

**MINUTES  
LINCOLN COUNTY BOARD OF COMMISSIONERS  
MONDAY, MARCH 1, 2021**

The Lincoln County Board of County Commissioners met on March 1, 2021, at the James W. Warren Citizens Center Auditorium, 115 W. Main Street., Lincolnton, at 4:00 PM.

Commissioners Present:

Carrol Mitchem, Chairman  
Milton Sigmon, Vice-Chairman  
Anita McCall  
Bud Cesena  
Cathy Davis

Others Present:

Kelly G. Atkins, County Manager  
Josh Grant, Programs Manager  
Amy S. Atkins, Clerk to the Board

**Adoption of Agenda:** Chairman Mitchem presented the agenda for the Board's approval.

**AGENDA  
Lincoln County Board of Commissioners Meeting  
Monday, March 1, 2021  
4:00 PM**

**James W. Warren  
Citizens Center  
115 W. Main Street  
Lincolnton, NC 28092**

Call to Order – Chairman Mitchem

1. Adoption of the Agenda
2. Discussion of Proposed Stormwater Ordinance

Adjourn

**UPON MOTION** by Commissioner Sigmon, the Board voted unanimously to adopt the agenda as presented.

**Discussion of Proposed Stormwater Ordinance:** Andrew Bryant presented the proposed Stormwater Ordinance which is attached to these minutes. This work session is for further discussion of the Stormwater Ordinance, which was proposed at the February 15, 2021 meeting of the Board of Commissioners.

**UPON MOTION** by Commissioner Cesena, the Board voted unanimously to send the Stormwater Ordinance to the State with the noted revisions.

*Revised Section xx-105 (B)*

*Redevelopment of non-residential structures* outside the *floodplain* that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.

Revise Section xx-201 (A) (1)

A Stormwater Administrator shall be ~~designated by the Lincoln County Board of County Commissioners~~ assigned by the Lincoln County Manager to administer and enforce this ordinance.

Revise Section xx-202 (D) (3)

The Lincoln County Board of County Commissioners shall ~~establish~~ approve permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

Remove Section xx-402 (B) (4)

~~(4) — The percent of developer contribution and lengths of time to fund the escrow account may be varied by Lincoln County depending on the design and materials of the stormwater control and management facility.~~

Revise Section xx-503 (C)

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, ~~in writing via written notice or email,~~ the property owner or other person violating this ordinance.

Revise Definition in Section 6

Design Manual

The stormwater design manual approved for use in ~~Phase II~~ jurisdictions by the Department [developed by Lincoln County and certified by this jurisdiction [approved by the Division] as at least as stringent as the stormwater design manual approved for use in Phase II jurisdictions by the Department] for the proper implementation of the requirements of the ~~federal Phase II~~ stormwater program. All references herein to the Design Manual are to the latest published edition or revision

**Adjourn:** **UPON MOTION** by Commissioner McCall, the Board voted unanimously to adjourn.

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Amy S. Atkins, Clerk  
Board of Commissioners

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Carrol Mitchem, Chairman  
Board of Commissioners

PROPOSED  
STORMWATER  
ORDINANCE



## **Task From Commissioners (November 2019)**

- ❖ Establish ad-hoc committee
- ❖ Review and modify (as needed) the Universal Stormwater Ordinance template to determine funding structure


## **Stormwater Committee created in April 2020 and consist of the following members:**

- Lee Garrison, Chairman of Environmental Review Board: PE
- Steve Gurley, ERB-City of Lincoln representative; Soil Scientist
- Ron Geiger, Denver Resident; PE
- Brandi Wyant, West Lincoln Resident; farm family/construction business
- Bud Cesena, County Commissioner
- Anita McCall, County Commissioner
- Andrew C. Bryant, Staff
- Patty Dellinger, Staff
- Chuck King, Staff
- Danielle Rudisill, Staff
- Ritchie Haynes, City of Lincoln Staff

# Benefits of a Stormwater Ordinance

- Protection of wetlands & aquatic ecosystems
  - Improved quality of receiving waterbodies
  - Help prevent problems for new/future projects
  - Reduction in some flooding issues
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, located in the lower right quadrant of the slide.

# State Stormwater Programs

- Focus on stormwater quality, **not** quantity.
  - No authority to regulate flooding
  - Requires treatment of runoff before discharge but does not control volume.
- 
- A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, set against the blue background.

# Overview of Proposed Stormwater Ordinance

- Enforcement: Natural Resources Division
    - Oversees Erosion & Sedimentation Control
  - Ordinance Provisions
  - Design Standards
  - Installation
  - Performance Guarantee
  - Maintenance
  - Enforcement (illicit discharge)
- 

# Primary Impact (General)

**Residential development:** Disturbs greater than one (1) acre

**Non-Residential development:** Disturbs greater than 20,000 sf

**All development** measures include the concept of a larger common plan of development or sale.



# Impacts to County to Implement Ordinance

FY22 budget:

- Job title changes, reclassification and pay modifications for existing positions
- Hire one additional position
- Purchase vehicle, technology, etc. \$30,000
- Training \$8,000
  
- Projected Expenditures - \$70,000 - \$80,000
- Projected Revenues - \$60,000  
(Plan review \$300 per acre)

# Next Steps

Commission moves to proceed → State Review

State Review → Public Hearing (Adoption)

*Lincolnton would consider concurrent adoption*

## If adopted

Staff proposal: Fund division and positions July 2021  
Ordinance effective **January 1, 2022**

Allows for training and administrative manual development

This would be a voluntary adoption

State requirement: no earlier than 2023.

