

**Falls Lake Watershed, Water Supply Watershed,
and NPDES Phase II
Stormwater Ordinance for New Development and
Illicit Discharge Detection and Elimination Ordinance**

Adopted February 12, 2019

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SECTION 1: GENERAL PROVISIONS

53-101 TITLE

This ordinance shall be officially known as “The Falls Watershed, Water Supply Watershed and NPDES Phase II Stormwater Ordinance for New Development.” It is referred to herein as “this ordinance.”

53-102 AUTHORITY

The City of Roxboro 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 Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Chapter 143-215.6A; Chapter 153A-454; Chapter 160A, §§ 174, 185, 459; as well as Chapter 113A, Article 21, Part 6, Floodway Regulation.

53-103 FINDINGS

It is hereby determined that:

Development and *redevelopment* alter the hydrologic response of local watersheds and increases 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 design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the *Commission* has identified Falls of Neuse reservoir, a water supply reservoir, as nutrient sensitive waters; has identified all or a portion of the reservoir as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the “Falls Rules”) to reduce the average annual loads of nitrogen and phosphorus delivered to Falls Reservoir from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction;

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 the minimum stormwater controls such as those included in this ordinance.

Therefore, the City of Roxboro City Council 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 for *development*.

53-104 PURPOSE

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 stormwater runoff, nitrogen and phosphorus in stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* in the City of Roxboro corporate limits. 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.

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

1. Establishing decision-making processes for *development* that protects 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 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. Controlling illicit discharges into the municipal separate *stormwater system*.

53-105 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, within the corporate and extra territorial jurisdictional limits unless exempt pursuant to this ordinance.

(B) **Exemptions**

Single family and duplex residential and recreational *development* and *redevelopment* that cumulatively disturbs less than one half acre in the Falls Lake Watershed or one (1) acre within the rest of the City's jurisdiction or does not increase the built upon area of the site and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance. This exemption does not exist for the Water Supply Watershed Standards within the City's jurisdiction.

Commercial, industrial, institutional, multifamily residential or local government *development* and *redevelopment* that cumulatively disturbs less than 12,000 square feet in the Falls Lake Watershed or one (1) acre within the rest of the City's jurisdiction or does not increase the built upon area of the site and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance. This exemption does not exist for the Water Supply Watershed Standards within the City's jurisdiction.

Development and *redevelopment* that disturbs less than the above thresholds are not exempt if such activities are part of a *larger common plan of development or sale* and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.

Development that is 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.

Redevelopment projects that are exempt from this ordinance must provide equal or greater stormwater control than the previous development.

This ordinance shall not require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment.

All subdivisions must be reviewed by the Stormwater Administrator prior to recording by the Register of Deeds to determine whether or not the property/project is subject to this ordinance.

(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* or *redevelopment* 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 "Stormwater Map of City of Roxboro, 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. The Stormwater Map will contain two different designations, within Falls Lake watershed and outside of Falls Lake Watershed. Falls Lake and Water Supply Watershed standards will apply within the Falls Lake watershed and the Phase II standards will apply to all areas of the map.

The Stormwater Map shall be kept on file 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 *engineered stormwater controls* 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.

53-106 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 the City of Roxboro Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this 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 City of Roxboro, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of Roxboro. 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 City of Roxboro 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.

53-107 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 *engineered stormwater controls* and other practices for compliance with this ordinance.

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 Falls Rules.

(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~~ may control and ~~shall~~ may be utilized in reviewing the application and in implementing this ordinance with regard to the application. This decision will be made by the Stormwater Administrator.

(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.

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.

(E) Design Manual vs. NC DENR BMP Manual

The Design Manual shall be as stringent or more so than the North Carolina Department of Environment and Natural Resources-Division of Water Quality's Manual of Stormwater Best Management Practices.

53-108 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.

(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 City of Roxboro be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

53-109 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.

53-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on July 1, 2012.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the City of Roxboro prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of stormwater.

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* or *redevelopment*, 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* or *redevelopment*, 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.

(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.

