

Sec. 44-434. - Watershed protection district (WP-O).

*Purpose:*

- ◆ *Surface waters of the state and county are a precious but delicate natural resource. They are life sustaining for humans, animals, and vegetation both directly and as a source of recharge for the underground aquifers. They provide an essential link in almost all natural processes, provide opportunities for recreation and refreshment, supply industrial needs for process and cooling water, generate power, and contribute immeasurably to scenic beauty.*
- ◆ *Most important, surface waters provide raw water for domestic consumption and fire protection to scores of communities in the state, including several in the county and its surrounding jurisdictions.*
- ◆ *For the protection of the public health, safety, and general welfare, it is essential that the integrity of these surface waters be protected from pollution, so that the well-being of present and future residents and visitors to the county and surrounding jurisdictions be assured, the costs of furnishing potable water be minimized, and the quality and quantity of surface water be protected.*
- ◆ *The intent of the watershed protection district (WP-O) is to provide regulations, which, will limit the exposure of watersheds, under the jurisdiction of the county and used as sources of supply for public water systems, to pollution. The sources of such pollution include leachate from septic tank nitrification fields; stormwater runoff; accidental spillage from residential, commercial and industrial operations.*
- ◆ *These occurrences can contribute biological contamination, turbidity from soil erosion and sedimentation, nutrient enhancement, and heavy metal pollution, all of which endanger the water supplies of communities dependent on these watersheds for life-giving and life-sustaining water.*
- ◆ *This section is enacted pursuant to G.S. § 153A-121 and § 143-211 through 143-215.741.*

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.01. - Boundaries.

→ See overlay Map Attached

- (a) The boundaries of the watershed protection district (WP-O) encompassing the watersheds within the county's jurisdiction are shown as overlay districts on the official zoning map and are adopted as part of this chapter. Where watershed boundaries follow topographic boundaries and the official zoning map does not accurately represent the actual topographic boundary, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries does not lie within the watershed area.

(b)

The watershed protection overlay district shall, as appropriate, impose greater restrictions, require higher development standards, prohibit certain uses and require additional approvals as stated in this section.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.02. - Existing development and exceptions to applicability.

- (a) Existing development, as defined in this section, is exempt from the requirements of the watershed protection district. The term existing development is defined as those projects that are built or those projects that at a minimum have established a vested right under state law as of the effective date of this section (January 1, 1994) based on at least one of the following criteria:
  - (1) Having expended substantial resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
  - (2) Having an outstanding valid building permit as authorized by G.S. § 153A-344.1; or
  - (3) Having an approved site-specific or phased development plan as authorized by G.S. § 153A-344.1.
- (b) Reserved.
- (c) Expansions to structures, other than single-family, classified as existing development must meet the requirements of this section; however, the built-upon area of the existing development is not required to be included in the density calculations.
- (d) Any existing nonresidential or multi-family (three or more dwelling units) structure or built-upon area not in conformance with the density or built-upon restrictions of this section that has been damaged or removed may be repaired and/or reconstructed provided it meets the following conditions:
  - (1) The repair or reconstruction is in compliance with article VII, nonconformities.
  - (2) Repair or reconstruction is initiated within 12 months and completed within two years of such damage; and
  - (3) The total amount of built-upon area may be increased according to the built-upon restrictions as allowed for existing development.
- (e) Uses existing on January 1, 1994, but which would not be permitted to be established in the watershed protection district in which they are located, may continue subject to article VII, nonconformities, except as follows:
  - (1) When such nonconforming use of land has been changed to an allowed use, it cannot revert to any prohibited use.
  - (2) Expansions may be allowed subject to the built-upon restrictions as allowed for existing development.
- (f)



If the requirements of this section conflict with other portions of this chapter, the more restrictive of each particular item apply.

