

ARTICLE III. - PHASE II STORMWATER

DIVISION 1. - GENERALLY

Sec. 26-71. - Title.

This article shall be officially known as the "Phase II Stormwater Ordinance." It is referred to herein as "this article."

(Code 2003, § 32-1; Ord. No. 09-05, 3-19-2009)

Sec. 26-72. - Findings.

The town finds that:

- (1) Increased impervious areas and other site features of development or redevelopment may alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, non-point and point source pollution, and sediment transport and deposition, as well as reduce groundwater recharge;
- (2) These changes in stormwater runoff may contribute to increased quantities of water-borne pollutants and to altered hydrology that may be harmful to public health, and safety and the natural environment;
- (3) These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites; and
- (4) 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 state environmental management commission promulgated in response to federal phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt stormwater controls such as those included in this article.

Therefore, the town 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.

(Code 2003, § 32-3; Ord. No. 09-05, 3-19-2009)

Sec. 26-73. - Purpose.

- (a) *General.* The purpose of this article is to protect, maintain and enhance the public health, safety, environment, and general welfare by establishing requirements and procedures to control the adverse effects of increased post-development stormwater runoff and non-point and point source pollution associated with new development and redevelopment (as well as illicit discharges into municipal stormwater systems). It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.
- (b) *Specific.* This article seeks to meet its general purpose through the following specific objectives and means:
 - (1) Establishing decision-making processes for new development and redevelopment that protect the integrity of watersheds and preserve the health of water resources;
 - (2) Requiring that new development and redevelopment:
 - a. Maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm;

- b. Reduce flooding, stream bank erosion, non-point and point source pollution and increases in stream temperature;
 - c. Maintain the integrity of stream channels and aquatic habitats;
- (3) Establishing stormwater management standards and design criteria to regulate and control post-development 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 post-development stormwater management standards;
 - (5) Encouraging the use of better management and site design practices, such as the preservation of green space, riparian buffers and other conservation areas to the maximum extent practicable;
 - (6) Establishing provisions for 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:
 - a. For the submission, review, approval and disapproval of stormwater management plans;
 - b. For the inspection of approved projects; and
 - c. To ensure long-term maintenance;
 - (8) Controlling illicit discharges into the municipal separate stormwater system; and
 - (9) Controlling erosion and sedimentation from construction activities.

(Code 2003, § 32-4; Ord. No. 09-05, 3-19-2009)

Sec. 26-74. - Applicability and jurisdiction.

- (a) *General.* Beginning with and subsequent to its effective date, this article shall be applicable to:
 - (1) All development or redevelopment unless exempt pursuant to subsection (b) of this section; and
 - (2) Development or redevelopment that disturb less than one acre and does not add 10,000 square feet or more of built-upon area if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
- (b) *Exemptions.* The following are exempt from the provisions of this article:
 - (1) Development that cumulatively disturbs less than one acre, does not add 10,000 square feet or more of built-upon area and is not part of a larger common plan of development or sale;
 - (2) Redevelopment that cumulatively disturbs less than one acre, does not add 10,000 square feet or more of built-upon area and is not part of a larger common plan of development or sale; or
 - (3) Activities that are exempt from permit requirements of section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).
- (c) *No development or redevelopment until compliance and permit.* No development or redevelopment shall occur except in compliance with the provisions of this article or unless exempted. No development for which a permit is required pursuant to this article shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- (d) *Map.* The provisions of this article shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Leland, North Carolina" ("the stormwater map"), which is adopted simultaneously herewith. The stormwater map and all explanatory matter contained thereon accompany and are hereby made a part of this article. 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 article and the geographic location of all structural BMPs

permitted under this article. In the event of a dispute, the applicability of this article to a particular area of land or BMP shall be determined by reference to the state statutes, the state administrative code, and local zoning and jurisdictional boundary ordinances.

(Code 2003, § 32-5; Ord. No. 09-05, 3-19-2009)

Sec. 26-75. - Interpretation.

- (a) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this article shall be construed according to the general and specific purposes set forth in section 26-73. If a different or more specific meaning is given for a term defined elsewhere in the Code, the meaning and application of the term in this article shall control for purposes of application of this article.
- (b) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this article 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 article. 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 article.
- (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) *Delegation of authority.* Any act authorized by this article to be carried out by the stormwater administrator may be carried out by his designee.
- (f) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.
- (g) *Minimum requirements.* The requirements contained in this article shall be the minimum requirements for administration, enforcement, procedures, restrictions, standards, uses, variances, and all other areas addressed by this article ; and, if any other existing chapter or regulation allows lesser regulation, this article shall govern, so that in all cases, the more restrictive limitation or requirement shall govern.