SECTION 2: ADMINISTRATION AND PROCEDURES

53-201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the City of Roxboro City Manager 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 City of Roxboro 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 City of Roxboro City Council 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 City of Roxboro City Council, 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.
- i. To keep records of all reviews and actions generated by and associated with this ordinance.

53-202 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. A permit is required prior to a certificate of occupancy being issued and executed on a property.

(B) Effect of Permit

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

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 *engineered stormwater controls* 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 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. 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.

(3) Permit Review Fees

The City of Roxboro 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, 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 **15** 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.

(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 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 **15** 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.

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 a permit review fee additional fee, as established pursuant to this ordinance.

53-203 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 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 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; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements; 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 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 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 *engineered 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 53-202(D).

(C) As-Built Plans and Final Approval

The plans shall show the final design specifications for 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 City of Roxboro 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 City of Roxboro 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.

53-204 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.

53-205 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 within 30 days. Appeals of variance requests shall be made as provided in the section on Variances. In the case of requests for review of proposed civil penalties for violations of this ordinance, the Board of Adjustment shall make a final decision on the request for review within 90 days of receipt of the date the request for review is filed.

(B) Filing of Appeal and Procedures

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by City of Roxboro. The Stormwater Administrator shall transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(C) Review by Superior Court

Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior

Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

- (1) The decision of the Board of Adjustment is filed; or
- (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Chairman of the Board of Adjustment at the time of its hearing of the case.

SECTION 3: STANDARDS

53-301 GENERAL STANDARDS

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

Three types of standards exist in this ordinance: Phase II standards that apply to the areas within the City of Roxboro that are not within the Falls Lake Watershed; Falls Lake Watershed standards and Water Supply Watershed standards that only apply to the areas within the Falls Lake Watershed. Compliance with the Water Supply Watershed Standards within the Falls Lake Watershed is considered, by law, compliance with the NPDES Phase II standards. See the Stormwater Map to determine which standards apply to specific properties. Where standards within this ordinance overlap the most stringent standard shall be applied.

53-302 PHASE II STANDARDS

(A) Development Standards for Low-Density Projects

Low-density projects (no more than two dwelling units per acre or twenty-four percent built-upon area for all residential and non-residential development) shall comply with each of the following standards:

(1) Stormwater Conveyance

Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(2) Stream Buffers

All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately 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 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.

(3) Density Provision

A project with an overall density at or below the low-density thresholds, 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.

(4) Restrictions on Property Use

The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(B) Development Standards for High-Density Projects

High-density projects (any project that exceeds the low density thresholds for dwelling units per acre or built-upon area) shall implement structural stormwater management systems that comply with each of the following standards:

(1) Treatment Volume

The measures shall be designed to control and treat the stormwater run-off generated by the 1” (one inch) of rain;

(2) Drawdown Time

Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours;

(3) Post-Development Flows

Stormwater shall not leave the project site at a rate greater than the predevelopment discharge rate for the ten-year, 24-hour storm;

(4) Total Suspended Solids Removal

All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);

(5) General Design Criteria

General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;

(6) Stream Buffers

All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately 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 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.

(7) Restrictions on Property Use

The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(A) Nitrogen and Phosphorus loading

- (a) Nitrogen and phosphorus loads contributed by the proposed new *development* shall not exceed the following unit-area mass loading rates: 2.2 and 0.33 pounds per acre per year for nitrogen and phosphorus, respectively.
- (b) Notwithstanding 15A NCAC 2B.104(q), *redevelopment* subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in *built-upon area* shall have the option of either meeting the loading standards identified in subsection (a) or meeting a loading rate that achieves the following nutrient loads compared to the *existing development*: 40 percent and 77 percent reduction for nitrogen and phosphorus, respectively.
- (c) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the *approved accounting tool*.

(B) Nitrogen and Phosphorus standard is supplemental

The nitrogen and phosphorus loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the *development*. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 2B.0233 and .0242.