Census Urbanized Areas and population  
guides classification as Phase II

Where do we go from here?

A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, set against a blue background.

# **Universal Stormwater Model Ordinance for North Carolina**

By Richard Whisnant  
UNC School of Government

**Table of Contents**

*Universal Stormwater Model Ordinance for North Carolina* ..... ***1***

**SECTION 1: GENERAL PROVISIONS**..... ***78***

*xx-101 Title* ..... ***78***

*xx-102 Authority* ..... ***78***

*xx-103 Findings* ..... ***79***

*xx-104 Purpose* ..... ***79***

**(A) General** ..... ***79***

**(B) Specific** ..... ***810***

*xx-105 Applicability and Jurisdiction* ..... ***911***

**(A) General** ..... ***912***

**(B) Exemptions** ..... ***912***

        (1) **Thresholds** ..... ***912***

        (2) **General exemption** ..... ***1013***

**(C) No Development or Redevelopment Until Compliance and Permit**..... ***1013***

**(D) Map**..... ***1013***

*xx-106 Interpretation* ..... ***1013***

**(A) Meaning and Intent**..... ***1013***

**(B) Text Controls in Event of Conflict** ..... ***1114***

**(C) Authority for Interpretation**..... ***1114***

**(D) References to Statutes, Regulations, and Documents** ..... ***1114***

**(E) Computation of Time**..... ***1114***

**(F) Delegation of Authority** ..... ***1114***

**(G) Usage** ..... ***1114***

        (1) **Mandatory and Discretionary Terms** ..... ***1114***

        (2) **Conjunctions** ..... ***1114***

        (3) **Tense, Plurals, and Gender**..... ***1115***

**(H) Measurement and Computation**..... ***1215***

*xx-107 Design Manual*..... ***1215***

**(A) Reference to Design Manual**..... ***1215***

**(B) Relationship of Design Manual to Other Laws and Regulations** ..... ***1215***

**(C) Changes to Standards and Specifications** ..... ***1215***

~~**(D) [Amendments to Design Manual]**..... ***1216***~~

*xx-108 Relationship to Other Laws, Regulations and Private Agreements*..... ***1316***

(A)	<b>Conflict of Laws .....</b>	<b><u>1316</u></b>
(B)	<b>Private Agreements.....</b>	<b><u>1317</u></b>
<i>xx-109</i>	<b><i>Severability.....</i></b>	<b><u>1317</u></b>
<i>xx-110</i>	<b><i>Effective Date and Transitional Provisions.....</i></b>	<b><u>1317</u></b>
(A)	<b>Effective Date .....</b>	<b><u>1317</u></b>
(B)	<b>Final Approvals, Complete Applications .....</b>	<b><u>1317</u></b>
(C)	<b>Violations Continue .....</b>	<b><u>1418</u></b>
	<b><i>SECTION 2: ADMINISTRATION AND PROCEDURES.....</i></b>	<b><u>1519</u></b>
<i>xx-201</i>	<b><i>Review and Decision-Making Entities .....</i></b>	<b><u>1519</u></b>
(A)	<b>Stormwater Administrator .....</b>	<b><u>1519</u></b>
(1)	Designation.....	<u>1519</u>
(2)	Powers and Duties.....	<u>1519</u>
<i>xx-202</i>	<b><i>Review Procedures .....</i></b>	<b><u>1520</u></b>
(A)	<b>Permit Required; Must Apply for Permit.....</b>	<b><u>1520</u></b>
(B)	<b>Effect of Permit .....</b>	<b><u>1620</u></b>
(C)	<b>Authority to File Applications .....</b>	<b><u>1620</u></b>
(D)	<b>Establishment of Application Requirements, Schedule, and Fees .....</b>	<b><u>1621</u></b>
(1)	Application Contents and Form.....	<u>1621</u>
(2)	Submission Schedule .....	<u>1621</u>
(3)	Permit Review Fees .....	<u>1621</u>
(4)	Administrative Manual.....	<u>1722</u>
(E)	<b>Submittal of Complete Application.....</b>	<b><u>1722</u></b>
(F)	<b>Review .....</b>	<b><u>1722</u></b>
(1)	Approval.....	<u>1722</u>
(2)	Fails to Comply.....	<u>1722</u>
(3)	Revision and Subsequent Review .....	<u>1723</u>
<i>xx-203</i>	<b><i>Applications for Approval .....</i></b>	<b><u>1823</u></b>
(A)	<b>Concept Plan and Consultation Meeting .....</b>	<b><u>1823</u></b>
(1)	Existing Conditions / Proposed Site Plans .....	<u>1824</u>
(2)	Natural Resources Inventory .....	<u>1824</u>
(3)	Stormwater Management System Concept Plan.....	<u>1924</u>
(B)	<b>Stormwater Management Permit Application.....</b>	<b><u>1924</u></b>
(C)	<b>As-Built Plans and Final Approval .....</b>	<b><u>1925</u></b>
(D)	<b>Other Permits.....</b>	<b><u>2025</u></b>
<i>xx-204</i>	<b><i>Approvals .....</i></b>	<b><u>2025</u></b>
(A)	<b>Effect of Approval.....</b>	<b><u>2025</u></b>

