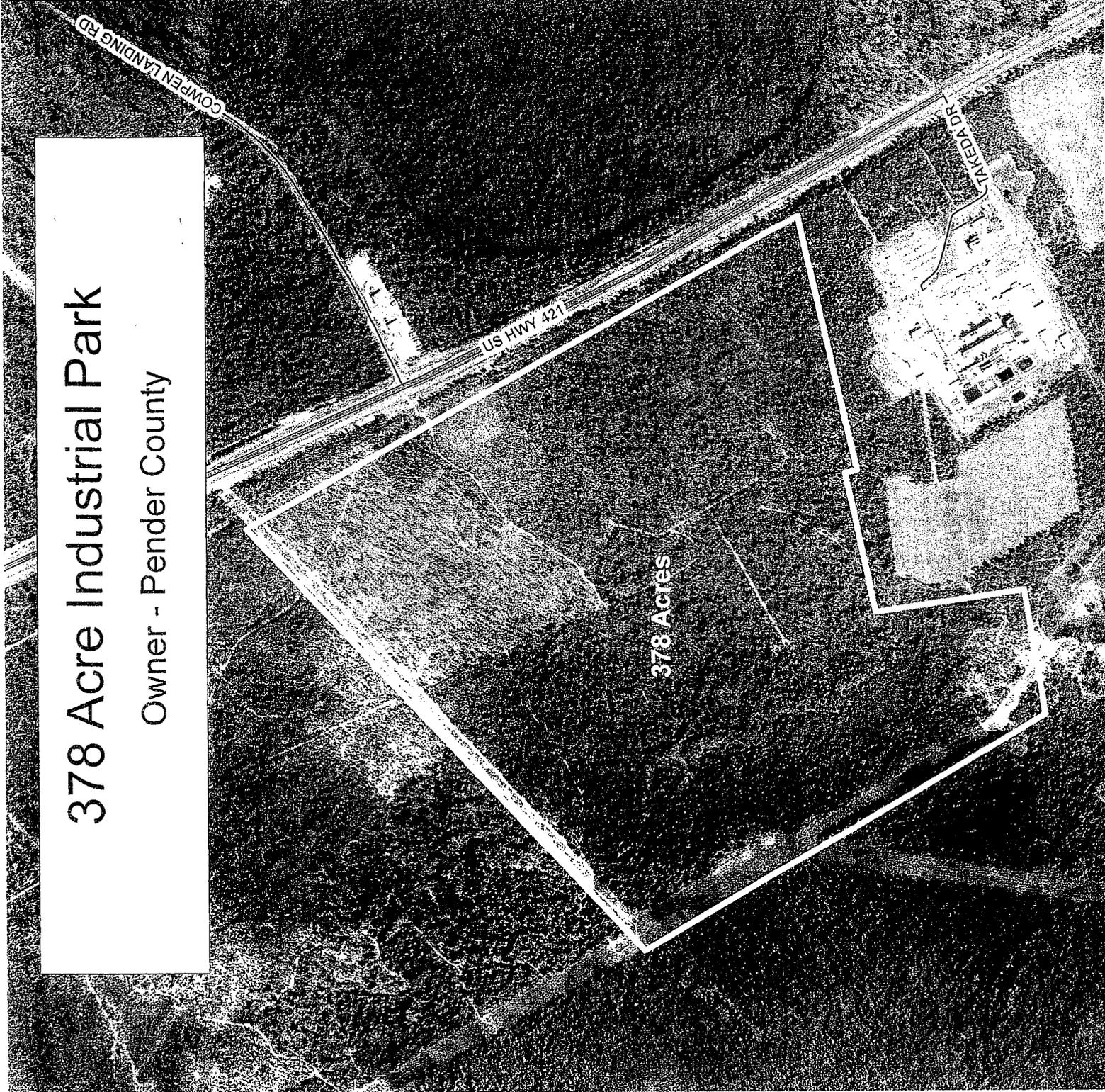


Pender County GIS



Legend

- Subject Tract
- Private Roads
- Secondary Road
- NC Highways
- US Highways
- Interstate



378 Acre Industrial Park

Owner - Pender County

378 Acres

**RESTRICTIVE COVENANTS
FOR
PENDER COMMERCE PARK**

DRAFT

KNOW ALL MEN BY THESE PRESENTS:

THE COUNTY OF PENDER, NORTH CAROLINA, a political subdivision of the State of North Carolina, having a mailing address of P.O. Box 5, Burgaw, North Carolina, 28425 and further having its principal place of business in Pender County, North Carolina (hereinafter referred to as the "County"), is the owner of an interest in certain real property described on Exhibit "A" which is attached hereto and incorporated herein by reference.

