

**CITY OF LEXINGTON, NORTH CAROLINA
STORMWATER CONTROL REGULATIONS**

3.11.1 AUTHORITY

The City of Lexington is authorized to adopt these regulations pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174,185; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulation); Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18.

3.11.2 FINDINGS

It is hereby determined that:

- (1) Development and redevelopment alters the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;
- (2) These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment;
- (3) These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites;
- (4) 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 minimum stormwater controls such as those included in these regulations;
- (5) Therefore, the City of Lexington 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.

3.11.3 PURPOSE

The purpose of these regulations 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 illegal discharges into municipal stormwater systems. It has been determined that proper management, or Best Management Practices (BMPs), 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.

3.11.4 REGULATORY OBJECTIVES

These regulations 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, stream bank 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) Controlling illicit discharges into the municipal separate storm sewer system.
- (9) Controlling erosion and sedimentation from construction activities;
- (10) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.

3.11.5 APPLICABILITY AND JURISDICTION

Beginning with and subsequent to its effective date, these regulations shall be applicable to all districts, new development and redevelopment, including, but not limited to, site plan

applications, subdivision applications, and grading applications, unless exempt as described in section 3.11.7 Exemptions.

3.11.6 EXEMPTIONS

- (1) 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 these regulations.
- (2) 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 these regulations.
- (3) 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.
- (4) 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 these regulations.

3.11.7 NO DEVELOPMENT OR REDEVELOPMENT UNTIL COMPLIANCE AND PERMIT

No development or redevelopment shall occur except in compliance with the provisions of these regulations or unless exempted. No development for which a permit is required pursuant to these regulations shall occur except in compliance with the provisions, conditions, and limitations of the permit.

3.11.8 MAP

- (1) The provisions of these regulations shall apply within the areas designated on the map titled "Stormwater Map of the City of Lexington, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of these regulations.
- (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 these regulations and the geographic location of all structural BMPs permitted under these regulations. In the event of a dispute, the applicability of these regulations 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.

3.11.9 INTERPRETATION

- (1) Intent: All provisions, terms, phrases, and expressions contained in these regulations shall be construed according to the purpose and regulatory objectives set forth in Section 3.11.4 and 3.11.5. If a different or more specific meaning is given for a term defined elsewhere in the City of Lexington's Code of Ordinances, the meaning and application of the term in these regulations shall control for purposes of application of these stormwater regulations.

- (2) Text controls in event of conflict: In the event of a conflict or inconsistency between the text of these regulations and any heading, caption, figure, illustration, table, or map, the text shall control.
- (3) Authority for interpretation: The Stormwater Administrator has authority to determine the interpretation of these regulations. 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 these regulations.
- (4) References to statutes, regulations and documents: Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the North Carolina Department of Environmental Quality (NCDEQ) Stormwater BMP 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.
- (5) 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 Lexington, 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 Lexington. References to days are calendar days unless otherwise stated.
- (6) Delegation of authority: Any act authorized by these regulations is to be carried out by the Stormwater Administrator, or his/her designee, of the City of Lexington.
- (7) 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.
- (8) 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.
- (9) 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.
- (10) Measurement and computation: Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

3.11.10 NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY (NCDEQ) STORMWATER BMP DESIGN MANUAL

- (1) Reference to NCDEQ Stormwater BMP Manual: The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the NCDEQ Stormwater BMP Design Manual, or Design Manual, as the basis for decisions about stormwater management permits and about the design, implementation and performance of structural and non-structural stormwater BMPs. The NCDEQ Stormwater BMP 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.
- (2) Relationship of the 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.
- (3) 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 these regulations but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing these regulations with regard to the application.

3.11.11 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

- (1) Conflict of laws: These regulations is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of these regulations are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of these regulations 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.
- (2) Private Agreements: These regulations are not intended to revoke or repeal any easement, covenant, or other private agreement. However, where these regulations are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of these regulations shall govern. Nothing in these regulations shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with these regulations. In no case shall the City of Lexington be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.
- (3) Severability: If the provisions of any section, subsection, paragraph, subdivision or clause

of these regulations 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 these regulations.

3.11.12 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

- (1) Effective date: These regulations shall take effect on November 11, 2017.
- (2) Final approvals, complete applications: All development and redevelopment projects for which complete and full applications were submitted and approved by the City of Lexington prior to the effective date of these regulations 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 these regulations 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.
- (3) Violations continue: Any violation of provisions existing on the effective date of these regulations shall continue to be a violation under these regulations and be subject to penalties and enforcement under these regulations unless the use, development, construction, or other activity complies with the provisions of these regulations.

