

CITY OF BURLINGTON

STORMWATER ORDINANCE

REV 05/31/2007

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Table of Contents

SECTION 1: GENERAL PROVISIONS..... 7

- 1-101 Title..... 7
- 1-102 Authority..... 7
- 1-103 Findings..... 7
- 1-104 Purpose..... 8
 - (A) General..... 8
 - (B) Specific..... 8
- 1-105 Applicability and Jurisdiction..... 9
 - (A) General..... 9
 - (B) Exemptions..... 10
 - (C) No Development or Redevelopment Until Compliance and Permit..... 10
 - (D) Map..... 10
- 1-106 Interpretation..... 11
 - (A) Meaning and Intent..... 11
 - (B) Text Controls in Event of Conflict..... 11
 - (C) Authority for Interpretation..... 11
 - (D) References to Statutes, Regulations, and Documents..... 11
 - (E) Computation of Time..... 12
 - (F) Delegation of Authority..... 12
 - (G) Usage..... 12
 - (H) Measurement and Computation..... 13
- 1-107 Design Manual..... 13
 - (A) Reference to Design Manual..... 13
 - (B) Relationship of Design Manual to Other Laws and Regulations..... 13
 - (C) Changes to Standards and Specifications..... 13
 - (D) Amendments to Design Manual..... 13
- 1-108 Relationship to Other Laws, Regulations and Private Agreements..... 14
 - (A) Conflict of Laws..... 14
 - (B) Private Agreements..... 14
- 1-109 Severability..... 14
- 1-110 Effective Date and Transitional Provisions..... 15
 - (A) Effective Date..... 15
 - (B) Final Approvals, Complete Applications..... 15
 - (C) Violations Continue..... 15

SECTION 2: ADMINISTRATION AND PROCEDURES..... 16

- 2-201 Review and Decision-Making Entities..... 16
 - (A) Stormwater Administrator..... 16
- 2-202 Review Procedures..... 17

(A)	Permit Required; Must Apply for Permit	17
(B)	Effect of Permit	17
(C)	Authority to File Applications.....	17
(D)	Establishment of Application Requirements, Schedule, and Fees	18
(E)	Submittal of Complete Application.....	18
(F)	Review.....	19
2-203	Applications for Approval.....	20
(A)	Concept Plan and Consultation Meeting.....	20
(B)	Technical Review Committee Submittal and Approval..	22
(C)	Stormwater Management Permit Application.....	22
(D)	Other Permits	22
2-204	Approvals.....	23
(A)	Effect of Approval	23
(B)	Time Limit/Expiration	23
2-205	Appeals.....	23
(A)	Right of Appeal.....	23
2-206	Design Professional's Certificate of Compliance, As-Built Plans and Final Approval.....	24
SECTION 3: STANDARDS		26
3-301	General Standards.....	26
3-302	Development Standards for Low-Density Projects	26
3-303	Development standards for High-Density Projects....	27
3-304	Undisturbed Buffer	28
(A)	Buffer Width general.....	28
(B)	Buffer Width - water supply watershed.....	28
(C)	Exceptions to the Undisturbed Buffer Rules.....	28
3-305	Standards for Stormwater Control Measures.....	29
(A)	Evaluation According to Contents of Design Manual..	29
(B)	Determination of Adequacy; Presumptions and Alternatives.....	29
(C)	Separation from Seasonal High Water Table.....	29
3-306	Dedication of BMPS, Facilities & Improvements.....	29
3-307	Variances.....	30
(A)	Variance Request	30
(B)	Conditions of Variance.....	30
(C)	Statutory Exceptions.....	30
3-308	Additional standards for special situations	31
(A)	Animal Waste.....	31
(B)	Nutrient Sensitive Waters.....	32
(C)	Nutrient Application Management Program.....	32
(D)	Nutrient Management Training	34
(E)	Nutrient Management Plans.....	35