The above-identified tract is the Pender Commerce Park (hereinafter the "Park.")

THESE RESTRICTIVE COVENANTS have been established to implement guidelines and covenants establishing specific criteria for site development, architectural design, landscape design, signage, and lighting. These Restrictive Covenants are intended to provide uniform criteria by which each proposal may be evaluated.

1. APPROVAL OF PLANS AND PLANNING ADVISORY BOARD

- 1.1 Before commencing the construction or alteration of all buildings, enclosures, fences, loading docks, parking facilities, storage yards, or any other structure or improvements on or to any parcels of land within the Park, the property owner shall first submit plans and specifications in accordance with Exhibit "B" to this document to the Property Owner's Review Board, or such successor entity as may be created to fulfill the duties outlined herein (the "Board") for its prior written approval. Such plans and specifications shall be prepared in full compliance with the North Carolina Building Code, any Pender County Code and Pender County Land Use Ordinances, and shall show all details necessary to the construction of the buildings or structures, including, but not limited to, the following:
 - 1.1.1 The requirements for the submission of plans as set forth on Exhibit "B".
 - 1.1.2 The landscape requirements as set forth on Exhibit "C".
- 1.2 All such construction or alteration shall proceed according to the plans and specifications approved by the Board.
 - 1.2.1 Upon receipt of plans and specifications, the Board shall review the same and thereafter either approve in their entirety, disapprove in their entirety, approve in part or disapprove in part.
 - 1.2.2 In the event that the Board shall fail to take action on the plans submitted within sixty (60) days of the date of their submission, the same shall be deemed to have been approved in their entirety.
 - 1.2.3 Such approval, however, shall not be deemed to be a waiver of any provision or requirement of the Pender County Land Use Ordinance, Pender County Code, or the North Carolina Building Code.
- 1.3 All pertinent requirements of public and government agencies shall be followed in the development of this property, and all plans must be approved by the County of Pender and all other public agencies having jurisdiction over the same.
- 1.4 Each subsequent buyer must verify code requirements at the time of purchase and development of the property.

- 1.5 Although based on local zoning and subdivision regulations, the Park design criteria may be more restrictive in land use, site development standards, landscape requirements, or in other matters.
- 1.6 In every case in which these criteria are at a variance with public agency requirements, the more restrictive regulations shall govern. In the event of any inconsistency between the Restrictive Covenants and the design criteria, the provisions of the Restrictive Covenants shall control.

2. CONSTRUCTION MATERIALS

- 2.1 The exterior walls of all buildings and above ground structures facing a public street or access street within the park shall be of masonry construction, architectural precast concrete, architectural metal panels, glass, or equivalent (subject to approval of the Board), and must be noncombustible.
 - 2.1.1 All exterior finish materials to be used in any building shall be subject to the approval of the Board as provided herein.
 - 2.1.2 Painted or exposed concrete blocks and corrugated metal or pre-engineered metal on exterior walls of any structure facing a public street within the Park shall not be permitted.
 - 2.1.3 All exterior walls of structures, except for glass and architectural metal or shall be finished with face brick, stucco, aggregate, granite, paint, or other equivalent satisfactory to the Board.
 - 2.1.4 Exposed concrete such as columns, beams, facias, and spandrels on front walls facing any public street or access street within the Park will be permitted only with the prior permission of the Board.
 - 2.1.5 All roof top equipment must be screened from view from all public streets or access streets in the Park.
- 2.2 In cases where the Board determines that the architectural integrity of the Park will be preserved with the use of particular materials, the Board may modify any provisions in this specific covenant.