3.12 ADMINISTRATION AND PROCEDURES

3.12.1 REVIEW AND DECISION-MAKING ENTITIES

- (1) Stormwater Administrator: A Stormwater Administrator shall be designated by the City of Lexington to administer and enforce these regulations.
- (2) Powers and Duties: In addition to the powers and duties that may be conferred by other provisions of the City of Lexington Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under these regulations:
 - (3) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to these regulations.
 - (4) To make determinations and render interpretations of these regulations.
 - (5) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the City of Lexington on applications for development or redevelopment approvals.
 - (6) To enforce the provisions of these regulations in accordance with its enforcement provisions.
 - (7) To maintain records, maps, forms and other official materials as relate to the adoption,

amendment, enforcement, and administration of these regulations.

- (8) To provide expertise and technical assistance to the City of Lexington, upon request.
- (9) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- (10) To take any other action necessary to administer the provisions of these regulations.

3.12.2 REVIEW PROCEDURES

- (1) Permit required; must apply for permit: A stormwater management permit is required for all development and redevelopment unless exempt pursuant to these regulations. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- (2) Effect of permit: A stormwater management 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 these regulations, 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 these regulations.
- (3) Authority to file applications: All applications required pursuant to these regulations shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent.
- (4) 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 management 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 these regulations.
- (5) 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.
- (6) Permit review fees: The City of Lexington 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.

- (7) Administrative manual: For applications required under these regulations, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of these regulations, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.
- (8) 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.
- (9) An application shall be considered complete only when it contains all elements of an application pursuant to these regulations, 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.
- (10) Review: 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 these regulations.
- (11) Approval: If the Stormwater Administrator finds that the application complies with the standards of these regulations, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with these regulations. The conditions shall be included as part of the approval.
- (12) Failure to comply: If the Stormwater Administrator finds that the application fails to comply with the standards of these regulations, 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.
- (13) Revisions and subsequent review: 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.
- (14) If a revised application is not re-submitted within thirty 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.
- (15) 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 these regulations.

3.12.3 APPLICATIONS FOR APPROVAL

- (1) Concept plan and pre-application 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 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 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 in advance of the meeting.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) Stormwater management permit application: The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of these regulations,

including Standards in Section 3.13. 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 BMP Design Manual, and that the designs and plans ensure compliance with these regulations. 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 Sections 3.12.2.12 through 3.12.2.15.

- (6) As-built plans and final approval: Upon completion of a project, and before a Certificate of Occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual as-built plans for all stormwater management facilities or practices after final construction is completed. As-builts shall be submitted in the form of signed and sealed PDF's as well as a geo-referenced AutoCAD file (.dwg) for digital upload into the City's GIS system. 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 these regulations. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.
- (7) Other permits: No Certificate of Compliance or Occupancy shall be issued by the City of Lexington 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 City of Lexington 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.

3.12.4 PERMIT APPROVALS

- (1) 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.
- (2) 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.

- (3) Right of appeal: Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of these regulations made by the Stormwater Administrator, may file an appeal to the City of Lexington City Council within thirty (30) days.

3.13 STANDARDS

3.13.1 FLOODPLAIN AND WATERCOURSE PROTECTION RESTRICTIONS FOR ALL DISTRICTS

- (1) Applicability: All area within the one percent (1%) (100-year) floodplain as shown on the most recent version of the Federal Emergency Management Agency Flood Insurance Rate Maps; and All streams, creeks, rivers, etc. shown as watercourses on the most recent version of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps. Development and redevelopment activities in all districts are subject to stormwater control regulations.
- (2) Floodplain Restrictions: Development shall not mar or disturb the ecological and environmental efficiency of the floodplain land, nor may it disturb or re-grade slopes to more than a ten percent (10%) elevation or contour change. Building permits will not be issued for development within floodplain. Fill is prohibited.
- (3) Watercourse buffer required: A minimum fifty (50) foot vegetative buffer is required along both sides of all watercourses. A twenty-five (25) foot vegetative buffer is required around impoundments along watercourses. On each side of the watercourse, the required buffer will begin at the edge of the watercourse channel and extend perpendicular to the watercourse a distance equal to the lesser of fifty (50) feet, or to a ridge line which changes the runoff flow to be away from the watercourse.

3.13.2 DEVELOPMENT AND USE RESTRICTIONS WITHIN WATERCOURSE BUFFERS

Development within the required watercourse buffer is limited to flood control, stream bank stabilization, water dependent structures and other public projects such as road crossings and greenways where no practical alternative exists. These activities shall minimize built-upon surface area, direct runoff away from the surface waters, and maximize the utilization of Best Management Practices (BMPs). Use within buffer is limited to the following, subject to the requirement that adjacent lands disturbed as a result of these uses are stabilized and replanted with native vegetation:

- (1) Land-related activities with no permanent structures
- (2) Near perpendicular (75 degrees or greater) utility watercourse crossings

