



WINTERVILLE

A slice of the good life!

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MIKE WELDIN, BUILDING INSPECTOR/CODE ENFORCEMENT OFFICER

July 14, 2014



TOWN COUNCIL AGENDA

July 14, 2014

7:00 P.M.

WINTERVILLE TOWN HALL ASSEMBLY ROOM

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. WELCOME**
- V. APPROVAL OF AGENDA**
- VI. RECOGNITION**
- VII. INTRODUCTION OF NEW EMPLOYEES:**
- VIII. PRESENTATIONS –**
- IX. PUBLIC HEARINGS:**
 - 1. Phase II Stormwater Ordinance
- X. PUBLIC COMMENT:**

The Public Comment period of thirty minutes provides an opportunity for residents to comment on any item included in the agenda or to address the Town Council on any other matter related to the Town of Winterville. For an item included in the Public Hearing section of the agenda, residents should address the Council at the time the Mayor invites public comment on the item.

No public comment may be made to the Council during the meeting, except during the Public Comment period or as part of a Public Hearing. Individual speakers are limited to a maximum of three minutes, and no more than three speakers may address the Council on a single matter.

The Town Council may elect to take no action on the matter addressed by a speaker, may schedule the matter for further consideration at a future Council meeting, or may refer the matter to Town staff for disposition. Copies of the Town Public Comment Policy are available in the rear of the Assembly Room.

XI. CONSENT AGENDA:

The following items are considered routine in nature and will not be discussed by the Town Council unless a Councilman or citizen requests that an item be removed from the Consent Agenda for further discussion. The Mayor may allow citizens to address an item or ask questions.

1. Approval of Request from the Winterville Watermelon Festival Committee to Suspend the Winterville Park Hours Limitation for August 21, 2014 to August 23, 2014
2. Approval of Request from the Winterville Watermelon Festival Committee for Parade Permit and Exemption of Parade Permit Fee
3. Approval of Request from the Winterville Watermelon Festival Committee to Grant Exemption from the Noise Ordinance and the Noise Ordinance Administrative Fee
4. Approval of Request from the Winterville Watermelon Festival Committee to Limit the Use of the Parking Lot at the Winterville Recreation Park and Request a Change in the Traffic Patterns of Certain Streets from August 21, 2013 to August 23, 2014
5. Approval of Request from the Winterville Watermelon Festival Committee for the Placement of Signs and Banners on Town Property and Public Rights-of-Way
6. Approval of Request from the Winterville Watermelon Festival Committee for the usage of the Parks and Recreation Bathroom facilities from August 21, 2014 to August 23, 2014

XII. ITEMS REMOVED FROM THE CONSENT AGENDA

XIII. OLD BUSINESS:

1. Receive Clerk's Certificate of Sufficiency and adopt Resolution Fixing Date of Public Hearing on Question of Annexation Pursuant to G.S. 160A-58.2 – for annexation of proposed Bridlesong Park subdivision.

XIV. NEW BUSINESS:

1. GUC Water Agreement
2. Award of Contract to _____ for copier services
3. Dedication of the Town Streets to the Town of Winterville

XV. OTHER AGENDA ITEMS

XVI. ITEMS FOR FUTURE AGENDAS/FUTURE WORK SESSIONS

XVII. REPORTS FROM TOWN ATTORNEY, TOWN MANAGER, AND DEPARTMENT HEADS

XVIII. REPORTS FROM THE MAYOR AND TOWN COUNCIL

XIX. ANNOUNCEMENTS

- XX. CLOSED SESSION § 143 318.11(a) (5) To establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease; or (ii) the amount of compensation and other material terms of an employment contract or proposed employment contract (4799 and 4801 Reedy Branch Road)**

XXI. ADJOURN

SPECIAL NOTICE: Anyone who needs an interpreter or special accommodations to participate in the meeting should notify the Town Clerk, Jasman Smith at 215-2340, ext. 2344 at least forty-eight (48) hours prior to the meeting. (Americans with Disabilities Act (ADA) 1991.)



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Public Hearings

Meeting Date: July 8, 2014

Presenter: Travis Welborn, Public Works
Director

Item to be Considered

Subject: Town of Winterville Phase II Stormwater Ordinance

Action Requested: Adoption of Phase II Stormwater Ordinance

Attachments: Proposed Ordinance, NPDES General Permit & Requirements

Prepared By: Travis Welborn, Public Works Director

Date: 6/20/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD _____

TM tlp – 7/9/2014

Final tlp – 7/9/2014

Supporting Documentation

In order to comply with the regulations adopted by the North Carolina Environmental Management Commission and the Federal Water Pollution Control Act the Town of Winterville was issued a general permit under the National Pollutant Discharge Elimination System (NPDES) to discharge stormwater. The permit requires the Town to adopt and implement a Stormwater Management Plan. As part of that plan, the Town is required to implement an "Illicit Discharge Detection and Elimination Program" and "Post Construction Stormwater Management Program." This proposed Phase II Stormwater Ordinance will address these two portions of the required Stormwater Management Plan and help the Town satisfy the requirements of its NPDES MS4 permit.

Budgetary Impact: Stormwater Permit review fee will be used to offset cost of consulting Engineer's review of proposed projects. Proposed fee of \$500.

Recommendation: Staff recommends adoption of Phase II Stormwater Ordinance

STATE OF NORTH CAROLINA
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
DIVISION OF WATER QUALITY

GENERAL PERMIT NO. NCG230000

TO DISCHARGE STORMWATER IN THE EIGHTY NON-COASTAL COUNTIES UNDER
THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the regulations promulgated and adopted by the North Carolina Environmental Management Commission, and the Federal Water Pollution Control Act, as amended, this permit is hereby issued to owners or operators of small municipal separate storm sewer systems located in the eighty non-coastal counties, hereafter permittees, which are covered by this permit as evidenced by receipt of a Certificate of Coverage from the Environmental Management Commission to allow the discharge of stormwater to the surface waters of North Carolina via a small municipal separate storm sewer system in accordance with the terms and conditions set forth herein.

The General Permit becomes effective on June 1, 2005.

The General Permit expires at midnight on May 31, 2010.

Signed this day May 18, 2005.

Original signed by Alan Klimek

Alan Klimek, P.E., Director

Division of Water Quality

By the authority of the Environmental Management Commission

TABLE OF CONTENTS

PART I	PERMIT COVERAGE
PART II	REQUIREMENTS FOR PERMITTED DISCHARGES
SECTION A:	STORMWATER MANAGEMENT PLAN IMPLEMENTATION
SECTION B:	PUBLIC EDUCATION AND OUTREACH PROGRAM
SECTION C:	PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM
SECTION D:	ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM
SECTION E:	CONSTRUCTION SITE RUNOFF CONTROL PROGRAM
SECTION F:	POST-CONSTRUCTION STORMWATER MANAGEMENT PROGRAM
SECTION G:	POLLUTION PREVENTION AND GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS PROGRAM
PART III	STORMWATER MANAGEMENT PLAN ASSESSMENT AND PERMIT COMPLIANCE ASSESSMENT
PART IV	REPORTING AND RECORD KEEPING REQUIREMENTS
PART V	STANDARD CONDITIONS
SECTION A:	COMPLIANCE AND LIABILITY
SECTION B:	OPERATION AND MAINTENANCE OF POLLUTION CONTROLS
SECTION C:	MONITORING AND RECORDS
PART VI	LIMITATIONS REOPENER
PART VII	ADMINISTERING AND COMPLIANCE MONITORING FEE REQUIREMENTS
PART VIII	DEFINITIONS

PART I PERMIT COVERAGE

1. During the period beginning on the effective date of the Certificate of Coverage and lasting until expiration of the General Permit, the permittee is authorized to discharge stormwater from a small municipal separate storm sewer system (MS4) to the surface waters of North Carolina.
2. The permittee shall manage all discharges authorized hereby in accordance with the terms and conditions of this General Permit, in accordance with the permittee's approved Stormwater Management Plan, in accordance with any approved modifications to the Stormwater Management Plan, and in accordance with any provisions made by the Director. The permittee's approved Stormwater Management Plan and any subsequent approved modifications are enforceable under this permit.
3. Coverage under this General Permit does not relieve the permittee from responsibility for compliance with any other applicable federal, state, or local law, rule, standard, ordinance, order, judgment, or decree. In any circumstance where any stormwater control requirement under this General Permit conflicts or overlaps with any stormwater control requirement under any other water quality program, the most stringent requirement shall apply. The Director or his designee shall resolve any dispute as to whether there is a conflict or overlap, and shall determine which requirement shall be deemed the most stringent.
4. This General Permit applies to current and future jurisdictional areas of the permittee.
5. This General Permit is not available to the following regulated entities:
 - (a) Regulated entities with MS4s currently subject to an approved TMDL (Permittees that become subject to an approved TMDL while covered under this General Permit shall apply for an individual permit within one year of receipt of notice from DWQ of the approved TMDL.);
 - (b) Regulated entities located in the twenty coastal counties;
 - (c) Regulated entities with MS4s serving greater than 16,500 population;
 - (d) Regulated entities seeking permit coverage combined with another regulated entity;
 - (e) Regulated entities relying on a DLR delegated (municipal or county) program to meet the requirement to reduce the pollutants in stormwater runoff from construction activities.
6. Any other point source discharge to surface waters of the state is prohibited unless it is:
 - (a) permitted by, and in compliance with, another NPDES discharge permit; or

- (b) determined to be incidental non-stormwater discharges as defined in Part VIII of this General Permit. The Director may require that non-stormwater flows of this type be controlled by the permittee.
7. The permit requires the development and proper implementation of the Stormwater Management Plan. The purpose of the Stormwater Management Plan is to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the applicable water quality requirements of the Clean Water Act. Implementation of best management practices consistent with the provisions of the Stormwater Management Plan constitutes compliance with the standard of reducing pollutants to the maximum extent practicable. Successive iterations of the Stormwater Management Plan and other components of this permit will be driven by the objective of assuring that discharges do not cause or contribute to the violation of water quality standards, through the expansion and tailoring of management measures within the scope of the Stormwater Management Plan.

