

**TOWN OF STEM  
STORMWATER ORDINANCE FOR NEW  
DEVELOPMENT**

Adopted June 21, 2012

**AN ORDINANCE ADOPTING A STORMWATER ORDINANCE FOR NEW DEVELOPMENT, AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY FOR THE TOWN OF STEM, AND A STORMWATER UTILITY FEE SCHEDULE AND APPROVING AN INTERLOCAL AGREEMENT FOR THE JOINT OPERATION OF A STORMWATER MANAGEMENT PROGRAM**

WHEREAS, the Town of Stem Board of Commissioners is considering adopting a stormwater ordinance and stormwater utility in compliance with and in furtherance of requirements mandated by the State of North Carolina with regard to the Falls of the Neuse Reservoir; and

WHEREAS, the Town of Stem Board of Commissioners has held a duly noticed public hearing prior to establishing a stormwater utility fee in compliance with G.S. § 160A-314.

NOW THEREFORE, the Town of Stem Board of Commissioners ordains the following:

**Section 1.** The Town of Stem Stormwater Ordinance for New Development attached hereto as Attachment A is adopted.

**Section 2.** The Ordinance Establishing a Stormwater Management Utility for the Town of Stem attached hereto as Attachment **B** is adopted.

**Section 3.** The Town of Stem Stormwater Utilities Rates attached hereto as Attachment C are adopted. Said rates shall be effective July 1, 2012. They shall be used solely to fund the Town of Stem Stormwater Management Enterprise Fund and to implement the requirements of the Ordinance Establishing a Stormwater Management Utility for the Town of Stem (see Attachment B) and the Interlocal Agreement for the Joint Operation of a Stormwater Management Program (see Attachment D).

**Section 4.** The Interlocal Agreement for the Joint Operation of a Stormwater Management Program attached hereto as Exhibit D is adopted.

**Section 5.** All provisions of any town ordinance or resolution in conflict with this Ordinance are repealed.

**Section 6.** This Ordinance shall become effective upon adoption.

The foregoing Ordinance, having been submitted to a vote, received the following vote and was duly adopted this 21<sup>st</sup> day of June, 2012

Ayes: \_\_\_\_\_  
Noes: \_\_\_\_\_  
Absent or Excused: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy Alford, Mayor

Attest:

\_\_\_\_\_  
Vicki Garrett, Town Clerk



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## **ARTICLE 1: GENERAL PROVISIONS**

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### **23-101 TITLE**

This ordinance shall be officially known as "The Town of Stem Falls Watershed Stormwater Ordinance for New Development." It is referred to herein as "this ordinance."

### **23-102 AUTHORITY**

The Board of Commissioners of the Town of Stem 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 Town Charter; North Carolina General Statutes Chapter 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; G.S. § 143-215.6A; and G.S. § 160A-174, 160A-185, and 160A-459.

### **23-103 FINDINGS**

It is hereby determined that:

- (A) 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;
- (B) These changes in stormwater runoff contribute to increased quantities of waterborne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; **and**
- (C) These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.
- (D) Further, the Commission has identified the Falls of the Neuse Reservoir, a water supply reservoir, as nutrient sensitive waters; has identified all or a portion of the reservoir as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the "Falls Rules") to reduce the average annual loads of nitrogen and phosphorus delivered to the Falls of the Neuse Reservoir from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction;

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

### **23-104 PURPOSE**

The purpose of this ordinance is to protect, maintain and enhance the public health,

safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of nitrogen and phosphorus in stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment in the watershed of the Falls of the Neuse Reservoir. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources. This ordinance seeks to meet its general purpose through the following specific objectives and means:

- (A) Establishing decision-making processes for development that protects the integrity of watersheds and preserve the health of water resources;
- (B) Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (C) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (D) 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;
- (E) 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;
- (F) 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;
- (G) 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.

### **23-105 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 grading applications, unless exempt pursuant to this ordinance.

#### **(B) Exemptions**

(1) Single family and duplex residential and recreational development and redevelopment that cumulatively disturbs less than one half (1/2) acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.