(Code 2003, § 32-6; Ord. No. 09-05, 3-19-2009; altered in 2018 recodification)

Sec. 26-76. - Design manual.

- (a) *Reference to design manual.*
 - (1) The stormwater administrator shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and nonstructural stormwater BMPs.
 - (2) 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 shall be presumed to meet the water quality performance standards of the phase II laws and this article.
- (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 article but prior to approval, the standards, specifications, guidelines, policies, criteria, or other information in the design manual that was in effect at the time of application shall apply.

(Code 2003, § 32-7; Ord. No. 09-05, 3-19-2009)

Sec. 26-77. - Relationship to other laws, regulations and private agreements.

- (a) *Conflict of laws.* This article is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this article are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this article 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 article is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this article are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this article shall govern. Nothing in this article shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this article. In no case shall the town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(Code 2003, § 32-8; Ord. No. 09-05, 3-19-2009)

Sec. 26-78. - Effective date and transitional provisions.

- (a) *Effective date.* This article shall take effect on March 19, 2009.
- (b) *Final approvals, complete applications.*
- (1) All development or redevelopment projects for which complete and full applications and plans were submitted and approved by the town prior to the effective date of the ordinance from which this article is derived and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment, shall be exempt from complying with all provisions of the ordinance from which this article is derived dealing with the control or management of post-construction runoff, but shall be required to comply with all other applicable provisions.
 - (2) A phased development plan shall be deemed approved prior to the effective date of this article if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:
 - a. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including the boundaries of the project and a subdivision plan that has been approved; and
 - b. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this article 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 the ordinance from which this article is derived shall continue to be a violation under this article and be subject to penalties and enforcement under this article unless the use, development, construction, or other activity complies with the provisions of this article.

(Code 2003, § 32-10; Ord. No. 09-05, 3-19-2009)

Sec. 26-79. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The definitions set out in 15A NCAC 02H .1002 (definitions), and G.S. 143-212, and 143-213 shall be used when not in conflict with the definitions set out specifically in this article.

Built-upon area (BUA) means that portion of a development project that is covered by 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. The term "built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department means the state department of environment and natural resources.

Design manual means the stormwater design manual approved for use in phase II jurisdictions by the department for the implementation of the requirements of the federal phase II stormwater program. All references herein to the design manual are to the latest published edition or revision. The design manual may be obtained from the town stormwater management division or the division.

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

Division means the division of water quality in the department.

Hazardous material means any item or agent (biological, chemical, physical) which has the potential to cause harm to humans, animals, or the environment, either by itself or through interaction with other factors.

High-density project means any project that exceeds the low-density threshold for dwelling units per acre or built-upon area.

Larger common plan of development or sale means 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 (examples are a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (boundary signs, lot stakes, or surveyor markings are examples) indicating that construction activities may occur on a specific plot.

Low-density project.

- (1) For a project that is not located within one-half mile of and draining to shellfish resource waters: the project is a low-density project if it has no more than 24 percent built-upon area (BUA).
- (2) For a project that is located within one-half mile of and draining to shellfish resource waters, the project is a low-density project only if it contains no more than 12 percent built-upon area.
- (3) A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

Material change means a modification which results in an alteration to 25 percent or more of the design.

Non-erosive velocity means a rate of flow of stormwater runoff, measured in feet per second, which does not erode soils. Non-erosive velocities vary for individual sites, taking into account topography, soil type, and runoff rates.

One-year, 24-hour storm means the surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months.

Owner means the legal or beneficial owner of land, including 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. The term "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 the term "owner" under another description in this definition, such as a management entity.

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

Residential development means buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, and gazebos.

Shellfish resource waters means Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a state-certified laboratory.

Structural BMP means 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. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. The term "structural BMP" is synonymous with the terms "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 article.

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:

- (1) Obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than 30 days; or
- (2) Installation and approval of on-site infrastructure; or
- (3) 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.

Vegetative buffer means an area of natural or established vegetation directly adjacent to surface waters through which stormwater runoff flows in a diffuse manner to protect surface waters from degradation due to development activities.

Vegetative conveyance means a permanent, designed waterway lined with vegetation that is used to convey stormwater runoff at a non-erosive velocity within or away from a developed area.

Water dependent structures means a structure for which the use requires access 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 boat storage areas are not water dependent uses.