PART II REQUIREMENTS FOR PERMITTED DISCHARGES

SECTION A: STORMWATER MANAGEMENT PLAN IMPLEMENTATION

1. The permittee shall develop and maintain adequate legal authorities to implement all parts of this permit, including the approved Stormwater Management Plan. The permittee shall keep the Director advised of the status of development of the necessary legal authorities and shall pursue these in accordance with the schedules established in the Stormwater Management Plan.
2. The permittee shall maintain adequate funding and staffing to implement and manage all provisions of the Stormwater Management Plan.
3. Provisions of the permittee's Stormwater Management Plan which may be found to conflict with the requirements of Session Law 2004-163, or the Stormwater Management Rule, or 40 Code of Federal Regulations 122.30 and following, will be subsequently amended to comply with the law and regulations.
4. The permittee shall develop, implement, and enforce the Stormwater Management Plan such that the discharge of pollutants from the MS4 is reduced to the maximum extent practicable. The permittee shall implement the Stormwater Management Plan with emphasis given to priority areas and to management measures and programs that are most effective and efficient at the several stages of the plan's implementation.
5. The permittee shall implement public education and outreach, and public involvement programs to comply with the requirements of, and to support the objectives of, this stormwater discharge General Permit and the approved Stormwater Management Plan.
6. The permittee shall implement the pertinent components of the approved Stormwater Management Plan to assure that illicit discharges, spills, and illegal dumping into the MS4 are detected and eliminated.
7. In accordance with the provisions of the approved Stormwater Management Plan, the permittee shall develop, implement, and enforce a program to reduce pollution from construction site runoff.
8. In accordance with the provisions of the approved Stormwater Management Plan, the permittee shall implement a post-construction stormwater management program to regulate stormwater runoff from new development and redevelopment by requiring structural and non-structural best management practices to prevent or minimize post-development impacts to water quality. The program must manage stormwater and protect water quality. This program shall include provisions for long-term operation and maintenance of structural BMPs.

9. In accordance with the provisions of the approved Stormwater Management Plan, the permittee shall develop and implement a program for the evaluation, operation, and maintenance of municipal facilities to reduce the potential for stormwater pollution.
10. The permittee shall monitor and assess the performance of the various management programs and management measures as identified in the permittee's approved Stormwater Management Plan on an annual basis.
11. Proposed modifications to the Stormwater Management Plan, including proposed modifications to the schedules contained therein, must be submitted to the Director for approval.

SECTION B: PUBLIC EDUCATION AND OUTREACH PROGRAM

1. Objectives for Public Education and Outreach Program

- (a) Raise public awareness on the causes and impacts of stormwater pollution.
- (b) Inform the public on steps they can take to reduce or prevent stormwater pollution.

2. BMPs for the Public Education and Outreach Program

The permittee shall implement the following BMPs to meet the objectives of the Public Education and Outreach Program.

BMP	Measurable Goals
(a) Establish a Public Education and Outreach Program	Develop a public education program and implement within 12 months of the Certificate of Coverage issue date. Instead of developing its own materials, the permittee may rely on state-supplied Public Education and Outreach materials, as available, when implementing its program. Incorporate outreach elements for significant minority and disadvantaged communities.
(b) Distribute targeted public education materials	Develop and distribute stormwater educational materials targeting select groups such as school children, households, builders and developers, and businesses likely to have a significant stormwater impact. Identify steps that each targeted group can take to reduce stormwater pollution.
(c) Distribute general public stormwater pollution education materials	Distribute written educational material to a wider public audience. For example, through utility mail outs, or at special civic events, or broadcast spots, or at high traffic businesses.

SECTION C: PUBLIC INVOLVEMENT AND PARTICIPATION PROGRAM

1. Objectives for the Public Involvement and Participation Program

- (a) Provide opportunities for the public to participate in program development, implementation, and review.
- (b) Reach out and engage major economic and ethnic groups.
- (c) Comply with applicable state and local public notice requirements.

2. BMPs for the Public Involvement and Participation Program

The permittee shall implement the following BMPs to meet the objectives of the Public Involvement and Participation Program.

BMP	Measurable Goals
(a) Administer a Public Involvement Program	Establish a Public Involvement Program. Conduct at least one public meeting to allow the public an opportunity to review and comment on the stormwater management program. Comply with state and local requirements for public notice. Make specific provisions to reach out and engage all economic and significant ethnic groups.
(b) Organize a volunteer community involvement program	Organize and implement annually a volunteer stormwater related program designed to promote ongoing citizen participation.

SECTION D: ILLICIT DISCHARGE DETECTION AND ELIMINATION PROGRAM

1. Objectives for the Illicit Discharge Detection and Elimination Program

- (a) Detect and eliminate illicit discharges, including spills and illegal dumping.
- (b) Address significant contributors of pollutants to the MS4. The permittee may require specific controls for a category of discharges, or prohibit that discharge completely, if one or more of these categories of sources are identified as a significant contributor of pollutants to the MS4.

2. BMPs for the Illicit Discharge Detection and Elimination Program

The permittee shall implement the following BMPs to meet the objectives of the Illicit Discharge Detection and Elimination Program.

BMP	Measurable Goals
(a) Develop and implement an Illicit Discharge Detection and Elimination Program	Develop and implement an Illicit Discharge Detection and Elimination Program. Include provisions for program assessment and evaluation.
(b) Establish and maintain appropriate legal authorities	Establish and maintain adequate legal authorities to prohibit illicit discharges and enforce an approved Illicit Discharge Detection and Elimination Program.
(c) Develop a storm sewer system map	Complete the identification of, locations of, and mapping of stormwater drainage system components. At a minimum, mapping components must include outfalls and receiving streams.
(d) Implement illicit discharge detection procedures	Implement an inspection program to detect dry weather flows at system outfalls. Establish procedures for tracing the sources of illicit discharges and for removing the sources. Develop procedures for identification of priority areas likely to have illicit discharges. Address incidental non-stormwater discharges if they are significant contributors of pollutants to the MS4.
(e) Conduct employee cross-training	Conduct training for selected municipal staff on detecting and reporting illicit discharges.
(f) Provide public education	Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.
(g) Establish a public reporting mechanism	Establish and publicize a reporting mechanism for the public to report illicit discharges.

SECTION E: CONSTRUCTION SITE RUNOFF CONTROL PROGRAM

1. Objective for the Construction Site Runoff Control Program

Reduce the pollutants in stormwater runoff from construction activities disturbing one or more acres of land surface and those activities less than one acre that are part of a larger common plan of development.

2. BMPs for the Construction Site Runoff Control Program

The permittee shall implement the following BMP to meet the objective of the Construction Site Runoff Control Program.

BMP	Measurable Goals
(a) Implement a program and establish a regulatory mechanism for erosion and sediment control at construction sites	The permittee shall rely exclusively on the NCDENR Division of Land Resources (DLR) Erosion and Sediment Control Program and the requirements of the active NCG010000, the General Permit to Discharge Stormwater Under the National Pollutant Discharge Elimination System associated with construction activities, as administered exclusively by the DLR.

SECTION F: POST-CONSTRUCTION STORMWATER MANAGEMENT PROGRAM

1. Objectives for the Post-Construction Stormwater Management Program

- (a) Manage stormwater runoff from new development projects and redevelopment projects that disturb an acre or more of land, including projects less than an acre that are part of a larger common plan of development or sale.
- (b) Protect water quality.
- (c) Ensure long term operation and maintenance of BMPs.

2. BMPs for the Post-Construction Stormwater Management Program

The permittee shall implement the following BMPs to meet the objectives of the Post-Construction Stormwater Management Program.

BMP	Measurable Goals
(a) Establish a Post-Construction Stormwater Management Program	Develop, adopt by ordinance (or similar regulatory mechanism), implement, and enforce a program to address stormwater runoff from new development and redevelopment. The ordinance must be reviewed and approved by the Director prior to implementation. Ensure that controls are in place to prevent or minimize water quality impacts. This BMP shall be implemented in accordance with the schedule in the Certificate of Coverage.
(b) Establish strategies which include BMPs appropriate for the MS4	Develop and implement strategies that include a combination of structural and/or non-structural BMPs. Ensure adequate long-term operation and maintenance of structural BMPs. Require annual inspection reports of permitted structural BMPs performed by a qualified professional.
(c) Establish a program to control the sources of fecal coliform to the maximum extent practicable	Control the sources of fecal coliform to the maximum extent practicable. Develop and implement an oversight program to ensure proper operation and maintenance of on-site wastewater treatment systems for domestic wastewater. The permittee shall coordinate this program with the county health department.
(d) Establish trout waters (Tr) protection measures (for programs with development or redevelopment draining to Tr waters)	Develop, adopt, and implement an ordinance (or similar regulatory mechanism) to ensure that the best management practices selected do not result in a sustained increase in the receiving water temperature.
(e) Establish nutrient sensitive waters (NSW) protection measures (for programs with development or redevelopment draining to NSW waters)	Develop, adopt, and implement an ordinance (or similar regulatory mechanism) to ensure that the best management practice for reducing nutrient loading is selected. In areas where the Environmental Management Commission has approved a Nutrient Sensitive Water Urban Stormwater Management Program, the provisions of that program fulfill the nutrient loading reduction requirement. Develop and include a nutrient application (fertilizer and organic nutrients) management program in the Post-construction Stormwater Management Program.