(2) Commercial, industrial, institutional, multifamily residential or local government development and redevelopment that cumulatively disturbs less than 12,000 square feet and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.

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

(4) Development that is 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 or redevelopment 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

(1) The provisions of this ordinance shall apply within the areas designated on the map titled "Falls Watershed Stormwater Map" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

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

**23-106 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 Stem Code of Ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within thirty (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 Town of Stem, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Stem. 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 Town of Stem 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.

## 23-107 DESIGN MANUAL

(A) Reference to Design Manual

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

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

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

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

(C) Changes to Standards and Specifications

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

## 23-108 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 Town of Stem be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

**23-108 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.

**23-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

(A) Effective Date

This Ordinance shall take effect on July 1, 2012.

(B) Final Approvals, Complete Applications

(1) All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Stem prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of stormwater.

(2) 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:

(a) For the initial or first phase of development or redevelopment, 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; and

(b) For any subsequent phase of development or redevelopment, 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.

## ARTICLE 2: ADMINISTRATION AND PROCEDURES

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### 23-201 REVIEW AND DECISION-MAKING ENTITIES

#### (A) Stormwater Administrator

(1) Designation. A Stormwater Administrator shall be designated by the Board of Commissioners of the Town of Stem 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 Stem Code of Ordinances 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 Board of Commissioners of the Town of Stem 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 as relate to the adoption, amendment, enforcement, and administration of this ordinance;

(f) To provide expertise and technical assistance to Board of Commissioners of the Town of Stem, upon request;

(g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator; and

(h) To take any other action necessary to administer the provisions of this ordinance.

### 23-202 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 engineered stormwater controls and elements of site design for stormwater management other than engineered stormwater controls.

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

(C) Authority to File Applications

All applications required pursuant to this ordinance shall be submitted to the Stormwater Administrator by the land owner or the land owner'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, which shall be reviewed and approved by the Board of Commissioners of the Town of Stem. 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 Board of Commissioners of the Town of Stem 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 ordinance, 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.

(5) Submittal of Complete Application.

(a) 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.

(b) 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.

(E) Review

(1) Within thirty (30) working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(2) 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.

(3) 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.

(4) Revision and Subsequent Review.

(a) A complete revised application shall be reviewed by the Stormwater Administrator within thirty (30) working days after its re-submittal and shall be approved, approved with conditions or disapproved.

(b) 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.

(c) 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.

23-203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

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

(I) Existing Conditions / Proposed Site Plans

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

(2) Natural Resources Inventory

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

(3) Stormwater Management System Concept Plan

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

(B) Stormwater Management Permit Application

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

(2) The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 23-202(D).

(C) As-Built Plans and Final Approval

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

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

(D) Other Permits

No certificate of compliance or occupancy shall be issued without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the building inspector may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

**23-204 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

(1) An approved plan shall become null and void if the applicant fails to make substantial progress on the site within one (1) year after the date of approval.

(2) 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.

23-205 APPEALS

(A) Right of Appeal

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Commissioners of the Town of Stem within thirty (30) days. Appeals of variance requests shall be made as provided in Section 23-308, "Variances." In the case of requests for review of proposed civil penalties for violations of this ordinance, Board of Commissioners of the Town of Stem shall make a final decision on the request for review within ninety (90) days of receipt of the date the request for review is filed.

(B) Filing of Appeal and Procedures

(1) Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the Town of Stem. The Stormwater Administrator shall transmit to the Board of Commissioners of the Town of Stem all documents constituting the record on which the decision appealed from was taken.

(2) The hearing conducted by the Board of Commissioners of the Town of Stem shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(C) Review by Superior Court

Every decision of the Board of Commissioners of the Town of Stem shall be subject to Superior Court review by proceedings in the nature of certiorari. A petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

(1) The decision of Board of Commissioners of the Town of Stem is filed; or

(2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Clerk to the Board of Commissioners of the Town of Stem at the time of its hearing of the case.