(Code 2003, § 32-11; Ord. No. 09-05, 3-19-2009)

Secs. 26-80—26-101. - Reserved.

DIVISION 2. - ADMINISTRATION AND PROCEDURES

Sec. 26-102. - Review and decision-making entities; stormwater administrator.

- (a) *Designation.* A stormwater administrator shall be designated by the town manager to administer and enforce this article.
- (b) *Powers and duties.* In addition to the powers and duties that may be conferred by other provisions of the Code and other laws, the stormwater administrator shall have the following powers and duties under this article:
 - (1) To review and approve, approve with conditions, or disapprove stormwater management plans pursuant to this article;
 - (2) To make determinations and render interpretations of this article;
 - (3) To establish permit application requirements and schedules for submittal and review of stormwater management plans, permit applications, and appeals, to review and make recommendations to the town council and planning board on modification of this article or the process for stormwater management;
 - (4) To enforce the provisions of this article in accordance with its enforcement provisions;
 - (5) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this article;
 - (6) To provide expertise and technical assistance to the town council, planning board, and stormwater advisory committee upon request;
 - (7) To designate an appropriate other person to carry out the powers and duties of the stormwater administrator; and
 - (8) To take any other action necessary to administer the provisions of this article.

(Code 2003, § 32-21; Ord. No. 09-05, 3-19-2009)

Sec. 26-103. - Review procedures.

- (a) *Permit required; must apply for permit.* A stormwater management permit (hereafter "permit") shall be required for all development or redevelopment unless exempt pursuant to this article. A permit may be issued after submitting a stormwater permit application, a stormwater management plan, and the fee for stormwater management permit application review.
- (b) *Effect of permit.* A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs. The permit review process is intended to provide a mechanism for the review, approval, and inspection of the planned approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this article, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions established in this article.
- (c) *Authority to file applications.* All permit applications required pursuant to this Code shall be submitted to the

stormwater administrator by the land owner or the land owner's authorized agent.

- (d) *Establishment of permit application requirements, schedule and fees.*
- (1) *Permit 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. The stormwater permit application shall require in a detailed plan a description of:
 - a. The post-development stormwater runoff control and management;
 - b. The design of all stormwater facilities and practices;
 - c. Site identification information;
 - d. Ownership information; and
 - e. How the proposed project shall meet the requirements of this article.
 - (2) *Submission schedule.* The stormwater administrator shall establish a submission schedule for permit 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 plans and applications, and that the various stages in the review process are accommodated.
 - (3) *Permit application review fees.* The town council 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 the ordinance from which this article derived, 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.*
- (1) Applications for a stormwater management permit shall be submitted to the stormwater administrator pursuant to the application submittal schedule established by the stormwater administrator, along with the stormwater management plan and appropriate fee established pursuant to this section.
 - (2) An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this article, along with the appropriate fee. If the stormwater administrator finds that an application or stormwater management plan 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 45 working days after a complete application submittal, the stormwater administrator shall review the application and determine whether the stormwater management plan permit application complies with the standards of this article.
- (1) *Approval.* If the stormwater administrator finds that the application complies with the standards of this article, the stormwater administrator shall approve the application and issue a stormwater management permit.
 - (2) *Approval with conditions.* The stormwater administrator may impose conditions of approval as needed to ensure compliance with this article. The conditions shall be included as part of the approval and included in the issued stormwater permit.
 - (3) *Disapproval.* If the stormwater administrator finds that the stormwater management plan fails to comply with the standards of this article, the stormwater administrator shall notify the applicant and shall indicate how the application or plan fails to comply. The applicant shall have an opportunity to submit a revised application and

plan.

- (g) *Revision and subsequent review.* Within 45 working days after a complete revised application submittal, the stormwater administrator shall review the revised application and determine whether the stormwater management plan and application complies with the standards of this article, and shall approve, approve with conditions, or disapprove the application.
- (1) *Fee for resubmittal.* One resubmittal of a revised application may be submitted without payment of an additional permit application review fee. Any resubmittal after the first resubmittal shall be accompanied by a permit application review additional fee, as established pursuant to this article.
- (2) *Time limit for resubmittal.* If a revised application is not resubmitted within 90 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.

(Code 2003, § 32-22; Ord. No. 09-05, 3-19-2009)

Sec. 26-104. - Applications for approval.