3. Post-construction Stormwater Management Program measures

- (a) Those areas within the jurisdictional area of the permittee that are already subject to the existing state stormwater management programs listed herein are deemed compliant with the post-construction stormwater management model practices identified in (b) below. The listed programs are: the Water Supply Watershed protection programs for WS-I – WS-IV waters, the HQW and ORW waters management strategies, the Neuse River Basin Nutrient Sensitive Waters Management Strategy, the Tar-Pamlico River Basin Nutrient Sensitive Waters Management Strategy, and the Randleman Lake Water Supply Watershed program.
- (b) Model Practices. For those areas within the jurisdictional area of the permittee that are not subject to the post-construction stormwater management provisions of one of the existing state stormwater management programs listed in (a) above, the permittee shall implement the following model practices.
 - (i) The permittee may issue a local stormwater management permit to a development or redevelopment project as either a low density project or a high density project.
 - (ii) A project may be permitted as a low density project if it meets the following criteria:
 - (A) No more than two dwelling units per acre or 24% built-upon area;
 - (B) Use of vegetated conveyances to the maximum extent practicable;
 - (C) All built-upon areas are at least 30 feet landward of perennial and intermittent surface waters; and,
 - (D) Deed restrictions and protective covenants are required by the locally issued permit and incorporated by the development to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans.
 - (iii) A project not consistent with the requirements for a low density project may be permitted as a high density project if it meets the following requirements:
 - (A) The stormwater control measures must control and treat the difference between the pre-development and post-development conditions for the 1-year 24-hour storm. Runoff volume drawdown time must be a minimum of 24 hours, but not more than 120 hours;
 - (B) All structural stormwater treatment systems must be designed to achieve 85% average annual removal of total suspended solids;
 - (C) Stormwater management measures must comply with the General Engineering Design Criteria For All Projects requirements listed in 15A NCAC 2H .1008(c);
 - (D) All built-upon areas are at least 30 feet landward of perennial and intermittent surface waters; and,

- (E) Deed restrictions and protective covenants are required by the locally issued permit and incorporated by the development to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans.

SECTION G: POLLUTION PREVENTION AND GOOD HOUSEKEEPING FOR MUNICIPAL OPERATIONS PROGRAM

1. Objective for the Pollution Prevention and Good Housekeeping for Municipal Operations Program

Prevent or reduce stormwater pollution from municipal operations.

2. BMPs for the Pollution Prevention and Good Housekeeping for Municipal Operations Program

The permittee shall implement the following BMPs to meet the objectives of the Pollution Prevention and Good Housekeeping for Municipal Operations Program.

BMP	Measurable Goals
(a) Develop an operation and maintenance program	Develop an operation and maintenance program that has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.
(b) Inspection and evaluation of municipal facilities and operations	Develop an inventory of all facilities and operations owned and operated by the permittee with the potential for generating polluted stormwater runoff. Specifically inspect the stormwater system, the potential sources of polluted runoff, the stormwater controls, and the conveyance systems. Evaluate the sources, document deficiencies, plan corrective actions, and document the accomplishment of corrective actions.
(c) Conduct staff training	Conduct staff training specific for stormwater pollution prevention and good housekeeping procedures.
(d) Review of regulated industrial activities	Conduct an annual review of the industrial activities owned or operated by the permittee that hold a Phase I NPDES stormwater permit. Specifically review the following aspects: the Stormwater Pollution Prevention Plan where one is required, the timeliness of any monitoring reports required by the Phase I permit, and the results of inspections and subsequent follow-up actions at the facilities.

PART III STORMWATER MANAGEMENT PLAN ASSESSMENT AND PERMIT COMPLIANCE ASSESSMENT

1. Implementation of the Stormwater Management Plan shall include documentation of all program components that are being undertaken including, but not limited to, inspections, maintenance activities, educational programs, implementation of BMPs, and enforcement actions. Documentation shall be kept on-file by the permittee for a period of five years and made available to the Director or his authorized representative immediately upon request.

2. The permittee's Stormwater Management Plan shall be reviewed and updated as necessary, but at least on an annual basis. The permittee shall submit a report of this evaluation and monitoring information to the Director. This information shall be submitted each year, within 30 days after the anniversary of the effective date of the permittee's Certificate of Coverage, and it shall cover the previous year's activities as defined by each succeeding anniversary of the Certificate of Coverage effective date. The permittee's reporting shall include appropriate information to accurately describe the progress, status, and results of the Stormwater Management Plan and shall include, as a minimum, the following components:
 - (a) A detailed description of the status of implementation of the Stormwater Management Plan. This shall include information on the development and implementation of all components of the Stormwater Management Plan for the past year and schedules and plans for the year following each report.

 - (b) A description and justification for any proposed changes to the Stormwater Management Plan. This shall include descriptions and supporting information for the proposed changes and how these changes will affect the Stormwater Management Plan (results, effectiveness, implementation schedule, etc.).

 - (c) Documentation of any necessary changes to the programs or the practices for assessment of the management measures implemented through the Stormwater Management Plan. In addition, any changes in the cost of, or funding for, the Stormwater Management Plan shall be documented.

 - (d) A summary of data accumulated as part of the Stormwater Management Plan throughout the year along with an assessment of what the data indicates in light of the Stormwater Management Plan.

 - (e) Information on the annual expenditures and budget anticipated for the year following each report along with an assessment of the continued financial support for the overall Stormwater Management Plan.

 - (f) A summary of activities undertaken as part of the Stormwater Management Plan throughout the year. This summary shall include, but is not limited to, information on the establishment of appropriate legal authorities, project assessments, inspections, enforcement actions, continued inventory and review of the storm sewer system, public education, training, and results of the illicit discharge detection and elimination program.

3. The Director may notify the permittee when the permittee does not meet one or more of the requirements of this permit. Within 30 days of such notice, the permittee shall submit a plan and time schedule to the Director for meeting the permit requirements. The Director may approve the corrective action plan, approve a plan with modifications, or reject the proposed plan. The permittee shall provide certification in writing (in accordance with Part IV, Paragraph 2) to the Director that the changes have been made. Nothing in this paragraph shall be construed to limit the Director's ability to conduct enforcement actions for violations of this permit.

4. The Director may request additional reporting information as necessary to assess the permittee's compliance with this permit, including compliance with the elements of the permittee's Stormwater Management Plan.

PART IV REPORTING AND RECORD KEEPING REQUIREMENTS

1. Records

The permittee shall retain records of all information required by this permit for a period of at least 5 years from the date of acquisition. This period may be extended by request of the Director at any time prior to the end of the five-year period.

2. Report Submittals

(a) Duplicate signed copies of all reports required herein, shall be submitted to the following address:

Division of Water Quality
 Surface Water Protection Section
 Stormwater Permitting Unit
 1617 Mail Service Center
 Raleigh, North Carolina 27699-1617

(b) All applications, reports, or information submitted to DWQ shall be signed by a principal executive officer, ranking elected official, or duly authorized representative. A person is a duly authorized representative only if:

- (i) The authorization is made in writing by a principal executive officer or ranking elected official;
- (ii) The authorization specified either an individual or a position having responsibility for the overall operation of a regulated facility or activity or an individual or position having overall responsibility for environmental/stormwater matters; and
- (iii) The written authorization is submitted to the Director.

(c) Any person signing a document under paragraphs (a) or (b) of this section shall make the following certification:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

3. Recording Results

For each activity performed or information collected pursuant to the requirements of this permit, the permittee shall record the following information:

- (a) The dates, exact place, and time of activity or information collected;
- (b) The individual(s) who performed the activity;
- (c) The techniques or methods used; and
- (d) The results of such activity or information collected.

4. Twenty-four Hour Reporting

The permittee shall report to the DWQ central office or the appropriate regional office any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances.

The written submission shall contain a description of the noncompliance, and its causes; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time compliance is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The Director may waive the written report on a case-by-case basis if the oral report has been received within 24 hours.

5. Annual Reporting

The permittee shall submit reporting and program monitoring information on an annual basis, concurrent with the annual assessment of the Stormwater Management Plan.

6. Additional Reporting

The Director may request reporting information on a more frequent basis as deemed necessary either for specific portions of the permittee's Stormwater Management Plan, or for the entire Plan.

7. Other Information

Where the permittee becomes aware that it failed to submit any relevant facts in applying to be covered under this permit or in any report to the Director, it shall promptly submit such facts or information.

PART V STANDARD CONDITIONS

SECTION A: COMPLIANCE AND LIABILITY

1. Duty to Comply

The permittee shall comply with all conditions of this general permit. Any general permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for certificate of coverage termination, revocation, re-issuance, or modification; or denial of general permit coverage upon renewal application.

- (a) The permittee shall comply with standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the general permit has not yet been modified to incorporate the requirement.
- (b) The Clean Water Act provides that any person who violates a permit condition is subject to a civil penalty not to exceed the maximum amounts authorized by Section 309(d) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$27,500 per day for each violation). Any person who negligently violates any permit condition is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment for not more than 1 year, or both. Any person who knowingly violates permit conditions is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. Also, any person who violates a permit condition may be assessed an administrative penalty not to exceed \$11,000 per violation with the maximum amount not to exceed \$137,500. [Ref: Section 309 of the Federal Act 33 USC 1319 and 40 CFR 122.41(a).]
- (c) Under state law, a daily civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation may be assessed against any person who violates or fails to act in accordance with the terms, conditions, or requirements of a permit. [Ref: North Carolina General Statutes 143-215.6A]
- (d) Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Pursuant to 40 CFR Part 19 and the Act, administrative penalties for Class I violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(A) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently \$11,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$27,500). Pursuant to 40 CFR Part 19 and the Act, penalties for Class II violations are not to exceed the maximum amounts authorized by Section 309(g)(2)(B) of the Act and the Federal Civil Penalties Inflation Adjustment Act (28 U.S.C. §2461 note) as amended by the Debt Collection Improvement Act (31 U.S.C. §3701 note) (currently

\$11,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$137,500).

2. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

3. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from any responsibilities, liabilities, or penalties for noncompliance pursuant to NCGS 143-215.3, 143-215.6A, 143-215.6B, 143-215.6C or Section 309 of the Federal Act, 33 USC 1319. Furthermore, the permittee is responsible for consequential damages, such as fish kills, even though the responsibility for effective compliance may be temporarily suspended.

4. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under NCGS 143-215.75 et seq. or Section 311 of the Federal Act, 33 USC 1321.

5. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws or regulations.

6. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

7. Duty to Provide Information

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the coverage issued pursuant to this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required by this permit.

8. Penalties for Tampering

The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

9. Penalties for Falsification of Reports

The Clean Water Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two years per violation, or by both.

10. Permit Actions

Coverage under this permit may be modified, revoked and reissued, or terminated for cause. The notification of planned changes or anticipated noncompliance does not stay any permit condition.

SECTION B: OPERATION AND MAINTENANCE OF POLLUTION CONTROLS

1. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are owned and/or operated by the permittee to achieve compliance with the conditions of this permit.

2. Need to Halt or Reduce not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the condition of this permit.

SECTION C: MONITORING AND RECORDS

1. Representative Sampling

When required herein, stormwater samples collected and measurements taken shall be characteristic of the volume and nature of the permitted discharge. Analytical stormwater sampling shall be performed during a representative storm event. These samples shall be

taken on a day and time that is characteristic of the discharge. Where appropriate, all stormwater samples shall be taken before the discharge joins or is diluted by any other waste stream, body of water, or substance. When specified herein, monitoring points established in this permit shall not be changed without notification to and approval of the Director.

2. Flow Measurements

Where required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be selected and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges.

3. Test Procedures

Test procedures for the analysis of pollutants shall conform to the EMC regulations published pursuant to NCGS 143-215.63 et. seq, the Water and Air Quality Reporting Acts, and to regulations published pursuant to Section 304(g), 33 USC 1314, of the Federal Water Pollution Control Act, as Amended, and Regulation 40 CFR 136.

To meet the intent of any monitoring required by this permit, all test procedures must produce minimum detection and reporting levels and all data generated must be reported down to the minimum detection or lower reporting level of the procedure.

4. Inspection and Entry

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Director), or in the case of a facility which discharges through a MS4, an authorized representative of a municipal operator of the MS4 receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to;

- (a) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (d) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

5. Availability of Reports

Except for data determined to be confidential under NCGS 143-215.3(a)(2) or Section 308 of the Federal Act, 33 USC 1318, all reports prepared in accordance with the terms of this

permit shall be available for public inspection at the offices of the Division of Water Quality. As required by the Act, analytical data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in NCGS 143-215.6B or in Section 309 of the Federal Act.

PART VI LIMITATIONS REOPENER

The issuance of this permit does not prohibit the Director from reopening and modifying the permit, revoking and reissuing the permit, or terminating the permit as allowed by the laws, rules, and regulations contained in Title 40, Code of Federal Regulations, Parts 122 and 123; Title 15A of the North Carolina Administrative Code, Subchapter 2H .0100; and North Carolina General Statute 143-215.1 et. al.

PART VII ADMINISTERING AND COMPLIANCE MONITORING FEE REQUIREMENTS

The permittee shall pay the administering and compliance monitoring fee within 30 (thirty) days after being billed by the Division. Failure to pay the fee in a timely manner in accordance with 15A NCAC 2H .0105(b)(4) may cause the Director to initiate action to revoke coverage under the permit.

PART VIII DEFINITIONS

1. Act
See Clean Water Act.
2. Best Management Practice (BMP)
Measures or practices used to reduce the amount of pollution entering surface waters. BMPs can be structural or non-structural and may take the form of a process, activity, physical structure or planning (see non-structural BMP).
3. Built-upon Area
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.
4. Clean Water Act
The Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), as amended, 33 USC 1251, et. seq.
5. Common Plan of Development
A construction or land disturbing activity is part of a larger common plan of development if it is completed in one or more of the following ways:
 - (a) In separate stages
 - (b) In separate phases
 - (c) In combination with other construction activities.

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

6. Department
Department means the North Carolina Department of Environment and Natural Resources.
7. Division (DWQ)
The Division of Water Quality, Department of Environment and Natural Resources.
8. Director
The Director of the Division of Water Quality, the permit issuing authority.
9. EMC
The North Carolina Environmental Management Commission.
10. Grab Sample
An individual sample collected instantaneously. Grab samples that will be directly analyzed or qualitatively monitored must be taken within the first 30 minutes of discharge.
11. Hazardous Substance
Any substance designated in 40 CFR Part 116 pursuant to Section 311 of the Clean Water Act.
12. Illicit Discharge
Any discharge to a MS4 that is not composed entirely of stormwater except discharges pursuant to an NPDES permit (other than the NPDES MS4 permit), allowable non-stormwater discharges, and discharges resulting from fire-fighting activities.
13. Industrial Activity
For the purposes of this permit, industrial activities shall mean all industrial activities as defined in 40 CFR 122.26.
14. Municipal Separate Storm Sewer System (MS4)
Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):
 - (i) Owned or operated by the United States, a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved

management agency under Section 208 of the Clean Water Act (CWA) that discharges to waters of the United States or waters of the State;

- (ii) Designed or used for collecting or conveying stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2.

15. Non-stormwater Discharge Categories

The following are categories of non-stormwater discharges that the permittee must address if it identifies them as significant contributors of pollutants to the storm sewer system: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration, [as defined in 40 CFR 35.2005(20)], uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the definition of illicit discharge and only need to be addressed where they are identified as significant sources of pollutants to waters of the United States).

16. Non-structural BMP

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

17. Outfall

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

18. Permittee

The owner or operator issued this permit.

19. Point Source Discharge of Stormwater

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

20. Redevelopment
Any rebuilding activity 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.
21. Representative Storm Event
A storm event that measures greater than 0.1 inches of rainfall and that is preceded by at least 72 hours in which no storm event measuring greater than 0.1 inches has occurred. A single storm event may contain up to 10 consecutive hours of no precipitation. For example, if it rains for 2 hours without producing any collectable discharge, and then stops, a sample may be collected if a rain producing a discharge begins again within the next 10 hours.
22. Stormwater Runoff
The flow of water which results from precipitation and which occurs immediately following rainfall or as a result of snowmelt.
23. Total Maximum Daily Load (TMDL)
A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Section 303 of the Clean Water Act establishes the water quality standards and TMDL program.
24. Toxic Pollutant
Any pollutant listed as toxic under Section 307(a)(1) of the Clean Water Act.

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Phase II Stormwater Ordinance

Town of Winterville, Pitt County, NC

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Table of Contents

Phase II Stormwater Ordinance 1

SECTION 1: GENERAL PROVISIONS..... 87

xx-101 Title 87

xx-102 Authority 87

xx-103 Findings 87

xx-104 Purpose 87

 (A) **General** 87

 (B) **Specific** 98

xx-105 Applicability and Jurisdiction 108

 (A) **General** 108

 (B) **Exemptions** 109

 (C) **No Development or Redevelopment Until Compliance and Permit**..... 109

 (D) **Map**..... 109

xx-106 Interpretation 119

 (A) **Meaning and Intent**..... 119

 (B) **Text Controls in Event of Conflict** 1110

 (C) **Authority for Interpretation**..... 1110

 (D) **References to Statutes, Regulations, and Documents** 1110

 (E) **Computation of Time**..... 1110

 (F) **Delegation of Authority** 1110

 (G) **Usage** 1210

 (1) **Mandatory and Discretionary Terms** 1210

 (2) **Conjunctions** 1210

 (3) **Tense, Plurals, and Gender** 1211

 (H) **Measurement and Computation**..... 1211

xx-107 Design Manual..... 1211

 (A) **Reference to Design Manual**..... 1211

 (B) **Relationship of Design Manual to Other Laws and Regulations** 1211

 (C) **Changes to Standards and Specifications** 1311

xx-108 Relationship to Other Laws, Regulations and Private Agreements 1312

 (A) **Conflict of Laws** 1312

 (B) **Private Agreements**..... 1312

<i>xx-109</i>	<i>Severability</i>	<u>1312</u>
<i>xx-110</i>	<i>Effective Date and Transitional Provisions</i>	<u>1312</u>
	(A) Effective Date	<u>1312</u>
	(B) Final Approvals, Complete Applications	<u>1312</u>
	(C) Violations Continue	<u>1413</u>
	SECTION 2: ADMINISTRATION AND PROCEDURES	<u>1514</u>
<i>xx-201</i>	<i>Review and Decision-Making Entities</i>	<u>1514</u>
	(A) Stormwater Administrator	<u>1514</u>
	(1) Designation	<u>1514</u>
	(2) Powers and Duties.....	<u>1514</u>
<i>xx-202</i>	<i>Review Procedures</i>	<u>1514</u>
	(A) Permit Required; Must Apply for Permit	<u>1514</u>
	(B) Effect of Permit	<u>1615</u>
	(C) Authority to File Applications	<u>1615</u>
	(D) Establishment of Application Requirements, Schedule, and Fees	<u>1615</u>
	(1) Application Contents and Form	<u>1615</u>
	(2) Submission Schedule	<u>1615</u>
	(3) Permit Review Fees	<u>1615</u>
	(4) Administrative Manual	<u>1615</u>
	(E) Submittal of Complete Application	<u>1716</u>
	(F) Review	<u>1716</u>
	(1) Approval	<u>1716</u>
	(2) Fails to Comply.....	<u>1716</u>
	(3) Revision and Subsequent Review	<u>1716</u>
<i>xx-203</i>	<i>Applications for Approval</i>	<u>1817</u>
	(A) Concept Plan and Consultation Meeting	<u>1817</u>
	(1) Existing Conditions / Proposed Site Plans	<u>1817</u>
	(2) Natural Resources Inventory	<u>1817</u>
	(3) Stormwater Management System Concept Plan.....	<u>1817</u>
	(B) Stormwater Management Permit Application	<u>1918</u>
	(C) As-Built Plans and Final Approval	<u>1918</u>
	(D) Other Permits	<u>1918</u>
<i>xx-204</i>	<i>Approvals</i>	<u>1918</u>
	(A) Effect of Approval	<u>1918</u>
	(B) Time Limit/Expiration	<u>2019</u>
<i>xx-205</i>	<i>Appeals</i>	<u>2019</u>

