

NASH COUNTY

Neuse and Tar-Pamlico Model Stormwater Ordinance for New Development

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SECTION 1: GENERAL PROVISIONS

101 TITLE

This ordinance shall be officially known as “The **Nash County** Stormwater Ordinance for New Development.” It is referred to herein as “this ordinance.”

102 AUTHORITY

The **Nash County Board of Commissioners** is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management *Commission* thereunder; Chapter 143-215.6A; Chapter 153A-454; Chapter 160A, Chapter 160D, §§ 174, 185, 459 [; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)]; Article 21, Part 6 (Floodway Regulation) [;]; Chapter 143-214.5, Water Supply Watershed Protection]; Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18].

103 FINDINGS

It is hereby determined that:

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

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

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

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

Therefore, the **Nash County Board of Commissioners** establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of *stormwater* runoff and discharge for *development*.

104 PURPOSE

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of *nitrogen* and/or *phosphorus* in *stormwater* runoff and nonpoint and point source pollution associated with new *development* in the watershed of the **Tar-Pamlico**

and Neuse estuaries. It has been determined that proper management of construction-related and post-*development stormwater* runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

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

- (1) Establishing decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources;
- (2) Requiring that new *development* not exceed export targets for *nitrogen* and/or *phosphorus* in *stormwater* runoff for the watershed through site layout, *engineered stormwater controls*, or *permanent nutrient offset credits*;
- (3) Establishing minimum post-*development stormwater* management standards and design criteria for the regulation and control of *stormwater* runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of *engineered stormwater controls* that may be used to meet the minimum post-*development stormwater* management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for *stormwater* and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
- (6) Establishing provisions for the long-term responsibility for and maintenance of *engineered stormwater controls* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved *projects*, and to assure appropriate long-term maintenance;
- (8) Controlling illicit discharges into the waters of the State.
- (9) Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the waters of the State.
- (10) Requiring that new *development* maintain the pre-*development* hydrologic response in their post-*development* state for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (11) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.

(12) Coordinating site design plans that include open space and natural areas with the Comprehensive Plan Nash County.

(13) Controlling erosion and sedimentation from construction activities.

105 APPLICABILITY AND JURISDICTION

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and expansion of *development* throughout the territorial jurisdiction of Nash County within the Tar-Pamlico and Neuse watershed, including, but not limited to, *site plan* applications, subdivision applications, and grading applications, unless exempt pursuant to this ordinance.

(B) Exemptions

(1) Single family and duplex residential and related recreational *development* and expansion of *development* that disturbs less than one acre is exempt from the provisions of this ordinance.

(2) Commercial, industrial, institutional, multifamily residential or local government *development* that disturbs less than one half acre and does not expand existing structures on a *parcel* is exempt from the provisions of this ordinance.

(3) Commercial, industrial, institutional, multifamily residential or local government *development* that disturbs less than one half acre and expands existing structures on a *parcel* but does not result in a cumulative built-upon area for the *parcel* exceeding twenty-four (24) percent is exempt from the provisions of this ordinance.

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

(5) *Development* of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5) percent built-upon area on the lot is exempt from the provisions of this ordinance.

(6) A *project* subject to the requirements of the Falls Nutrient Strategy Development Stormwater Rule, 15A NCAC 02B .0277 is exempt from the provisions of this ordinance.]

(7) *Existing development or redevelopment* is exempt from the provisions of this ordinance.

(8) Activities subject to requirements of the **Tar-Pamlico and/or Neuse** Agriculture Rule, 15A NCAC 02B .0712 and Rule, 15A NCAC 02B .0732 is exempt from the provisions of this ordinance.

(9) *Development* or expansion of *development* with a vested right per the standards of N.C.G.S. 160D-108 is exempt from the provisions of this ordinance.

(10) *Development* or expansion of *development* for which the permit application was submitted prior to adoption of this ordinance is optionally exempt from the provisions of this ordinance per the requirements of N.C.G.S. 143-755.

