
surplus materials other than landfills regulated by the North Carolina Department of Environmental, Health and Natural Resources, Division of Solid Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated.

2. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.
3. The formal plan shall indicate if there will be borrowed or waste fill material used or deposited, where it originated or where it will be deposited, and what erosion control measures will be used to stabilize it.

12.4.5 Maintenance Requirements.

- A. No land disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five (25%) percent of the buffer zone nearest the land-disturbing activity or 25 feet wide, whichever is greater. During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved plan or any provision of the North Carolina Sedimentation Pollution Control Act, these regulations, or other local ordinances.
- B. After site development, the land owner or persons in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement and which are accepted for maintenance by a governmental agency.
- C. When sediment is transported onto a public road surface, the road shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner.
- D. If the town must clean up off-site sedimentation or mitigate other erosion related public safety and environmental hazards, the person in violation will be charged for the cost of the cleanup in addition to the civil penalty that may be charged. The cleanup cost shall include personnel costs, equipment usage, and related administrative overhead. If the violator does not pay for the cleanup cost, revoked permits shall not be reissued and a lien shall be placed on the violator's property until the cost is recouped by the town.

12.5 Stormwater Ordinance.

It is hereby determined that:

- This section shall be officially known as "the stormwater ordinance." It is referred to herein as "this section."
- Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
- These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

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

Therefore, the Town of Waynesville has established this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

12.5.1 Purpose.

The purpose of this section is to protect, maintain, and enhance the public health, safety, environment, and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment, as well as illicit discharges into the Town of Waynesville's 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. These requirements establish stormwater management requirements and controls to prevent surface water quality degradation to the extent practicable in the streams and lakes within the Town Limits and Extraterritorial Jurisdiction of Waynesville. This Section seeks to meet this purpose by fulfilling the following objectives:

- Minimize increases in stormwater runoff from new development or redevelopment to the maximum extent practicable for the applicable design storm in order to reduce flooding, siltation, streambank erosion, increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats.
- Minimize increases in non-point and point source pollution caused by stormwater runoff from development or redevelopment that would otherwise degrade local water quality. Minimize the total volume of surface water runoff that flows from any specific site during and following development in order to replicate pre development hydrology to the maximum extent practicable through the use of structural and nonstructural stormwater management Best Management Practices (BMPs).
- Establish minimum post development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
- Establish design and review criteria for the construction, function, and use of structural stormwater BMPs (also called stormwater control measures, or SCMs) that may be used to meet the minimum post-development stormwater management standards.
- Ensure that structural and nonstructural stormwater BMPs are properly maintained and pose no threat to public health or safety.
- Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety.
- Control illicit discharges into the municipal separate stormwater system.

12.5.2 Applicability.

- A. **Commencement Date:** Beginning with and subsequent to its effective date, the requirements of this section are applicable to all development and redevelopment located within the Town Limits and Extraterritorial Jurisdiction of Waynesville including, but not limited to, site plan applications, subdivision applications, and grading applications unless exempt pursuant to this section.
- B. **Required Conformity:** No building, structure, or land shall be used, occupied, or altered and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved,

enlarged, or structurally altered unless in conformity with all the provisions of this section and all other applicable regulations except as otherwise provided in this Section.

- C. **Minimum Development Thresholds:** The standards in this section shall apply to all new development and redevelopment projects that:
- a) Cumulatively disturb one (1) acre or more.
 - b) Projects of less than one acre and that are a 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.
 - c) Projects of less than one acre and that have a proposed increased impervious surface on completion of greater than 24,000 square feet.

All development and redevelopment shall direct stormwater runoff to landscaped areas and other pervious surfaces to the maximum extent possible. All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

- D. **Illicit Discharges Applicable to All Existing or New Development:** The non-stormwater discharge controls set forth in 12.5.9 of this section shall apply to all existing or proposed developments in the Town of Waynesville's jurisdiction.

12.5.3 Exemptions.

The following development applications are exempt from the standards of this section:

- Single-family and two-family developments on individual lots.
- All development in the Central Business District (CBD) zone.
- Development and redevelopment that cumulatively disturbs less than (1) one acre and is not part of a larger common plan of development or sale unless 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.
- Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily ongoing farming and forestry activities) are exempt from the provisions of this section.
- Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.