3. USE

- 3.1 No parcel of land shall be used for a purpose or business which is considered dangerous or unsafe, or which constitutes a nuisance, or is noxious or offensive by reason of emission of dust, odor, gas, smoke, fumes, noise, glare, vibration, radiation, radioactivity, electrical radiation, or creates an unreasonable risk of fire or explosion.
- 3.2 Any potential or prospective users of a parcel of land within the Park must first submit a description of any such use in sufficient detail to permit the Board to determine whether such use is permitted under the terms of these Restrictive Covenants.
 - 3.2.1 Such determination must be so made by the Board prior to any use of any parcel of land, and this determination must be made within thirty (30) days of its submission of the use proposal unless the parties agree to an extension.
 - 3.2.2 Failure of the Board to act within thirty (30) days shall be deemed approval of the plans submitted, but shall not in any way relieve the obligation of the property owner to comply with the provisions of these Restrictive Covenants, any provision of the Pender County Code, Land Use Ordinances, or the North Carolina Building Code.

- 3.3 Any change in use after the determination has been made by the Board shall be subject to further approval by the Board of the changed use.

4. ENVIRONMENTAL MATTERS

- 4.1 Owners or lessees of parcels of land shall not cause or permit any hazardous material (as hereinafter defined) to be brought upon, kept, or used in or about any site in the Park by owner, lessee, its agents, employees, contractors, or invitees excepted as permitted by the Board.
- 4.2 As used herein, the term "hazardous material" means:
- 4.2.1 any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, and the regulations promulgated thereunder;
 - 4.2.2 any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder;
 - 4.2.3 any material or substance regulated by the Toxic Substances Control Act as amended from time to time and regulations promulgated thereunder;
 - 4.2.4 any material or substance regulated by the Federal Insecticide, Fungicide and Rodenticide Act, as amended from time to time, and the regulations promulgated thereunder; and
 - 4.2.5 any explosives, radioactive materials, asbestos or any materials containing asbestos, or any other hazardous, toxic or dangerous material or substance that is or becomes regulated by any federal, state or local law or regulation.
- 4.3 Owners, lessees or developers of parcels of land are encouraged to incorporate cost effective "low impact development" and "green building" best management practices into site development and building construction design to facilitate the preservation and protection of natural resources systems, and to support energy efficiency, water conservation, and sustainable resource management.

5. LOADING

- 5.1 Off-street loading and unloading facilities shall be provided by each owner or lessee of any parcel of land within the Park when that parcel is developed.
- 5.2 Such loading and unloading shall be to the rear or side of any buildings on said parcels of land unless otherwise permitted by the Board.
- 5.3 All loading and unloading facilities shall be screened by effective landscaping or otherwise from view of any public street or access road within or leading to or from the Park.

6. STORAGE YARDS

Outdoor storage yards and tanks shall be screened from public view to such extent as is deemed necessary by the Board and shall be placed so as to conform with the building line restrictions set forth in Section 10. Setbacks.

7. SCREENING

Storage areas, incinerators, storage tanks, trucks based on the premises, roof objects (including fans, vents, cooling towers, and skylights) shall either be housed in closed buildings or be screened for sound and sight from public view and exposure from the street level on adjoining sites and from any dedicated roadways and streets. Such screening shall normally include landscaping or permanent fences (excluding

chain link), or approved solid materials and shall be located so as to most effectively screen the view of the offending items from the street.

8. PARKING

- 8.1 Owners or lessees of parcels of land shall not permit their employees, tenants, invitees, or agents to regularly park on public streets or access streets within such Park.
- 8.2 It will be the responsibility of such owners, or their successors, assigns, or other persons holding under them to provide adequate off-street parking for employees, tenants, invitees, or agents within the property lines of each individual tract, or to provide for such parking through the execution of acceptable written agreements with adjacent property owners allowing cross-utilization of parking areas.
 - 8.2.1 Any such agreement must name the Board and the Park as third-party beneficiaries to the Agreement, must grant to the Board and the County of Pender the authority to enforce such Agreement.
 - 8.2.2 Enforcement may include the revocation of the Certificate of Occupancy of any structure which, at some point in the future, fails to provide adequate parking.
- 8.3 All such parking areas shall be covered with a hard, dust-free, paved, all weather surface. Pervious concrete and other low impact development best management practices are encouraged (see Section 4.3).
- 8.4 Perimeter of parking and tree islands within parking lot shall have concrete curb.
- 8.5 No parking shall be constructed on any parcel or land nearer than 25 feet to street right-of-way unless a waiver of this requirement is granted by the Board.