(C) No Development or Expansion Until Compliance and Permit

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

(D) Map

The provisions of this ordinance shall apply within the areas designated on the map titled "**Tar-Pamlico and Neuse**" Watershed Stormwater Map of Nash County, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *engineered stormwater controls* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or *engineered stormwater control* shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

106 INTERPRETATION

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in Nash County's code of ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

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

(D) References to Statutes, Regulations, and Documents

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

(E) Computation of Time

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

(F) Delegation of Authority

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

(G) Usage

(1) Mandatory and Discretionary Terms

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

(2) Conjunctions

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

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

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

107 DESIGN MANUAL

(A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *engineered stormwater controls* and other practices for compliance with this ordinance.

The *Design Manual* includes a list of acceptable *stormwater* treatment practices, including specific design criteria for each *stormwater* practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the **Tar-Pamlico and/or Neuse** Rules.

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

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

(C) Changes to Standards and Specifications

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

108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

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

(B) Private Agreements

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to

comply with this ordinance. In no case shall Nash County be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

109 SEVERABILITY

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

110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on _____, 2024.

(B) Final Approvals, Complete Applications

All *development* and expansion of *development projects* for which complete and full applications were submitted to the Nash County Planning Department prior to the effective date of this ordinance may be exempted from complying with all provisions of this ordinance dealing with the control and/or management of stormwater by the choice of the developer.

A phased development plan shall be deemed complete prior to the effective date of this ordinance, and it shows:

- (1) For the initial or first phase of *development* or expansion of *development*, the type and intensity of use for a specific *parcel* or *parcels*, including at a minimum, the boundaries of the *project* and a *subdivision* plan that has been approved.
- (2) For any subsequent phase of *development* or expansion of *development*, sufficient detail so that implementation of the requirements of this ordinance to that phase of *development* would require a material change in that phase of the plan.

(C) Violations Continue

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

SECTION 2: ADMINISTRATION AND PROCEDURES

201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

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

(2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Nash County code(s) and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

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

202 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

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

(B) Effect of Permit

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

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

(C) Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

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

(1) Application Contents and Form

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

(2) Submission Schedule

The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.

(3) Permit Review Fees

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

(4) Administrative Manual

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

(E) Submittal of Complete Application

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

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

(F) Review

Within 45 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval

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

(2) Fails to Comply

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

(3) Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator within 45 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within forty-five (45) calendar days from the date the applicant was notified, the application shall be considered

withdrawn, and a new submittal for the same or substantially the same *project* shall be required along with the appropriate fee for a new submittal.

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

203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or *developer* may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development project*. This consultation meeting should take place at the time of the preliminary plan of *subdivision* or other early step in the *development* process. The purpose of this meeting is to discuss the stormwater management measures necessary for the proposed *project*, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the Unified Development Ordinance Nash County, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

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

(1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); stream and other buffers and features used in designing buffers and meeting any applicable buffer requirements; boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the *project*. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

(3) Stormwater Management System Concept Plan

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

(B) Stormwater Management Permit Application

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

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

(C) As-Built Plans and Final Approval

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

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the Nash County Planning Department without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Planning Director 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.

204 APPROVALS

(A) Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. No deviations from the terms of the application or the approval shall be made until written approval of proposed changes or deviations has been obtained through permit revision and review. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(B) Time Limit/Expiration

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

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

205 APPEALS

(A) Right of Appeal

Except as provided in N.C.G.S. 160D-1403.1, any aggrieved *person* affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Nash County Board of Adjustment within 30 days from receipt of the notice of a determination. Appeals of variance requests shall be made as provided in the section on Variances. In the case of requests for review of proposed civil penalties for violations of this ordinance, the Nash County Board of Adjustment shall make a final decision on the request for review within 90 days of receipt of the date the request for review is filed.