3-309	Onsite wastewater.....	37
	On-Site Wastewater System Permit.....	37
	(B) Standards for Operation and Maintenance.....	37
SECTION 4: MAINTENANCE		39
4-401	General Standards for Maintenance.....	39
	(A) Function of BMPs As Intended.....	39
	(B) Annual Maintenance Inspection and Report.....	39
4-402	Operation and Maintenance Agreement.....	40
	(A) In General.....	40
	(B) Special Requirement for Homeowners' and Other Associations.....	41
4-403	Inspection Program.....	43
4-404	Performance Security for Installation and Maintenance.....	43
	(A) May Be Required.....	43
	(B) Amount.....	44
	(C) Uses of Performance Security.....	44
4-405	Notice to owners.....	45
	(A) Deed Recordation and Indications On Plat.....	45
	(B) Signage.....	46
4-406	Records of Installation and Maintenance Activities 46	
4-407	Nuisance.....	46
4-408	Maintenance Easement.....	46
4-409	Existing Structural BMPs.....	46
SECTION 5: ENFORCEMENT AND VIOLATIONS.....		48
5-501	General.....	48
	(A) Authority to Enforce.....	48
	(B) Violation Unlawful.....	48
	(C) Each Day a Separate Offense.....	48
	(D) Responsible Persons/Entities.....	48
5-502	Remedies and Penalties.....	49
	(A) Remedies.....	49
	(B) Civil Penalties.....	51
	(C) Criminal Penalties.....	51
5-503	Procedures.....	51
	(A) Initiation/Complaint.....	51
	(B) Inspection.....	51
	(C) Notice of Violation and Order to Correct.....	51
	(D) Extension of Time.....	52
	(E) Enforcement After Time to Correct.....	53
	(F) Emergency Enforcement.....	53
SECTION 6: DEFINITIONS.....		54

6-601	Terms Defined.....	54
	Best Management Practice (BMP).....	54
	Built-upon area (BUA).....	54
	Clean Water Act.....	54
	Common Plan of Development.....	54
	Consultant.....	55
	Department.....	55
	Design Manual.....	55
	Development.....	55
	Director.....	55
	Division or DWQ.....	55
	EMC.....	55
	Grab Sample.....	55
	Hazardous Substance.....	56
	High-density project.....	56
	Illicit Discharge.....	56
	Industrial Activity.....	56
	Low-density project.....	56
	Municipal Separate Storm Sewer System (MS4).....	56
	Non-structural BMP.....	57
	1-year, 24-hour storm.....	57
	Outfall.....	58
	Owner.....	58
	Point Source Discharge of Stormwater.....	58
	Redevelopment.....	58
	Stormwater Runoff.....	58
	Structural BMP.....	58
	Substantial progress.....	59
	Toxic Pollutant.....	59
	SECTION 7: Illicit Discharges.....	60
7-701	Illicit Discharges and Connections.....	60
(A)	Illicit Discharges.....	60
(B)	Illicit Connections.....	61
(C)	Spills.....	62
(D)	Industrial or Construction Activity Discharges.....	62
(E)	Right of Entry, Inspection, Sampling, and Testing...	63
(F)	Enforcement.....	63
(G)	Violations Deemed a Public Nuisance.....	64

SECTION 1: GENERAL PROVISIONS

1-101 Title

This ordinance shall be officially known as "The City of Burlington Stormwater Ordinance." It is referred to herein as "this ordinance."

1-102 Authority

The Burlington City Council 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; the Charter of the City of Burlington; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163, Session Law 2006-246; Chapter 160A, §§ 174, 185.

1-103 Findings

It is hereby determined that:

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

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which 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 Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this ordinance.

Therefore, the City Council of the City of Burlington 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.

1-104 Purpose

(A) General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* as well as illicit discharges into municipal separate stormwater systems. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

(B) Specific

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

(1) Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;

(2) Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of structural

stormwater BMPs that may be used to meet the minimum post-development stormwater management standards;

(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers, and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

(7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance;

(8) Coordinating site design plans that include open space and natural areas with City of Burlington open space and natural area protection plans, policies or ordinances;

(9) Controlling illicit discharges into the municipal separate stormwater system;

(10) Controlling erosion and sedimentation from construction activities per the City of Burlington Code of Ordinances Chapter 31.5 - Soil Erosion and Sedimentation Control;

(11) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures per the City of Burlington Code of Ordinance Appendix B - Flood Damage Prevention Ordinance.