(A)	Right of Appeal	<u>2019</u>
	SECTION 3: STANDARDS	<u>2120</u>
xx-301	General Standards	<u>2120</u>
xx-302	Development Standards for Low-Density Projects	<u>2120</u>
xx-303	Development standards for High-Density Projects	<u>2120</u>
xx-304	Comprehensive Watershed Plan	<u>2221</u>
xx-305	Standards for Stormwater Control Measures.....	<u>2221</u>
(A)	Evaluation According to Contents of Design Manual	<u>2221</u>
(B)	Determination of Adequacy; Presumptions and Alternatives.....	<u>2221</u>
(C)	Separation from Seasonal High Water Table	<u>2221</u>
xx-306	Dedication of BMPS, Facilities & Improvements	<u>2321</u>
xx-307	VarianceS.....	<u>2322</u>
xx-308	Additional standards for special situations	<u>2423</u>
(B)	Nutrient Sensitive Waters.....	<u>2423</u>
	SECTION 4: MAINTENANCE	<u>2524</u>
xx-401	General Standards for Maintenance	<u>2524</u>
(A)	Function of BMPs As Intended	<u>2524</u>
(B)	Annual Maintenance Inspection and Report	<u>2524</u>
xx-402	Operation and Maintenance Agreement	<u>2625</u>
(A)	In General	<u>2625</u>
(B)	Special Requirement for Homeowners' and Other Associations	<u>2625</u>
xx-403	Inspection Program.....	<u>2827</u>
xx-404	Performance Security for Installation and Maintenance.....	<u>2827</u>
(A)	May Be Required	<u>2827</u>
(B)	Amount.....	<u>2827</u>
(1)	Installation	<u>2827</u>
(2)	Maintenance.....	<u>2827</u>
(C)	Uses of Performance Security.....	<u>2928</u>
(1)	Forfeiture Provisions.....	<u>2928</u>
(2)	Default.....	<u>2928</u>
(3)	Costs in Excess of Performance Security.....	<u>2928</u>
(4)	Refund	<u>2928</u>
xx-405	Notice to owners.....	<u>2928</u>
(A)	Deed Recordation and Indications On Plat	<u>2928</u>

(B)	Signage	<u>3029</u>
xx-406	Records of Installation and Maintenance Activities.....	<u>3029</u>
xx-407	Nuisance	<u>3029</u>
xx-408	Maintenance Easement.....	<u>3029</u>
SECTION 5: ENFORCEMENT AND VIOLATIONS		<u>3130</u>
xx-501	General	<u>3130</u>
(A)	Authority to Enforce.....	<u>3130</u>
(B)	Violation Unlawful.....	<u>3130</u>
(C)	Each Day a Separate Offense	<u>3130</u>
(D)	Responsible Persons/Entities	<u>3130</u>
(1)	Person Maintaining Condition Resulting In or Constituting Violation	<u>3131</u>
(2)	Responsibility For Land or Use of Land.....	<u>3231</u>
xx-502	Remedies and Penalties.....	<u>3231</u>
(A)	Remedies	<u>3231</u>
(1)	Withholding of Certificate of Occupancy	<u>3231</u>
(2)	Disapproval of Subsequent Permits and Development Approvals.....	<u>3231</u>
(3)	Injunction, Abatements, etc.....	<u>3231</u>
(4)	Correction as Public Health Nuisance, Costs as Lien, etc.....	<u>3232</u>
(5)	Stop Work Order.....	<u>3332</u>
(B)	Civil Penalties.....	<u>3332</u>
(C)	Criminal Penalties.....	<u>Error! Bookmark not defined.</u> <u>32</u>
xx-503	Procedures	<u>3332</u>
(A)	Initiation/Complaint	<u>3332</u>
(B)	Inspection	<u>3333</u>
(C)	Notice of Violation and Order to Correct	<u>3333</u>
(D)	Extension of Time	<u>3433</u>
(E)	Enforcement After Time to Correct.....	<u>3434</u>
(F)	Emergency Enforcement	<u>3434</u>
SECTION 6: DEFINITIONS.....		<u>3635</u>
xx-601	Terms Defined.....	<u>3635</u>
	Built-upon area (BUA)	<u>3635</u>
	Department.....	<u>3635</u>
	Design Manual.....	<u>3635</u>
	Development	<u>3635</u>
	Division	<u>3635</u>

High-density project	<u>3635</u>
Larger common plan of development or sale	<u>3635</u>
Low-density project.....	<u>3736</u>
1-year, 24-hour storm.....	<u>3736</u>
Owner.....	<u>3736</u>
Redevelopment	<u>3736</u>
Shellfish Resource Waters.....	<u>3736</u>
Structural BMP	<u>3736</u>
Substantial progress	<u>3837</u>
<i>SECTION 7: Illicit Discharges</i>	<u>3938</u>
<i>xx-701 Illicit Discharges and Connections</i>	<u>3938</u>
(A) Illicit Discharges.....	<u>3938</u>
(B) Illicit Connections	<u>4039</u>
(C) Spills	<u>4039</u>
(D) Nuisance	<u>4140</u>

SECTION 1: GENERAL PROVISIONS

xx-101 TITLE

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

xx-102 AUTHORITY

The Town of Winterville Town Council is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; The Charter of the Town of Winterville; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

xx-103 FINDINGS

It is hereby determined that:

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

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

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

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

Therefore, the Town Council establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.¹

xx-104 PURPOSE

(A) General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* as well as illicit discharges into municipal stormwater systems. It has

¹ Adapted from Stormwater Center/EPA Model Ordinance.

been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

(B) Specific

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

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the *pre-development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Coordinating site design plans that include open space and natural areas with the Subdivision Ordinance of the Code of Ordinances of the Town of Winterville, North Carolina.
9. Controlling illicit discharges into the municipal separate stormwater system.

xx-105 APPLICABILITY AND JURISDICTION

(A) **General**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

(B) **Exemptions**

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

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

Development and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.²

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

(C) **No Development or Redevelopment Until Compliance and Permit**

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

(D) **Map**

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Winterville, 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 this ordinance.³

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

² Adapted from the North Georgia Model Ordinance.

³ Adapted from North Carolina Model Watershed Protection Ordinance.

xx-106 INTERPRETATION

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Code of Winterville, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.⁴

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

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

(D) References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Winterville, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Winterville. References to days are calendar days unless otherwise stated.

(F) Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of the Town of Winterville may be carried out by his or her designee.

⁴ Provisions A through H were adapted from Town of Cary Land Development Ordinance.

(G) Usage

(1) Mandatory and Discretionary Terms

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

(2) Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

xx-107 DESIGN MANUAL

(A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.⁵

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

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

⁵ From Stormwater Center/EPA Model Ordinance.

(C) Changes to Standards and Specifications

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

xx-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.⁶

(B) Private Agreements

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town of Winterville be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.⁷

xx-109 SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

xx-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on August 1, 2014.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Winterville prior to the effective date

⁶ From Metro North Georgia Water Management District Model Ordinance.

⁷ Adapted from Town of Cary Land Development Ordinance.

of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

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

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

2. For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.⁸

(C) Violations Continue

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.⁹

⁸ SL 2006-246.

⁹ Adapted from Town of Cary Land Development Ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

xx-201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the Town Council to administer and enforce this ordinance.

(2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Code of Winterville and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.
- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town Council on applications for *development* or *redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the Town Council, upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

xx-202 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

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

(B) Effect of Permit

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

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

(C) Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

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

(1) Application Contents and Form

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

(2) Submission Schedule

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

(3) Permit Review Fees

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

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.



(E) Submittal of Complete Application

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(F) Review

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

(1) Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review

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

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

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

xx-203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

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

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing Conditions / Proposed Site Plans

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

(2) Natural Resources Inventory

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

(3) Stormwater Management System Concept Plan

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

(B) 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 this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

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

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(C) 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.

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

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the Town of Winterville Inspections Department 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 Town of Winterville Inspections Department 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.

xx-204 APPROVALS

(A) Effect of Approval

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

(B) Time Limit/Expiration

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

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

xx-205 APPEALS

(A) Right of Appeal

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment within 30 days.

SECTION 3: STANDARDS

xx-301 GENERAL STANDARDS

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

xx-302 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

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

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

xx-303 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

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

- (A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*;
- (D) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of

the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

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

xx-304 COMPREHENSIVE WATERSHED PLAN

xx-305 STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

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

(B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

(C) Separation from Seasonal High Water Table

For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.¹⁰

¹⁰ From SL 2006-246, § 9(k).

xx-306 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

The Town of Winterville will not accept dedication of any existing or future stormwater management facility for maintenance. All such facilities shall meet all the requirements of this ordinance and include adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance, to be performed by the responsible party.

xx-307 VARIANCES

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

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

(B) The Town of Winterville may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

Notwithstanding subdivision (A) of this section, exceptions from the 30-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:

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

accomplished in a manner which would avoid or result in less adverse impact to surface waters.

xx-308 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS

(A) Restrictions on Pet Waste

(i) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.

(ii) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

(iii) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.

(iv) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

(v) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.

(B) Nutrient Sensitive Waters

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

SECTION 4: MAINTENANCE

xx-401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

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

(B) Annual Maintenance Inspection and Report

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

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.¹¹

¹¹ Drawn from Wake County stormwater ordinance (based on Neuse Urban Stormwater program).

xx-402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

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

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

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.¹² A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.¹³

(B) Special Requirement for Homeowners' and Other Associations

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Winterville, in its sole discretion, may remedy the situation, and in such instances the Town of Winterville 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

¹² Adapted from Metro North Georgia Water Management District and Stormwater Center/EPA Model Ordinances. The requirement that owner maintain the BMP is adapted from the Town of Cary Watershed Protection Ordinance.