## **ARTICLE 3: STANDARDS**

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### **23-301 GENERAL STANDARDS**

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

### **23-302 NITROGEN AND PHOSPHORUS LOADING**

(A) Nitrogen and phosphorus loads contributed by the proposed new development shall not exceed the following unit-area mass loading rates: 2.2 and 0.33 pounds per acre per year for nitrogen and phosphorus, respectively.

(B) Notwithstanding 15A N.C.A.C. 2B .0104(q), redevelopment subject to this ordinance that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in subsection (A) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: forty percent (40%) and seventy-seven percent (77%) reduction for nitrogen and phosphorus, respectively.

(C) The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the approved accounting tool.

### **23-303 NITROGEN AND PHOSPHORUS STANDARD IS SUPPLEMENTAL**

The nitrogen and phosphorus loading standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A N.C.A.C. 2B. 0233 and .0242.

### **23-304 CONTROL AND TREATMENT OF RUNOFF VOLUME**

Stormwater systems shall be designed to control and treat the runoff generated from all surfaces by one (1) inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the Design Manual. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the one-year, twenty-four-hour storm event.

### **23-305 PARTIAL OFFSET OF NUTRIENT CONTROL REQUIREMENTS**

(A) Development subject to this ordinance shall attain nitrogen and phosphorus loading rate reductions on-site that meet the following criteria prior to using an offsite offset measure:

(1) Thirty percent (30%) or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing one half (1/2) acre but less than one (1) acre.

(2) Fifty percent (50%) or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing more than one (1) acre.

(3) Thirty percent (30%) or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing 12,000 square feet but less than one (1) acre.

(4) Fifty percent (50%) or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing more than one (1) acre.

(5) Thirty percent (30%) or more reduction in both nitrogen and phosphorus loading from the untreated condition for proposed redevelopment activities in a designated downtown area that would replace or expand structures or improvements that existed as of December 2006.

(B) A developer subject to this ordinance may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments to the NC Ecosystem Enhancement Program contingent upon acceptance of payments by that Program. A developer may use an offset option provided by the Town of Stem. A developer may propose other offset measures to the Town of Stem, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A N.C.A.C. 2B .0282 and 15A N.C.A.C. 2B .0240.

## 23-306 EVALUATION OF STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All stormwater control measures, stormwater systems and stormwater treatment practices (also referred to as Best Management Practices, or "BMP's") 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 and the approved accounting tool 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.

**23-307 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS**

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

**23-308 VARIANCES**

(A) Any person may petition the Town of Stem for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. For all proposed major and minor variances from the requirements of this ordinance, the Board of Commissioners of the Town of Stem shall make findings of fact showing that:

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

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

(3) In granting the variance, the public safety and welfare have been assured and substantial justice has been done.

(B) In the case of a request for a minor variance, the Town of Stem may vary or modify any of the regulations or provisions of the ordinance so that the spirit of the ordinance shall be observed, public safety and welfare secured, and substantial justice done may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) The Town of Stem may attach conditions to the major or minor variance approval that support the purpose of the local watershed protection ordinance. If the variance request qualifies as a major variance, and the Town of Stem decides in favor of granting the major variance, the Board shall then prepare a preliminary record of the

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hearing and submit it to the Commission for review and approval. If the Commission approves the major variance or approves with conditions or stipulations added, then the Commission shall prepare a Commission decision which authorizes the Town of Stem to issue a final decision which would include any conditions or stipulations added by the Commission. If the Commission denies the major variance, then the Commission shall prepare a decision to be sent to the Town of Stem. The Town of Stem shall prepare a final decision denying the major variance.

(D) Appeals from the Town of Stem's decision on a major or minor variance request are made on certiorari to the Granville County Superior Court. Appeals from the Commission decision on a major variance request are made on judicial review to Superior Court.