- (a) *Concept plan and consultation meeting.* Before a stormwater management permit application is deemed complete, the stormwater administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, other plans adopted by the town, 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: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
- (2) *Natural resources inventory.* A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should 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 structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.
- (b) *Stormwater management permit application.*

- (1) The stormwater management permit application shall contain detailed plans on how post-development stormwater shall be controlled and managed and how the proposed project shall meet the requirements of this article, including 3 of this article. All such plans shall be prepared by a registered state professional engineer, surveyor, soil scientist, landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in accordance with certification, and shall verify that the design of all stormwater management facilities and practices meets the 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 article.
 - (2) 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 26-103.
- (c) *As-built plans and final approval.*
- (1) Upon completion of a project, and before any certificate of occupancy or certificate of zoning compliance 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.
 - (2) The as-built 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. A registered state professional engineer 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 article. A final inspection and final approval by the stormwater administrator shall occur before the release of any performance securities.
- (d) *Other permits.* No certificate of zoning compliance or certificate of occupancy shall be issued by the town 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 town 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.

(Code 2003, § 32-23; Ord. No. 09-05, 3-19-2009)

Sec. 26-105. - 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.*
 - (1) An approved plan shall become null and void if the applicant fails to make substantial progress on the site within 18 months 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.
 - (2) 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.

(Code 2003, § 32-24; Ord. No. 09-05, 3-19-2009)

Sec. 26-106. - Appeals.

- (a) *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this article made by the stormwater administrator may file an appeal to the town board adjustment within 30 days of the decision, order, requirement or determination.
- (b) *Filing of appeal and procedures.*
 - (1) An appeal shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the town. The stormwater administrator shall transmit to the town board of adjustment all documents constituting the record on which the decision appealed from was taken.
 - (2) The hearing conducted by the town 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 town 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 30 days after the latter of the following:
 - (1) The decision of the town 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 chair of the town board of adjustment at the time of its hearing of the case.

(Code 2003, § 32-25; Ord. No. 09-05, 3-19-2009)

Secs. 26-107—26-125. - Reserved.

DIVISION 3. - STANDARDS

Sec. 26-126. - General standards.

- (a) All development or redevelopment to which this article applies shall comply with the standards of this section.
- (b) A 50-foot-wide undisturbed vegetative buffer for new development activities and a 30-foot-wide undisturbed vegetative buffer for redevelopment activities is required. The width of a buffer is measured horizontally from the normal pool elevation of impounded structures, from the top of bank for each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline. The town may, on a case-by-case basis, grant a minor variance from the vegetative buffer requirements of this section pursuant to the procedures set out in 15A NCAC 02B .0233(9)(b). Vegetative buffers and filters required by this section and any other buffers or filters required by state water quality or coastal management rules or local government requirements may be met concurrently and may contain, in whole or in part, coastal, isolated, or 404 jurisdictional wetlands that are located landward of the normal waterline.
 - (1) Approved stormwater control best management practices (BMPs), or stormwater control structures, with the exception of wet detention ponds are allowed in the buffer and the area required to construct the practices may be disturbed.
 - (2) Walking trails, picnic areas, benches, and water dependent structures, including, but not limited to, boat docks, boat ramps, and bulkheads, are allowed in the buffer and the area required to construct the practices may be disturbed provided that they have received all applicable federal, state, and local permits and approvals.
 - (3) Development in urban waterfronts that meet the requirements of 15A NCAC 07H .0209(g), development in new urban waterfront areas that meet the requirements of session law 2004-117, those activities listed in 15A NCAC 07H .0209(d)(10)(A)—15A NCAC 07H .0209(d)(10)(H), and development of upland marinas that have received a

Coastal Area Management Act major permit are allowed in the buffer and the area required to construct the practices may be disturbed.

- (4) Buffer management and maintenance. The buffer, including wetlands and floodplains, shall be managed to enhance and maximize the unique value of these resources. Management and maintenance includes specific limitations on alteration of the natural conditions of these resources. Any substantial vegetation that is removed must be replaced accordingly. The following management and maintenance practices and activities are permitted within the buffer area:
- a. General pruning of trees.
 - b. Removal and replacement of dead or diseased plant materials, and clearing nuisance of underbrush.
 - c. The application of pesticides by appropriate professionals for the spraying of noxious weeds or non-native species as listed by the state department of agriculture and consumer services.
 - d. Stream restoration projects, facilities and activities approved by federal, state, or local agencies.
 - e. Individual trees within the forest buffer may be removed which are in immediate danger of falling and causing damage to dwellings, other structures, or causing blockage of the stream.
 - f. Other timber cutting techniques approved by the agency may be undertaken within the forest buffer under the advice and guidance of the state division of forest resources, state cooperative extension service, or the United States Department of Agriculture, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.
 - g. Repairing erosion problems internal to the buffer.
 - h. Removal of debris after a storm event.
- (c) For the purposes of this section, areas defined as coastal wetlands under 15A NCAC 07H .0205, as measured landward from the normal high waterline, shall not be included in the overall project area to calculate impervious surface density. Wetlands that are not regulated as coastal wetlands pursuant to 15A NCAC 07H .0205 and that are located landward of the normal high waterline may be included in the overall project area to calculate impervious surface density.