1-105 Applicability and Jurisdiction

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision

applications, and land disturbing activity applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

(B) Exemptions

Development that cumulatively disturbs less than one acre and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of *development* or sale is exempt from the provisions of this ordinance.

Development and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.

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 ordinance.

(C) No Development or Redevelopment Until Compliance and Permit

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* 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 "Phase II Stormwater Map of City of Burlington, North Carolina" ("the Stormwater Map"), which is being prepared at the time of adoption of this ordinance and shall be presented for adoption at the time of completion. 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 *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

1-106 Interpretation

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances of the City of Burlington, North Carolina, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

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

(D) References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with

due provision for notice and comment, unless otherwise specifically stated.

(E) Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of Burlington, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of Burlington. 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 the City of Burlington 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.

1-107 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 *structural and non-structural stormwater BMPs*.

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 laws.

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

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

(C) Changes to Standards and Specifications

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

(D) Amendments to Design Manual

The *Design Manual* may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

Prior to amending or updating the *Design Manual*, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

1-108 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 the City of Burlington be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

1-109 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.

1-110 Effective Date and Transitional Provisions

(A) Effective Date

This Ordinance shall take effect on July 1, 2007.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and accepted for review by the City of Burlington Technical Review Committee prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

(1) For the initial or first phase of development, 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, 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

2-201 Review and Decision-Making Entities

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the Burlington City Council 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 Code of Ordinances of the City of Burlington and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- (a)** To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (b)** To make determinations and render interpretations of this ordinance.
- (c)** To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the City Council on applications for *development* or *redevelopment* approvals.
- (d)** To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (e)** To maintain records, maps, forms, and other official materials relating to the adoption, amendment, enforcement, and administration of this ordinance.
- (f)** To provide expertise and technical assistance to the City Council, upon request.

- (g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- (h) To take any other action necessary to administer the provisions of this ordinance.

2-202 Review Procedures

(A) Permit Required; Must Apply for Permit

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

(B) Effect of Permit

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

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

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

(1) Application Contents and Form

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

(2) Submission Schedule

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

(3) Permit Review Fees

The City Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of 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 60 calendar 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 30 calendar days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date

the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

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

2-203 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 post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, open space and natural area protection plans, policies or ordinances, 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); 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.

Existing and proposed topography shall be shown at two-foot contour intervals on the tract to be developed and a minimum of 100-feet beyond the property lines. All contour information shall be based on mean sea level and accurate to within one-half foot. The benchmark with its description and the datum shall be clearly shown on the plan.

(2) Natural Resources Inventory

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

(3) Stormwater Management System Concept Plan

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

(B) Technical Review Committee Submittal and Approval

The Stormwater Management System Concept Plan and a separate maintenance plan shall be submitted to the Technical Review Committee (TRC) prior to, or concurrent with, the TRC development plan submittal. The Technical Review Committee shall be authorized to approve the Stormwater Management System Concept Plan and separate maintenance plan if the Concept Plan and maintenance plan are both found to be in conformance with this Ordinance.

(C) Stormwater Management Permit Application

The stormwater management permit application and Stormwater Management Plan 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. The plans shall contain a signed and sealed statement certifying that the design of all stormwater management facilities and practices will control and treat runoff generated from one inch of rainfall over the total drainage area, 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 of the Stormwater Management Plan and permit application shall occur after approval of the Stormwater Management Concept Plan by the Technical Review Committee. The submittal shall include construction drawings and any other information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 2-202(E).

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the City of Burlington Inspections Department without final as-built plans and a final inspection and approval by the Stormwater

Administrator, except when a performance security is posted as allowed by Sections 2-206 and 4-404, or where multiple units are served by the stormwater practice or facilities, in which case the City of Burlington Inspections Department may elect to withhold permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

2-204 Approvals

(A) Effect of Approval

Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(B) Time Limit/Expiration

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

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

2-205 Appeals

(A) Right of Appeal

(1) Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Stormwater Administrator may file an appeal to the City Council within 15 days after receipt of said written decision, order, requirement, or determination.