- (g) Exclusions and exceptions to the rules described in Chapter 2B of Title 15A of the North Carolina Administrative Code, as amended, shall also be exclusions and exceptions to the requirements of the Watershed Protection District.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

#### Sec. 44-434.03. - Definitions.

The definitions found in this section apply specifically to this section and are intended to supplement the definitions found in the appendix. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Balance of watershed (BW).* The area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.

*Best management practices (BMP).* A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

*Buffer (watershed only).* An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

*Built-upon area.* Includes that portion of a development project that is covered by impervious (does not allow water to infiltrate from surface to subsurface) or partially impervious cover, including buildings, pavement, gravel areas (such as roads, parking lots, and paths), recreation facilities (such as tennis courts). Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.

*Cluster development.* The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments. For purposes of this chapter, planned unit developments and mixed use developments are considered cluster developments.

*Critical area.* The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half mile upstream from the intake located directly in

the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

*Existing lot of record.* A lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds prior to January 1, 1994, in accordance with the subdivision regulations in effect at the time of recordation, or a lot described by metes and bounds, the description of which has been so recorded prior to July 31, 1982.

*Landfill (discharging).* A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. ch. 130A, art. 9. For the purpose of this section, this term does not include composting facilities.

*Nonresidential development.* All development other than residential development, agriculture and forestry.

*Protected area (PA).* The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles upstream of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed, whichever comes first; or within ten miles of and draining to a water intake located in a stream or river or to the ridgeline of the watershed, whichever comes first.

*Registered professional.* Professional engineers, landscape architects to the extent that G.S. ch. 89A allows, and land surveyors to the extent that the design represents incidental drainage within a subdivision, as provided by G.S. § 89C-3(7).

*Residential development.* Buildings for residence, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings, such as garages, storage buildings, gazebos, and customary home occupations.

*Single-family residential.* Any development where no building contains more than one dwelling unit, every dwelling unit is on a separate lot, and where no lot contains more than one dwelling unit except for approved accessory dwelling units.

*Stormwater control measure (SCM).* A permanent structural device, including any vegetated conveyance, that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater or a combination thereof.

*Surface waters.* All waters of the state as defined in G.S. § 143-212 except underground waters.

*Toxic substance.* Any substance or combination of substances, including disease-causing agents, which, after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death,



disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions including malfunctions or suppression in reproduction or growth, or physical deformities in such organisms or their offspring or cause other adverse health effects.

*Variance, major.* A variance that results in any one or more of the following:

- The relaxation, by a factor of more than ten percent, of any management requirement under the low density option; or
- The relaxation, by a factor of more than five percent, of the buffer, density or built-upon area requirement under the high-density option; or
- Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

*Variance, minor.* A variance that does not qualify as a major variance.

*Water dependent structure.* Any structure for which the use requires access to or proximity to or situated within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, docks and bulkheads. Ancillary facilities, such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas, are not water dependent structures.

*Watershed.* The entire land area contributing surface drainage to a specific point, such as the water supply intake or alternatively, the geographic region within which water drains to a particular river, stream or body of water.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.09. - WS-IV watershed area—Protected area (WS-W-PA).

Only new development activities that require an erosion/sedimentation control plan under state law are required to meet the requirements of this Section when located in a WS-IV watershed. Written verification of project exemption must be submitted from the entity responsible for enforcement of the erosion/sedimentation program. In order to address a moderate to high land use intensity pattern, single-family residential uses are allowed on a lot with a minimum area of 20,000 square feet without public water or sewer or 15,000 square feet with public water or sewer where a curb and gutter street system is not installed. All other residential and nonresidential development are allowed at a maximum of 24 percent built-upon area if a curb and gutter system is installed or 36 percent built-upon area if a curb and gutter system is not installed. Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable.

(1) *Density and built-upon limits.* Density and built-upon limits are as follows:

a.



For single-family residential development, the minimum lot area must be at least 20,000 square feet without public water or sewer or 15,000 square feet with public water or sewer where a curb and gutter street system is not installed. An exception to these requirements is when a cluster subdivision is approved according to section 44-544.