¹³ Most of the following homeowners' association requirements are adapted from Neuse model program provisions as adopted in Wake County.

repair, and reconstruction of the *structural BMPs*, provided that the Town of Winterville shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Winterville depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Winterville a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Winterville to recover from the association and its members any and all costs the Town of Winterville expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the Town of Winterville all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Winterville shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Winterville to maintain or repair any *structural BMPs*, and the Town of Winterville shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Winterville to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Winterville for any costs and injuries arising from or related to the structural BMP, unless the Town of Winterville 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.

xx-403 INSPECTION PROGRAM

Inspections and inspection programs by the Town of Winterville 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.¹⁴

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.

xx-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) May Be Required¹⁵

The Town of Winterville 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.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) Maintenance

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

¹⁴ Adapted from Stormwater Center/EPA and Metro North Georgia Water Management District Model Ordinances.

¹⁵ From Virginia Model Ordinance for Stormwater Management.

(C) Uses of Performance Security

(1) Forfeiture Provisions

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

(2) Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Winterville shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.¹⁶

(3) Costs in Excess of Performance Security

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

(4) Refund

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

xx-405 NOTICE TO OWNERS

(A) Deed Recordation and Indications On Plat

The applicable operations and maintenance agreement or conservation easement, (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 or conservation easement shall be recorded with the county

¹⁶ From Town of Cary Watershed Protection Ordinance.

Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

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

xx-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.¹⁷

xx-407 NUISANCE

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

xx-408 MAINTENANCE EASEMENT

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

¹⁷ Adapted from Metro North Georgia Water Management District Model Ordinance.

SECTION 5: ENFORCEMENT AND VIOLATIONS

xx-501 GENERAL

(A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Winterville. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Winterville.

(B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.¹⁸

(C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.¹⁹

(D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.²⁰

For the purposes of this article, responsible person(s) shall include but not be limited to:²¹

(1) Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a

¹⁸ From Town of Apex Unified Development Ordinance.

¹⁹ Adapted from Town of Cary Land Development Ordinance.

²⁰ Adapted from Hall County, Georgia, Unified Development Ordinance.

²¹ An inclusive approach to "responsible persons" drawn from the Town of Apex UDO.

condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility For Land or Use of Land

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

xx-502 REMEDIES AND PENALTIES

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

(1) Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town of Winterville may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the *zoning*, *subdivision*, or *building* regulations for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

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

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

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

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.²²



(B) Civil Penalties

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

xx-503 PROCEDURES

(A) Initiation/Complaint

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

(B) Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.²³

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

²² Adapted from Metro North Georgia Water Management District Model Ordinance.

²³ From Town of Cary Land Development Ordinance.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the code enforcement officer, 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.²⁴

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 10-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.²⁵

(E) Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.²⁶

(F) Emergency Enforcement

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

²⁴ From Town of Apex Unified Development Ordinance.

²⁵ From Town of Apex Unified Development Ordinance.

²⁶ From Town of Apex Unified Development Ordinance.

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SECTION 6: DEFINITIONS

xx-601 TERMS DEFINED

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

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.²⁷

Department

The North Carolina Department of Environment and Natural Resources.²⁸

Design Manual

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.²⁹

Development

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.³⁰

Division

The Division of Energy, Mineral, and Land Resources in the *Department*.³¹

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.³²

²⁷ From S.B. 1210.

²⁸ From temporary rule.

²⁹ Adapted from North Georgia M.O.

³⁰ From North Carolina Model Ordinance for Water Supply Watershed Protection and 15A NCAC 2B.0202(23).

³¹ From S.B. 1210.

³² Definition adapted from EPA Storm Water Phase II Compliance Assistance Guide.

Low-density project

For a project that is not located within one-half mile of and draining to *Shellfish Resource Waters*, the project is a low-density project if it has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

For a project that is located within one-half mile of and draining to *Shellfish Resource Waters*: the project is a low-density project only if it contains no more than twelve percent *built-upon area* (BUA).

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

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.³³

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*.

Shellfish Resource Waters

Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.³⁴

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

³³ From S.B. 1210.

³⁴ From SL 2006-246.

created on real property. “Structural BMP” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) 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.³⁵

³⁵ Adapted from Town of Cary Land Development Ordinance.

SECTION 7: ILLICIT DISCHARGES

xx-701 ILLICIT DISCHARGES AND CONNECTIONS³⁶

(A) Illicit Discharges

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

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water; and

³⁶ Drawn from Raleigh and Greenville ordinances.

(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 Town of Winterville.

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

(B) Illicit Connections

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

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property *owner* or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

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

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

1. The quantity and complexity of the work,
2. The consequences of delay,
3. The potential harm to the environment, to the public health, and to public and private property, and
4. The cost of remedying the damage.

(C) Spills

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

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of Winterville Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Nuisance

Illicit discharges and illicit connections which exist within the Town of Winterville town limits are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Chapter 95, Section 015 (D) of the Code of Winterville, or in accordance with N.C.G.S. 160A-193.

Appendix: Sources consulted or from which provisions were drawn for this Ordinance

Model Ordinance for Post-Development Stormwater Management for New Development and Redevelopment (Metropolitan North Georgia Water Management District)

Model Ordinance for Water Supply Watershed (NC Division of Water Quality)

Neuse River Basin Model Stormwater Program for Nitrogen Control

Tar-Pamlico Basin Nutrient-Sensitive Waters Management Strategy

Model Stormwater Ordinance (Center for Watershed Protection, Inc. ["Stormwater Center"])

Model Stormwater Ordinance (US EPA)

Unified Development Ordinance (Hall County, Georgia)

Unified Development Ordinance (Town of Apex, NC)

Land Development Ordinance (Town of Cary, NC)

Watershed Protection Ordinance (Town of Cary, NC)

Stormwater Management Model Ordinance (State of Virginia)

Town Code of Wrightsville Beach, NC

Illicit discharge provisions: Raleigh, NC; Greenville, NC; Franklin, TN

Stormwater Management Ordinance (Wake County, NC)



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Chief Ryan Willhite

Item to be Considered

Subject: Approval of Request from the Watermelon Festival Committee to Suspend the Winterville Park Hours Limitation for August 21st-23rd, 2014.

Action Requested: Approve Request

Attachments: None

Prepared By: Ryan C. Willhite, Chief of Police

Date: 7/9/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD _____

TM 7/9/2014

Final 7/9/2014

Supporting Documentation

The Town of Winterville's policy states that the Winterville Recreation Park may not be used after the hours of 10:30pm. The Winterville Watermelon Festival Committee requests that his policy be suspended for the 2014 Winterville Watermelon Festival to be held August 21st-23rd, 2014.

Budgetary Impact: None

Recommendation: Approval



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Chief Ryan Willhite

Item to be Considered

Subject: The Town of Winterville Code of Ordinance section 96.04 requires person(s) wishing to engage in activities regulated by this ordinance to acquire a specific permit approved by the Chief of Police, or his designee. A permit granted under this section requires an administration fee of fifteen dollars (\$15.00). The Winterville Watermelon Festival Committee is requesting exemption from this fee.

Action Requested: Approve Request

Attachments: None

Prepared By: Ryan C. Willhite, Chief of Police

Date: 7/9/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD

TM 7/9/2014

Final 7/9/2014

Supporting Documentation

The code of ordinance requires all organizations that wish to hold a parade submit information describing the route, responsible persons and their contact numbers. The Town Council must approve the issuance of the permit based on this and any other information they request. The Winterville Watermelon Festival committee is expected to submit a parade application in the immediate future to the Chief of Police. The Organizations president/chairperson and/or vice president/co-chairperson are David Hooks and Keen Lassiter. The parade contact person is Alton Wadford. The organization's address and contact telephone numbers are on file at the Police Department, along with any other additional information that may be required to notify responsible parties. The date of the parade is August 23rd, 2014. The lineup will begin at 9:00am and will end at approximately 11:00am. The parade route is attached.

Budgetary Impact: None

Recommendation: Approval of Request



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Chief Ryan Willhite

Item to be Considered

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Action Requested: Approve Request

Attachments: None

Prepared By: Ryan C. Willhite, Chief of Police

Date: 7/9/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

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Budgetary Impact: None

Recommendation: Approval of Request



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Chief Ryan Willhite

Item to be Considered

Subject: Approval of Request from the Winterville Watermelon Festival Committee to Limit the use of the Parking lot at the Winterville Recreation Park, and Request a Change in Traffic Patterns from August 21st-23rd, 2013.

Prepared By: Ryan C. Willhite, Chief of Police

Date: 7/9/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD _____

TM 7/9/2014

Final 7/9/2014

Supporting Documentation

The Winterville Watermelon Festival Committee request that the parking lot located at the Winterville Recreation Park be utilized for parking during the festival for the following: Handicapped, VIP, Employee, Bands, Vendors, Emergency Services, and other Festival staff.

Additionally the Winterville Watermelon Festival Committee and the Chief of Police request a change in the following traffic patterns to help ensure public safety:

Sylvania Street- West bound vehicular traffic only from Ange Street to Church Street, and East bound pedestrian traffic only from Church Street to Ange Street.

- Thursday, August 21st 4:00pm until 12:00am.
- Friday, August 22nd 4:00pm until 12:00am.
- Saturday, August 23rd 3:00pm until 12:00am.

Division Street- From Church Street to Park entrance.

- Closed Thursday, August 21st at 4:00pm until 12:00am.
- Closed Friday, August 22nd at 4:00pm until 12:00am.
- Closed Saturday, August 23rd at 8:00am until 12:00am.

Barrel Street – From Ange Street to Forbes Street.

- No parking on south side of street during festival hours.
- No parking on south side of street during festival hours.

Windmill Street – From Ange Street to Forbes Street.

- No parking on south side of street during festival hours.

No parking on west side of Ange street from Blount street to Sylvania street.