(2) A public hearing held pursuant to this section shall be conducted by the City Council within 45

days after the date of appeal or request for a hearing.

(3) The City Council will render its final decision on any appeal within 20 days of the date of hearing.

(4) The decision of the City Council shall be subject to Superior Court review of the proceedings in the nature of certiorari. All Superior Court review of City Council decisions shall be performed by the Superior Court of Alamance County. Petition for review by the Superior Court of Alamance County shall be filed with the Clerk of Superior Court of Alamance County within 30 days after the latter of the following:

(a) The decision of the City Council is filed;
or

(b) A written copy of the decision is delivered to any aggrieved party that has filed a written request for such copy with the City Council at the time of its hearing of the case.

2-206 Design Professional's Certificate of Compliance, As-Built Plans and Final Approval

The construction of all structural stormwater management improvements shown on an approved and permitted Stormwater Management Plan shall be substantially complete prior to final plat recordation or issuance of any certificate of occupancy. Upon approval of the Stormwater Administrator, an installation performance security as specified in Section 4-404 may be submitted prior to substantial completion of all structural stormwater management measures in order to record a final plat.

Upon completion of a project and its associated structural stormwater management improvements, and before a certificate of occupancy shall be granted, the Design Professional shall certify, under seal, that the completed project is in accordance with the approved Stormwater Management Plan and design and with the requirements of this ordinance.

The Design Professional shall also submit the information required in the As-Built submittal checklist established by the Stormwater Administrator.

As-built submittals shall be certified by a qualified, licensed North Carolina professional engineer, surveyor, soil scientist, or landscape architect. The As-Built drawings 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.

Prior to the release of any performance securities required for the installation of structural BMPs as specified in Sections 4-404(A) & 4-404(B) the following conditions must be satisfied:

- (1)** As-Built drawings and submittals must be approved by the Stormwater Administrator;
- (2)** Project must be in compliance with the City's Erosion and Sedimentation Control Ordinance; and
- (3)** Project must pass a final inspection and receive approval by the Stormwater Administrator.

SECTION 3: STANDARDS

3-301 General Standards

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

3-302 Development Standards for Low-Density Projects

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

(A) Stormwater runoff from the **development** shall be transported from the **development** by vegetated conveyances to the maximum extent practicable. On-site stormwater treatment devices such as infiltration areas, bioretention areas, and level spreaders may also be used as added controls for stormwater runoff. A project with an overall density at or below the low-density thresholds, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainage ways to the maximum extent practicable.

(B) All **built-upon area** shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

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

3-303 Development standards for High-Density Projects

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

(A) The measures shall be designed to control and treat the stormwater runoff generated from all surfaces by the first one inch of rain.

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

(C) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm;

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

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

(F) All ***built-upon area*** shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233

(3) (a) or similar site-specific determination made using *Division*-approved methodology.

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

3-304 Undisturbed Buffer

(A) Buffer Width general

A minimum 30-foot wide undisturbed buffer measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank shall be provided directly adjacent to surface waters (intermittent streams, perennial streams, lakes reservoirs and ponds). A surface water shall be deemed present as stated in 3-302(B) and 3-303(E).

(B) Buffer Width - water supply watershed

In water supply watersheds the minimum undisturbed buffer widths shall be:

- (1) Lake Buffer - minimum 100-foot wide undisturbed buffer measured horizontally to a line perpendicular to a line marking the normal pool elevation outward
- (2) Perennial Stream - minimum 50-foot undisturbed buffer measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.
- (3) Intermittent Stream - minimum 50-foot undisturbed buffer measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.

(C) Exceptions to the Undisturbed Buffer Rules

Exceptions to the Undisturbed Buffer requirements may be granted by City Council for public utilities, public roads, greenways, or other uses deemed in the public interest on a case by case basis where no practical alternative exists.

3-305 Standards for Stormwater Control Measures

(A) Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* 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.

(C) Separation from Seasonal High Water Table

For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high water table.