(B)	Time Limit/Expiration.....	<a href="#">2025</a>
xx-205	Appeals.....	<a href="#">2026</a>
(A)	Right of Appeal .....	<a href="#">2026</a>
(B)	[Filing of Appeal and Procedures].....	<a href="#">Error! Bookmark not defined.26</a>
(C)	[Review by Superior Court] .....	<a href="#">Error! Bookmark not defined.26</a>
	<b>SECTION 3: STANDARDS</b> .....	<a href="#">2128</a>
xx-301	General Standards .....	<a href="#">2128</a>
xx-302	impervious surface requirements .....	<a href="#">2128</a>
(A)	Setback requirement.....	<a href="#">2128</a>
(B)	No new impervious or partially pervious surface in floodplain .....	<a href="#">2128</a>
(C)	[Land draining to shellfish waters.....	<a href="#">Error! Bookmark not defined.28</a>
(D)	[Development in Critical Area of Water Supply Watersheds .....	<a href="#">2129</a>
xx-303	structural stormwater control requirements.....	<a href="#">2129</a>
xx-305	Standards for Stormwater Control Measures.....	<a href="#">2229</a>
(A)	Evaluation According to Contents of Design Manual .....	<a href="#">2229</a>
(B)	Determination of Adequacy; Presumptions and Alternatives.....	<a href="#">2230</a>
(C)	Separation from Seasonal High Water Table.....	<a href="#">Error! Bookmark not defined.30</a>
xx-306	Dedication of BMPS, Facilities & Improvements .....	<a href="#">2230</a>
xx-307	VarianceS.....	<a href="#">2330</a>
xx-308	Additional standards for special situations .....	<a href="#">2431</a>
(A)	<del>[SA Waters ].....</del>	<del><a href="#">Error! Bookmark not defined.31</a></del>
(1)	<del>[Pet waste] .....</del>	<del><a href="#">2432</a></del>
(2)	<del>No Direct Discharge or Expansion of Discharges to SA Waters .....</del>	<del><a href="#">Error! Bookmark not defined.33</a></del>
(B)	<del>[Trout Waters] .....</del>	<del><a href="#">Error! Bookmark not defined.33</a></del>
	<b>SECTION 4: MAINTENANCE</b> .....	<a href="#">2534</a>
xx-401	General Standards for Maintenance.....	<a href="#">2534</a>
(A)	Function of BMPs As Intended .....	<a href="#">2534</a>
(B)	Annual Maintenance Inspection and Report.....	<a href="#">2534</a>
xx-402	Operation and Maintenance Agreement .....	<a href="#">2635</a>
(A)	In General .....	<a href="#">2635</a>
(B)	Special Requirement for Homeowners' and Other Associations .....	<a href="#">2635</a>
xx-403	Inspection Program.....	<a href="#">2837</a>

<i>xx-404</i>	<i>Performance Security for Installation and Maintenance</i> .....	<u>2837</u>
(A)	<b>May Be Required</b> .....	<u>2837</u>
(B)	<b>Amount</b> .....	<u>2837</u>
(1)	Installation .....	<u>2837</u>
(2)	Maintenance.....	<u>2837</u>
(C)	<b>Uses of Performance Security</b> .....	<u>2938</u>
(1)	Forfeiture Provisions .....	<u>2938</u>
(2)	Default.....	<u>2938</u>
(3)	Costs in Excess of Performance Security.....	<u>2938</u>
(4)	Refund .....	<u>2939</u>
<i>xx-405</i>	<i>Notice to owners</i> .....	<u>3039</u>
(A)	<b>Deed Recordation and Indications On Plat</b> .....	<u>3039</u>
(B)	<b>Signage</b> .....	<u>3039</u>
<i>xx-406</i>	<i>Records of Installation and Maintenance Activities</i> .....	<u>3039</u>
<i>xx-407</i>	<i>Nuisance</i> .....	<u>3039</u>
<i>xx-408</i>	<i>[Maintenance Easement</i> .....	<u>3040</u>
	<b>SECTION 5: ENFORCEMENT AND VIOLATIONS</b> .....	<u>3141</u>
<i>xx-501</i>	<i>General</i> .....	<u>3141</u>
(A)	<b>Authority to Enforce</b> .....	<u>3141</u>
(B)	<b>Violation Unlawful</b> .....	<u>3141</u>
(C)	<b>Each Day a Separate Offense</b> .....	<u>3141</u>
(D)	<b>Responsible Persons/Entities</b> .....	<u>3141</u>
(1)	Person Maintaining Condition Resulting In or Constituting Violation ....	<u>3142</u>
(2)	Responsibility For Land or Use of Land .....	<u>3242</u>
<i>xx-502</i>	<i>Remedies and Penalties</i> .....	<u>3242</u>
(A)	<b>Remedies</b> .....	<u>3242</u>
(1)	Withholding of Certificate of Occupancy .....	<u>3242</u>
(2)	Disapproval of Subsequent Permits and Development Approvals .....	<u>3242</u>
(3)	Injunction, Abatements, etc.....	<u>3242</u>
(4)	Correction as Public Health Nuisance, Costs as Lien, etc.....	<u>3343</u>
(5)	[Stop Work Order .....	<u>3343</u>
(B)	<b>Civil Penalties</b> .....	<u>3343</u>
(C)	<b>Criminal Penalties</b> .....	<u>3344</u>
<i>xx-503</i>	<i>Procedures</i> .....	<u>3344</u>
(A)	<b>Initiation/Complaint</b> .....	<u>3344</u>
(B)	<b>Inspection</b> .....	<u>3344</u>