12.5.4 Administration.

Delegation of Authority: Any act authorized by this ordinance shall be carried out by the Development Services Director and may be carried out by his or her designee as a Stormwater Administrator. For the purpose of this section, the Stormwater Administrator shall mean any Development Services employee designated in this function.

The Administrator shall have the following powers and duties under this section:

- Review, approve, or disapprove applications for approval of plans.
- Make determinations and render interpretations of the requirements of this section.

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- Establish application requirements and schedules for submittal and review of applications and appeals and to review and approve applications.
 - Enforce the provisions of this section in accordance with its enforcement provisions.
 - Make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this section.
 - Provide expertise and technical assistance to the Town of Waynesville.
 - Carry out the technical duties outlined in this section. The Stormwater Administrator may contract such services to another local government or private entity.
 - Designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
 - Take necessary actions to administer the provisions of this section.

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

Conformance to Stormwater Plans: The latest versions of the Town of Waynesville Stormwater Management Plan and Illicit Discharge Detection and Elimination Plan are herein incorporated by reference. Conformance to them is required in addition to the standards of this ordinance.

Conflict of Laws: This section is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section 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.

Other Permits: No certificate of compliance or occupancy shall be issued by the Town of Waynesville Development Services 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 Development Services may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval have occurred.

12.5.5 Application Procedures and Requirements.

Cross Reference: Permit Procedures: See 15.7.3

Variance: See 15.13

12.5.6 Design Manual.

- Reference to Design Manual:** The Town of Waynesville shall use the policy, criteria, and information, including technical specifications and standards, in the ***North Carolina Department of Environmental Quality (NC DEQ) Stormwater Design Manual*** as the basis for decisions about stormwater plans and about the design, implementation, and performance of structural and nonstructural stormwater control measures.

The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are

designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II and other applicable stormwater laws.

- B. **Right to Consult:** Stormwater management practices that are designed, constructed, or maintained in accordance with the Stormwater Design Manual are presumed to comply with these requirements. However, the Stormwater Administrator shall have the right to consult duly qualified professionals to impose any conditions or require any modifications deemed necessary to meet the purpose, intent, and requirements of this section.
- C. **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.
- D. **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, then Section 15.16.1- Permit Choice will apply.

12.5.7 Standards.

A. **General Requirements:**

1. A Stormwater Management System Concept Plan is required for all development and redevelopment projects to which this section applies. This plan shall be prepared by a licensed professional engineer or landscape architect and meet the design specifications of the Town of Waynesville in addition to those standards set forth in this section. See Section 15.7.3 for the specific application process.
2. The use of natural vegetation and creative landscaping in establishing stormwater control measures is required if applicable. A developer must incorporate the use of natural topography and land cover such as wetlands, ponds, natural swales as they exist prior to development to the degree that they can accommodate the additional flow of water.
3. Developers are required to use the aforementioned natural measures as well as other BMPs (pervious pavement, discontinuous imperviousness, etc.) in developing property in the town's jurisdiction for the purpose of cleansing and diffusing surface water flow.
4. Developments shall be designed and constructed with a positive drainage flow away from buildings towards approved stormwater management facilities.
5. No utilities or habitable structures may be located within any impoundment area of any stormwater management facility. Structures may not be located over a storm drainage line.
6. All stormwater management facilities will be considered permanent.

B. **Water Quality Design Requirements:**

1. All Low Density projects and High Density projects must have the built-upon area at a minimum of thirty (30) feet landward of all perennial and intermittent surface waters. This distance shall be measured horizontally from the edge of water. 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 site-specific determination is made using NC Division of Water Quality-approved methodology.

2. In addition to the standards for stormwater management set out in this section, development and redevelopment that drains in whole or part to class TR waters shall design and implement stormwater best management practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this section.
3. The stormwater approval issued shall require recorded deed restrictions and protective covenants to ensure that future development activities maintain the stormwater management measures consistent with the approved project plans.
4. All Low Density Project sites must employ LID practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology and which cumulatively capture and treat the runoff from the 1-year 1-hour storm event. Wherever LID practices are not achievable, or have not been demonstrated, the stormwater management measures shall be designed to control the stormwater runoff according to the requirements of this section.
5. All High Density projects, for both LID and conventional design approaches, shall include stormwater management measures designed to control the stormwater runoff according to the requirements of this section.