- b. All other residential and nonresidential development cannot exceed 24 percent built-upon area if a curb and gutter system is installed or 36 percent built-upon area if a curb and gutter system is not installed. For the purpose of calculating the built-upon area, total project area includes acreage in the tract on which the project is to be developed.

(2) *Uses permitted.* The following uses are permitted:

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
- b. Forestry, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15A NCAC 11.0101-.0209). The division of forest resources is the designated management agency responsible for implementing this subsection.
- c. Residential development.
- d. Nonresidential development.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.10. - 10/70 bonus permit.

- (a) In addition to the nonresidential built-upon restrictions for the balance of WS-II and WS-III watersheds as stated in sections 44-434.05 and 44-434.07, nonresidential uses may occupy no more than ten percent of the balance of each WS-II and WS-III watershed outside the critical area, with a maximum 70 percent built-upon area when approved as a 10/70 bonus permit. The 10/70 bonus permit must be considered as a special use permit that must be reviewed by the board of adjustment and is subject to all rules and procedures as established in article III. Requests for a 10/70 bonus permit will be considered in order of receipt of completed applications. A 10/70 bonus permit is valid for two years, and if the development has not begun within that time period the permit shall expire. Reapplication cannot be made for a period of 12 months following the date the permit expired.
- (b) In reviewing an application for a 10/70 bonus permit, the board of adjustment shall make the findings of fact as stated in subsection 44-332. In addition, the board of adjustment shall consider whether the property can be developed as proposed according to any or all of the following pertinent factors:
  - (1) Whether the proposal is in conformance with the county's current land use plan.
  - (2) Whether the development is in coordination with the county's thoroughfare plan and urban area transportation plan.

- (3) The feasibility of the proposed development based on site-specific factors, such as but not limited to soil type; topography; distance to public utilities, such as water, sewer and gas lines; and road access.
  - (4) Projects must minimize built-upon surface area and direct stormwater runoff away from surface waters. Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable.
- (c) Where developments are approved under a 10/70 bonus permit, a 100-foot wide vegetative buffer is required for new development along all perennial waters indicated on the most recent version of USGS 1: 24,000 (7.5 minute) scale topographic maps or as determined by local government studies.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.11. - Watershed cluster development.

Clustering of development is permitted in all watershed areas under the following conditions:

- (1) Minimum lot sizes are not applicable to single-family watershed cluster development projects; however, the overall density of the project must meet the associated density as required in sections 44-434.04 through 44-434-09.
- (2) Built-upon area of projects shall not exceed that allowed for the applicable critical area or protected area/balance of the watershed as required in sections 44-434.04 through 44-434-09.
- (3) All built-upon areas shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (4) The remainder of the tract must remain in a vegetated or natural state. The title to the open space must be conveyed to an incorporated homeowners' association for management, to a local government for preservation as a park or open space, or to a conservation organization for preservation in a permanent easement.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.12. - Buffer area required.

- (a) In the watershed protection overlay (WP-O), a minimum 30-foot wide vegetative buffer is required for all new development along all perennial waters indicated on the most recent version of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Developments approved under the high-density option, including the 10/70 bonus permit, are required to maintain a 100-foot wide vegetative buffer.

(b)



No new development which requires a zoning authorization permit is allowed in the buffer except for water-dependent structures and public projects, such as road crossings, railroad rights-of-way and the like, where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater best management practices. Desirable artificial streambank or shoreline stabilization is permitted.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.13. - Administration.