(C) Notice of Violation and Order to Correct .....	<a href="#">3444</a>
(D) Extension of Time .....	<a href="#">3445</a>
(E) Enforcement After Time to Correct.....	<a href="#">3445</a>
(F) Emergency Enforcement .....	<a href="#">3545</a>
<b>SECTION 6: DEFINITIONS.....</b>	<a href="#">3646</a>
<i>xx-601 Terms Defined.....</i>	<a href="#">3646</a>
<b>Built-upon area (BUA) .....</b>	<a href="#">3646</a>
<b>Department .....</b>	<a href="#">3646</a>
<b>Design Manual.....</b>	<a href="#">3646</a>
<b>Development .....</b>	<a href="#">3646</a>
<b>Division .....</b>	<a href="#">3647</a>
<b>Floodplain .....</b>	<a href="#">3647</a>
<b>Larger common plan of development or sale .....</b>	<a href="#">3747</a>
<b>1-year, 24-hour storm.....</b>	<a href="#">3747</a>
<b>Owner.....</b>	<a href="#">3747</a>
<b>Redevelopment .....</b>	<a href="#">3747</a>
<b>Structural BMP .....</b>	<a href="#">3747</a>
<b>Substantial progress .....</b>	<a href="#">3848</a>
<b>[SECTION 7: Illicit Discharges .....</b>	<a href="#">3949</a>
<i>xx-701 Illicit Discharges and Connections .....</i>	<a href="#">3949</a>
<b>(A) Illicit Discharges.....</b>	<a href="#">3949</a>
<b>(B) Illicit Connections .....</b>	<a href="#">4050</a>
<b>(C) Spills .....</b>	<a href="#">4051</a>
<b>(D) Nuisance .....</b>	<a href="#">4151</a>

## SECTION 1: GENERAL PROVISIONS

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### xx-101 TITLE

This ordinance shall be officially known as “Lincoln County Stormwater Management Ordinance.” It is referred to herein as “this ordinance.”

### xx-102 AUTHORITY

The Lincoln County Board of County Commissioners is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)); Article 21, Part 6 (Floodway Regulation) ; Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18].

### xx-103 FINDINGS

It is hereby determined that:

*Development* and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying ~~proper~~ appropriately designed and well-planned controls to manage stormwater runoff from *development* sites.

~~Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.~~

Therefore, the Lincoln County Board of County Commissioners establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge. <sup>1</sup>

### xx-104 PURPOSE

#### (A) General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater

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<sup>1</sup> Adapted from Stormwater Center/EPA Model Ordinance.

Commented [AB1]: Evaluate the choice of language. Consider “appropriately” instead of “proper”

runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* ~~as well as illicit discharges into municipal stormwater systems~~. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

**(B) Specific**

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space and natural areas with the Unified Development Ordinance.

~~9. Controlling illicit discharges into the municipal separate stormwater system.~~

~~10.~~ Controlling erosion and sedimentation from construction activities.

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10. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.

xx-105 APPLICABILITY AND JURISDICTION

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

(B) Exemptions

(1) Thresholds

~~Development that cumulatively disturbs less than ten thousand square feet of land and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.~~

~~Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.~~

~~Residential development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale, and non-residential development that cumulatively disturbs less than one-half acre 20,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.~~

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Redevelopment outside the floodplain that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance

Redevelopment of residential structures that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance whether or not within the floodplain.

Redevelopment of non-residential structures that disturbs less than one-half acre 20,000 square feet, that is not part of a larger common plan of development or sale, that is within the floodplain, and that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.

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Development and redevelopment that disturb less than a stated area threshold are not exempt if such activities are part of a larger common plan of development or sale that exceeds the area threshold, even though multiple, separate or distinct activities take place at different times on different schedules.<sup>2</sup>

<sup>2</sup> Adapted from the North Georgia Model Ordinance.