3-306 Dedication of BMPs, Facilities & Improvements

Unless otherwise approved by City Council, ownership and maintenance responsibility of any existing or future stormwater management facilities shall remain with the owner of the property or a legally established property

owner's association. Such facilities shall meet all the requirements of this ordinance and include adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

3-307 Variances

(A) Variance Request

Any person may petition the City Council for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

(B) Conditions of Variance

The City Council may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory Exceptions

Notwithstanding subdivision (A) of this section, exceptions from the 50-foot landward location of built-upon area requirement as well as deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least

adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

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

3-308 Additional standards for special situations

(A) Animal Waste

- (1) It shall be unlawful for the owner or custodian of any animal to take it off the owner's own property limits without the means to properly remove and dispose of the animal's feces from any public property.
- (2) It is the responsibility of the animal's owner or custodian to clean up the animal's feces from any public property outside of the animal owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

- (3) "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 animal waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.
- (4) This provision shall not apply to handicapped persons assisted by trained guide or assistant dogs, or other animals trained to assist handicapped persons.
- (5) "Public nuisance" is defined to include "an animal which deposits feces on public property, and the person owning, possessing, harboring of having the care, charge, control or custody of the animal fails to remove the feces so deposited. Provided, however, this definition shall not apply to any animal assisting a handicapped person.

(B) Nutrient Sensitive Waters

In addition to the standards for stormwater handling set out in the *design manual, development and redevelopment* that drains in whole or part to class NSW waters shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

(C) Nutrient Application Management Program

- (1) The purpose of this provision is to protect water quality by managing the application of nutrients, both inorganic fertilizer and organic nutrients, to lands in the region. This provision requires nutrient application in keeping with the most current state-recognized technical guidance on proper nutrient management in order to help protect water quality in the region.
- (2) This Program shall apply to the following persons within the corporate limits and

extraterritorial jurisdiction of the City of Burlington as follows:

- (a)** Persons who own or manage cropland areas for commercial purposes;
 - (b)** Persons who own or manage commercial ornamental and floriculture areas and greenhouse production areas;
 - (c)** Persons who own or manage golf courses, grassed public recreational lands, grassed road or utility rights-of-way, or other institutional lands totaling at least five acres in size;
 - (d)** Persons hired to apply nutrients to the lands described in Sub-Items (a) through (c) above or to residential, commercial, industrial or institutional properties, if the total area of the properties served exceeds 10 acres. This shall not apply to residential, commercial, or industrial landowners who apply nutrients to their own property.
 - (e)** Nutrient management consultants hired by persons listed in this Item to provide nutrient management advice for lands in the City's jurisdiction.
- (3)** Persons to whom this Ordinance applies shall meet the following requirements:
- (a)** Any person subject to this rule who applies nutrients to, or who is hired to provide nutrient management advice for, land within the City's jurisdiction shall either:
 - i.** Attend and complete nutrient management training pursuant to Item (D) of this Section; or
 - ii.** Complete and properly implement a nutrient management plan for all lands to which they apply or

manage the application of nutrients, or for which they provide nutrient management advice, pursuant to Item (E) of this Section.

(b) Persons who hire an applicator to apply nutrients to the land that they own or manage shall either:

- i.** Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Item (D) of this Section; or
- ii.** Ensure that the applicator they hire has completed a nutrient management plan for the land that they own or manage pursuant to Item (E) of this Section; or
- iii.** Complete a nutrient management plan for the land that they own or manage pursuant to Item (E) of this Section and ensure that the applicator they hire follows this plan.

(D) Nutrient Management Training

Persons who choose to meet this requirement by completing nutrient management training shall meet the following requirements:

- (1)** Persons who are subject to this Ordinance as of its effective date, and persons who become subject to this Ordinance after its effective date, shall complete training provided by either the Cooperative Extension Service or the North Carolina Department of Environment and Natural Resources - Division of Water Quality within five years and obtain a certificate from the training entity to that effect. Training shall be sufficient to provide participants with an understanding of the value and importance of proper management of nitrogen and phosphorus, and the water quality impacts of

poor nutrient management, and the ability to understand and properly carry out a nutrient management plan.