(Code 2003, § 32-36; Ord. No. 09-05, 3-19-2009)

Sec. 26-127. - Development or redevelopment standards for low-density projects.

Low-density projects shall comply with each of the following standards:

- (1) Stormwater runoff from the development shall be transported from the development primarily by vegetated conveyances. As used in this section, the term "conveyance system" shall not include a stormwater collection system. Stormwater runoff from built-upon or disturbed areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity. In the event that excessive erosion is found to occur after the construction and final inspection, it shall be the responsibility of the permittee to make the necessary corrections to halt and prevent the erosion as well as repair the damage caused by the erosion.
- (2) All built-upon area shall be 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.

Development in urban waterfronts that meet the requirements of 15A NCAC 07H .0209(g), development in new urban waterfront areas that meet the requirements of session law 2004-117, those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H), development of upland marinas, and water dependent structures, including, but not limited to, boat docks, boat ramps, and bulkheads, are allowed within 30 feet of surface waters provided that they have received all applicable federal, state, and local permits and approvals.

- (3) A condition of the issuance of the stormwater management permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants or both, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Code 2003, § 32-37; Ord. No. 09-05, 3-19-2009)

Sec. 26-128. - Development or redevelopment standards for high-density projects.

High-density projects shall implement stormwater control measures that comply with each of the following standards:

- (1) The measures shall control and treat runoff from all surfaces generated by 1½ inches of rain. In addition, projects that are located within one-half mile and draining to SA waters must control and treat the difference in stormwater runoff from the pre- and post-development conditions for the one-year, 24-hour storm. Runoff volume draw down time shall be a minimum of 48 hours, but not more than 120 hours.
- (2) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS).
- (3) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the design manual.
- (4) All built-upon area shall be 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. Development in urban waterfronts that meet the requirements of 15A NCAC 07H .0209(g), development in new urban waterfront areas that meet the requirements of session law 2004-117, those activities listed in 15A NCAC 07H .0209(d)(10)(A) through 15A NCAC 07H .0209(d)(10)(H), development of upland marinas, and water dependent structures, including, but not limited to, boat docks, boat ramps, and bulkheads, are allowed within 30 feet of surface waters provided that they have received all applicable federal, state, and local permits and approvals.
- (5) Stormwater runoff from built-upon or disturbed areas that is directed to flow through any wetlands shall flow into and through these wetlands at a non-erosive velocity. In the event that excessive erosion is found to occur after the construction and final inspection, it shall be the responsibility of the permittee to make the necessary corrections to halt, prevent, and restore the erosion.
- (6) A condition of the issuance of the stormwater management permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, or both, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Code 2003, § 32-38; Ord. No. 09-05, 3-19-2009)

Sec. 26-129. - Standards for stormwater control measures.

- (a) *Evaluation according to contents of design manual.* All stormwater control measures and stormwater treatment practices (also referred to as best management practices, or BMPs) required under this article shall be evaluated by the stormwater administrator according to the policies, criteria, information, technical specifications, standards, and the specific design criteria for each stormwater practice in the design manual. The stormwater administrator shall determine whether BMPs in the plan will be adequate to meet the requirements of this article.
- (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 shall be presumed to meet the water quality and quantity performance standards of this article. Whenever a plan 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 shall satisfy the water quality and quantity performance standards of this article. 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.
- (c) *Separation from seasonal high water table.* For structural stormwater controls that are required under this section and that require separation from the seasonal high water table, a minimum separation of two feet is required. Where a separation of two feet from the seasonal high water table is not practicable, the division of water quality may grant relief from the separation requirement pursuant to the alternative design criteria set out in 15A NCAC 02H .1008(h). No separation from the seasonal high water table is required for a secondary stormwater best management practice that is used in a series with another stormwater best management practice.
- (d) *Additional standards.* The following additional standards shall apply:
 - (1) Remove an 85 percent average annual amount of total suspended solids;
 - (2) For detention ponds, draw down the treatment volume no faster than 48 hours, but no slower than 120 hours;
 - (3) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm; and
 - (4) Meet the general engineering design criteria set forth in 15A NCAC 02H .1008(c).