9. GRADING AND DRAINAGE

- 9.1 All structures will be equipped with gutters, downspouts and/or other drainage conveyance systems.
- 9.2 All surface drainage, including parking lots and roof drainage of buildings, shall be designed to conform to the overall drainage plan of the Park.
- 9.3 All berms, channels, swales, and pipes to be installed by owner must be undertaken in a manner which will be designed to integrate with the natural terrain and existing drainage system.
- 9.4 All surface and roof drainage shall be conveyed through an underground drainage collection system or a combination of overland surface drainage and underground pipes.
- 9.5 All outlets of drainage systems and swales must be stabilized to prevent scour and erosion.
- 9.6 Grading of each lot must be undertaken in order to avoid excessive cut/fill slopes.
 - 9.6.1 A slope ratio of 3:1 or flatter shall be generally acceptable.
 - 9.6.2 The Board, its successors and assigns shall not be liable for any losses or damages caused by any water levels, or drainage waters.
 - 9.6.3 The Board, its successors and assigns, shall have the ability to alter the slope ratio at its discretion.

10. SETBACKS

- 10.1 No building shall be constructed on any parcel of land nearer than 50 feet to the right-of-way lines of streets.
 - 10.1.1 In the case of corner lots, both 50-foot front setbacks will apply.
 - 10.1.2 There must be an owner maintained strip with a minimum of 20 feet in width of landscaped ground along the street property lines, except that drives and walks may be located within the landscaped strip.
 - 10.1.3 No building shall be erected nearer than 25 feet to a side property line.
 - 10.1.3.1 Where necessary and consistent with the overall purposes of these covenants, the 25-foot minimum may be waived by the Board.
 - 10.1.3.2 In the event more than one parcel of land shall be owned by one person or entity, and in the improvement of each parcel of land, a building shall be erected on more than one parcel of land, then the side line restriction on the interior line or lines may be waived.
- 10.2 No building shall be constructed nearer than 25 feet to a rear lot line.
 - 10.2.1 In the event more than one parcel of land shall be owned by one person or entity, and in the improvement of each parcel of land, a building shall be erected on more than one parcel of land, then the rear line restriction on the interior line or lines may be waived.
- 10.3 It is specifically provided that if a part of a parcel of land shall be sold before any improvement shall have been erected, the line between the part sold before any improvement shall have been erected and the part retained shall be the property line to which this setback restriction shall apply.

11. SIGNS

- 11.1 Plans and specifications for the construction, installation, or alteration of all outdoor signs shall be first submitted to and have the written approval of the Board. The Board shall act on approval within thirty (30) days from the date of submission. If the Board fails to act within thirty (30) days the sign shall be deemed approved.
- 11.2 Signs will advertise or identify only the products or services provided or manufactured on the parcel of land upon which the sign is located.
- 11.3 Size of signs will be in accordance with Pender County Land Use Ordinances and subject to and approval of the Review Committee.
- 11.4 Signs or space for signs may not be sold, rented, leased, loaned, or otherwise hypothecated to parties or entities other than the owner or lessee occupying the site upon which the sign is located.
- 11.5 These regulations shall not apply to signs erected by the County of Pender or any other governmental authority.

12. FENCING

No fence or detached wall which is located along the perimeter of any land or which is visible from any street in the Park shall be built without the prior written consent of the Board.

13. OUTSIDE LIGHTING

To minimize the offensive direction of light onto adjacent parcels of land the placement, number, type and intensity of all exterior lighting equipment and fixtures must be approved in advance by the Board.

14. UNDERGROUND UTILITIES

All utility service fixtures, attachments, supports, conduits, appliances and equipment (including, but not limited to outdoor wiring) must be underground except for such above ground cabinets or meters as may be required for the utility or except under special circumstances created by the topography or unique nature of the lot, when the Board may grant a variance.

15. CONSTRUCTION PERIOD

15.1 After implementation of these Restrictive Covenants, each property owner other than the owner at the time of implementation of these Restrictive Covenants must begin any improvements associated with the tract within eighteen (18) months of the date of purchase and complete the construction of infrastructure within thirty-six (36) months of the date of purchase.