C. Standards for Stormwater Control Measures:

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

1. All structural stormwater control measures shall control and treat the runoff from the 1-year 1-hour storm event as determined by NOAA data for the Town of Waynesville.
2. All structural stormwater treatment management measures shall be designed to have an eighty-five (85) percent average annual removal for total suspended solids (TSS).
3. Areas designated as open space that are not or will not be disturbed, developed or redeveloped do not require stormwater runoff treatment.
4. Where any stormwater management treatment measure utilizes a temporary water quality storage pool as a part of its designed treatment system:
 - a. The drawdown time shall be a minimum of 48-hours and a maximum of 120-hours.
 - b. The minimum draw down orifice size shall be 2-inches or equivalent.
 - c. The post development peak flow rates discharged shall not exceed the pre development 1-year 24 hour peak discharge rates.
5. No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.
6. Water quality BMPs may encroach into a required buffer as long as the encroachment does not disturb the majority of existing vegetation. Minor understory may be disturbed in order to accommodate water quality structures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.

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7. General engineering for all projects shall be in accordance with 15A NCAC 2H.1008(c).
 8. All stormwater control measures and stormwater treatment practices required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications, standards, and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether proposed SCMs/BMPs will be adequate to meet the requirements of this ordinance.

D. Water Quantity Design Requirements:

1. For any development to which this section applies, stormwater management facilities, structures, devices and methods shall be designed and built with sufficient capacity to accommodate surface runoff caused by the development in excess of that runoff which would occur from the site if left in its pre development condition.
2. The calculated difference in the peak runoff rate from the post development peak flow rates, less the pre-development shall determine the size of detention structures.
3. The storage shall be sufficient to store all excess surface runoff up to the 10-year 24-hour storm event.
4. The post development peak flow rates discharged from any development that this section applies, shall not exceed the pre development peak discharge rates for the 2-year, 24-hour storm event and the 25-year, 24-hour storm event.
5. The temporary storage capacity shall be restored within 72 hours.
6. The emergency overflow outlet must be designed to safely pass the 50-year, 24-hour storm event peak discharge.
7. Requirements of the Dam Safety Act shall be met when applicable.
8. No one stormwater management facility shall receive runoff from a developed or redeveloped area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.
9. The impoundment of stormwater runoff may be incorporated in the design of stormwater conveyance structures, engineered stormwater BMPs, and ponds. These structures may be located on or off site.
10. In all instances engineered stormwater management facilities and devices shall be designed to complement a development and the surrounding community. If ponds are used, such areas shall be landscaped as amenities or hidden from view.

E. Stormwater Conveyance Systems Design Requirements:

1. Stormwater collection systems (drainage parallel to road, including ditches, swales and pipes) shall be designed to pass the peak flows from the 2-year, 24-hour storm event. The minimum allowable pipe size is 15-inches.
2. Cross drainage systems that do not convey intermittent or perennial streams shall be designed to pass the peak flow rates from the 10-year, 24-hour storm event.
3. Cross drainage systems conveying intermittent or perennial streams, shall be designed pass peak flow rates for the 50-year, 24-hour storm event. These structures shall consist of bottomless single span structures.