(Code 2003, § 32-40; Ord. No. 09-05, 3-19-2009)

Sec. 26-130. - Variances.

- (a) Any person may petition the town board of adjustment for a variance granting permission to use the person's land in a manner otherwise prohibited by this article. To qualify for a variance, the petitioner must show all of the following:
 - (1) Unnecessary hardships would result from strict application of this article;
 - (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; and
 - (4) The requested variance is consistent with the spirit, purpose, and intent of this article; shall secure public safety and welfare; and shall preserve substantial justice.
- (b) The town board of adjustment may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (c) Notwithstanding subsection (a) of this section, exceptions from the 30-foot landward location of built-upon area

requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs;
- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs; or
- (3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

(Code 2003, § 32-42; Ord. No. 09-05, 3-19-2009)

Secs. 26-131—26-158. - Reserved.

DIVISION 4. - MAINTENANCE

Sec. 26-159. - General standards for maintenance.

- (a) *Function of BMPs as intended.* The owner of each structural BMP installed pursuant to this article shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.
- (b) *Annual maintenance inspection and report.*
 - (1) The person responsible for maintenance of any structural BMP installed pursuant to this article shall submit to the stormwater administrator an inspection report from one of the following persons performing services only in their area of certification: a registered state professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the state cooperative extension service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:
 - a. The name and address of the land owner;
 - b. The recorded book and page number of the lot of each structural BMP;
 - c. A statement that an inspection was made of all structural BMPs;
 - d. The date the inspection was made;
 - e. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this article; and
 - f. The original signature of the inspector.
 - (2) All inspection reports shall be on forms supplied by the stormwater administrator.
 - (3) 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 anniversary date of the as-built certification.

(Code 2003, § 32-54; Ord. No. 09-05, 3-19-2009)

Sec. 26-160. - Operation and maintenance agreement.

(a) *In general.*

- (1) Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this article, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this article, 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 structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
- (2) The operation and maintenance agreement shall require the owner or owners to maintain, repair, and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the town a right of entry in the event that the stormwater administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the structural BMP.
- (3) 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. A copy of the recorded maintenance agreement shall be given to the stormwater administrator within 14 days following its recordation.

(b) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this article and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;
- (2) Establishment of an escrow account with the town, which can be expended solely for the cost of sediment or vegetative removal; structural or vegetative replacement; repair; or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the town, in its sole discretion, may remedy the situation, and in such instances the town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal; structural, biological or vegetative replacement; repair; or reconstruction of the structural BMPs, provided that the town shall first consent to the expenditure;
- (3) Both developer contribution and annual accrued association funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to 15 percent of the estimated construction cost of the structural BMPs. Two-thirds of the total amount of the escrow fund budget shall be deposited into the escrow account within the first five years and the full amount shall be deposited within ten years following initial construction of the structural

BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the escrow fund budget;

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the town depending on the design and materials of the stormwater control and management facility;
- (5) Granting to the town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs;
- (6) Allowing the town to recover from the association and its members any and all costs the town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the town all of its expended costs, after 45 days written notice, shall constitute a breach of the agreement. In case of a deficiency, the town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery;
- (7) A statement that this agreement shall not obligate the town to maintain or repair any structural BMPs, and the town shall not be liable to any person for the condition or operation of structural BMPs;
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the town to enforce any of its ordinances as authorized by law; and
- (9) A provision indemnifying and holding harmless the town for any costs and injuries arising from or related to the structural BMP, unless the town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Code 2003, § 32-55; Ord. No. 09-05, 3-19-2009)

Sec. 26-161. - Inspection program.

- (a) Inspections and inspection programs by the town may be conducted or established on any reasonable basis, including 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 reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.
- (b) 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 official duties.

(Code 2003, § 32-56; Ord. No. 09-05, 3-19-2009)

Sec. 26-162. - Performance security for installation and maintenance.