(C) TSS Removal for High Density Projects

Projects that exceed two dwelling units per acre or twenty four percent built upon area for all residential and non-residential development are considered high density projects and all structural stormwater treatment systems used to meet the requirement of the program shall comply with each of the following additional standards:

(1) Total Suspended Solids Removal

All structural stormwater systems shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS) on site;

(2) Drawdown Time

Runoff Volume drawdown time shall be a minimum of 48 hours, but not more than 120 hour;

(D) Partial Offset of Nutrient Control Requirements

Development subject to this ordinance shall attain nitrogen and phosphorus loading rate reductions on-site that meet the following criteria prior to using an offsite offset measure:

- 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing one half acre but less than one acre.
- 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing more than one acre.

- 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing 12,000 square feet but less than one acre.
- 50 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing more than one acre.
- 30 percent or more reduction in both nitrogen and phosphorus loading from the untreated condition for proposed redevelopment activities in a designated downtown area that would replace or expand structures or improvements that existed as of December 2006.

A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the City of Roxboro. A developer may propose other offset measures to the City of Roxboro, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0282 and 15A NCAC 02B .0240.

53-304 WATER SUPPLY WATERSHED STANDARDS

(A) Exemptions from Water Supply Watershed Standards

- a. Existing Development for Water Supply Watershed Standards, as defined in this ordinance, is not subject to the requirements of the Water Supply Watershed Standards. Expansion to structures classified as existing development must meet the requirements of this section; however, the built-upon area of the existing development is not required to be included in the density calculations for water supply watershed standards.
- b. A pre-existing lot owned by an individual prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of the water supply watershed standards.

(B) General

- a. No subdivision plat of land within the City’s jurisdiction shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this ordinance. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of the plat would be in conflict with this ordinance.
- b. The approval of a plat does not constitute or effect the acceptance by the city or the public of the dedication of any street or other ground, easement, right-of-way, public utility line or other public facility shown on the plat, and shall not be construed to do so.

(C) Subdivision Application, Standards and Required Improvements

- a. All proposed subdivisions shall be reviewed by the Stormwater Administrator prior to recording with the Register of Deeds to determine if the property is subject to this

ordinance. Subdivisions that are not subject to this ordinance may be recorded, provided the Stormwater Administrator initials the plat. Subdivisions that are subject to this ordinance must comply with the provisions of this ordinance.

- b. All subdivisions shall conform with the mapping requirements contained in G.S. §47-30.
- c. All subdivisions of land within the jurisdiction of the city after the effective date of this chapter shall require a plat to be prepared, approved and recorded pursuant to this ordinance.
- d. All subdivision plats shall comply with the requirements for recording of the County Register of Deeds.
- e. The subdivider shall provide the watershed administrator with evidence that the plat has been recorded with the Register of Deeds within five working days of its being recorded.
- f. If the Stormwater Administrator approves the application, the approval shall be indicated on the plat by a certification and the signature of the Stormwater Administrator.
- g. If the Stormwater Administrator disapproves or approves conditionally the application, the reason for the action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.
- h. All lots shall provide adequate building space in accordance with the development standards contained within this chapter. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as, "Not for residential purposes."
- i. For the purpose of calculating built upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- j. Where possible, roads shall be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so as to minimize their impact on water quality.

(D) Construction Procedures

- a. No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Stormwater Administrator.
- b. No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The subdividers, prior to commencing any work within the subdivision, shall make arrangements with the Stormwater Administrator to provide for adequate inspection.

(E) Penalty for Transferring Lots in Unapproved Subdivisions

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the city, thereafter subdivides his or her land in violation of this chapter or

transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The city may bring an action for injunction of any illegal subdivision transfer, conveyance or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter.

(F) Watershed Areas Described; WS-III-BW (Balance of Watershed) with Low Density Option

a. Allowed Uses:

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990;
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 11.6101.0209);
3. Residential Development;
4. Nonresidential Development, excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.
5. Nondischarge landfills and sludge application sites are allowed.

b. Density and Built-Upon Limits:

1. Single family residential development shall not exceed two dwelling units per acre or 24% built-upon area, as defined on a project by project basis.
2. Low Density Projects shall comply with the Phase II Standards for Low-Density Projects found in Section 53-302.
3. All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis.