SECTION 3: STANDARDS

301 GENERAL STANDARDS

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

302 NITROGEN AND PHOSPHORUS LOADING RATE TARGETS

- (A) The *project* shall meet either a *nitrogen* stormwater *loading rate* target of 3.6 (Neuse) and 4.0 (Tar-Pamlico) pounds per acre per year (lb/ac/yr) and a *phosphorus* stormwater *loading rate target* of 0.8 lb/ac/yr (Tar-Pamlico) or meet “runoff volume match” as defined in 15A NCAC 02H .1002.
- (B) The *project* area used for *nutrient* calculation and stormwater requirements includes the site area less any *existing built-upon area*. The *project* density used for determining stormwater requirements is the amount of *built-upon area* subject to this ordinance at *project* completion divided by the *project* area.
- (C) The *developer* shall determine the *nitrogen* and/or *phosphorus* load and loading rate generated from the *project* area without *engineered stormwater controls* and determine the needed *nitrogen* and/or *phosphorus* load reduction to meet nutrient targets by using the *approved accounting tool*.

303 NITROGEN AND PHOSPHORUS STANDARD IS SUPPLEMENTAL

The *nitrogen* and/or *phosphorus* loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the *development*. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 02B .0714 , .0734 and .0295.

304 CONTROL AND TREATMENT OF RUNOFF VOLUME

- (A) All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (>24%) percent built-upon area, whereupon high-density stormwater design is required. All *engineered stormwater controls* will meet the standards set in the Design Manual and the State’s Minimum Design Criteria, 15A NCAC 02H .1050 through .1062.
- (B) Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat the volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.

- (C) Where high-density stormwater design is not required, stormwater systems shall meet the low-density stormwater design standards set forth in 15A NCAC 02H .1003(2).

305 METHODS TO MEET NUTRIENT CONTROL REQUIREMENTS

Projects subject to this ordinance shall meet *nitrogen* and/or *phosphorus* loading targets through a combination of the following methods:

- (A) *Projects* may reduce export of *nitrogen* and/or *phosphorus* through any combination of *engineered stormwater controls* treating runoff on the site, in an approved offsite regional *engineered stormwater control*, or through the acquisition of *permanent nutrient offset credits*. The *developer* shall calculate the *nitrogen* and/or *phosphorus* reduction provided by these controls using the approved *accounting tool*.
- (B) Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet *nitrogen* and/or *phosphorus* reduction needs for the *project* entirely through the use of *permanent nutrient offset credits* pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

306 USE OF PERMANENT NUTRIENT OFFSET CREDITS

- (A) Sufficient *permanent nutrient offset credits* to meet *project* nutrient reduction needs not provided by *engineered stormwater controls* serving the *project* shall be acquired prior to approval of the development plan. The Stormwater Administrator shall issue an approval letter for the *development* that documents the needed nitrogen and/or phosphorus credits and where the development is located relative to the Tar-Pamlico and Neuse Rules' geographic requirements. All *permanent nutrient offset credits* permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.
- (B) *Permanent nutrient offset credits* shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.
- (C) A *developer* subject to this ordinance may acquire *permanent nutrient offset credits* through one of the following methods:
 - (1) Through a private nutrient bank;
 - (2) Through offsite offset provided by the *developer* and approved by the Nash County Planning Director;
 - (3) Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.
- (D) Excess *permanent nutrient offset credits* acquired beyond what is required for the *development* may not be applied to any other *development*.

307 EVALUATION OF STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All *engineered stormwater controls* and *stormwater systems* required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice in the *Design Manual*. The Stormwater Administrator shall determine whether proposed *engineered stormwater controls* will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

Engineered stormwater controls that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

308 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

The **Nash County Board of Commissioners** may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

309 VARIANCES

(A) For all proposed major and *minor variances* from the requirements of this ordinance, the Nash County Planning Board, in its capacity as the local Watershed Review Board, shall make findings of quasi-judicial fact in accordance with the procedures of N.C.G.S 160D-406 showing that:

(1) there are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the ordinance;

(2) the variance is in harmony with the general purpose and intent of the local watershed protection ordinance and preserves its spirit; and

(3) in granting the variance, the project will ensure equal or better protection of waters of the State than the requirements of 15A NCAC 02B .0731 (Neuse Stormwater Rule) or .0711 (Tar-Pamlico Stormwater Rule), relative to the project

location, and that the public safety and welfare have been assured and substantial justice has been done.