(a) *May be required.*

- (1) In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat or permit approval, the town council may enter into an agreement with the applicant whereby the applicant shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved, if all other requirements of this article are met. To secure this agreement, the applicant shall provide, subject to the approval of the town council, a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement for 1.25 times the entire cost of the guaranteed improvements.
- (2) The performance security will ensure that BMPs are:

- a. Installed by the permit holder as required by the approved stormwater management plan; or
 - b. 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 percent.
 - (2) *Maintenance.* The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.
- (c) *Uses of performance security.*
- (1) *Forfeiture provisions.* The performance security shall contain forfeiture provisions for failure 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 article, permits issued pursuant to this article, or an operation and maintenance agreement established pursuant to this article.
 - (2) *Default.* Upon default of the owner to construct, maintain, repair, or reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator shall obtain and use all or any portion of the security to construct, maintain, repair or reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement. Such expenditure of funds shall only be made after a written request to the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the town shall retain any of the unused deposited cash funds or other security, which shall be retained for the maintenance escrow fund.
 - (3) *Costs in excess of performance security.* If the town takes action upon such failure by the applicant or owner, the town 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 60 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 percent) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one year after installation and deficiencies shall be corrected for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

(Code 2003, § 32-57; Ord. No. 09-05, 3-19-2009)

Sec. 26-163. - Notice to owners.

- (a) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every structural BMP on the plan 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.* At the determination of the stormwater administrator, to ensure compliance with this article, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual

inspection. The sign shall be maintained so as to remain visible and legible.

(Code 2003, § 32-58; Ord. No. 09-05, 3-19-2009)

Sec. 26-164. - Records of installation and maintenance activities.

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least ten years from the date of creation of the record and shall submit the same upon request to the stormwater administrator.

(Code 2003, § 32-59; Ord. No. 09-05, 3-19-2009)

Sec. 26-165. - Nuisance.

The owner of each stormwater BMP, whether structural or nonstructural, shall maintain it to prevent a nuisance condition.

(Code 2003, § 32-60; Ord. No. 09-05, 3-19-2009)

Sec. 26-166. - Maintenance easement.

Every structural BMP installed pursuant to this article 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.

(Code 2003, § 32-61; Ord. No. 09-05, 3-19-2009)

Secs. 26-167—26-185. - Reserved.

DIVISION 5. - ENFORCEMENT AND VIOLATIONS

Sec. 26-186. - General.

- (a) *Authority to enforce.* The provisions of this article shall be enforced by the stormwater administrator, his designee, or any authorized agent of the town. Whenever this article refers to the stormwater administrator, it includes his designee as well as any authorized agent of town.
- (b) *Violation unlawful.* Failure to comply with any applicable requirement, prohibition, standard, or limitation imposed by this article, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this article, is unlawful and shall constitute a violation of this article.
- (c) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.
- (d) *Penalty assessed after notice served.* No penalty shall be assessed until the person alleged to be in violation has been served notice of the violation as described in section 26-188 except as provided below. Refusal to accept the notice shall not relieve the violator of the obligation to pay such penalty.
- (e) *Responsible persons/entities.*
 - (1) Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this article shall be subject to the remedies, penalties, or enforcement actions in accordance with this article. 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 article, or fails to take appropriate action, so that a violation of this article 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.

- (2) For the purposes of this article, the term "responsible person" shall include:
- a. 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 article, or fails to take appropriate action, so that a violation of this article results or persists; and
 - b. Responsibility for land or use of land. The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

(Code 2003, § 32-72; Ord. No. 09-05, 3-19-2009)

Sec. 26-187. - Remedies and penalties.

The remedies and penalties provided herein, whether civil or criminal, are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.

- (1) *Remedies.*
- a. *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.
 - b. *Disapproval of subsequent permits and developments approvals.* As long as a violation of this article continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the town council, planning board, planning department, and building inspections department may disapprove, any request for permit or development approval or authorization provided for by this article or the zoning, subdivision, or building regulations for the land on which the violation occurs.
 - c. *Injunction, abatements, etc.* The stormwater administrator, with the written authorization of the town 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 article. Any person violating this article shall be subject to the full range of equitable remedies provided in the general statutes or at common law.
 - d. *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 G.S. 160A-193, the stormwater administrator, with the written authorization of the town manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
 - e. *Stop-work order.* The stormwater administrator may issue a stop-work order to the person violating this article. 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.