(G) Watershed Areas Described; WS-III-BW (Balance of Watershed) with High Density Options

Projects exceeding 24% Built Upon Area shall either be restricted to 50% Built Upon Area or be included within the 10% of the watershed that may be developed for nonresidential uses up to 70% Built Upon Area.

c. Allowed Uses:

1. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990;
2. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 11.6101.0209);

3. Residential Development;
 4. Nonresidential Development, excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.
- d. Density and Built-Upon Limits:
1. Where new development exceeds either 2 dwelling units per acre or 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall and development shall not exceed 50% built-upon area.
 2. Projects that exceed 50% Built Upon Area may occupy up to 10% of the watershed for nonresidential uses up to 70% built-upon area on a project by project basis when approved as a special nonresidential intensity allocation (SNIA). For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed. The Stormwater Administrator is authorized to approve SNIA's consistent with the provisions of this ordinance.
 3. All High Density Projects shall comply with the Phase II Standards for High Density Projects found in Section 53-302 (B).

(H) Cluster Development

- a. Clustering of development is allowed in the WS-III-BW watershed area.
- b. Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments within the above section on density.
- c. All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- d. The remainder of the tract shall remain in a vegetative or natural state. This area will be maintained through a maintenance agreement between the City and the property owner (s) or property owners association.

(I) Water Supply Watershed Buffers

- a. A minimum 100-foot vegetative buffer is required for all new development activities that exceed the low-density option is required along all perennial and intermittent waters located on the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS), on the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, or as determined by local government studies.
- b. The above buffer requirement is in addition to buffer requirements enforced by the NC Division of Water Quality that regulates uses within the first 50' along perennial and intermittent streams.

- c. No new development is allowed within the buffer except for water dependent structures and uses listed as exempt, allowable, and allowable with mitigation on the NC DWQ allowable uses buffer chart as listed in 15A NCAC 02B .0233.

(J) Watershed Area Boundaries

Where uncertainty exists as to the boundaries of the watershed areas as shown on the Watershed Map, the following rules apply:

- a. Where area boundaries are indicated as approximately following the street, alley, railroad or highway lines or centerlines thereof, the lines shall be construed to be the boundaries.
- b. Where area boundaries are indicated as approximately following lot lines, the lot lines shall be construed to the boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the city as evidence that or more properties along these boundaries do not lie within the watershed area.
- c. If further uncertainty exists, the Stormwater Administrator shall interpret the Watershed Map as to the location of the boundaries.

(K) Existing Development for Water Supply Watershed

Any existing development as defined in this chapter may be continued and maintained subject to the provisions provided herein. Expansion to structures classified as existing developments must meet the requirements of this chapter; however the built-upon area of the existing development is not required to be included in the density calculations for the water supply watershed density calculation. Calculations for density for the Phase II Standards within this ordinance are to be done separately from the Water Supply Watershed Standards calculation.

- a. Vacant Lots: Lots that are not built on but have been recorded in the office of the County Register of Deeds. Lots may be used for any of the uses allowed in the watershed area in which it is located.
- b. Occupied Lots: This category consists of lots occupied for residential purposes at the time of the adoption of this chapter.
- c. Uses of Land: This category consists of uses existing at the time of adoption of this chapter where the use of the land is not permitted to be established hereafter in the watershed area in which it is located. The uses may be continued, except as follows:
 - i. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - ii. Such use of land shall be changed only to an allowed use.
 - iii. When such uses ceases for a period of at least one year, it shall not be re-established.
- d. Reconstruction of buildings or built-upon areas: Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or

removed may be repaired and/or reconstructed, except that there are no restriction on single-family residential development, provided:

- i. Repairs or reconstruction is initiated within 12 months and completed within two years of the damage.
- ii. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

(L) Application of Regulations

- a. No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.
- b. No area required for the purpose of complying with the provisions of the water supply watershed standards shall be included in the area required for another building.
- c. Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except those designated as existing development.
- d. If a use or class of use is not specifically indicated as being allowed in a watershed area, the use or class of use is prohibited.