* *Note: Access to private residences on closed streets available by permits.*

In order to promote optimum traffic flow and public safety, changes to the Watermelon Festival Committee's request may have to be altered to accommodate Festival requirements.

Recommendation: Approval



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Chief Ryan Willhite

Item to be Considered

Subject: Approval of Request from the Winterville Watermelon Festival Committee for the Placement of Signs and Banners on Town Property and Public Right-of-Ways

Action Requested: Approve Request

Attachments: None

Prepared By: Ryan C. Willhite, Chief of Police

Date: 7/9/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD _____

TM

Final _____

Supporting Documentation

The Winterville Watermelon Festival Committee request approval for the placement of signs and Banners on town property and along public right-of-ways announcing the location and times for the upcoming 2014 Watermelon Festival. The signs will begin being erected on or about August 1st, 2014.

Budgetary Impact: None

Recommendation: Approval of Request



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: Consent Agenda

Meeting Date: July 14, 2014

Presenter: Terri L. Parker, Town Manager

Item to be Considered

Subject: Approval of Request from the Winterville Watermelon Festival Committee for the usage of the Parks and Recreation Bathroom facilities from August 21, 2014 to August 23, 2014

Action Requested: Approve Request

Attachments: N/A.

Prepared By: Terri L. Parker, Town Manager

Date: 7/9/2014

ABSTRACT ROUTING:

TC _____

FD _____

TM tlp – 7/9/2014

Final tlp – 7/9/2014

Supporting Documentation

The Winterville Watermelon Festival Committee has requested the use of bathrooms in both concession stands during the Watermelon Festival. The scheduled request is as follows:

8/21/2013 – 6 pm to 11 pm

8/22/2013 – 6 pm to 11 pm

8/23/2013 – 10 am to 11 pm

The Festival Committee will provide all paper products and they will hire janitorial services to keep the bathrooms clean during these times.

The Manager's Office has discussed this issue with the Parks and Recreation Director. Staff requests approval of the Committee's Request.

Budgetary Impact: Cost of water used during the Festival Period

Recommendation: Approve Request



Town of Winterville Town Council Agenda Abstract

Item Section: Old Business

Meeting Date: July 14, 2014

Presenter: Alan Lilley, Planning Director

Item to be Considered

Subject: Receive Clerk's Certificate of Sufficiency and adopt Resolution Fixing Date of Public Hearing on Question of Annexation Pursuant to G.S. 160A-58.2 – for annexation of proposed Bridlesong Park subdivision.

Action Requested: Adopt Resolution Scheduling Public Hearing

Attachments: a) Certificate of Sufficiency, & b) Resolution Fixing Date of Public Hearing on Question of Annexation Pursuant to G.S. 160A-58.2

Prepared By: Alan Lilley, Planning Director

Date: 7/8/2014

ABSTRACT ROUTING:

TC JJS-7/8/14

FD _____

TM tlp – 7/9/2014

Final tlp – 7/9/20/14

Supporting Documentation

The Town Council received a petition requesting annexation of the proposed Bridlesong Park subdivision at the June 9, 2014 and adopted a Resolution Directing the Town Clerk to Investigate the Sufficiency of the Petition. The Town Clerk has investigated the petition and prepared the Certificate of Sufficiency. The next required step in the annexation process is for the Town Council to adopt a Resolution Fixing Date of Public Hearing on Question of Annexation Pursuant to G.S. 160A-58.2. Since there will be no Town Council meeting during the month of August, the public hearing could be held at the regular monthly meeting on September 8, 2014.

Budgetary Impact: Annexation will increase tax base and population.

Recommendation: Adoption of the attached resolution scheduling the public hearing for September 8, 2014.

CERTIFICATE OF SUFFICIENCY
Bridlesong Park Subdivision
(*E. Jerry Williams Property*)

To the Town Council of the Town of Winterville, North Carolina:

I, Jasman J. Smith, Town Clerk, do hereby certify that I have investigated the petition attached hereto and have found as a fact that said petition is signed by all owners of real property lying in the area described therein, in accordance with G.S. 160A-58.1.

In witness whereof, I have hereunto set my hand and affixed the seal of the Town of Winterville, this 8th day of July, 2014.



Jasman J. Smith

Jasman J. Smith, Town Clerk

**RESOLUTION FIXING DATE OF PUBLIC HEARING ON QUESTION
OF ANNEXATION PURSUANT TO G.S. 160A-58.2**

Bridlesong Park Subdivision
(E. Jerry Williams Property)

WHEREAS, a petition requesting annexation of the non-contiguous area described herein has been received; and

WHEREAS, the Town Council has by resolution directed the Town Clerk to Investigate the Sufficiency of the petition; and

WHEREAS, certification by the Town Clerk as to the sufficiency of the petition has been made;

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Winterville, North Carolina that:

Section 1. A public hearing on the question of annexation of the non-contiguous area described herein will be held at the Winterville Town Hall at 7:00 p.m. on September 8, 2014.

Section 2. The area proposed for annexation is described as follows:

(insert metes and bounds description)

Section 3. Notice of the public hearing shall be published once in The Daily Reflector, a newspaper having general circulation in the Town of Winterville, at least ten (10) days prior to the date of the public hearing.

Douglas A. Jackson, Mayor

ATTEST:

Jasman J. Smith, Town Clerk



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: New Business

Meeting Date: July 14, 2014

Presenter: Travis Welborn, Public Works
Director

Item to be Considered

Subject: Water Purchase Agreement Between Greenville Utilities & Town of Winterville

Action Requested: Approval of Water Purchase Agreement

Attachments: Proposed Agreement

Prepared By: Travis Welborn, Public Works Director

Date: 6/30/2014

ABSTRACT ROUTING:

TC JJS-07/09/14

FD _____

TM tlp – 7/9/2014

Final tlp – 7/9/2014

Supporting Documentation

In order to comply with the requirements of the Central Coastal Plains Capacity Use Act (CCPCUA), the Town of Winterville must reduce its reliance on groundwater by 75% by August 2018. The total reduction is to be implemented in 3 equal phases, with each reduction being 25%. The first 25% reduction occurred in August 2008, and the second reduction occurred in August 2013. At this point the Town has had to reduce the amount of water it pumps from the aquifer by 50%. Since the Town does not have access to any alternative water supplies locally, it pursued an agreement with GUC to provide the Town with the necessary water supply. The majority of GUC's water comes from the Tar River, which is not subject to the CCPCUA since it is a surface water source.

The Town had an existing agreement with GUC that expired in 2013. That agreement was for an interruptible water supply, whereas the proposed new agreement will be for a non-interruptible water supply, including 375,000 gallons per day for the next 20 years. This is a long term agreement and long term solution to the Town's water supply issue. The rates for fiscal year 2015 are \$1.86 per thousand gallons for the first 375,000 gallons, and \$2.71 per thousand gallons for all water over 375,000 gallons per day. There is also a capital charge of \$6,000 per month.

Budgetary Impact: Purchasing the additional water from Greenville Utilities as required by the CCPCUA will increase the money spent on water purchase by approximately \$160,000 next fiscal year. This money has been budgeted for and approved in the budget. As Winterville continues to grow and demand increases, so will the amount needed to purchase water from Greenville Utilities.

Recommendation: Staff recommends approval of the agreement with Greenville Utilities.



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: New Business

Meeting Date: July 14, 2014

Presenter: Bryan Bell, Interim I.T. Director

Item to be Considered

Subject: Award of Contract for Copier Lease

Action Requested: Approval of Contract

Attachments: Contract with Cavin's Business Solutions

Prepared By: Bryan Bell, Interim I.T. Director

Date: 7/2/2014

ABSTRACT ROUTING:

TC JJS-7/9/2014

FD _____

TM 07/09/2014

Final 07/09/2014

Supporting Documentation

Attached is a contract from Cavin's Business Solutions.

The contract is for 36 months at \$798.33 a month.

This contract includes:

- A. Five Canon multi-function copiers
- B. No color or black and white impressions (no pre-paid prints).
- C. Per black and white impressions = \$.0078
- D. Per color impressions = \$.051
- E. Service
- F. All toner
- G. Two / Three hole punch and stapling on all copiers

We currently average approximately 17,400 black and white impressions and 3,800 color impressions per month. Based on these impression numbers the town will pay on average per month for the copier lease \$1,127.85. Our current copier contract cost at the least per month \$2,407.52; this is a savings of \$1,279.67 a month or \$15,356.04 a year.

Budgetary Impact: The Town will pay less for copier lease.

Recommendation: Staff recommends Council approve contract with Cavin's Business Solutions.



EQUIPMENT FINANCE

APPLICATION NO.

AGREEMENT NO.

Supplier:



724 Hay Street, Fayetteville, NC 28301

Total Copy Solution Agreement

Send Account Inquiries to: 1310 Madrid Street, Suite 101 • Marshall, MN 56258 • Phone: (800) 328-5371 • Fax: (800) 328-9092
Send Payments to: P.O. Box 790448 • St. Louis, MO 63179-0448

The words User, Lessee, you and your refer to Customer. The words Owner, Lessor, we, us and our refer to U.S. Bank Equipment Finance, a division of U.S. Bank National Association ("U.S. Bank Equipment Finance").

CUSTOMER INFORMATION

Form with fields for FULL LEGAL NAME, STREET ADDRESS, CITY, STATE, ZIP, PHONE, FAX, BILLING NAME, BILLING STREET ADDRESS, CITY, STATE, ZIP, E-MAIL, and EQUIPMENT LOCATION.

EQUIPMENT DESCRIPTION - PLEASE CHECK ONE:

Table with columns: Make/Model/Accessories, Serial No., Minimum Number of Copies (B&W, Color), Per Copy Charge* (B&W, Color), Minimum Monthly Payment*, Excess Per Copy Charge* (B&W, Color). Includes rows for Canon C5250 and a TOTALS row.