**(2) General exemption**

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance. [Farming is exempt based on G.S. 160D-903. Agricultural Uses: Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1.](#)

**(C) No Development or Redevelopment Until Compliance and Permit**

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

**(D) Map**

The provisions of this ordinance shall apply within the areas designated on the map titled "USMP Stormwater Map of Lincoln County, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.<sup>3</sup>

The Stormwater Map shall be kept on file [and made available to the public](#) by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

**xx-106 INTERPRETATION**

**(A) Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in County Code of Ordinances or Unified Development Ordinance the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.<sup>4</sup>

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<sup>3</sup> Adapted from North Carolina Model Watershed Protection Ordinance.

<sup>4</sup> Provisions A through H were adapted from Town of Cary Land Development Ordinance.

**(B) Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

**(C) Authority for Interpretation**

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

**(D) References to Statutes, Regulations, and Documents**

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

**(E) Computation of Time**

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Lincoln County, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by Lincoln County. References to days are calendar days unless otherwise stated.

**(F) Delegation of Authority**

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Lincoln County may be carried out by his or her designee.

**(G) Usage**

**(1) Mandatory and Discretionary Terms**

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

**(2) Conjunctions**

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

**(3) Tense, Plurals, and Gender**

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates

otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

**(H) Measurement and Computation**

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

**xx-107 DESIGN MANUAL**

**(A) Reference to Design Manual**

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II and other applicable stormwater laws.<sup>5</sup>

**(B) Relationship of Design Manual to Other Laws and Regulations**

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

**(C) Changes to Standards and Specifications**

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

~~**(D) [Amendments to Design Manual]**~~

~~{The *Design Manual* may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.<sup>6</sup>~~

~~Prior to amending or updating the *Design Manual*, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.~~

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<sup>5</sup> From Stormwater Center/EPA Model Ordinance.

<sup>6</sup> Adapted from Metro North Georgia Water Management District and Stormwater Center/EPA Model Ordinances.

**xx-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS**

**(A) Conflict of Laws**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.<sup>7</sup>

**(B) Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Lincoln County be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.<sup>8</sup>

**xx-109 SEVERABILITY**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**xx-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

**(A) Effective Date**

This Ordinance shall take effect on \_\_\_\_\_, 202\_\_.

**(B) Final Approvals, Complete Applications**

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by Lincoln County prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

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<sup>7</sup> From Metro North Georgia Water Management District Model Ordinance.

<sup>8</sup> Adapted from Town of Cary Land Development Ordinance.



A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.<sup>9</sup>

**(C) Violations Continue**

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.<sup>10</sup>

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<sup>9</sup> SL 2006-246.

<sup>10</sup> Adapted from Town of Cary Land Development Ordinance.

## SECTION 2: ADMINISTRATION AND PROCEDURES

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### xx-201 REVIEW AND DECISION-MAKING ENTITIES

#### (A) Stormwater Administrator

##### (1) Designation

A Stormwater Administrator shall be designated by the Lincoln County Board of County Commissioners to administer and enforce this ordinance.

##### (2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the County Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Lincoln County Board of County Commissioners on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Lincoln County Board of County Commissioners upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

### xx-202 REVIEW PROCEDURES

#### (A) Permit Required; Must Apply for Permit

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

**(B) Effect of Permit**

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater management other than *structural BMPs*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

**(C) Authority to File Applications**

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

**(D) Establishment of Application Requirements, Schedule, and Fees**

**(1) Application Contents and Form**

The Stormwater Administrator ~~{Stormwater Advisory Board}~~ shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

**(2) Submission Schedule**

~~The Stormwater Administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the Lincoln County Board of County Commissioners. The Stormwater Administrator {Stormwater Advisory Board} shall establish a submission schedule for applications.~~ The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.

~~{Optional provision. Replace first sentence with "The Stormwater Administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the Lincoln County Board of County Commissioners."}~~

**(3) Permit Review Fees**

The Lincoln County Board of County Commissioners shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

**(4) Administrative Manual**

For applications required under this ~~Code~~Ordinance, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

**(E) Submittal of Complete Application**

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

**(F) Review**

Within ~~28 working~~ days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance. Within 14 days of submittal the Stormwater Administrator will determine if the submittal is complete.

**(1) Approval**

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

**(2) ~~Fails-Failure~~ to Comply**

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

**(3) Revision and Subsequent Review**

A complete revised application shall be reviewed by the Stormwater Administrator within ~~14 working~~ days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee ~~for a new submittal~~which shall be 25% of the new submittal fee.

An application that is not resubmitted within 6 months from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by an additional permit review fee, as established pursuant to this ordinance.

#### xx-203 APPLICATIONS FOR APPROVAL

##### (A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, ~~the (name of locality's open space or natural area protection plan or section of its comprehensive plan dealing with open space/natural resources, if applicable)~~Guiding Principle 5 of the Lincoln County Land Use Plan, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

##### (1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; drainage mapping illustrating off site water coming onto the site and onsite water leaving the site; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

##### (2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description

~~should~~ ~~shall~~ include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention ~~should~~ ~~shall~~ be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

**(3) Stormwater Management System Concept Plan**

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

**(B) Stormwater Management Permit Application**

The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, ~~surveyor~~, soil scientist or landscape architect, and the engineer, ~~surveyor~~, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section xx-202(D).