- (a) Administration of this section shall be as provided under article III. Zoning authorization permits shall be issued for development in the watershed protection overlay (WP-O) as prescribed in article III. In addition to the general information required for a zoning authorization permit, the following must be submitted on detailed site plans, as applicable:
  - (1) The square footage and percent of built-upon area for nonresidential and residential development excluding single-family. The area required to remain as non-developable land must be noted on the detailed site plan.
  - (2) The location of all perennial streams and natural drainage areas on the property.
  - (3) The location and landscaping proposed for all required buffer areas.
- (b) The planning director administers the stormwater programs and shall have the following powers and duties:
  - (1) To review and approve or disapprove applications for approval of plans pursuant to this article.
  - (2) To make determinations and render interpretations of this article.
  - (3) To review and approve applications.
  - (4) To enforce the provisions of this article in accordance with the enforcement provisions.
  - (5) To designate appropriate other person(s) who shall carry out the powers and duties of stormwater administrator.
- (c) The county may make amendments to this section as provided by this chapter. Under no circumstances shall the county adopt such amendments that would cause this section to violate the watershed protection rules as adopted by the state environmental management commission. The planning director shall keep records of all amendments to the water supply watershed regulations and shall provide copies of all amendments, upon adoption, to the state division of water quality.
- (d) The planning director shall keep a record of variances to the local watershed protection district. This record shall be submitted, for the calendar year, to the state department of environmental quality, water resources section on or before January 1 of the following year and shall provide a



description of each project receiving a variance and the reasons for granting the variance.

- (e) The planning director shall keep records of the county's utilization of the provision that a maximum of ten percent of the noncritical area of WS-II-BW and WS-III-BW watersheds may be developed with nonresidential development to a maximum of 70 percent built-upon surface area. Records for each watershed shall include the total acres of noncritical watershed area, total acres eligible to be developed under this option, total acres approved for this development option and individual file records for each development that is approved in these areas.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

Sec. 44-434.14. - Variances.

- (a) The board of adjustment may authorize, in specific cases, minor variances from the terms of this section that will not be contrary to the public interest. An application for a variance must conform with section 44-333. In addition, the county shall notify and allow two weeks for response from all other local governments having jurisdiction in the designated watershed and the entity using the water supply for consumption where the variance is being considered. In granting of a variance the board of adjustment shall make findings as required in subsection 44-333(f).
- (b) If an application calls for the granting of a major variance, and if the board of adjustment decides in favor of granting the variance, the board shall prepare a preliminary record of the hearing within 30 days.
  - (1) The preliminary record of the hearing shall include the following:
    - a. The variance application;
    - b. The hearing notices;
    - c. The evidence presented;
    - d. Motions, offers of proof, objections to evidence and rulings on them;
    - e. Proposed findings and exceptions; and
    - f. The proposed decision, including all conditions proposed to be added to the permit.
  - (2) The preliminary record shall be sent to the environmental management commission ("commission") for its review as follows:
    - a. If the commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from nor make any practical use of the property unless the proposed variance is granted and will not result in a serious threat to the water supply, the commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The commission shall prepare a commission decision and send it to the board of adjustment. If the board of adjustment approves the variance as proposed, the board

shall prepare a final decision granting the proposed variance. If the commission approves the variance with conditions and stipulations, the board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

- b. If the commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted, will result in a serious threat to the water supply, the commission shall deny approval of the variance as proposed. The commission shall prepare a commission decision and send it to the board of adjustment. The board shall prepare a final decision denying the variance as proposed. Any appeal of the decision must be filed pursuant to section 44-329.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)

#### Sec. 44-434.15. - High-density development.

- (a) *Requirements.* Development projects which require a sedimentation and erosion control plan in a WS-IV watershed area, which are being developed as a planned development as defined in this chapter, may propose to be developed under a high-density option as described in this section and must meet the following requirements:

- (1) WS-IV watershed area—Critical area (WS-IV-CA). Where single-family residential development exceeds a density of one dwelling unit per 20,000 square feet on the overall project or other residential and nonresidential development exceeds 24 percent built-upon area, engineered stormwater controls must be used to control runoff from the first one inch of rainfall, and development cannot exceed 50 percent built-upon area.
- (2) WS-IV watershed area—Protected area (WS-IV-PA). Where single-family residential development exceeds a density of one dwelling unit per 20,000 square feet on the overall project, or one dwelling unit on 15,000 square feet on the overall project with public water or sewer where a curb and gutter system is not installed, or other residential and nonresidential development exceeds 24 percent built-upon area with curb and gutter installed, or 36 percent built-upon area for projects without a curb and gutter street system, engineered stormwater controls must be used to control the first one inch of rainfall, and development cannot exceed 70 percent built-upon area.
- (3) A minimum 100-foot wide buffer consistent with section 44-434.12 must be provided for all developments using the high-density option.