15.2 In the event that the purchaser of the property fails to comply with these provisions, the Park shall have an option for a period of six (6) months, to repurchase the property from the record owner, at the price at which it was originally purchased from the County and regardless of the value of any improvements that have been made to the property.

16. CONDITION OF PROPERTY

16.1 The owner of any parcel of land in the Park shall at all times keep the premises, buildings, improvements and appurtenances in a safe, clean and wholesome condition and comply in all respects with all government (including city, county, state and federal) health, fire, and police laws, rules, ordinances, codes, statutes, requirements and regulations.

16.2 The owner will remove, at his or its own expense, any rubbish of any character whatsoever which may accumulate on such parcel of land.

16.2.1 In the event such owner fails to comply with the terms of this covenant, then the Board shall have the right, privilege and license to enter upon such premises and make any and all corrections or improvements that may be necessary to bring the owner to full compliance therewith and to charge such owner the expenses incurred in doing so.

16.2.2 The expenses incurred by the Board in bringing the parcel of land into full compliance shall be a lien on the real property of the owner in favor of the Board.

16.2 If commercial water, sewer or refuse service is available to the property and offered by the County of Pender, all property located within the park shall be serviced by such services.

17. SUBDIVISION PROHIBITION/MINIMUM LOT SIZE

The Board reserves the right to subdivide the real property in the park into parcels containing a minimum of One (1) acre. In addition, owners of adjacent lots or sites in the park may exchange strips or parcels of land between themselves without creating a subdivision where the number of parcels is not increased and when no new parcel is created.

18. EASEMENTS RESERVED

Easements are specifically reserved over and through all front, side, rear and interior lot lines and at all corners of all lot lines for a distance of twenty (20) feet, on each side of the property line for the installation and maintenance of all utility services throughout the park. Additional easements may also be reserved for maintenance and service by the Board at the time of approval of plans by the Board.

19. SEABOARD COASTLINE RAILROAD RIGHT-OF-WAY RESERVED

The right-of-way of the former Seaboard Coastline Railroad, which runs parallel to US 421 as depicted on MB 42 Page 113 of the Pender County Registry, shall remain reserved and undeveloped to preserve its use as a future "rail to trail" corridor, or for use as a future rail corridor. Owners of property adjacent to the right-of-way shall endeavor to cooperate with local government, state government, non-profits and others in the future use and improvement of the rail corridor.

20. PARTIAL INVALIDITY

The invalidation of any one or more of the Restrictive Covenants herein set forth, or the failure to enforce any of such restrictions at the time of its violation or at any time thereafter shall in no event affect any of the other restrictions and shall not be deemed a waiver of the right to enforce the same thereafter.

21. TERM AND AMENDMENT OF RESTRICTIONS

21.1 Each condition and covenant herein contained shall terminate and be of no further effect at 5:00 p.m. on the 30th day of June, 2035.

21.1.1 At any time prior thereto, the then owners of sixty-five percent (65%) of the area of land within the Park may, by written declaration, signed and acknowledged by them, and duly recorded in the Office of the Register of Deeds for Pender County, North Carolina, extend such restrictions, conditions and covenants for a period of Ten (10) additional years.

21.1.2 This right to extend for additional Ten (10) year periods by the then owners shall exist as long as the owners of 65 percent (65%) of the area of land within the Park affirmatively elect to so extend them.

21.2 For purposes of determining quantity of land owned, the same formula shall be used as is established in Article 25, Expenses of Property Used in Common.

22. BENEFICIARIES

The restrictions and covenants are made for the benefit of any and all persons or entities who may now own, or who may hereafter own, real property in the park. Such persons or entities are specifically given the right to enforce these Restrictive Covenants by injunction or other lawful procedure and to recover damages resulting from any violation thereof.

23. BINDING EFFECT/LESSEES

23.1 These covenants shall run with the land herein referred to and shall be fully binding regardless of ownership of the property involved. They shall also be fully binding upon a lessee or sub-lessee of any purchaser of any parcel of land within the park.

23.2 A lease for any interest in any parcel of land shall be deemed to include all of the terms set forth in these Restrictive Covenants.