**(C) As-Built Plans and Final Approval**

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this

ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

**(D) Other Permits**

No Certificate of Compliance or Occupancy shall be issued by the Lincoln County Planning and Inspections Department without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Lincoln County Planning and Inspections Department may elect to withhold a percentage of permits or Certificates of Occupancy until as-built plans are submitted and final inspection and approval has occurred. The withholding of permits or Certificates of Occupancy shall be decided prior to the issuance of the initial stormwater permit and the applicant will be informed of the decision in writing. This practice shall be utilized to ensure the proper phasing and implementation of projects while also protecting the subject property and surrounding properties from stormwater related issues.

**xx-204 APPROVALS**

**(A) Effect of Approval**

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

**(B) Time Limit/Expiration**

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

**xx-205 APPEALS**

**(A) Right of Appeal**

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment Environmental Review Board within 30 days.

## SECTION 3: STANDARDS

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### xx-301 GENERAL STANDARDS

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

### xx-302 IMPERVIOUS SURFACE REQUIREMENTS

#### (A) Setback requirement

All impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least ~~30~~50 feet landward of all perennial and intermittent surface waters.

A perennial or intermittent surface water shall be deemed present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent complete version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

#### (B) No new impervious or partially pervious surface in floodplain

For development activities outside the counties subject to the Coastal Area Management Act of 1974, no new impervious surfaces or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the floodplain

#### (C) Development in Critical Area of Water Supply Watersheds

All development activities that are located within the area designated by the Environmental Management Commission as a Critical Area of a Water Supply Watershed shall be limited to a maximum impervious surface density as defined by Section 7 of the Lincoln County Unified Development Ordinance.

### xx-303 STRUCTURAL STORMWATER CONTROL REQUIREMENTS

*Owners* of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time for wet detention ponds shall be a minimum of 48 hours, but not more than 120 hours (5 days).



- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*;
- (D) The measure shall discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm.
- (E) The approval of the stormwater permit shall require enforceable restrictions on property usage that runs with the land, including recorded deed restrictions and protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

**xx-305 STANDARDS FOR STORMWATER CONTROL MEASURES**

**(A) Evaluation According to Contents of Design Manual**

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

**(B) Determination of Adequacy; Presumptions and Alternatives**

Stormwater treatment practices that are designed, ~~and~~ constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made. The design and documentation shall be by a qualified registered North Carolina professional engineer, landscape architect, soil scientist, or aquatic biologist.

**xx-306 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS**

~~Lincoln County may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance~~

~~and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.<sup>41</sup>~~

**xx-307 VARIANCES**

(A) Any person may petition Lincoln County for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

(B) Lincoln County may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

Notwithstanding subdivision (A) of this section, exceptions from the ~~3050~~-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located ~~45-30~~ feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically

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<sup>41</sup>~~From Virginia Stormwater Management Model Ordinance.~~

accomplished in a manner which would avoid or result in less adverse impact to surface waters.

xx-308 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS

~~(1) [Pet waste]~~

**Commented [ACB2]:** This is DOA if this stays in the ordinance.

~~Commentary: Some jurisdictions have existing pet waste ordinances, or cover pet waste in their littering ordinance. If the jurisdiction does not have a pet waste program or an ordinance regarding pet waste, and has development or redevelopment draining to class SA waters, the following language should be considered for adoption.~~

~~(a) Dogs At Large Prohibited<sup>12</sup>~~

~~It shall be unlawful for the owner of any dog to allow the animal to be off the premises of his owner and not on a leash in Lincoln County.~~

~~(b) Restrictions on Pet Waste~~

~~(i) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.~~

~~(ii) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.~~

~~(iii) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.~~

~~(iv) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.~~

~~(v) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.~~

<sup>12</sup> Adapted from the Town of Wrightsville Beach.

## SECTION 4: MAINTENANCE

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### xx-401 GENERAL STANDARDS FOR MAINTENANCE

#### (A) Function of BMPs As Intended

The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

#### (B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- ~~(6)~~ A statement of the balance of the escrow account along with all expenditures and deposits. Explanation of all deposits and expenditures shall be included in the report.
- ~~(7)~~ The original signature and seal of the engineer, ~~surveyor~~, or landscape architect. Individual Components of the report that require the seal of a licensed discipline shall be signed and sealed appropriately.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.<sup>13</sup>

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<sup>13</sup> Drawn from Wake County stormwater ordinance (based on Neuse Urban Stormwater program).

xx-402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment*, requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site ~~shall~~must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. The transfer of the responsibility of carrying of the provisions of the maintenance agreement may occur at an earlier time at the request of the Homeowners Association or other similarly organized body.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to Lincoln County a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural BMP*; however, in no case shall the right of entry, of itself, confer an obligation on Lincoln County to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.<sup>14</sup> A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.<sup>15</sup>

(B) Special Requirement for Homeowners' and Other Associations

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, reconstruction or annual inspection of the *structural BMPs*. If

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<sup>14</sup> Adapted from Metro North Georgia Water Management District and Stormwater Center/EPA Model Ordinances. The requirement that owner maintain the BMP is adapted from the Town of Cary Watershed Protection Ordinance.