(E) On request of the Stormwater Administrator, any person who petitions the Town of Stem for a variance under this ordinance shall provide notice to the affected local governments of the variance request as required under the Falls Rule, 15A N.C.A.C. 2B. 0104(r). For purposes of this notice requirement, "affected local governments" means any local governments that withdraw water from Falls Lake or its tributaries downstream of the site of the proposed variance. If the proposed variance is in a Water Supply Watershed area classified as WS II, WS III or WS IV, "affected local governments" also includes any other local governments in the same water supply watershed as the proposed variance. The notice shall provide a reasonable period for comments and shall direct the comments to be sent to the Stormwater Administrator. The person petitioning for the variance shall supply proof of notification in accordance with this ordinance to the Stormwater Administrator.

## **ARTICLE 4: MAINTENANCE**

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### **23-401 GENERAL STANDARDS FOR MAINTENANCE**

#### **(A) Function of BMPs As Intended**

The owner of each engineered stormwater control 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 engineered stormwater control was designed.

#### **(B) Annual Maintenance Inspection and Report**

(1) The person responsible for maintenance of any engineered stormwater control installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from 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:

- (a) The name and address of the land owner;
- (b) The recorded book and page number of the lot of each engineered stormwater control;
- (c) A statement that an inspection was made of all engineered stormwater controls;
- (d) The date the inspection was made;
- (e) A statement that all inspected engineered stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (f) The original signature and seal of the engineer, surveyor, or landscape architect.

(2) 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 (1) year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

### **23-402 OPERATION AND MAINTENANCE AGREEMENT**

#### **(A) In General**

(1) Prior to the conveyance or transfer of any lot or building site to be served by a engineered stormwater control pursuant to this ordinance, and prior to issuance of any permit for development requiring a engineered stormwater control 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 them- site, and lots or parcels served by the engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

(2) The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the engineered stormwater control, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater control. In addition, it shall grant to the Town of Stem a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Stem to assume responsibility for the engineered stormwater control.

(3) The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the Granville 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 engineered stormwater controls required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required 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 engineered stormwater controls. If engineered stormwater controls are not performing adequately or as intended or are not properly maintained, the Town of Stem, in its sole discretion, may remedy the situation, and in such instances the Town of Stem shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the engineered stormwater controls, provided that the Town of Stem shall first consent to the expenditure;

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever

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

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Stem depending on the design and materials of the stormwater control and management facility;

(5) Granting to the Town of Stem a right of entry to inspect, monitor, maintain, repair, and reconstruct engineered stormwater controls;

(6) Allowing the Town of Stem to recover from the association and its members any and all costs the Town of Stem expends to maintain or repair the engineered stormwater controls or to correct any operational deficiencies. Failure to pay the Town of Stem all of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Stem shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery;

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

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

(9) A provision indemnifying and holding harmless the Town of Stem for any costs and injuries arising from or related to the engineered stormwater control, unless the Town of Stem 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.

#### 23-403 INSPECTION PROGRAM

Inspections and inspection programs by the Town of Stem 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.

**23-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE**

(A) May Be Required

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

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

(2) maintained by the owner 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 twenty-five percent (25%).

(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 engineered stormwater control in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain

and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Stem 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 Town of Stem takes action upon such failure by the applicant or owner, the Town of Stem 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 (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

#### **23-405 NOTICE TO OWNERS**

##### **(A) Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, pertaining to every engineered stormwater control shall be referenced on the final plat and shall be recorded with the Granville County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, shall be recorded with the Granville County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

##### **(B) Signage**

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

#### **23-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES**

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

#### **23-407 NUISANCE**

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

## ARTICLE 5: ENFORCEMENT AND VIOLATIONS

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### 23-501 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 Town of Stem. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Stem.

#### (B) Violation Unlawful

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

#### (C) Each Day a Separate Offense

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

#### (D) Responsible Persons/Entities

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

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

(1) Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; and

(2) Responsibility For Land or Use of Land. The owner of the land on which

the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use or development of the property.

## **23-502            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 Board of Commissioners of the Town of Stem may disapprove, any request for permit or development approval or authorization provided for by this ordinance or any other zoning, building, or development permit required by the Town of Stem for the land on which the violation occurs.