(M) General Public Health

No activity, situation, structure or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety, and welfare of the public. These conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

53-305 CONTROL AND TREATMENT OF RUNOFF VOLUME

Stormwater systems shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the *Design Manual*. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the *development* shall not contribute to degradation of waters of the State. At a minimum, the *development* shall not result in a net increase in peak flow leaving the site from pre-development conditions for the ~~one~~ *ten-year, 24-hour storm* event.

53-306 WATER QUANTITY REDUCTION

In the event that development has, in the opinion of the Stormwater Administrator or his designee, the potential to cause increased downstream flooding and erosion, a structural stormwater management system may be required that does not allow stormwater to leave the

project site at a rate greater than the predevelopment discharge rate for up to the 100-year, 24 hour storm.

53-307 EVALUATION OF STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All stormwater control measures, *stormwater systems* 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, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* and the *approved accounting tool* 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.

53-308 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

The City of Roxboro 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.

53-309 VARIANCES

(A) Any *person* may petition the City of Roxboro for a variance granting permission to use the *person's* land in a manner otherwise prohibited by this ordinance. For all proposed *major* and *minor variances* from the requirements of this ordinance, the local Watershed Review Board shall make findings of fact showing that:

- (1) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the 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 variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit; and
- (5) In granting the variance, the public safety and welfare have been assured and substantial justice has been done.

(B) In the case of a request for a *minor variance (or a major variance of the Phase II standards)*, the City of Roxboro may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) The City of Roxboro may attach conditions to the *major or minor variance* approval that support the purpose of this ordinance. If the variance request qualifies as a *major variance (only for Falls Lake Watershed and Water Supply Watershed standards)*, and the City of Roxboro decides in favor of granting the *major variance*, the Board shall then prepare a preliminary record of the hearing and submit it to the *Commission* for review and approval. If the *Commission* approves the *major variance* or approves with conditions or stipulations added, then the *Commission* shall prepare a *Commission* decision which authorizes City of Roxboro to issue a final decision which would include any conditions or stipulations added by the *Commission*. If the *Commission* denies the major variance, then the *Commission* shall prepare a decision to be sent to City of Roxboro. The City of Roxboro shall prepare a final decision denying the major variance.

(D) Appeals from the local government decision on a *major or minor variance* request are made on certiorari to the local Superior Court. Appeals from the *Commission* decision on a *major variance* request are made on judicial review to Superior Court.

SECTION 4: MAINTENANCE

53-401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

The *owner* of each *engineered stormwater control* 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 *engineered stormwater control* was designed.

(B) Annual Maintenance Inspection and Report

The *person* responsible for maintenance of any *engineered stormwater control* 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 *engineered stormwater control*;
- (3) A statement that an inspection was made of all *engineered stormwater controls*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *engineered stormwater controls* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

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.

53-402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *engineered stormwater control* pursuant to this ordinance, and prior to issuance of any permit for *development* requiring a *engineered stormwater control* pursuant to this ordinance, the applicant or *owner* of the site 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 *engineered stormwater control*. Until the transference of all property, sites, or lots served by the *engineered stormwater control*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *engineered stormwater control*, and shall state the terms, conditions, and schedule of maintenance for the *engineered stormwater control*. In addition, it shall grant to the City of Roxboro 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 *engineered stormwater control*; however, in no case shall the right of entry, of itself, confer an obligation on City of Roxboro to assume responsibility for the *engineered stormwater control*.

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 by the recorder of the final plat. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) Operation and Maintenance Agreement

For all *engineered stormwater controls* required pursuant to this ordinance, the required operation and maintenance agreement shall include all of the following provisions:

1. Acknowledgment that the owner or association shall continuously operate and maintain the stormwater control and management facilities.
2. The OWNER, its successors and assigns, including any homeowners association, shall adequately maintain the structural stormwater BMP facilities in accordance with the approved Operation and Maintenance Plan or Manual(s). This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.
3. The OWNER, its successors and assigns, shall ensure the structural stormwater BMP facility is inspected by a qualified professional and shall submit an annual inspection report to the City of Roxboro. The inspection report shall be due annually 30 days from the date of the final structural stormwater Management facilities construction inspection. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report.
4. The OWNER, its successors and assigns, hereby grant permission to the City of Roxboro its authorized agents and employees, to enter upon the Property and to inspect the structural stormwater Management facilities whenever the City of Roxboro deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City of

Roxboro shall provide the OWNER, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.