- (B) In the case of a request for a *minor variance*, the Nash County Board of Commissioners may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (C) The Nash County Board of Commissioners may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. If the variance request qualifies as a major variance, and the Nash County Board of Commissioners decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the hearing and submit it to the Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes Nash County Board of Commissioners to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to Nash County Board of Commissioners. Nash County shall prepare a final decision denying the *major variance*.
- (D) Appeals from the local government decision on a major or *minor variance* request are made on certiorari to the local Superior Court. Appeals from the *Commission* decision on a *major variance* request are made on judicial review to Superior Court.

SECTION 4: MAINTENANCE

401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of Engineered Stormwater Controls as Intended

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

(B) Annual Maintenance Inspection and Report

The *person* responsible for maintenance of any *engineered stormwater control* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from a qualified professional certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the landowner;
- (2) The recorded book and page number of the lot of each *engineered stormwater control*;
- (3) A statement that an inspection was made of all *engineered stormwater controls*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *engineered stormwater controls* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

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

402 OPERATION AND MAINTENANCE OF ENGINEERED STORMWATER CONTROLS

(A) Operation and Maintenance Plan

There shall be an Operation and Maintenance Plan (O&M Plan) for every *engineered stormwater control*. The O&M Plan shall specify all operation and maintenance work necessary for the function of all *engineered stormwater control* components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point.

The O&M Plan shall require the *owner* to maintain, repair and, if necessary, reconstruct the *engineered stormwater controls*, and shall state the terms, conditions, and schedule of maintenance for the *engineered stormwater controls*. The O&M Plan shall specify methods to be used to maintain or restore the *engineered stormwater controls* to design specifications in the event of failure.

The O&M Plan shall be signed by the *owner* and notarized. The *owner* shall keep maintenance records, and these shall be available upon request by the Stormwater Administrator.

(B) Operation and Maintenance Agreement

Prior to the conveyance or transfer of any lot or building site to be served by *engineered stormwater controls* pursuant to this ordinance, and prior to issuance of any permit for *development* requiring *engineered stormwater controls* pursuant to this ordinance, the applicant or *owner* of the site must enter into an Operation and Maintenance Agreement (O&M Agreement) with the Stormwater Administrator. The O&M Agreement shall require the applicant or *owner* to maintain, repair, or reconstruct the *engineered stormwater controls* in accordance with the approved design plans and the Operation and Maintenance Plan. The O&M Agreement shall be binding on all subsequent *owners* of the site, portions of the site, and lots, or *parcels* served by the *engineered stormwater control*. Until the transference of all property, sites, or lots served by the *engineered stormwater control*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the O&M Agreement.

The O&M Agreement shall grant to Nash County a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *engineered stormwater control*; however, in no case shall the right of entry, of itself, confer an obligation on Nash County to assume responsibility for the *engineered stormwater controls*.

The O&M Agreement must be approved by the Stormwater Administrator prior to development 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 O&M Agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(C) Special Requirement for Homeowners' and Other Associations

For all *engineered stormwater controls* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property *owners'* association, or similar entity, the required O&M Agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the *engineered stormwater controls* according to the specifications laid out in the Operation and Maintenance Plan.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *engineered stormwater controls*. If *engineered stormwater controls* are not performing adequately or as intended or are not properly maintained, Nash County,

in its sole discretion, may remedy the situation, and in such instances Nash County shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *engineered stormwater controls*, provided that Nash County shall first consent to the expenditure.

(3) Both *developer* contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the *developer* shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *engineered stormwater controls*. 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 *engineered stormwater controls*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of *developer* contribution and lengths of time to fund the escrow account may be varied by the Nash County depending on the design and materials of the *engineered stormwater controls*.

(5) Granting to Nash County a right of entry to inspect, monitor, maintain, repair, and reconstruct *engineered stormwater controls*.

