

DEED RESTRICTIONS AND PROTECTIVE COVENANTS AGREEMENT (LSW102)



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For All Development Requiring a Stormwater Management Permit

In accordance with Chapter 26, the Stormwater Management Regulations for the Town of Leland, deed restrictions and protective covenants are required for projects where lots will be subdivided and sold. Deed restrictions and protective covenants are necessary to ensure that the development maintains a "built-upon" area consistent with the Stormwater Management Permit. This must be referenced on all final plats recorded for the area covered under the permit.

I, _____, acknowledge, affirm, and agree by my signature below, that I will record deed restrictions and covenants that meet the following stipulations prior to the sale of any lot:

1. The following covenants are intended to ensure ongoing compliance with Town of Leland Stormwater Management Permit Number _____, as issued by the Stormwater Management Division under Chapter 26 of the Town Code.
2. The Town of Leland and State of North Carolina are made beneficiaries of these covenants to the extent necessary to maintain compliance with the stormwater management permit.
3. These covenants are to run with the land and be binding on all persons and parties claiming under them.
4. The covenants pertaining to stormwater may not be altered or rescinded without the express written consent of the Town of Leland Stormwater Management Division.
5. Alteration of the drainage as shown on the approved plan may not take place without the concurrence of the Town of Leland Stormwater Management Division.
6. The maximum allowable built-upon area per lot is _____square feet. This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

OR, if the proposed built-upon areas per lot will vary, please REPLACE #6 above with the following:

6. The maximum built-upon area per lot, in square feet, is as listed below:

Lot #	BUA	Lot #	BUA	Lot #	BUA	Lot #	BUA
_____	_____	_____	_____	_____	_____	_____	_____

This allotted amount includes any built-upon area constructed within the lot property boundaries, and that portion of the right-of-way between the front lot line and the edge of the pavement. Built upon area includes, but is not limited to, structures, asphalt, concrete, gravel, brick, stone, slate, coquina, and parking areas, but does not include raised, open wood decking, or the water surface of swimming pools.

7. Built-upon area in excess of the permitted amount will require a permit modification. For Low Density Projects this may require modification to a High Density Project.
8. All runoff from the built-upon areas on the lot must drain into the permitted system. This may be accomplished through a variety of means including roof drain gutters which drain to the street, grading the lot to drain toward the street, or grading perimeter swales to collect the lot runoff and directing them into a component of the stormwater collection system. Lots that will naturally drain into the system are not required to provide these additional measures (NOT APPLICABLE TO LOW DENSITY PROJECTS).
9. In the case of a lot within CAMA's regulated AEC, where the Division of Coastal Management calculates a different maximum allowable built-upon area for that lot than is shown herein, the governing maximum built-upon area for that lot shall be the more restrictive of the two.
10. Filling in or piping of any vegetative conveyances (ditches, swales, etc.) associated with the Stormwater Management Permit, except for average driveway crossings, is strictly prohibited by any persons.
11. Each lot will maintain a 50 foot (30 foot for redevelopment) wide vegetated buffer between all impervious areas and surface water.
12. All roof drains shall terminate at least 50 foot from the mean high-water mark of surface waters.
13. The Operations and Maintenance Agreements recorded on Deed Book _____ Page _____ will be followed for all structural stormwater BMP's permitted under Town of Leland Stormwater Management Permit Number _____.
14. The Town of Leland and State of North Carolina shall have a right of entry to inspect, monitor, maintain, repair, or reconstruct the permitted structural BMP's; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Leland or State of North Carolina to assume responsibility for said BMP. Any costs incurred to the Town of Leland pursuant to this shall be fully reimbursed.
15. A provision indemnifying and holding harmless the Town of Leland for any costs and injuries arising from or related to the structural BMP, unless the Town of Leland 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.

Special Requirements for High Density Commercial Developments with Out-parcels

1. The runoff from all built-upon area within the out-parcel or future development area must be directed into the permitted stormwater control system.
2. The connection from the out-parcel's collection system into the stormwater control shall be made such that short-circuiting of the system does not occur.
3. For those out-parcels or future development areas whose ownership is not retained by the permittee, the new owner shall submit a separate offsite stormwater permit application to the Town of Leland and receive a permit prior to construction.

Special Requirements for Low Density Commercial Projects

1. Each lot, whose ownership is not retained by the permittee, shall submit a separate stormwater permit application to the Town of Leland and receive a permit prior to construction. The application shall demonstrate compliance with the maximum BUA limit and the low density requirements set forth in Chapter 26 of the Town Code. Lots whose ownership is retained by the permittee shall be submitted as modifications to the original permit.

Special Requirements for Low Density Projects with Curb Outlet Swales

1. This project proposes a curb outlet system. Each designated curb outlet swale shown on the approved plan must be maintained at a minimum of 100' long with 5:1 (H:V) side slopes or flatter, have a longitudinal slope no steeper than 5%, carry the flow from a 10 year storm in a non-erosive manner, and maintain a dense vegetated cover.
2. Filling in, piping or altering any designated 5:1 curb outlet swale associated with the development is prohibited by any persons.

Special Requirements for Home Owners Associations, Property Owners Associations, and other Associations

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 of Leland, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town of Leland, in its sole discretion, may remedy the situation, and in such instances the Town of Leland shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town of Leland shall first consent to the expenditure.
 - a. Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the structural BMPs. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
 - b. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Leland depending on the design and materials of the stormwater control and management facility.

3. Allowing the Town of Leland to recover from the association and its members any and all costs the Town of Leland expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of Leland all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Leland 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.
4. This agreement shall not obligate the Town of Leland to maintain or repair any structural BMPs, and the Town of Leland shall not be liable to any person for the condition or operation of structural BMPs.
5. This agreement shall not in any way diminish, limit, or restrict the right of the Town of Leland to enforce any of its ordinances as authorized by law.

Printed Name: _____

Signature: _____

Date: _____

I, _____, a Notary Public in the
State of _____, County of _____,

do hereby certify that _____ personally appeared
before me this the _____ day of _____, 20____, and acknowledge
the due execution of the foregoing instrument. Witness my hand and official seal,

SEAL

Signature

My Commission expires _____