(3) Injunction, Abatements, etc. The Stormwater Administrator, with the written authorization of the Board of Commissioners of the Town of Stem 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 Board of Commissioners of the Town of Stem, 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

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

(C) Criminal Penalties

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

**23-503 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

**(1)** 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.

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

(3) 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 thirty (30) days. The Stormwater Administrator may grant thirty-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) Enforcement After Time to Correct

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

(F) Emergency Enforcement

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

## ARTICLE 6: DEFINITIONS

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### 23-601 TERMS DEFINED

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

**Approved accounting tool.** The accounting tool for nutrient loading approved by the EMC for the relevant geography and development type under review.

**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. The project site or area must exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, state or local stormwater regulation.

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

**Department.** The North Carolina Department of Environment and Natural Resources.

**Design Manual.** The stormwater design manual approved for use in this part of the Falls Watershed by the Department for the proper implementation of the requirements of the Falls Watershed 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 of precipitation into the soil.

**Division.** The Division of Water Quality in the Department.

**Existing development.** Development not otherwise exempted by this ordinance that meets one of the following criteria:

- (a) It either is built or has established a statutory or common-law vested right as of the effective date of this ordinance;  
or
- (b) It occurs after the effective date of this ordinance, but does not result in a net increase in built-upon area and does not decrease the infiltration of precipitation into the soil.

**Engineered stormwater control.** 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. Engineered stormwater control includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control" 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. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

**Land disturbing activity.** Any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation.

**Larger common plan of development or sale.** Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, 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.

**Major variance.** A variance from the minimum statewide watershed protection or Falls Rules that results in the relaxation, by a factor greater than five percent (5%) of any buffer, density or built-upon area requirement under the high density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than ten percent (10%), of any management requirement under the low density option. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Falls rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum requirements.

**Minor variance.** A variance from the minimum statewide watershed protection or Falls Rules that results in a relaxation, by a factor of up to five percent (5%) of any buffer, density or built-upon area requirement under the high density option; or that results in a relaxation by a factor up to ten percent (10%), of any management requirement under the low density option.

**1-year, 24-hour storm.** The surface runoff resulting from a twenty-four hour rainfall of an intensity expected to be equaled or exceeded, on average, once in twelve (12) months and with a duration of twenty-four (24) hours.

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

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

**Person.** Includes, without limitation, individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies.

**Redevelopment.** Any development on previously-developed land. Redevelopment of structures or improvements that (i) existed prior to December 2006, and (ii) would not result in an increase in built-upon area and (iii) provides stormwater control at least equal to the previous development is not required to meet the nutrient loading targets of this ordinance.

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

- **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) 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.

**AN ORDINANCE ESTABLISHING A STORMWATER MANAGEMENT UTILITY  
FOR THE TOWN OF STEM**

**Section 1. Findings.**

The Board does hereby find that:

- (a) Water quality standards mandated by state and federal law are requiring that local governments develop more detailed, advanced, and costly stormwater programs.
- (b) Effective stormwater management should be provided to protect, to the extent practicable, the citizens of the Town from the loss of life and property damage from flooding.
- (c) The construction, operation, and maintenance of stormwater conveyance systems requires long term planning and stable and adequate funding.
- (d) Chapter 160A. Article 16 of the North Carolina General Statutes, authorizes the Town to acquire, construct, establish, enlarge, improve, extend, maintain, own, operate, and contract for the operation of Stormwater Management Programs designed to protect water quality by controlling the level of pollutants in. and the quantity and flow of, stormwater and structural and natural stormwater and Drainage Systems of all types.
- (e) The establishment of a Stormwater Management Utility that would be accounted for as a separate enterprise fund and would facilitate the provision of a Stormwater Management Program is reasonable and in the public interest.
- (f) North Carolina General Statute §160A-314 authorizes the Town of Stem to establish and revise, from time to time, a schedule of rates and charges to fund the Stormwater Management Program activities including both structural and natural stormwater conveyance and Drainage System services provided by the Stormwater Management Utility.