5. Before the City of Roxboro shall approve the completed facility and issue final certificates of occupancy, the Owner and/or maintaining entity shall furnish the City of Roxboro with a financial guarantee insuring future maintenance, operation, and repair of the facility. The financial guarantee shall be in the form of cash or an irrevocable letter of credit and made payable to the City of Roxboro. The amount of guarantee shall be 40% of the total cost of constructing the facility based on actual contract prices for said facility.

The initial duration of the financial guarantee shall be for 20 years. At the end of that period, the City of Roxboro may extend such periods of guarantee as the City of Roxboro deems appropriate. The financial guarantee may be dissolved at any time by mutual agreement when the need for such guarantee no longer exists. Any funds remaining from such guarantee will be returned to the appropriate entity.

6. In the event the OWNER, its successors and assigns, fails to maintain the structural stormwater Management facilities in good working condition acceptable to the City of Roxboro or that maintenance and repairs are not being made as required or that any action is not being done in accordance with this agreement, the City of Roxboro shall notify the responsible entity who shall be given a reasonable time to correct such deficiencies. Should the responsible entity fail to act in a timely manner, or otherwise fail to correct the deficiencies, the City of Roxboro will institute appropriate action to obtain compliance including criminal or civil penalties, or both. In addition, the City of Roxboro may declare the responsible entity in default of this agreement and financial guarantee and use part or all of such guarantee funds to correct the deficiencies and may assume actual operation and maintenance. Default of this agreement does not release the responsible entity from liability/responsibility for the deficiencies, nor release the entity from this agreement. Likewise, default of this agreement does not prevent the City of Roxboro from taking action against the responsible entity to recover the cost of such actions to correct the deficiencies.
7. For all structural stormwater Management facilities which are to be or are owned and maintained by a property owner's association or similar entity, the OWNER also agrees to the following provisions:
 - a. Acknowledgment that the association shall continuously operate and maintain the structural stormwater Management facilities.
 - b. Establish adequate owner/property association dues which are to be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the stormwater control measures and devices of the particular site plan or subdivision.
 - c. Granting to the City of Roxboro a right of entry to inspect, monitor, maintain, repair, and reconstruct structural stormwater Management facilities.
 - d. Allow the City of Roxboro to recover from the association and its members any and all costs the City of Roxboro may expend to maintain or repair the stormwater control and management facility or to correct any operational

deficiencies as a result of default by the Owner/association/responsible entity. Failure to pay to the City of Roxboro all of its expended costs, after thirty (30) days written notice, shall constitute a breach of the agreement. The City of Roxboro shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien herein authorized by the agreement against the property, or both in the case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

8. The OWNER, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the structural stormwater Management facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.
9. In the event the City of Roxboro, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the OWNER, its successors and assigns, shall reimburse the City of Roxboro upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City of Roxboro hereunder.
10. This Agreement imposes no liability of any kind whatsoever on the City of Roxboro and the OWNER agrees to hold the City of Roxboro harmless from any liability in the event the structural stormwater Management facilities fail to operate properly.

53-403 INSPECTION PROGRAM

Inspections and inspection programs by City of Roxboro 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.

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 his or her official duties.

53-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) Shall Be Required

The City of Roxboro shall 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 *engineered stormwater controls* 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 of the BMPs approved under the permit, plus 25%.

(2) Maintenance

The amount of a maintenance performance security shall be in the form of cash or an irrevocable letter of credit and made payable to the City of Roxboro. The amount of guarantee shall be 40% of the total cost of constructing the facility based on actual contract prices for said facility

(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 *engineered stormwater control* 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, the City of Roxboro shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security

If the City of Roxboro takes action upon such failure by the applicant or *owner*, the City of Roxboro 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.

53-405 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 *engineered stormwater control* 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

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *engineered stormwater controls* 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.

53-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The *owner* of each *engineered stormwater control* 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.