- (b) *High-density development permits and procedures.* Developers requesting to use the high-density development option must follow the application, review, public hearing and approval procedures as required by this chapter for planned developments along with the following procedures:



- (1) For all activities which are subject to this article, no person shall initiate, proceed or undertake any land-disturbing or development activity for which a permit is required without first being issued a written stormwater control permit. All other required applications must be received and permits must be obtained prior to the start of the work. These may include but are not limited to soil erosion and sedimentation control, flood damage prevention, subdivision, and building permits and inspections.
- (2) Approval or denial of the proposed stormwater plan shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal decisions of the planning director to the subdivision review board ("SRB") within 15 days after receipt of written notice of disapproval. Only the applicant can appeal the decision of the planning director. Hearings held pursuant to this section shall be conducted by the SRB within 30 days after the date of the appeal. The SRB shall decide appeals within 15 days after the date of the hearing on a stormwater plan. The SRB may uphold or overturn the decision of the planning director. If the SRB upholds the disapproval of a proposed plan, the applicant shall then be entitled to appeal the SRB's decision to the board of adjustment within 15 days of receipt of the SRB's decision. An appeal of the SRB decision pursuant to this section must conform with the provisions of section 44-329.
- (3) The planning director shall take action on revisions to a stormwater plan which has been previously denied within 15 days of receipt of the revised plan application.
- (4) If a revised application is not re-submitted within 60 days from the date the applicant was notified of the denial of the proposed stormwater plan, the application shall be considered withdrawn and a new submittal shall be required along with the appropriate fee and pursuant to the current standards.
- (5) Application for an amendment to a stormwater plan in written and graphic form may be made at any time. Until such time that any amendment is approved by the planning director, it shall be unlawful to deviate from the approved plan. Appeal from the decision of the planning director as to an application for amendment to a stormwater plan must be in accordance with the provisions of subsection (b)(2) of this section.
- (6) An approved plan shall become null and void if the applicant has failed to make progress on the site within 12 months after the date of approval. The stormwater administrator may grant a single, six-month extension of this time limit, for good cause shown, upon receiving written request from the applicant before the expiration of the approved plan. In granting an extension, the planning director 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.
- (7) The county may not approve a final plat or issue a building permit until:

- a. The stormwater control application has been approved by the planning director; and
  - b. Other conditions of preliminary subdivision plat approval are met related to construction of required infrastructure or an approved financial security is posted.
- (8) Upon completion of the required improvements, the registered professional must submit to the planning director as-built plans of the installed stormwater improvements or certify the existing plans as as-built if no changes have occurred. These plans must indicate that stormwater control measures were constructed in accordance with this section.
- (c) *SCM application, plan review, and inspection fees for high-density development.* Application, plan review, and inspection fees are required as follows:
- (1) Processing and inspection fees must be submitted in the form of a check or money order payable to the county. Applications will be returned and labeled incomplete if not accompanied by the following:
    - a. SCM application form;
    - b. Payment of the SCM application review fee;
    - c. Proposed site plan and SCM plan ("plans") with either written or graphic representations describing the SCM system in sufficient detail for review and any related easement documents;
    - d. SCM operation and maintenance manual;
    - e. SCM maintenance agreement as required below; and
    - f. Performance bond for construction of the SCM ("construction security") in accordance with the provisions of subsection (f) below.
  - (2) Before an application is deemed complete, the planning director or the applicant can request a consultation on a concept plan to discuss procedural steps, timing, or any post-construction SCM changes or modifications necessary for the project.
- (d) *Final SCM inspection, approval and recordation.* Upon completion of the SCM, but prior to a certificate of occupancy ("CO") being issued, the planning director must verify completion of the following:
- (1) Applicant shall provide a sealed set of as-built plans, executed maintenance and easement agreements, maintenance bond, and certification by a registered professional that the SCM has been constructed in accordance with the approved plans. The planning director may issue COs where multiple units are served by the SCM, in which case the planning director may elect to withhold a percentage of permits or COs until as-built plans are submitted and the final inspection and approval has occurred.
  - (2)