**Section 2. Purpose.**

A Stormwater Management Utility is hereby created as an identified fiscal and accounting fund for the purpose of comprehensively addressing the Stormwater management needs of the Town. The Town 's Stormwater management needs are met herein (1) through programs designed to protect and manage water quality and quantity by controlling the level of pollutants in Stormwater runoff, and the quantity and rate of Stormwater received and conveyed by structural and natural Stormwater and Drainage Systems of all types, (2) by establishing a schedule of charges, (3) by defining the control, collection, and disbursal of funds, and (4) by setting forth penalties, methods of appeals and exemptions.

**Section 3. Definitions.**

For the purpose of this Article, the following words, terms. and phrases shall have the meanings given to them in this section, except where the context clearly indicates a different meaning:

*Developed land* shall mean a land parcel altered from its Natural State.

*Drainage System* shall mean natural and structural channels, swales, ditches, swamps, rivers, streams, creeks, wetlands, branches, reservoirs, ponds, drainage ways, inlets, catch basins, gutters, pipes, culverts, bridges, head walls, storm sewers, lakes, and other physical works, properties, and improvements that transfer, control, convey or otherwise influence the movement of storm water runoff

*Equivalent Residential Unit* (ERU) is a unit of measure of impervious surface (in square feet) that represents the impervious surface area on the average Single Family Residential Parcel in the underlying jurisdiction as a unit of comparison. ERU shall mean for the purposes of this Ordinance 2,700 square feet of impervious surface.

*Gross Parcel Area* shall mean the property area contained within the legally described boundaries of a property or the total lot size of a property, in acres.

*Impervious Surface* shall mean developed areas of land that prevent or significantly impede the infiltration of Stormwater into the soil. Typical Impervious Surfaces include, but are not limited to: roofs, sidewalks, walkways, patios, swimming pools, private driveways, parking lots, access extensions, alleys and other paved, engineered, compacted or gravel surfaces containing materials that prevent or significantly impede the natural infiltration of Stormwater into the soil. Impervious Surface Area is synonymous with *Built Upon Area* ("BUA") as defined in the Falls Model Stormwater Ordinance for New Development as approved by the North Carolina Environmental Management Commission on March 10, 2011.

*Natural State* shall describe existing Undeveloped Land where the soil and vegetation characteristics have not been substantially modified or disturbed by human activities and the hydrologic function is in an unaltered or natural condition.

*Service Area* shall mean all land within the corporate limits of the Town of Stem.

*Service Charge* shall mean a Stormwater management service charge, applicable to a land parcel, which generally reflects the impact on or demand for Stormwater management services provided by the Town to properly control and manage Stormwater runoff quantity and/or quality associated with the land parcel. The Service Charge will vary from one land parcel to another based on the Impervious Surface and Gross Parcel Areas. The Service Charge may vary for the same class of service in different areas of the Service Area and may vary according to classes of service.

*Single Family Residential Parcel* means a parcel with a single family residential structure used as a single family dwelling and whose primary use is as a single family residence.

*Stormwater* shall mean the runoff from precipitation that travels over Natural State or Developed Land surfaces and enters a Drainage System.

*Stormwater Utility Manager.* A person working for or on behalf of the Town to administer the Stormwater Management Program.

*Stormwater Management Program* shall mean an identified set of measures and activities designed to protect, restore and/or manage stormwater quality by controlling and/or reducing pollutants and to reduce and/or manage stormwater quantity by controlling velocity, volume, and rate.

*Stormwater Management Utility* shall mean an organizational structure that is responsible for funding, administering, and operating the Town's Stormwater Management Program, and that is supported through a rate structure based on the Impervious Surface Area and Gross Area found on land parcels located within the Service Area.

*Undeveloped Land* shall mean all land that is not altered from its Natural State.