- (3) Parallel utility installation
- (4) Near perpendicular (75 degrees or greater) watercourse crossings by greenway trails, bicycle paths, sidewalks, and other pedestrian path
- (5) Near perpendicular (75 degrees or greater) crossings for farm animals with fencing to minimize the animals' impacts upon the buffers
- (6) Narrow footpaths constructed with minimal vegetation disturbance that permit the landowner to walk to the water
- (7) Incidental drainage improvements or repairs for maintenance
- (8) Mitigation approved by a State or Federal agency acting under Sections 401 or 404 of the Clean Water Act
- (9) The continuation of existing agricultural uses
- (10) Other land uses within the buffers may approved as part of a development plan subject to the requirement that the landowner demonstrate that the net result of the land use and strategy to mitigate the impact of the land use provide at least the same protection to the water quality and ecological integrity.

3.13.3 PROHIBITED DEVELOPMENT AND USES WITHIN WATERCOURSE BUFFERS

- (1) Land disturbances and vegetation clearing are prohibited within the buffer, except for placement of necessary public utilities.
- (2) Buildings are prohibited within the buffer.
- (3) Piping of watercourses is prohibited.

3.13.4 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

All development and redevelopment to which these regulations applies shall comply with the standards of this section. Low-density projects shall comply with each of the following standards:

- (1) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (2) All built-upon area shall be at a minimum of fifty (50) feet landward of all perennial and intermittent surface waters, per section 3.13.1(3). 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 NCDEQ-approved methodology.

- (3) The approval of the stormwater management 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.

3.13.5 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

All development and redevelopment to which these regulations applies shall comply with the standards of this section. High density projects shall meet the following minimum design criteria:

- (1) Stormwater Control Measures shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02H .1002.
- (2) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of forty-eight (48) hours, but not more than one hundred and twenty (120) hours.
- (3) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.
- (4) All built-upon area shall be at a minimum of 50 feet landward of all perennial and intermittent surface waters, per section 3.13.1(3). 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 NCDEQ-approved methodology.
- (5) The approval of the stormwater management 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 (and approved stormwater control measure) consistent with the approved project plans.

3.13.6 STANDARDS FOR STORMWATER CONTROL MEASURES

- (1) Evaluation according to contents of the Design Manual: All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or

BMPs) required under these regulations 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 these regulations.

- (2) Determination of adequacy; presumptions and alternatives: Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the NCDEQ Stormwater BMP Design Manual will be presumed to meet the minimum water quality and quantity performance standards of these regulations. 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 these regulations. 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.
- (3) 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 twelve (12) inches of naturally occurring soil above the seasonal high-water table.

3.13.7 VARIANCES

- (1) Any person may petition to the City of Lexington City Council for a variance granting permission to use the person's land in a manner otherwise prohibited by these regulations. To qualify for a variance, the petitioner must show all of the following.
 - (2) Unnecessary hardships would result from strict application of these regulations.
 - (3) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (4) The hardships did not result from actions taken by the petitioner.
 - (5) The requested variance is consistent with the spirit, purpose, and intent of these regulations; will secure public safety and welfare; and will preserve substantial justice.
 - (6) The City of Lexington may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (7) Statutory exceptions: Notwithstanding subdivision (A) of this section, exceptions from the 50-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (6) The date the inspection was made;
- (7) 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 these regulations; and
- (8) The original signature and seal of the engineer, surveyor, or landscape architect.
- (9) 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 the as-built certification and each year thereafter on or before January 1st (or the next available workday).

3.14.2 OPERATION AND MAINTENANCE AGREEMENT: GENERAL

- (1) Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to these regulations, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to these regulations or Certificate of Occupancy, 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.
- (2) 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 City of Lexington a right of entry, shown on the as-builts as a maintenance easement 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 City of Lexington to assume responsibility for the structural BMP.
- (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 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.

3.14.3 OPERATION AND MAINTENANCE AGREEMENT: SPECIAL REQUIREMENTS FOR HOMEOWNERS' AND OTHER ASSOCIATIONS

- (1) For all structural BMPs required pursuant to these regulations and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the

following provisions.

- (2) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (3) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the City of Lexington, in its sole discretion, may remedy the situation, and in such instances the City of Lexington 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 Lexington shall first consent to the expenditure.
- (4) 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) percent 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.
- (5) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City of Lexington depending on the design and materials of the stormwater control and management facility.
- (6) Granting to the City of Lexington a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
- (7) Allowing the City of Lexington to recover from the association and its members any and all costs the City of Lexington expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the City of Lexington 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 City of Lexington 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.
- (8) A statement that this agreement shall not obligate the City of Lexington to maintain or repair any structural BMPs, and the City of Lexington shall not be liable to any person for the condition or operation of structural BMPs.

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

3.14.4 INSPECTION PROGRAM

- (1) Inspections and inspection programs by the City of Lexington 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.
- (2) 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.