24. MODIFICATION

24.1 At any time while these covenants are in full force and effect, the then owners of sixty-five percent (65%) of the area of land within the Park may, by written declaration signed, acknowledged by them and duly recorded in the Office of the Register of Deeds for Pender County, North Carolina, modify, amend, alter or eliminate any provisions of the covenants herein set out, provided that the Board referred to herein must approve and concur with any such modification, amendment, alteration or elimination in writing.

24.2 For purposes of determining quantity of land owned, the same formula shall be used as is established in Article 25, Expenses of Property Used in Common.

25. SUCCESSOR TO BOARD

The Board shall have the right to designate by a duly recorded instrument an owner of any parcel of land within the park (or an association of the owners of lots in the park) as the successor to the Board for the purpose of discharging its duties and responsibilities set forth in these Restrictive Covenants. In the event the Board is dissolved or terminated without designating such a successor, then, and in that event, the successor shall be designated by the Senior Resident Superior Court Judge residing in Pender County upon petition by the owner of any parcel of land within the park or by an association of the owners of real property in the park.

26. EXPENSES OF PROPERTY USED IN COMMON

- 26.1 The Board reserves the right to assess annual fees against the owners or lessees of parcels of the land in the park for expenses incurred in the operation, maintenance, repairs, replacements, and services for the property used in common and all improvements thereon including, but not limited to, lighting, trash removal, cleaning, insurance premiums, and real property taxes.
- 26.2 Each owner or lessee of parcels of land's share of the aforesaid expense shall be a sum equal to the product of the amount of such total expenses multiplied by a fraction of the number of which shall be the acreage of the owner or lessee parcels of land building site, and the denominator of which shall be the total acreage of the property exclusive of public streets.
- 26.3 Each owner or lessee of parcels of land will be assessed its respective share of the aforesaid expenses not more frequently than quarterly, and payment of such assessments shall be made within 15 days after mailing of statements to the last known address of the record owner of the property.
- 26.4 Assessments not timely paid shall constitute a lien against the real property to which the assessment pertains from and after the due date of such assessment, and may be collected by the Board together with all costs of collection including attorney fees, from the nonpaying owner by appropriate legal action.

EXECUTED at Pender County, North Carolina, this ____ day of _____, 2009.

PENDER COUNTY

(SEAL)

ATTEST:

BY:

Rick Benton, Clerk to the Board

Jimmy T. Tate, Chairman

Approved as to form on behalf of the County of Pender the ___ day of _____, 2009.

Carl W. Thurman III, Attorney

**STATE OF NORTH CAROLINA
COUNTY OF PENDER**

I, _____, a Notary Public of said County and State, certify that Rick Benton personally appeared before me this day and acknowledged that he is the Clerk to the Board of the County of Pender, and that by authority duly given and as the act of the Board of Commissioners of the County of Pender, the foregoing instrument was signed in its name and by its Chairman, sealed with its corporate seal and attested by him as its Clerk to the Board.

WITNESS my hand and seal this _____ day of _____, 2009.

Notary Public

(SEAL)

My Commission expires:

(SEAL)

EXHIBIT A

Located in Grady Township, Pender County, North Carolina, lying on the southwest side of U.S. Highway 421, and bounded on the northwest now or formerly by Corbett Industries, on the southwest now or formerly by Wiltak, Inc., on the southeast by BASF Corporation, and being more particularly described as follows:

Being 378.195 acres, including 8.917 acres of railroad right-of-way, 22.151 acres of CP&L right-of-way, 56.041 acres of wetlands, and 10.659 acres within the bounds of U.S. Highway 421 right-of-way, as shown on a map entitled "May 10, 2006 Final Plat For Pender County of the Pender County 421 Site" prepared by Thompson and Jones Surveying Company and recorded in Map Book 42 at page 113 of the Pender County Registry, referenced to which map is hereby made for a more particular description.

Together with a perpetual easement appurtenant over that certain new 50' waterline easement connecting the southernmost portion of the above-described tract to the existing 48' raw water line easement of the Lower Cape Fear Water and Sewer District as shown on the map recorded in map book 42 at page 113 of the Pender County Registry.

The property dedicated and reserved for the public water and wastewater plant facilities shall be excluded from these restrictive covenants.