**Section 4. Establishment of a Stormwater Management Utility and Stormwater Management Enterprise Fund.**

- (a) There is hereby established a Town of Stem Stormwater Management Utility that shall be responsible for implementing, operating, and administering the Town's Stormwater Management Program as defined herein.
- (b) There is hereby established a Town of Stem Stormwater Management Enterprise Fund for the purpose of dedicating and protecting funding applicable to the responsibilities of the Stormwater Management Utility including, but not limited to, rents, rates, fees, charges, and penalties as may be established after due notice having been given and a public hearing held by the Board as required by N.C. Gen. Stat. § 160A-314(a1)(1). The hearing may be held concurrently with the public hearing on the proposed budget ordinance. Funding may also include other funds transferred or allocated to the Stormwater Management Utility by the Board. All revenues and receipts of the Stormwater Management Utility shall be placed in the Stormwater Management Enterprise Fund and all expenses of the Stormwater Management Utility shall be paid from the Stormwater Management Enterprise Fund, except that other revenues, receipts, and resources not accounted for in the Stormwater Management Enterprise Fund may be applied to Stormwater management activities as deemed appropriate by the Board.

**Section 5. Jurisdiction.**

The jurisdiction of the Stormwater Management Utility shall extend throughout the Service Area.

**Section 6. Rate Structure.**

- (a) Every parcel within the Service Area shall be subject to a Stormwater Management Utility Service Charge derived from the rate structure described below. The rate structure to distribute the cost of services associated with the operation, repair, improvement and maintenance of public Drainage Systems and facilities through a schedule of rates, fees, charges, and penalties related to the operation of a Stormwater Management Utility and

Stormwater Management Enterprise Fund as established in Section 4 shall be based on the following parameters:

1. *Fixed Charge Per Parcel* based on account existence which directly relates to certain administrative, billing, collections, public outreach, and other charges as may be allocated on a per parcel basis.

2. *Gross Parcel Area* on a given land parcel, which is related to total pollutant loading of stormwater runoff discharged from that land parcel. The gross area blocks are as follows:

- i. A parcel of 0 to <2 acres in gross area is 1 block.
- ii. A parcel of 2 to <10 acres in gross area is 2 blocks.
- iii. A parcel of 10 to <100 acres in gross area is 3 blocks.
- iv. A parcel of 100 or greater acres in gross area is 4 blocks.

3. *Impervious Surface Area* on a given land parcel, which directly relates to the volume, rate and pollutant loading of Stormwater runoff discharged from that land parcel to the Town's structural and natural Drainage Systems and facilities. An Impervious Area Units Charge for stormwater costs shall be allocated to impervious area on an ERU basis. *Impervious Surface Area rates will apply to each unit or part thereof of impervious area.*

- i. Based on an analysis by the Town upon the enactment of this Ordinance of Impervious Surface Area on properties throughout the Town, an Impervious Surface Area of 2,700 square feet is hereby designated as one (1) ERU.

- (b) Each Single Family Residential Parcel shall be charged for one ERU of impervious area.
- (c) Each residential unit in a townhome, condominium, or other multifamily structure with individual unit ownership and duplexes shall be billed for one (1) ERU of impervious area.
- (d) There will be no Impervious Area Units Charge for land parcels with fewer than 500 square feet of Impervious Surface Area.

### **Section 7. Schedule of Fees and Charges.**

The schedule of rates, fees, charges, and penalties related to this Ordinance shall be adopted after notice and a public hearing as required by N.C. Gen. Stat. §160A-314. As set out in N.C. Gen. Stat. §160A-314, the hearing may be held concurrently with the public hearing on the Town's proposed budget. The schedule of rates, fees, charges, and penalties shall apply to all land parcels within the Service Area, except as may be altered by credits or exemptions provided in this Article.