F. Uniform Watershed Analysis:

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1. Uniform Watershed Analysis is required for all developments. Calculations must be developed to show the development's impact on the greater watershed.
 2. The requirements, or portions thereof, for detention may be waived by the Stormwater Administrator if it can be shown by detailed engineering calculations and analysis which are acceptable to the Administrator that one of the following exists:
 - a. The installation of stormwater management facilities would have insignificant effects on reducing downstream flood peak flow rates and water surface elevations.
 - b. Stormwater management facilities are not needed to protect downstream developments and the downstream drainage system has sufficient capacity to receive any increase in runoff for the design storm.
 - c. It is not necessary to install stormwater management facilities to control post development peak discharge rates at the exit to a proposed development and installing such facilities would increase flood peak flow rates and or water surface elevations at some downstream locations.
 - d. The Administrator determines that stormwater management facilities are not needed to control post development peak discharge rates and installing such facilities would not be in the best interest of the Town.
 3. The requirements, or portions thereof, of this section may not be waived if the Administrator determines that not controlling peak flow rates would increase known flooding problems, or exceed the capacity of the downstream drainage system.
 4. A waiver shall only be granted after a written request is submitted by the applicant containing descriptions, drawings, and any other information that is necessary to evaluate the proposed development or redevelopment. A separate written waiver request shall be required if there are subsequent additions, extensions, or modifications which would alter the approved stormwater runoff characteristics of the development or redevelopment receiving a waiver.
 5. Discharge velocities shall be reduced to provide a non-erosive velocity flow from a structure, channel, or other control measure or the velocity of the 2-year 24-hour design storm runoff in the receiving waterway prior to the development, whichever is greater.
 6. For all stormwater management facilities, a hydrologic/hydraulic study shall be conducted showing how the drainage system will function with and without the proposed facilities. For such studies the existing and developed land use conditions shall be used. Existing land use data shall be taken from the most recent aerial photograph and field checked and updated.
 7. For the design of the facility outlet structure, use developed land use conditions for the area within the proposed development and existing land use conditions for upstream areas draining to the facility.
 8. For any analysis of flood flows downstream from the proposed development, use existing land use conditions for all downstream areas.

12.5.8 Exceptions to the 30-Foot Setback.

Exceptions from the 30-foot landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements shall be granted by the Administrator in any of the following instances:

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- A. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing (including water, sewer, or gas construction and maintenance corridors) 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.
- B. When there is a lack of practical alternatives for a stormwater treatment measures. 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.
1. These measures shall be 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.
 2. The implementation of the alternative stormwater treatment measures shall not disturb existing vegetation.
 3. Minor understory trees may be disturbed in order to accommodate these measures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.

12.5.9 Illicit Discharges and Connections.

- A. Illicit Discharges: No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES Permit. Prohibited instances include but are not limited to: anti-freeze, chemicals, animal waste, paints, garbage, and litter. However, non-stormwater discharges associated with the following activities are allowed provided that the do not significantly impact water quality:
- Dechlorinated swimming pool discharges.
 - Landscape irrigation and lawn watering.
 - Springs, diverted stream flows, rising ground waters, and flows from riparian habitats and wetlands.
 - Filter backwash and draining associated with raw water intake screening and filtering devices.
 - Condensate from residential or commercial air conditioning.
 - Residential vehicle washing.
 - Flushing and hydrostatic testing water associated with utility distribution systems.
 - Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state or local government on-scene coordinator.
 - Uncontaminated ground water (including the collection or pumping of springs, wells, or rising ground water and ground water generated by well construction or other construction activities).
 - Collected infiltrated stormwater from foundation or footing drains.
 - Collected ground water and infiltrated stormwater from basement or crawl space pumps.

- Irrigation water.
- Street wash water.
- Flows from fire fighting.
- Discharges from the pumping or draining of natural watercourses or water bodies.
- Flushing and cleaning of stormwater conveyances with unmodified potable water.
- Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat.
- Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina, provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

B. **Illicit Connections:** Connections to a stormwater conveyance or stormwater conveyance system which allow the discharge of non-stormwater, other than the exclusions described in subsection 12.5.11.A above, are unlawful. Prohibited connections include, but are not limited to: industrial/commercial floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

1. **Prior Illegal Connections To Cease Within One (1) Year:** Where 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 (1) year following application of this regulation.
2. **Hazardous Material Connections to Cease Immediately:** The aforementioned one (1) year grace period shall not apply to connections that result in the discharge of hazardous material. Nor shall the grace period apply to 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. For such connections, the Public Works Director shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the director shall take into consideration: the quantity and complexity of the work; the consequences of delay; the potential harm to the environment, public health and to public and private property; and, the cost of remedying the damage.

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

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of Waynesville 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.