<sup>15</sup> Most of the following homeowners' association requirements are adapted from Neuse model program provisions as adopted in Wake County.

*structural BMPs* are not performing adequately or as intended or are not properly maintained, Lincoln County, in its sole discretion, may remedy the situation, and in such instances Lincoln County shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, reconstruction and annual inspection of the *structural BMPs*, provided that the Lincoln County shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) percent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by Lincoln County depending on the design and materials of the stormwater control and management facility.
- (5) Granting to Lincoln County a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing Lincoln County to recover from the association and its members any and all costs Lincoln County expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay Lincoln County all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency Lincoln County shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate Lincoln County to maintain or repair any *structural BMPs*, and Lincoln County shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of Lincoln County to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless Lincoln County for any costs and injuries arising from or related to the structural BMP, unless Lincoln County has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

xx-403 INSPECTION PROGRAM

Inspections and inspection programs by Lincoln County may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.<sup>16</sup>

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out their official duties.

Commented [AB3]: Add notice requirements to the manual requiring the inspectors to make a reasonable attempt notify a homeowner at the time of the inspections if a structure is present on the property where the structure is being inspected or across which access is required to reach said structure.

xx-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) ~~May Be Required~~<sup>17</sup> **Surety Required**

~~The Lincoln County Board of County Commissioners may, shall, at its discretion,~~ require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural* BMPs are

(1) installed by the permit holder as required by the approved stormwater management plan, and/or

(2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) **Amount**

(1) **Installation**

The amount of an installation performance security shall be the total estimated construction cost ~~(materials and labor)~~ of the BMPs approved under the permit, plus 25%.

(2) **Maintenance**

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus

<sup>16</sup> Adapted from Stormwater Center/EPA and Metro North Georgia Water Management District Model Ordinances.

<sup>17</sup> ~~From Virginia Model Ordinance for Stormwater Management.~~

an reasonable estimate of long-term inflation of 2% annually. The administrative manual will provide the calculation methods for each type of installation.

**(C) Uses of Performance Security**

**(1) Forfeiture Provisions**

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

**(2) Default**

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, Lincoln County shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.<sup>18</sup>

**(3) Costs in Excess of Performance Security**

If Lincoln County takes action upon such failure by the applicant or *owner*, Lincoln County may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

**(4) Refund**

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

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<sup>18</sup> From Town of Cary Watershed Protection Ordinance.



**xx-405 NOTICE TO OWNERS**

**(A) Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

**(B) Signage**

*Structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

**xx-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES**

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.<sup>19</sup>

**xx-407 NUISANCE**

The *owner* of each stormwater BMP, whether *structural* or *non-structural BMP*, shall maintain it so as not to create or result in a nuisance condition as defined by County ordinances.

**xx-408 MAINTENANCE EASEMENT**

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

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<sup>19</sup> Adapted from Metro North Georgia Water Management District Model Ordinance.

## SECTION 5: ENFORCEMENT AND VIOLATIONS

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### xx-501 GENERAL

#### (A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Lincoln County. Whenever this section refers to the Stormwater Administrator, it includes their designee as well as any authorized agent of Lincoln County.

#### (B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.<sup>20</sup>

#### (C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.<sup>21</sup>

#### (D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.<sup>22</sup>

For the purposes of this article, responsible person(s) shall include but not be limited to:<sup>23</sup>

##### (1) Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a

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<sup>20</sup> From Town of Apex Unified Development Ordinance.

<sup>21</sup> Adapted from Town of Cary Land Development Ordinance.

<sup>22</sup> Adapted from Hall County, Georgia, Unified Development Ordinance.

<sup>23</sup> An inclusive approach to “responsible persons” drawn from the Town of Apex UDO.

condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

**(2) Responsibility For Land or Use of Land**

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

**xx-502 REMEDIES AND PENALTIES**

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

**(A) Remedies**

**(1) Withholding of Certificate of Occupancy**

The Stormwater Administrator or other authorized agent may refuse to ~~issue~~ approve a Certificate of Occupancy for a non-residential building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein. No local government may withhold a building permit or Certificate of Occupancy that otherwise would be eligible to be issued to compel, with respect to another property or parcel, completion of work for a separate permit or compliance with land-use regulations under this Chapter unless otherwise authorized by law or unless the local government reasonably determines the existence of a public safety issue directly related to the issuance of a building permit or Certificate of Occupancy.

**(2) Disapproval of Subsequent Permits and Development Approvals**

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning Board, Board of Adjustment or Board of County Commissioners may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the Unified Development Ordinance, and/or building regulations, as appropriate for the land on which the violation occurs.

**(3) Injunction, Abatements, etc.**

The Stormwater Administrator, with the written authorization of the County Manager may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

**(4) Correction as Public Health Nuisance, Costs as Lien, etc.**

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the County Manager may cause the violation to be corrected and the costs to be assessed as a lien against the property.