(2) *Civil penalties.*

- a. Any person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of this article is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.
- b. Civil penalties may be assessed up to the full amount of penalty to which the town is subject for violations of its NPDES stormwater permit, or \$5,000.00 for each violation of this article, whichever is greater. Each day of violation shall constitute a separate violation.
- c. Penalties may be assessed concurrently with a notice of violation for any of the following:
 1. Obstructing, hampering, or interfering with an authorized town representative who is in the process of carrying out official duties under this article;
 2. A repeated violation for which a notice of violation was previously given to the person responsible for the violation; or
 3. Willful violation of this article.
- d. In determining the amount of a civil penalty, the stormwater manager shall consider any relevant mitigating and aggravating factors, including:
 1. Degree and extent of harm caused by the violation;
 2. Cost of rectifying the damage;
 3. Amount of money saved through noncompliance;
 4. Whether the violator took reasonable measures to comply with this article;
 5. Knowledge of the requirements by the violator and/or reasonable opportunity or obligation to obtain such knowledge;
 6. Whether the violator voluntarily took reasonable measures to restore any areas damaged by the violation;
 7. Whether the violation was committed willfully;
 8. Whether the violator reported the violation to an appropriate authority;
 9. Technical and economic reasonableness of reducing or eliminating the discharge; and
 10. Prior record of the violator in complying or failing to comply with this article or any other water pollution control ordinance or regulation.
- e. The stormwater manager shall determine the amount of the civil penalty to be assessed under this article and shall make written demand for payment upon the person in violation and shall set forth in detail a description of the violation for which the penalty was imposed. Notice of said assessment shall be by registered or certified mail or other means reasonably calculated to give adequate notice. If a violator does not pay a civil penalty assessed by the town within 30 days after it is due, the stormwater manager shall request the town attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in the county superior court or in any other court of competent jurisdiction. Such civil actions must be filed within three years of the date the notice of assessment was served on the violator.
- f. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
- g. Civil penalties collected pursuant to this article shall be credited to the town general fund as a non-tax revenue.
- h. A violation of this article shall not constitute a misdemeanor or infraction punishable under G.S. 14-4, but

instead shall be subject to the civil penalties fixed by this article.

(Code 2003, § 32-73; Ord. No. 09-05, 3-19-2009)

Sec. 26-188. - Procedures.

- (a) *Initiation/complaint.* Whenever a violation of this article 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 article.
- (c) *Notice of violation and order to correct.*
 - (1) When the stormwater administrator finds that any building, structure, or land is in violation of this article, the stormwater administrator shall notify, in writing, the property owner or other person violating this article. 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.
 - (2) The stormwater administrator may deliver the notice of violation and correction order personally, by the police department, code enforcement officer, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by rule 4 of the North Carolina Rules of Civil Procedure.
 - (3) If a violation is not corrected within the period of time provided in the notification, the stormwater administrator may take appropriate action under this article to correct and abate the violation and to ensure compliance with this article.
- (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. The stormwater administrator may grant 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 article. 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 shall 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 if authorized by the stormwater administrator, the stormwater administrator shall determine if the violation is corrected. If the violation is not corrected, the stormwater administrator may act to impose one or more of the remedies and penalties authorized by this article.
- (f) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this article 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.

(Code 2003, § 32-74; Ord. No. 09-05, 3-19-2009)

Secs. 26-189—26-236. - Reserved.

DIVISION 6. - ILLICIT DISCHARGES

Sec. 26-237. - Illicit discharges and connections.

- (a) *Illicit discharges.* The discharge, emission, disposal, pouring, or pumping directly or indirectly any liquid, solid, gas, or other substance, other than stormwater to any stormwater conveyance, the waters of the state, or upon the land in a manner or amount that the substance is likely to reach a stormwater conveyance or the waters of the state is prohibited. Prohibited substances include: oil, anti-freeze, chemicals, animal waste, paints, garbage, debris, or litter.
- (b) *Exemptions.* Nonstormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:
- (1) Waterline flushing;
 - (2) Landscape irrigation;
 - (3) Diverted stream flows;
 - (4) Rising groundwaters;
 - (5) Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20));
 - (6) Uncontaminated pumped groundwater;
 - (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, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the town.
- (c) *Illicit connections.*
- (1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (a) of this section, are unlawful. Prohibited connections include, but are not limited to: floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater 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 the ordinance from which this article is derived. 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 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 was made in violation of any applicable regulation or ordinance, other than this section; the stormwater administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the stormwater administrator shall take into consideration:

- 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.

(d) *Spills.*

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

(2) Persons in control of the prohibited 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 fire chief and the stormwater manager 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.

(e) *Nuisance.* Illicit discharges and illicit connections which exist within the town 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. Such public nuisances shall be abated in accordance with the procedures set forth in [chapter 34](#), article III.

(Code 2003, § 32-96; Ord. No. 09-05, 3-19-2009)