53-407 NUISANCE

The *owner* of each stormwater BMP, whether *engineered stormwater control* or *non-engineered stormwater control*, shall maintain it so as not to create or result in a nuisance condition.

53-408 MAINTENANCE EASEMENT

Every *engineered stormwater control* 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

SECTION 5: ENFORCEMENT AND VIOLATIONS

53-501 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 City of Roxboro. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of City of Roxboro.

(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* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

(C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.

(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, *engineered stormwater control*, 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.

For the purposes of this article, responsible *person(s)* shall include but not be limited to:

(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 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 or *development* of the property.

53-502 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 a certificate of occupancy for the 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.

(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 City of Roxboro may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, 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 City of Roxboro City 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 City of Roxboro City 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.

(B) Civil Penalties

The Stormwater Administrator may assess a civil penalty against any person who violates any provision of this ordinance or of a permit or other requirement pursuant to this ordinance. Civil penalties may be assessed up to the full amount of penalty authorized by G.S. 143-215.6A.

(C) Criminal Penalties

Violation of this ordinance may be enforced as a criminal matter under North Carolina law.

53-503 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.

(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.

(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 by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

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 120-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.

(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. The Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance whether or not the violation has been corrected.

(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

53-601 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.

Approved accounting tool

The accounting tool for nutrient loading approved by the *EMC* for the relevant geography and development type under review.

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. The project site or area must exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other *development* regulated under a federal, state or local stormwater regulation.

Commission

The North Carolina Environmental Management Commission, in the *Department*.

Department

The North Carolina Department of Environment and Natural Resources.

Design Manual

The stormwater design manual approved for use in this part of the Falls Watershed by the *Department* for the proper implementation of the requirements of the Falls Watershed stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

Development

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

Division

The Division of Water Quality in the *Department*.

Existing development

Development not otherwise exempted by this ordinance that meets one of the following criteria:

- (a) It either is built or has established a statutory or common-law vested right as of the effective date of this ordinance; or
- (b) It occurs after the effective date of this ordinance, but does not result in a net increase in *built-upon area* and does not decrease the infiltration of precipitation into the soil

Engineered stormwater control

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 combination of these goals. *Engineered stormwater control* includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Engineered stormwater control” 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. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

Land disturbing activity

Any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation.

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.

Major variance

A variance from the minimum statewide watershed protection or Falls rules that results in the relaxation, by a factor greater than five percent of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10 percent, of any management requirement under the low density option. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Falls rules, a variance to this ordinance is not considered a *major variance* as long as the result of the variance is not less stringent than the state's minimum requirements.

Minor variance

A variance from the minimum standards or Falls rules that results in a relaxation, by a factor of up to five percent of any buffer, density or built-upon area requirement under the high density option (or the Falls Lake standards); or that results in a relaxation by a factor up to 10 percent, of any management requirement under the low density option.

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.

10-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 10 years and with a duration of 24 hours.

100-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 100 years and with a duration of 24 hours.

Outfall

A point at which stormwater (1) enters surface water or (2) exits the property of a particular *owner*.

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.

Person

Includes, without limitation, individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

Redevelopment

Any *development* on previously-developed land. *Redevelopment* of structures or improvements that (i) existed prior to December 2006 and (ii) would not result in an increase in *built-upon area* and (iii) provides stormwater control at least equal to the previous development is not required to meet the nutrient loading targets of this ordinance.

Stormwater system

All engineered stormwater controls owned or controlled by a *person* that drain to the same *outfall*, along with the conveyances between those controls. A system may be made up of one or more stormwater controls.

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.

Best Management Practices (BMP)

A Structural or nonstructural management-based practice used singularly or in combination to reduce non-point source inputs to receiving waters in order to achieve water quality protection goals.

Buffer.

An area of natural or planted vegetation through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The **BUFFER** is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Building.

Any structure having a roof supported by columns or by walls and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them a building.

Cluster Developments

The grouping of buildings in order to conserve land resources and provide for innovations in the design of the project. This term includes nonresidential development as well as single-family residential development subdivisions and multi-family developments that do not involve the subdivision of land

Composting Facility

A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

Critical Area

The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The ***Critical Area*** is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in the stream of river (run-of-the-river) or the ridge line of watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

Customary Home Occupations

Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further, that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes and that not over 50% of the area of one floor of the dwelling is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off-site, such as a service repair truck and the like.