**(5) Stop Work Order**

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.<sup>24</sup>

**(B) Civil Penalties**

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Lincoln County is subject for violations of its USMP Stormwater permit, or if no USMP Stormwater permit exists for the jurisdiction, civil penalties may be assessed ~~up to the full amount allowed by laws defined by the adopted fee schedule.~~

**(C) Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

**xx-503 PROCEDURES**

**(A) Initiation/Complaint**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated ~~promptly~~ by the Stormwater Administrator within 2 business days.

**(B) Inspection**

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.<sup>25</sup>

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<sup>24</sup> Adapted from Metro North Georgia Water Management District Model Ordinance.

<sup>25</sup> From Town of Cary Land Development Ordinance.

**(C) Notice of Violation and Order to Correct**

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Lincoln County Sheriff's Office, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.<sup>26</sup>

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

**(D) Extension of Time**

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Stormwater Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.<sup>27</sup>

**(E) Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.<sup>28</sup>

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<sup>26</sup> From Town of Apex Unified Development Ordinance.

<sup>27</sup> From Town of Apex Unified Development Ordinance.

<sup>28</sup> From Town of Apex Unified Development Ordinance.

**(F) Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

## SECTION 6: DEFINITIONS

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### xx-601 TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

#### ***Built-upon area (BUA)***

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.<sup>29</sup>

#### ***Department***

The North Carolina Department of Environment ~~and Natural Resources~~ Quality.<sup>30</sup>

#### ***Design Manual***

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* [developed by Lincoln County and certified by this jurisdiction [approved by the *Division*] as at least as stringent as the stormwater design manual approved for use in Phase II jurisdictions by the *Department*] for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.<sup>31</sup>

Commented [AB4]: Reference state design manual.

#### ***Development***

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.<sup>32</sup>

#### ***Division***

The Division of Water Quality in the *Department*.<sup>33</sup>

#### ***Floodplain***

The one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management.

#### ***High-density project***

Any project that exceeds the *low-density* threshold for dwelling units per acre or *built-upon area*.

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<sup>29</sup> From S.B. 1210.

<sup>30</sup> From temporary rule.

<sup>31</sup> Adapted from North Georgia M.O.

<sup>32</sup> From North Carolina Model Ordinance for Water Supply Watershed Protection and 15A NCAC 2B.0202(23).

<sup>33</sup> From S.B. 1210.

***Larger common plan of development or sale***

Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.<sup>34</sup>

***Low-density project***

For a project that has no more than two dwelling units per acre or twenty-four percent built-upon area (BUA) for all residential and non-residential development.

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

***1-year, 24-hour storm***

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.<sup>35</sup>

***Owner***

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

***Partially pervious surface***

Surfaces that cause an increase in stormwater runoff from a natural forested condition but that are not clearly a defined impervious surface. Common surfaces in this category are lawns, landscaping areas, gardens, areas that have been cleared of native vegetation, and nonengineered pervious driveways.

***Redevelopment***

Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

***Structural BMP***

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any

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<sup>34</sup> Definition adapted from EPA Storm Water Phase II Compliance Assistance Guide.

<sup>35</sup> From S.B. 1210.



combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural BMP” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

***Substantial progress***

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.<sup>36</sup>

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<sup>36</sup> Adapted from Town of Cary Land Development Ordinance.

## SECTION 7: ILLICIT DISCHARGES

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### xx-701 ILLICIT DISCHARGES AND CONNECTIONS<sup>37</sup>

#### (A) Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water; and

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<sup>37</sup> Drawn from Raleigh and Greenville ordinances.

(19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the jurisdiction.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

**(B) Illicit Connections**

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (A) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property *owner* or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- b. Was made in violation of any applicable regulation or ordinance, other than this section;

the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

- 1. The quantity and complexity of the work,
- 2. The consequences of delay,
- 3. The potential harm to the environment, to the public health, and to public and private property, and
- 4. The cost of remedying the damage.

**(C) Spills**

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify Lincoln County Emergency Management of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

**(D) Nuisance**

Illicit discharges and illicit connections which exist within Lincoln County are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in section in the jurisdiction nuisance abatement code. ~~(insert cross-reference to nuisance abatement section of code, if applicable)~~.

Appendix: Sources consulted or from which provisions were drawn for this Model Ordinance

Model Ordinance for Post-Development Stormwater Management for New Development and Redevelopment (Metropolitan North Georgia Water Management District)

Model Ordinance for Water Supply Watershed (NC Division of Water Quality)

Neuse River Basin Model Stormwater Program for Nitrogen Control

Tar-Pamlico Basin Nutrient-Sensitive Waters Management Strategy

Model Stormwater Ordinance (Center for Watershed Protection, Inc. ["Stormwater Center"])

Model Stormwater Ordinance (US EPA)

Unified Development Ordinance (Hall County, Georgia)

Unified Development Ordinance (Town of Apex, NC)

Land Development Ordinance (Town of Cary, NC)

Watershed Protection Ordinance (Town of Cary, NC)

Stormwater Management Model Ordinance (State of Virginia)

Town Code of Wrightsville Beach, NC

Illicit discharge provisions: Raleigh, NC; Greenville, NC; Franklin, TN

Stormwater Management Ordinance (Wake County, NC)