(6) Allowing Nash County to recover from the association and its members any and all costs Nash County expends to maintain or repair the *engineered stormwater controls* or to correct any operational deficiencies. Failure to pay Nash County all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, Nash County shall thereafter be entitled to bring an action against the association and its members to pay or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate Nash County to maintain or repair any *engineered stormwater controls*, and Nash County shall not be liable to any *person* for the condition or operation of *engineered stormwater controls*.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of Nash County to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless Nash County for any costs and injuries arising from or related to the *engineered stormwater controls*, unless Nash County has agreed in writing to assume the maintenance responsibility for the *engineered stormwater controls* and has accepted dedication of any and all rights necessary to carry out that maintenance.

403 INSPECTION PROGRAM

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

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 N.C.G.S. 15-27.2 or its successor. No *person* shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) May Be Required

Nash County may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *engineered stormwater controls* are:

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

(2) maintained by the *owner of the device* as required by the Operation and Maintenance Agreement. In conjunction with G.S. 160D-925, Nash County will require the responsible party for the site to adhere to establishment and funding of a segregated account used solely for the purposes of maintaining, repairing, replacing, and reconstructing the *owner's* stormwater control system.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the *engineered stormwater controls* approved under the permit, plus 25%.

(2) Maintenance

In conjunction with G.S. 160D-925, *Owner* shall establish, collect, and retain funds for maintenance, repair, replacement, and reconstruction costs for the owner's stormwater control system, which shall not exceed ten percent (10%) of the stormwater control project's original cost of construction and shall be retained by the owner of the system. An initial grace period of five (5) years shall be given before the first payment, beginning when the stormwater control

system is confirmed by Nash County, or its designee, to be constructed per local and state regulations.

(C) Uses of Performance Security

(1) Forfeiture Provisions

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

(2) Default

Upon default of the *owner* to construct, maintain prior to substantial completion, repair and, if necessary, reconstruct any *engineered stormwater control* in accordance with the applicable permit or Operation and Maintenance Agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or Operation and Maintenance Agreement and within the guidance of G.S. 160D-925.

(3) Costs in Excess of Performance Security

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

(4) Refund

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

405 NOTICE TO OWNERS

(A) Deed Recordation and Indications on Plat

The applicable Operations and Maintenance Agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable) pertaining to every *engineered stormwater control* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no *subdivision* plat is recorded for the site, then the Operations and Maintenance Agreement, conservation easement, or dedication and acceptance into public

maintenance, whichever is applicable shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *engineered stormwater controls* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The *owner* of each *engineered stormwater control* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

407 NUISANCE

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

408 MAINTENANCE EASEMENT

Every *engineered stormwater control* and its associated maintenance accesses on privately owned land, except for those located on single family residential lots, installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a permanent maintenance easement. The easement shall be recorded, and its terms shall specify who may make use of the easement and for what purposes. The engineered stormwater control will be shown and labeled within the easement. The easement shall be granted in favor of the Stormwater Administrator.

SECTION 5: ENFORCEMENT AND VIOLATIONS

501 GENERAL

(A) Authority to Enforce

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

(B) Violation Unlawful

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

(C) Each Day a Separate Offense

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

(D) Responsible Persons/Entities

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

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

(1) Person Maintaining Condition Resulting in or Constituting Violation

An architect, engineer, builder, contractor, *developer*, agency, or any other *person* who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any *person* who is responsible for stormwater controls or practices

pursuant to a private agreement or public document, or any *person*, who has control over, or responsibility for, the use or *development* of the property.

502 REMEDIES AND PENALTIES

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

(A) Remedies

(1) Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning Board and/or Development Review Committee that review land *development* requests may disapprove, any request for permit or *development approval* or authorization provided for by this ordinance or the zoning, *subdivision*, and/or building regulations, as appropriate for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

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

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

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

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the *person(s)* violating this ordinance. A copy of the order shall be delivered to the holder of the *development* permit and to the *owner* of the property involved (if that person is not the holder of the *development* permit) by personal delivery, electronic delivery,

or first-class mail. The stop work order shall remain in effect until the *person* has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the *person* to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

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

(C) Criminal Penalties

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

503 PROCEDURES

(A) Initiation/Complaint

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

(B) Inspection

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

(C) Notice of Violation and Order to Correct

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

The Stormwater Administrator may deliver the notice of violation and correction order by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this

ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

A *person* who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the *person* requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The Stormwater Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the *person* violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) Enforcement After Time to Correct

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

(F) Emergency Enforcement

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

SECTION 6: DEFINITIONS

601 TERMS DEFINED

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

Approved accounting tool

The most recent version of the accounting tool for calculating *nutrient* loading and reduction approved by the *Division* for the relevant geography and development type under review.