- (2) Persons who become subject to this Ordinance after its effective date shall complete the training provided by either the Cooperative Extension Service or the North Carolina Department of Environment and Natural Resources - Division of Water Quality and obtain a certificate to that effect from the training entity within one year from the date that they become subject verifying completion of training that addresses the elements identified in Sub-Item (D) (1).
- (3) Persons who fail to obtain the nutrient management certificate within the required timeframes or who are found by the Stormwater Administrator to have knowingly failed to follow nutrient management requirements as referenced in Sub-Items (E) (1) (a) through (E) (1) (c) of this section shall develop and properly implement nutrient management plans pursuant to Item (E) of this Section.
- (4) Training certificates must be kept on-site, at the job site, or be produced within 24 hours of a request by the City of Burlington.

(E) Nutrient Management Plans

Persons who choose to meet the nutrient application requirement by completing and implementing a nutrient management plan shall meet the following requirements:

- (1) Persons who are subject to this Ordinance as of its effective date and persons who become subject to this Ordinance after its effective date shall develop and implement a nutrient management plan that meets the following standards within five years of the effective date or within 6 months from the date that they become subject, whichever is later.
 - (a) Nutrient management plans for cropland shall meet the standards and

specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06F .0104, which are incorporated herein by reference, including any subsequent amendments and additions to such rules that are in place at the time that plans are approved by a technical specialist as required under Sub-Item (E)(2) of this section.

(b) Nutrient management plans for turfgrass shall follow the North Carolina Cooperative Extension Service guidelines in "Water Quality and Professional Lawn Care" (NCCES publication number WQMM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQMM-151), or other equivalent or more stringent guidance distributed by land-grant universities for turfgrass management.

(c) Nutrient management plans for nursery crops and greenhouse production shall follow the Southern Nurserymen's Association guidelines promulgated in "Best Management Practices Guide For Producing Container-Grown Plants" or guidelines distributed by land-grant universities. The materials related to nutrient management plans for turfgrass, nursery crops and greenhouse production are hereby incorporated by reference including any subsequent amendments and editions and are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina.

(2) The person who writes the nutrient management plan shall have the plan approved in writing by a technical specialist. Appropriate technical specialists shall be as follows:

(a) Nutrient management plans for cropland using either inorganic fertilizer or organic nutrients shall be approved by a

technical specialist designated pursuant to the process and criteria specified in Rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06F .0105, excepting Sub-Item (a)(2) of that Rule.

(b) Nutrient management plans for turfgrass and nursery crops and greenhouse production shall be approved by a technical specialist designated by the Soil and Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06F .0105, excepting Sub-Item (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such specialists, then the Environmental Management Commission shall do so using the same process and criteria.

(3) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the City.

3-309 Onsite wastewater

(A) On-Site Wastewater System Permit

For new development and redevelopment that utilize the use of on-site wastewater treatment systems, a copy of the approved on-site wastewater system permit issued by the Alamance County Environmental Health Department shall be provided to the Stormwater Administrator as part of the Stormwater Management Permit Application.

(B) Standards for Operation and Maintenance

Onsite systems for domestic wastewater shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present

significant risks to human health, surface water or groundwater.

SECTION 4: MAINTENANCE

4-401 General Standards for Maintenance

(A) Function of BMPs As Intended

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

(B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1)** The name, address and telephone number of the landowner;
- (2)** The recorded book and page number and the Parcel Identification Number (PIN) or Parcel Number as assigned by Alamance County or Guilford County respectively 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 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.

4-402 Operation and Maintenance Agreement

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to the City of Burlington 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 City of Burlington to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county

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

(B) Special Requirement for Homeowners' and Other Associations

For all *structural BMPs* 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 operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, 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 City of Burlington, in its sole discretion, may remedy the situation, and in such instances the City of Burlington 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 City of Burlington shall first consent to the expenditure.
- (3) The escrow account shall be funded to a level suitable to conduct the activities listed in Section 4-402(B)(2), which shall be based upon a submittal of construction costs and anticipated maintenance costs prepared and sealed by the design professional, and approved by the City of Burlington. Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an

amount equal to fifteen (15) per cent of the initial construction cost of the structural BMPs. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City of Burlington depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the City of Burlington a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
- (6) Allowing the City of Burlington to recover from the association and its member's any and all costs the City of Burlington expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the City of Burlington all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the City of Burlington shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the City of Burlington to maintain or repair any structural BMPs, and the City of Burlington shall not be liable to any person

for the condition or operation of structural BMPs.

- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City of Burlington to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the City of Burlington for any costs and injuries arising from or related to the structural BMP, unless the City of Burlington 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.

4-403 Inspection Program

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

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties

4-404 Performance Security for Installation and Maintenance

(A) May Be Required

The City of Burlington may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, irrevocable letter of credit or other acceptable legal arrangement prior

to issuance of a permit in order to ensure that the *structural BMPs* are

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%. The estimate of construction cost shall be prepared by a qualified registered North Carolina Professional Engineer, Surveyor, Soil Scientist, or Landscape Architect.

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation.

(C) Uses of Performance Security

(1) Forfeiture Provisions

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

(2) Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct

any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the City of Burlington shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security

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

(4) Refund

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

4-405 Notice to owners

(A) Deed Recordation and Indications On Plat

The applicable operations and maintenance agreement pertaining to every *structural BMP* 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, 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, *structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

4-406 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.

4-407 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.

4-408 Maintenance Easement

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes. Dedicated access and/or maintenance easements for structural BMPs on private property are for the use of the owner of the structural BMP(s). Dedication of access and/or maintenance easements for structural BMPs in no way binds or requires the City of Burlington to perform maintenance on structural BMPs on private property.

4-409 Existing Structural BMPs

Sections 4-401, 4-403, 4-404, 4-405(B), 4-406 and 4-407 of this Ordinance shall also apply to structural BMPs that were installed prior to the effective date of this ordinance.

At the time of subdivision, recombination, development or redevelopment of property having structural BMPs installed prior to the effective date of this ordinance Sections 4-402, 4-405(A), and 4-408 shall also apply.

SECTION 5: ENFORCEMENT AND VIOLATIONS

5-501 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 the City of Burlington. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the City of Burlington.

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

(C) Each Day a Separate Offense

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

(D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, 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, landscape architect, soil scientist, surveyor, 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, landscape architect, soil scientist, surveyor, 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, *development* or *redevelopment* of the property.

5-502 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 and Zoning Board and/or City Council may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

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

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

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

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the City of Burlington is subject for violations of its Phase II Stormwater permit or if no Phase II Stormwater permit violation exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

(C) Criminal Penalties

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

5-503 Procedures

(A) Initiation/Complaint

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

(B) Inspection

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

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil

penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Burlington Police Department, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

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 14 days. The Stormwater Administrator may grant 7-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. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(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

6-601 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.

Applicator

Person who applies fertilizer to the land or the immediate supervisor of such person.

Best Management Practice (BMP)

Measures or practices used to reduce the amount of pollution entering surface waters. BMPs can be structural or non-structural and may take the form of a process, activity, physical structure or planning.

Built-upon area (BUA)

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Clean Water Act

The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC 1251, et. Seq.

Common Plan of Development

A construction or land disturbing activity is part of a larger common plan of development if it is completed in one or more of the following ways:

- In separate stages
- In separate phases
- In combination with other construction activities

It is identified by the documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, plats, blueprints, marketing plans, contracts, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

It can include one operator or many operators.

Consultant

Person who is hired to provide professional advice to another person.

Department

The North Carolina Department of Environment and Natural Resources.

Design Manual

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

Development

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

Director

The Director of the Division of Water Quality is the North Carolina Department of Environment and Natural Resources.

Division or DWQ

The Division of Water Quality in the Department.

EMC

The North Carolina Environmental Management Commission.

Grab Sample

An individual sample collected instantaneously. Grab samples that will be directly analyzed or qualitatively

monitored must be taken within the first 30 minutes of discharge.

Hazardous Substance

Any substance designated in 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.

High-density project

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

Illicit Discharge

Any discharge to a MS4 that is not composed entirely of stormwater except discharges pursuant to an NPDES permit (other than the NPDES MS4 permit), allowable non-stormwater discharges, and discharges resulting from fire-fighting activities.