3.14.5 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

The City of Lexington 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 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.
- (3) 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%).
- (4) 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.
- (5) 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 these regulations, approvals issued pursuant to these regulations, or an operation and maintenance agreement established pursuant to these regulations.

- (6) 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 Lexington shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.
- (7) Costs in excess of performance security: If the City of Lexington takes action upon such failure by the applicant or owner, the City of Lexington 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.
- (8) 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 twenty-five percent (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.

3.14.6 NOTICE TO OWNERS

- (1) Deed recordation and indications on plat: The applicable operations and maintenance agreement, conservation easement, maintenance easement or dedication and acceptance into public maintenance (whichever is applicable) 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, conservation easement, maintenance easement, or dedication and acceptance into public maintenance (whichever is applicable) shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.
- (2) Signage: Where appropriate in the determination of the Stormwater Administrator to assure compliance with these regulations, 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.

3.14.7 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.

3.14.8 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.

3.14.9 MAINTENANCE EASEMENT

Every structural BMP installed pursuant to these regulations 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.

3.15 ENFORCEMENT AND VIOLATIONS

3.15.1 GENERAL

- (1) Authority to enforce: The provisions of these regulations shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the City of Lexington. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the City of Lexington.
- (2) Violation unlawful: Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by these regulations, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to these regulations, is unlawful and shall constitute a violation of these regulations.
- (3) Each day a separate offense: Each day that a violation continues shall constitute a separate and distinct violation or offense.

3.15.2 RESPONSIBLE PERSONS/ENTITIES

- (1) 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 these regulations 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 these regulations, or fails to take appropriate action, so that a violation of these regulations 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.

- (2) 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 these regulations, or fails to take appropriate action, so that a violation of these regulations results or persists.
- (3) 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.

3.15.3 REMEDIES AND PENALTIES

- (1) The remedies and penalties provided for violations of these regulations, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.
- (2) Withholding of certificate of occupancy (CO): 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.
- (3) Disapproval of subsequent permits and development approvals: As long as a violation of these regulations continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the City of Lexington may disapprove, any request for permit or development approval or authorization provided for by these regulations or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.
- (4) Injunction, abatements, etc.: The Stormwater Administrator, with the written authorization of the City of Lexington, 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 these regulations. Any person violating these regulations shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- (5) 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 of Lexington, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- (6) Stop work order: The Stormwater Administrator may issue a stop work order to the person(s) violating these regulations. 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.

- (7) Civil penalties: Violation of these regulations 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 thirty (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 Lexington is subject for violations of its Phase II Stormwater management permit, or if no Phase II Stormwater management permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.
- (8) Criminal penalties: Violation of these regulations may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

3.15.4 ENFORCEMENT PROCEDURES

- (1) Initiation/complaint: Whenever a violation of these regulations 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.
- (2) 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 these regulations.
- (3) Notice of violation and order to correct: When the Stormwater Administrator finds that any building, structure, or land is in violation of these regulations, the Stormwater Administrator shall notify, in writing, the property owner or other person violating these regulations. 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 City of Lexington personnel, 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 these regulations to correct and abate the violation and to ensure compliance with these regulations.
- (4) 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 (30) day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating these regulations. 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.

- (5) 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 these regulations.
- (6) Emergency enforcement: If delay in correcting a violation would seriously threaten the effective enforcement of these regulations 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.

3.16 ILLEGAL DISCHARGES AND CONNECTIONS

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

- (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/or
- (19) 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 Lexington.

3.16.2 ILLEGAL CONNECTIONS

- (1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection 13.16.1 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 these regulations. 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.

- (3) Where it is determined that said connection: 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 was made in violation of any applicable regulation or ordinance, other than this section.
- (4) 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: The quantity and complexity of the work, the consequences of delay, the potential harm to the environment, to the public health, and to public and private property, and the cost of remedying the damage.

3.16.3 SPILLS

- (1) Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
- (2) 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 City of Lexington 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.

3.17 DEFINITIONS SPECIFIC TO STORMWATER REGULATIONS

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

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. Gravel must be #57 stone that is laid at a minimum depth of four (4) inches and underlain with a geotextile fabric, otherwise, it is deemed as an impervious surface.

Department

The North Carolina Department of Environmental Quality (NCDEQ)

Design Manual

The NCDEQ Stormwater BMP Design Manual approved for use in Phase II jurisdictions by the Department. All references herein to the NCDEQ Stormwater BMP 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 Energy, Mineral and Land Resources in the Department.

High-density project

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

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.

Low-density project

The project is a low-density project if it has no more than two dwelling units per acre or twenty-four percent (24%) 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 drainage-ways to the maximum extent practicable.

1-year, 24-hour storm

The surface runoff resulting from a twenty-four (24) 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.

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.

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.

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 these regulations or otherwise approved by NCDEQ.

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.

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