12.5.10 Operations and Maintenance Agreement.

- A. **Private Development:** Prior to the conveyance or transfer of any private lot or building site to be served by a structural BMP pursuant to this section and prior to issuance of any permit for development or redevelopment requiring a structural stormwater BMP pursuant to this section, 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 the primary responsibility for carrying out the provisions of the maintenance agreement.
- B. **Public Development:** BMPs that are constructed on public land within public rights-of-way and/ or within public easements shall be maintained by the public body with ownership/ jurisdiction of the subject property.
- C. **Requirements for Homeowners' and Other Associations:**
 - 1. For all structural BMPs required pursuant to this section 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:
 - 2. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
 - 3. Establishment of an escrow account, 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, 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, major repair, and reconstruction of the structural BMPs, provided that the Stormwater Administrator shall first consent to the expenditure.
 - 4. Both developer contribution and annual deposits for future use of "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 percent (15%) of the initial construction cost of the structural BMPs. Two-thirds ($\frac{2}{3}$) 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 to cover the cost of maintenance. 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.
 - 5. 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.
 - 6. Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
 - 7. Allowing the Town to recover from the association and its member's 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 of its expended costs, after forty-five (45) days' written notice, shall constitute a breach of the agreement. 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, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

8. A statement that this agreement shall not obligate the Town to maintain or repair any structural BMPs, and that the Town shall not be liable to any person for the condition or operation of structural BMPs.
9. 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.
10. 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.

D. Agreement Requirements:

1. 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 The Town of Waynesville 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 of Waynesville to assume responsibility for the structural BMP.
2. 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 Haywood County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be submitted to the Stormwater Administrator following its recordation.

E. Construction of Stormwater Management Measures:

1. Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant/ property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.
2. Inspections which may be performed by the Town of Waynesville during construction will not relieve the developer of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.
3. Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

12.5.11 Inspections.

- A. **Function of BMP as Intended:** The owner of each structural BMP installed pursuant to this section 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. **Right of Entry for Inspection:**

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1. When any new BMP is installed on private property, the property owner shall grant to the Stormwater Administrator the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.
 2. Inspections may be conducted by the Stormwater Administrator on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual dischargers of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of State or Federal water quality standards or the NPDES Storm Water Permit; and joint inspections with other agencies inspecting under environmental and safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; evaluating the condition of BMPs and storm water management practices.
 3. If the owner or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.
- C. **Annual Maintenance Inspections and Report:** Inspections shall be conducted as prescribed by the Operations and Maintenance Agreement. The person responsible for maintenance of any structural BMP installed pursuant to this section shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:
1. The name and address of the land owner;
 2. The recorded book and page number of the lot of each structural BMP;
 3. A statement that an inspection was made of all structural BMPs;
 4. The date the inspection was made;
 5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this section; and
 6. Signature and seal of a registered engineer, landscape architect, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance.
 7. 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.
- D. **Records of Installation and Maintenance Activities:** The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

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

12.5.12 Performance Security.

The Town of Waynesville 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 stormwater BMPs are installed as required by the approved stormwater management plan, and are maintained by the owner as required by the operation and maintenance agreement.

- A. **Amount:**
 - 1. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.
 - 2. 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.
- B. **Forfeiture:** 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 in accordance with this section.
- C. **Default:** Upon default of the applicant to construct, maintain, repair, and if necessary reconstruct any stormwater device in accordance with the applicable permit, 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 applicant to comply with the permit. In the event of a default triggering the use of installation of performance security, the Town of Waynesville shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- D. **Cost in Excess of Performance Security:** If the Town of Waynesville takes action upon such failure by the applicant, the Town may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. This difference will be collected from the applicant.
- E. **Refund:** Within sixty (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%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

12.5.13 Additional Standards for Special Situations.

- A. **Trout Waters:** In addition to the standards for handling stormwater set out in the Design Manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.
- B. **Pet Waste:** Pet waste can pollute rivers, streams, and lakes. Stormwater runoff carries pet waste into drainage ditches and storm drains where it is then dumped, untreated, into the nearest waterway. Dog waste contains bacteria, viruses, and parasites that can harm humans and affect

water quality. Once in a waterway, pet waste can travel long distances and pollute a large area. Therefore:

- It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.
- It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.
- "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container.
- This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

12.5.14 Interpretation.

- 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 12.5.1, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Town of Waynesville Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- 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.
- Authority for Interpretation:** The Stormwater Administrator or a Development Services employee designated to carry out the duties of a 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.
- 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.
- Computation of Time:** The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Waynesville, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Waynesville. References to days are calendar days unless otherwise stated.