Following final inspection and approval of the SCM and final as-built plans, the final plat, if there were deviations from the original plat, maintenance agreement, easements and deed of conveyance of the SCM to the HOA (if applicable) must be recorded with the county register of deeds office.

- (3) Following final inspection and approval of the SCM and upon the posting and approval of a perpetual maintenance bond ("maintenance security") in accordance with the provisions of section (f) below, the construction security may be released.

(e) *Stormwater control measures.* Standards for SCMs are as follows:

- (1) All SCMs must be designed by a registered professional with qualifications appropriate for the type of system required.
- (2) All SCMs must comply with the provisions of section 15A NCAC 02H .1050 of the North Carolina Administrative Code, as amended, and meet the following design criteria:
  - a. Be designed to remove 85 percent of total suspended solids in runoff from a one-inch rainfall from the site above the permanent pool.
  - b. The discharge rate following the one-inch design storm must be such that the runoff draws down to the pre-storm stage within five days, but not less than two days; or
  - c. The post development peak discharge rate must equal the predevelopment rate for the one-year, 24-hour storm.
- (3) All land areas outside of the SCM must be provided with a ground cover sufficient to restrain erosion within 14 days after any land disturbance for flat lands and seven days after any land disturbance for slopes steeper than 3:1. Upon completion of the SCM, a permanent ground cover must be established and maintained as part of the maintenance agreement.
- (4) The area containing the SCM must be depicted on the final recorded plat filed in the office of the county register of deeds containing any easements necessary for general access to the SCM. The described area must include the SCM, vegetative filters, all pipes and water control structures, berms, and dikes. Maintenance access must have a minimum width of ten feet, not to include lateral or incline slopes that exceed 3:1 (horizontal to vertical), and extend to the nearest public right-of-way.
- (5) Qualifying areas of the SCM may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage of built-upon area for one site, it cannot be used to compute the built-upon area for any other site or area.

(f) *Posting of financial security and maintenance agreement.* Posting of financial security is required as follows:

- (1) All new SCMs must be conditioned on the posting of adequate financial security for the purpose of construction, maintenance, repair or reconstruction necessary for adequate performance of the SCM.

- a. *Construction security.* Financial security to ensure that the required SCMs are installed as required must be provided to the county so that, if these structures are not properly installed, the county may use the financial security to have such structures properly installed. The bond or other instrument must be in an amount equal to 1.25 times the total cost of constructing the SCM, as estimated by the applicant and approved by the planning director. The total cost of the SCM must include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation and fill. The costs cannot be prorated as part of a larger project, but are considered under the assumption of an independent mobilization.
  - b. *Maintenance security.* Financial security, to ensure that the required SCMs are properly maintained, must be provided to the county consistent with subsection (2) below so that, if these structures are not properly maintained, the county may use the financial security to have the structures properly maintained or repaired. The cash or security must be in an amount equal to 15 percent of the total cost of construction of the SCM, as defined in subsection (a) above, or the estimated cost of maintaining the SCM over a ten-year period, whichever is greater. The estimated cost of maintaining the SCM must be consistent with the approved operation and maintenance manual provided by the developer under subsection (g)(1) below.
- (2) *Financial security.* Financial security must be in the form of a certified check, a no-contest irrevocable bank letter of credit or a performance and payment bond underwritten by a state-licensed corporate surety company. Except for a certified check, such sureties cannot be accepted unless the county attorney has reviewed them and rendered a written opinion that the interests of the county are fully protected. The certified check must be deposited with the county manager, as escrow agent, who shall deposit the check in an interest-bearing escrow account of the county. The no-contest irrevocable bank letter of credit must be from a banking corporation licensed to do business in the state and having an office in the county. The terms of the letter must include the absolute right of the county manager to withdraw funds from the bank upon the county manager's certifying to the bank that the terms and conditions of the performance guarantee have been breached.
  - (3) *Default under the construction security.* Upon default of the applicant to complete the SCM as spelled out in the performance bond or other security, the county may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The county shall return any funds not spent in completing the required improvements to the owning entity. The county may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. The difference will be collected from the applicant.