EXHIBIT B
REQUIREMENTS FOR PLANS SUBMITTAL

1. Topographical plat showing final contour grades (with two (2) foot contour intervals) and showing the location of all improvements, structures, walks, patios, driveways, fences and walls. Existing and finished grades shall be shown at lot corners and at corners of proposed improvements. Site drainage provisions shall be included as well as cut and fill details if any appreciable change in the lot contours is contemplated.
2. Exterior elevations of all proposed buildings, structures and proposed use; green building techniques proposed to be incorporated into building design.
3. Exterior materials, colors, textures and shapes which, if required by the Board, shall also be identified by manufacturer's name, product name and identifying number where appropriate.
4. Landscaping plan, including walkways, berms, fences and walls, elevation changes, new trees, tree save areas, shrubs and ground cover.
5. Parking area and driveway plan.
6. Screening, including site, location and method.
7. Utility connections, including routing of electrical, gas and telephone cables.
8. Site lighting plan and illumination level.
9. Signs, flags and other horizontal or vertical advertising or identification not necessary for structural purposes including size, height, shape, color, location and material.
10. Trash container storage locations and related screening.
11. Ingress and egress design and plan.
12. Curbing including curb cuts and gutters.
13. Storm water management facilities including low impact development best management practices.
14. Proposed use of site and such matters as may be required by the Board.
15. Any hazardous materials to be kept or stored on the property.

**EXHIBIT C
LANDSCAPE TREATMENT**

1. **Plans:** No plans for any building, structure or other improvement to be erected, placed or altered in or upon site shall be approved by the Board unless the plans include landscape plans satisfactory to the Board, such landscape plans to include plant material and landscape construction to be installed on the site.
2. **Landscaped Area:** Landscape planting, as a minimum, shall occur in an area forward of the building and adjacent to the street rights-of-way. If on a corner lot, landscape planting shall occur on both sides fronting streets.
3. **Installation:** Approved landscape planting must be installed prior to the granting of a certificate of occupancy for the building, except as delays may be approved by the board and subject to any delays caused by weather conditions.
4. **Landscape Treatments:** Landscape treatment of the site shall be in the form of grass lawns and ground covers, shade trees in parking areas, street trees along every public road in the park, plantings in areas used as dividers and in any areas of limited use. Landscape planting shall be used to mark entrance points and parking areas. The intent of landscape treatment is to provide continuity through the park with implementation of common plant material through the park.
5. **Ground Cover:** All sites shall contain ground cover, preferably properly maintained grass, throughout the developed area.
6. **Undeveloped Areas:** Undisturbed areas which remain in a natural state shall not be subject to landscape planting requirements. On property which has been cleared and held for future development, the owner must install and maintain grass or groundcover sufficient to maintain the aesthetics of the property and preclude erosion.
7. **Sight Lines:** Landscape treatment shall not be in violation of sight line requirements set by the Board for street or driveway intersections.
8. **Maintenance:** All landscape plantings shall be designed for reasonable maintenance and all landscaped areas shall be maintained in a high quality manner at all times, including all necessary watering.

EXHIBIT D
INITIAL MEMBERSHIP OF THE PROPERTY OWNERS REVIEW BOARD

- A. The Property Owner's Review Board shall be initially established with the following members:
 - a. The Pender County Manager or designee
 - b. The Pender County Planning Director or designee
 - c. The Pender County Public Utilities Director or designee
 - d. The Pender County Building Codes Administrator or designee
 - e. The CEO of Wilmington Industrial Development or designee

- B. If any individual named above holds more than one (1) position with the County of Pender, then the next ranking individual employed by the County, or such other person as may be assigned by that individual, shall fulfill the duties of that position on the Board.

- C. If any position with the County of Pender is abolished or renamed, then the individual replacing or fulfilling the majority of such employee's primary duties shall succeed to the position on the Board.

- D. Upon development of one hundred (100%) of the property within the park, the Board composition shall be altered to eliminate those individuals who participate solely due to their employment with the County of Pender, with the exception of the County Manager. When the property in the Park is developed 100%, the Board shall then be constituted by each lot owner being a board member and having one (1) vote, the County Manager (1 vote), and the CEO of Wilmington Industrial Development (1 vote). If a County employee owns property in the Park or is otherwise qualified to continue participating as a member of the Board, such individual may be selected for membership on the Board without regard to their employment with the County of Pender.

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