## **Section 8 Billing and Collection**

- (a) *Method of billing.* Billing and collection of the Stormwater Management Utility Service Charges for Stormwater management services and facilities shall be billed with property taxes under the general administration of the Town Manager and shall be payable in the same manner as property taxes.
- (b) *Delinquencies.* Stormwater Management Utility Service Charge billings that are not paid within the time allowed for the payment of property taxes shall be collected by any remedy provided by law for collecting and enforcing private debts or in any other manner authorized by law.
- (c) *Application of payment.* Payment will be applied to a customer's bill in the following order:
  - 1. Interest, to the extent allowed by law.
  - 2. Civil penalties assessed pursuant to this Ordinance.
  - 3. Stormwater Management Utility Service Charge.
- (d) *Appeal of disputed bills and adjustments.* If any citizen wishes to dispute a Stormwater Utility Service Charge billing or any other rents, rates, fees, charges, or penalties adopted pursuant to this Article, that citizen must submit a written appeal within 60 days from the date of billing, stating the reasons for the appeal, and providing information pertinent to the calculation of the billed charge. A timely appeal shall stay the penalty deadlines. An appeal of a disputed bill shall be filed with the Stormwater Utility Manager for review and disposition. If the citizen is not satisfied with the disposition of the appeal, the citizen may further appeal the disputed charge to the Town of Stem Mayor or his designee who shall make the final ruling on the validity of the appeal.

## **Section 9. Disposition of Service Charges and Fees.**

Stormwater Management Utility Service Charge and fee revenues shall be assigned and dedicated solely to the Stormwater Management Enterprise Fund in the Town budget and accounting system, which shall be and remain separate from other funds, and shall be used only to fund identified Stormwater Management Program activities. The services charges and fees paid to and collected by virtue of the provision of this Article shall not be used for general or other governmental or proprietary purposes of the Town, except to pay for costs incurred by the Town in rendering services associated with the Stormwater Management Utility.

## **Section 10. Exemptions and Credits Applicable to Stormwater Management Service Charges.**

- (a) *Statement of Policy.* Except as provided in this section, no public or private property shall be exempt from Stormwater Management Service Charges or receive a credit or offset

against such Stormwater Management Service Charges. No exemption or reduction in Stormwater Management Service Charges shall be granted based on the age, tax or economic status, race, or religion of the customer, or other condition unrelated to the cost of providing stormwater services and facilities.

(b) *Exemptions.* No public or private property shall be exempt from Stormwater Management Utility Service Charges, with the following exceptions:

- I. Publically dedicated roads, streets, greenways, sidewalks and other publically dedicated rights of way and easements for vehicular or pedestrian traffic that are available for use by the general public for transportation purposes, shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not apply to internal site roadways within public facilities.
2. Railroad rights-of-way used or formerly used for trackage shall be exempt from Town Stormwater Management Utility Service Charges. This exemption shall not be construed to apply to railroad stations, maintenance buildings, or other developed land used for railroad purposes.

(c) *Credits.* The following credits may be allowed upon adoption of a Credit Application Instruction Manual by the Board:

1. Non single family residential parcels that provide measures to mitigate the impacts of runoff on the Stormwater system may be eligible for one or more credits to the Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge, proportional to the extent those measures address the impacts of peak discharge and total runoff volume from the site.
2. The Credit Application Instruction Manual may be approved by the Board and placed on file with the Town Clerk at which time it shall be followed in establishing applicable credits to a customer's Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge.
3. Each credit allowed against a customer's Impervious Area Units Charge portion of the Stormwater Management Utility Service Charge shall be conditioned on continuing compliance with the performance standards set forth in the Credit Application Instruction Manual and/or the applicable standards set out in the Town's Land Development Ordinance existing at the time of construction of such facilities and may be rescinded for noncompliance with those standards.
4. Each credit for which a customer applies shall be subject to review and approval by the Stormwater Utility Manager. The Stormwater Utility Manager may approve or reject any application for a credit in whole or in part.

**Section 11. Miscellaneous.**

- (a) This Ordinance supersedes all other Town ordinances, or parts of ordinances in conflict herewith.
  - (b) Any part or provision of this Ordinance found by a court of competent jurisdiction to be in violation of the Constitution or laws of the United States or of the State of North Carolina is hereby deemed severable and shall not affect the validity of the remaining provisions of the Ordinance.
  - (c) This Ordinance shall become effective upon adoption
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