*Default under the maintenance security.* Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the SCM in accordance with the maintenance agreement, the county must obtain and use all or any portion of the cash security to make the necessary improvements based on an engineering estimate. The expenditure of funds must be made after exhausting all other remedies seeking the owning entity to comply with the terms and conditions of the maintenance agreement. The county shall not return any of the deposited cash funds.

- (5) *Maintenance agreement.* The applicant must enter into a binding maintenance agreement between the county and all interested parties in the development. The agreement must require the owning entity to maintain, repair, or reconstruct the SCM in accordance with the operation and maintenance manual provided by the developer. The maintenance agreement must be referenced on the final plat and must be filed with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the maintenance agreement must be recorded with the county register of deeds and a copy provided to the planning director.

(g) *Maintenance and upkeep.* Maintenance and upkeep must be provided as follows:

- (1) An operation and maintenance manual must be provided by the developer for each SCM, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and, consistent with the maintenance agreement, who is responsible for those actions. The plan must clearly indicate the steps that will be taken for restoring an SCM to design specifications if a failure occurs.
- (2) Landscaping and grounds management must be the responsibility of the owning entity. However, vegetation must not be established or allowed to mature to the extent that the integrity of the SCM structure is diminished or threatened or to the extent of interfering with any easement or access to the SCM.
- (3) Except for general landscaping and grounds management, the owning entity must notify the planning department prior to any repair or reconstruction of the SCM. All improvements must be made consistent with the approved plans and specifications of the SCM and the operation and maintenance manual. After notification by the owning entity, the planning director shall have the completed improvements inspected and inform the owning entity of any required additions, changes or modifications and of the time period to complete the improvements. The planning director may consult with a registered professional.
- (4) Amendments to the plans and specifications of the SCM and/or operation and maintenance manual must be approved by the planning director. Proposed changes must be prepared by a registered professional and submitted to and reviewed by the planning director.

a.

If the planning director approves the proposed changes, the owning entity of the SCM must file sealed copies of the revisions with the planning department.

- b. If the planning director disapproves the changes, the proposal may be revised and resubmitted as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, the proposal will be returned to the applicant. Appeal from the decision of the planning director as to an application for amendment to a stormwater plan must be in accordance with the provisions of subsection (b)(2) of this section.
  - c. If the planning director finds that the operation and maintenance manual is inadequate for any reason, the planning director shall notify the owning entity of any required changes and prepare and file copies of the revised operation and maintenance manual with the planning department and the owning entity.
- (5) All SCMs will be inspected by a qualified inspector at least on an annual basis to determine whether the controls are performing as designed and intended. The costs of the inspections are the responsibility of the owning entity. Records of inspections shall be maintained on forms approved or supplied by the North Carolina Department of Environmental Quality (NCDEQ). Annual inspections will begin within one year of the filing date of the deed for the SCM.
- (6) If the county discovers the need for corrective action or improvements, the planning director shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements must be made consistent with the plans and specifications of the SCM and operation and maintenance manual. After notification by the owning entity, the planning director may consult with a registered professional.

(Ord. No. 2021-05, 6-21-2021; Ord. No. 2022-09, 5-16-2022)