Industrial Activity

For the purposes of this permit, industrial activities shall mean all industrial activities as defined in 40 CFR 122.26.

Low-density project

A project that has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low-density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

Municipal Separate Storm Sewer System (MS4)

Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (i) Owned or operated by the United States, a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage,

industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Section 208 of the Clean Water Act (CWA) that discharges to waters of the United States or waters of the State.

(ii) Designed or used for collecting or conveying stormwater;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2.

Non-structural BMP

Non-structural BMPs are preventive actions that involve management and source controls such as: (1) Policies and ordinances that provide requirements and standards to direct growth to identified areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or increase open space, provide buffers along sensitive water bodies, minimize impervious surfaces, and/or minimize disturbance of soils and vegetation; (2) policies or ordinances that encourage infill development in higher density urban areas, and areas with existing storm sewer infrastructure; (3) education programs for developers and the public about minimizing water quality impacts; (4) other measures such as minimizing the percentage of impervious area after development, use of measures to minimize directly connected impervious areas, and source control measures often thought of as good housekeeping, preventive maintenance and spill prevention.

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours. For design purposes, the 1-year, 24-hour storm produces approximately 3.0 inches of rain in the Burlington Area.

Outfall

The point of wastewater or stormwater discharge from a discrete conveyance system. See also point source discharge of stormwater.

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.

Point Source Discharge of Stormwater

Any discernible, confined and discrete conveyance including, but not specifically to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which stormwater is or may be discharged to waters of the state.

Redevelopment

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

Stormwater Runoff

The flow of water which results from precipitation and which occurs immediately following rainfall or as a result of snowmelt.

Structural BMP

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the *pre-development hydrology* on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands,

vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) calendar 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.

Toxic Pollutant

Any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

SECTION 7: Illicit Discharges

7-701 Illicit Discharges and Connections

(A) Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1)** Water line flushing;
- (2)** Landscape irrigation;
- (3)** Diverted stream flows;
- (4)** Rising ground waters;
- (5)** Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6)** Uncontaminated pumped ground water;
- (7)** Discharges from potable water sources;
- (8)** Foundation drains;
- (9)** Air conditioning condensation;
- (10)** Irrigation water;
- (11)** Springs;
- (12)** Water from crawl space pumps;
- (13)** Footing drains;
- (14)** (Lawn watering;
- (15)** (Individual residential car washing;
- (16)** (Flows from riparian habitats and wetlands;
- (17)** Dechlorinated swimming pool discharges;
- (18)** Street wash water; and
- (19)** Flows from emergency firefighting
- (20)** Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the City of Burlington.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) Illicit Connections

- (1)** Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
- (2)** Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

- (3)** Where it is determined that said connection:

 - (a)** May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
 - (b)** Was made in violation of any applicable regulation or ordinance, other than this section;

the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

- i.** The quantity and complexity of the work,
- ii.** The consequences of delay,
- iii.** The potential harm to the environment, to the public health, and to public and private property, and
- iv.** The cost of remedying the damage.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to 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 Emergency Management Coordinator or the Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Industrial or Construction Activity Discharges

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

(E) Right of Entry, Inspection, Sampling, and Testing

(1) Authority to Inspect - Whenever necessary to make an inspection to enforce any provision of this Ordinance, or whenever the Stormwater Administrator has cause to believe that there exists, or potentially exists, in or upon any premise any condition which constitutes a violation of this Ordinance, the Stormwater Administrator may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to stormwater compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the City of Burlington is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(2) Authority to Sample, Establish Sampling Devices, and Test - During any inspection as provided herein, the Stormwater Administrator may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

(F) Enforcement

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

(1) The performance of monitoring, analysis, and reporting;

(2) The elimination of illicit connections or discharges;

(3) That violating discharges, practices, or operations shall cease and desist;

(4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;

(5) Payment of a fine to cover administrative and remediation costs; and

(6) The implementation of source control BMPs.

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

(G) Violations Deemed a Public Nuisance

Illicit discharges and illicit connections which exist within the City Limits and the City's Extraterritorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in the City of Burlington Code of Ordinances Chapter 22.