Built-upon area (BUA)

Means the same as defined in N.C.G.S. 143-214.7(b2).

Commission

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

Department

The North Carolina Department of Environmental Quality.

Design Manual

The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the *Design Manual* are to the latest published edition or revision.¹ [Change this definition to a local Design Manual if one is in use, provided that the local Design Manual provides instructions for proper implementation of State Minimum Design Criteria for engineered stormwater controls.]

Developer

Means the same as defined in N.C.G.S. 160D-102(11).

Development

Means the same as defined in N.C.G.S. 143-214.7(a1)(1).

Development approval

Means the same as defined in N.C.G.S. 160D-102(13).

Division

The Division of Water Resources in the *Department*.

Existing development

Means the same as defined in 15A NCAC 02H .1002(18).

Engineered stormwater control

A physical device designed to trap, settle out, filter, or otherwise remove 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

¹ Adapted from North Georgia M.O.

achieve any combination of these goals. *Engineered stormwater control* includes physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. “Engineered stormwater control” is synonymous with “structural practice,” “Primary SCM,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

Land disturbing activity

Means the same as defined in 15A NCAC 02B .0202(33).

Larger common plan of development or sale

Means the same as defined in 15A NCAC 02H .1002(8).

Load

Means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Load in this ordinance refers to pounds of *nitrogen* or *phosphorus* per year.

Loading rate

Means the mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this ordinance refers to pounds of *nitrogen* or *phosphorus* per acre per year.

Major variance

A variance that is not a "minor variance" as that term is defined in this Rule. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Neuse | Tar-Pamlico rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum requirements.

Minimum Design Criteria

Means the same as defined in 15A NCAC 02H .1002(24).

Minor variance

A variance from the minimum Neuse | Tar-Pamlico Stormwater rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

Nitrogen

Means *total nitrogen* unless specified otherwise.

Nutrient, Nutrients

Means the combination of *total nitrogen* and *total phosphorus*.

1-year, 24-hour storm

Means the same as defined in 15A NCAC 02H .1002(30).

Outfall

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

Owner

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

Parcel

Means the same as *project* in this list of definitions.

Permanent nutrient offset credits

Means the same as defined in 15A NCAC 02B .0701(38).

Person

Means the same as defined in N.C.G.S. 143-212(4).

Phosphorus

Means total *phosphorus* unless specified otherwise.

Primary SCM

Means the same as defined in 15A NCAC 02H .1002(37).

Project

Means the same as defined in 15A NCAC 02H .1002(38).

Redevelopment

Means the same as defined in N.C.G.S. 143-214.7(a1)(2).

Runoff treatment

Means the same as defined in 15A NCAC 02H .1002(43).

Runoff volume match

Means the same as defined in 15A NCAC 02H .1002(44).

Site Plan

A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The *site plan* may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the *project* and the *site plan* review. A *site plan* approval based solely upon application of objective standards is an administrative decision and a *site plan* approval based in whole or in part upon the application

of standards involving judgment and discretion is a quasi-judicial decision. A *site plan* may also be approved as part of a conditional zoning decision.

Stormwater

Means the same as defined in N.C.G.S. 143-213(16a).

Stormwater system

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

Subdivision

The division of land for the purpose of sale or development as specified in G.S. 160D-802.

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 plan* or *subdivision* plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null, and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

Total nitrogen

Means the sum of the organic, nitrate, nitrite, and ammonia forms of *nitrogen* in water.

Total phosphorus

Means the sum of the orthophosphate, polyphosphate, and organic forms of *phosphorus* in water.