Discharge Landfills

A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment to a receiving stream.

Dwelling Unit

A building, or portion thereof, providing complete permanent living facilities for one family.

Existing Development for Water Supply Watershed Standards

Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this chapter based on at least one of the following criteria:

- 1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
- 2) Having an outstanding valid building permit as authorized by G.S. § 160A-385.1; or

- 3) Having expended substantial resources (time, labor, money) and having an approved site-specific or phased-development plan as authorized by G.S. § 160A-385.1

Existing Lot (Lot-of-Record)

A lot which is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

Hazardous Material

Any substance listed as such in: Superfund Amendments and Reauthorization Act (SARA) § 302, being 42 USC 11002, Extremely Hazardous Substances, Comprehensive Environmental Response Compensation and Liability Act (CERCLA), being 42 USC 9601, or § 311 of the Clean Water Act (CWA), being 33 UCS 1321, Oil and Hazardous Substances.

Industrial Development

Any nonresidential development that requires a NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

Landfill

A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. Chapter 130A, Article 9. For the purpose of this chapter, this term does not include composting facilities .

Lot

A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.

Non-Residential Development

All development other than residential development, agricultural and silviculture.

Single-Family Residential

Any development where:

- 1) No building contains more than one dwelling unit.
- 2) Every dwelling unit is on a separate lot; and
- 3) Where no lot contains more than one dwelling unit.

Street (Road)

A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

Structure

Anything constructed or erected, including, but not limited to buildings, which requires location on the land or attachment to something having permanent location on the land.

Subdivider

Any person, firm or corporation who subdivides or develops any land deemed to be a subdivision location on the land.

Subdivision

All divisions of a tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future),

and shall include all divisions of land involving the dedication of a new street or a change in existing streets, but the following shall not be included within this definition, nor be subject to the regulations authorized by this chapter:

- 1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the building, pavement, gravel roads, recreation facilities (for example, tennis courts) and the like. Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.
- 2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- 3) The public acquisition by purchase of strips of land for the widening or opening of streets.
- 4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right of way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;
- 5) The division of a tract into plots or lots used as a cemetery.

Toxic Substance

Any substance or combination of substances (including disease-causing agents), which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer , genetic mutations, physiological malfunctions, (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

Water-Dependent Structure

Any structure for which the use requires access to or proximity to or sitting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage area are not water dependent structures.

Watershed

The entire land area contributing surface drainage to a specific point (for example, the water supply intake.)

SECTION 7: ILLICIT DISCHARGE DETECTION AND ELIMINATION

53-701 ILLICIT DISCHARGES AND CONNECTIONS

(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
- (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 City of Roxboro.

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 section (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;
- (4) 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:
 - (a) The quantity and complexity of the work,
 - (b) The consequences of delay,
 - (c) The potential harm to the environment, to the public health, and to public and private property, and
 - (d) 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 pre-existing 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 the Roxboro Fire Department 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) Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Roxboro prior to the allowing of discharges to the MS4.

53-702 RIGHT OF ENTRY

(A) Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this Ordinance, or whenever the Stormwater Administrator has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Ordinance, the Stormwater Administrator may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant

refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(B) Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Stormwater Administrator may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

53-703 ENFORCEMENT.

(A) Notice of Violation.

Whenever the Stormwater Administrator finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the City or a contractor designated by the Stormwater Administrator and the expense thereof shall be charged to the violator.

(B) Violations Deemed a Public Nuisance

Illicit discharges and illicit connections which exist within the corporate limits 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 and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

53-704 DEFINITIONS

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 10-419 of this ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4): Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains):

- (i) Owned or operated by a City, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, that discharges to waters of the United States or waters of the State.
- (ii) Designed or used for collecting or conveying stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by the North Carolina Department of Environment and Natural Resources, Division of Water Quality that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater: means any water or other liquid, other than uncontaminated storm water, discharged from a facility.