TERMS:

Form with fields for TERM (36 MONTHS), ADVANCE PAYMENT* (\$ N/A), METER READING PREFERENCE (Monthly/Quarterly), and Customer Contact/Telephone (Bryan Bell / 252-756-2221).

THIS IS A NONCANCELABLE / IRREVOCABLE AGREEMENT; THIS AGREEMENT CANNOT BE CANCELED OR TERMINATED.

OWNER ACCEPTANCE

Form with fields for U.S. Bank Equipment Finance, OWNER, SIGNATURE, TITLE, and DATED.

CUSTOMER ACCEPTANCE

By signing below, you certify that you have reviewed and do agree to all terms and conditions of this Agreement on this page and on page 2 attached hereto.

Form with fields for CUSTOMER (as referenced above), SIGNATURE (with X), TITLE, and DATED.

FEDERAL TAX I.D. # PRINT NAME

ACCEPTANCE OF DELIVERY

You certify that all the Equipment listed above has been furnished, that delivery and installation has been fully completed and is satisfactory. Upon you signing below, your promises herein will be irrevocable and unconditional in all respects.

Form with fields for CUSTOMER (as referenced above), SIGNATURE (with X), TITLE, and DATE OF DELIVERY.

1. AGREEMENT: For business purposes only, you agree to rent from us the goods, together with all replacements, parts, repairs, additions, and accessions incorporated therein or attached thereto and any and all proceeds of the foregoing, including, without limitation, insurance recoveries (the "Equipment") and/or to finance certain licensed software and services ("Financed Items", which are included in the word "Equipment" unless separately stated), all as described on page 1 of this Agreement, excluding equipment marked as not financed under this Agreement, as it may be supplemented from time to time. You agree to all of the terms and conditions contained in this Agreement and any supplement, which (with the acceptance certification) is the entire agreement regarding the Equipment ("Agreement") and which supersedes any purchase order or invoice. You authorize us to correct or insert missing Equipment identification information and to make corrections to your proper legal name and address. This Agreement becomes valid upon execution by us. This Agreement will renew for 12-month term(s) unless you send us written notice between 90 and 150 days (before the end of any term) that you do not want it renewed, in which case you shall return the Equipment (according to the conditions herein). If any provision of this Agreement is declared unenforceable in any jurisdiction, the other provisions herein shall remain in full force and effect in that jurisdiction and all others.

2. RENT, TAXES AND FEES: You will pay the monthly Payment (as adjusted) when due, plus any applicable sales, use and property taxes. The base Payment will be adjusted proportionately upward or downward: (1) by up to 10% to accommodate changes in the actual Equipment cost; (2) if the shipping charges or taxes differ from the estimate given to you; and (3) to comply with the tax laws of the state in which the Equipment is located. If we pay any taxes, insurance or other expenses that you owe hereunder, you agree to reimburse us when we request and to pay us a processing fee for each expense or charge we pay on your behalf. We may charge you for any filing or titling fees required by the Uniform Commercial Code (UCC) or other laws, which fees vary state-to-state. By the date the first Payment is due, you agree to pay us an origination fee, as shown on our invoice or addendum, to cover us for all closing costs. We will have the right to apply all sums, received from you, to any amounts due and owed to us under the terms of this Agreement. If for any reason your check is returned for nonpayment, you will pay us a bad check charge of \$30 or, if less, the maximum charge allowed by law. We may make a profit on any fees, estimated tax payments and other charges paid under this Agreement.

3. MAINTENANCE AND LOCATION OF EQUIPMENT; SECURITY INTEREST: At your expense, you agree to keep the Equipment: (1) in good repair, condition and working order, in compliance with applicable manufacturers' and regulatory standards; (2) free and clear of all liens and claims; and (3) only at your address shown on page 1, and you agree not to move it unless we agree. As long as you have given us the written notice as required in paragraph 1 prior to the expiration or termination of this Agreement's term, you will return all but not less than all of the Equipment and all related manuals and use and maintenance records to a location we specify, at your expense, in retail re-saleable condition, full working order and complete repair. You are solely responsible for removing any data that may reside in the Equipment you return, including but not limited to hard drives, disk drives or any other form of memory. You grant us a security interest in the Equipment to secure all amounts you owe us under any agreement with us, and you authorize us to file a financing statement (UCC-1). You will not change your state of organization, headquarters or residence without providing prior written notice to us so that we may amend or file a new UCC-1. You will notify us within 30 days if your state of organization revokes or terminates your existence.

4. COLLATERAL PROTECTION; INSURANCE; INDEMNITY; LOSS OR DAMAGE: You agree to keep the Equipment fully insured against risk and loss, with us as lender's loss payee, in an amount not less than the original cost until this Agreement is terminated. You also agree to obtain a general public liability insurance policy with such coverage and from such insurance carrier as shall be satisfactory to us and to include us as an additional insured on the policy. Your insurance policy(s) will provide for 10 days advance written notice to us of any modification or cancellation. You agree to provide us certificates or other evidence of insurance acceptable to us. If you fail to comply with this requirement within 30 days after the start of this Agreement, we may charge you a monthly property damage surcharge of up to .0035 of the Equipment cost as a result of our credit risk and administrative and other costs, as would be further described on a letter from us to you. We may make a profit on this program. NOTHING IN THIS PARAGRAPH WILL RELIEVE YOU OF RESPONSIBILITY FOR LIABILITY INSURANCE ON THE EQUIPMENT. We are not responsible for, and you agree to hold us harmless and reimburse us for and to defend on our behalf against, any claim for any loss, expense, liability or injury caused by or in any way related to delivery, installation, possession, ownership, use, condition, inspection, removal, return or storage of the Equipment. You are responsible for the risk of loss or for any destruction of or damage to the Equipment. You agree to promptly notify us in writing of any loss or damage. If the Equipment is destroyed and we have not otherwise agreed in writing, you will pay to us the unpaid balance of this Agreement, including any future rent to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 2%). Any proceeds of insurance will be paid to us and credited, at our option, against any loss or damage. You authorize us to sign on your behalf and appoint us as your attorney-in-fact to endorse in your name any insurance drafts or checks issued due to loss or damage to the Equipment. All indemnities will survive the expiration or termination of this Agreement.

5. ASSIGNMENT: YOU HAVE NO RIGHT TO SELL, TRANSFER, ASSIGN OR SUBLEASE THE EQUIPMENT OR THIS AGREEMENT, without our prior written consent. Without our prior written consent, you shall not reorganize or merge with any other entity or transfer all or a substantial part of your ownership interests or assets. We may sell, assign, or transfer this Agreement without notice. You agree that if we sell, assign or transfer this Agreement, our assignee will have the same rights and benefits that we have now and will not have to perform any of our obligations. You agree that the new Lessor will not be subject to any claims, defenses, or offsets that you may have against us. You shall cooperate with us in executing any documentation reasonably required by us or our assignee to effectuate any such assignment. This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

6. DEFAULT AND REMEDIES: You will be in default if: (a) you do not pay any Payment or other sum due to us or any other person when due or if you fail to perform in accordance with the covenants, terms and conditions of this Agreement or any other agreement with us or any of our affiliates or any material agreement with any other lender, (b) you make or have made any false statement or misrepresentation to us, (c) you or any guarantor dies, dissolves or terminates existence, (d) there has been a material adverse change in your or any guarantor's financial, business or operating condition, or (e) any guarantor defaults under any guaranty for this Agreement. If any part of a Payment is more than 5 days late, you agree to pay a late charge of 10% of the Payment which is late or if less, the maximum charge allowed by law. If you are ever in default, at our option, we can terminate this Agreement and require that you pay the unpaid balance of this Agreement, including any future Payments to the end of the term plus the anticipated purchase price of the Equipment (both discounted at 2%). We may recover default interest on any unpaid amount at the rate of 12% per year. Concurrently and cumulatively, we may also use any or all of the remedies available to us under Articles 2A and 9 of the UCC and any other law, including requiring that you: (1) return the Equipment to us to a location we specify; and (2) immediately stop using any Financed Items. In addition, we will have the right, immediately and without notice or other action, to set-off against any of your liabilities to us any money, including depository account balances, owed by us to you, whether or not due. In the event of any dispute or enforcement of rights under this Agreement or any related agreement, you agree to pay our reasonable attorney's fees (including any incurred before or at trial, on appeal or in any other proceeding), actual court costs and any other collection costs, including any collection agency fee. If we have to take possession of the Equipment, you agree to pay the costs of repossession, moving, storage, repair and sale. The net proceeds of the sale of any Equipment will be credited against what you owe us under this Agreement. YOU AGREE THAT WE WILL NOT BE RESPONSIBLE TO PAY YOU ANY CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES FOR ANY DEFAULT, ACT OR OMISSION BY ANYONE. Any delay or failure to enforce our rights under this Agreement will not prevent us from enforcing any rights at a later time. You agree that this Agreement is a "Finance Lease" as defined by Article 2A of the UCC and your rights and remedies are governed exclusively by this Agreement. You waive all rights under sections 2A-508 through 522 of the UCC. If interest is charged or collected in excess of the maximum lawful rate, we will not be subject to any penalties.

7. INSPECTIONS AND REPORTS: We will have the right, at any reasonable time, to inspect the Equipment and any documents relating to its use, maintenance and repair. Within 30 days after our request, you will deliver all requested information (including tax returns) which we deem reasonably necessary to determine your current financial condition and faithful performance of the terms hereof. This may include: (i) compiled, reviewed or audited annual financial statements (including, without limitation, a balance sheet, a statement of income, a statement of cash flow, a statement of changes in equity and notes to financial statements) within 120 days after your fiscal year end, and (ii) management-prepared interim financial statements within 45 days after the requested reporting period(s). Annual statements shall set forth the corresponding figures for the prior fiscal year in comparative form, all in reasonable detail without any qualification or exception deemed material by us. Unless otherwise accepted by us, each financial statement submitted to us shall be prepared in accordance with generally accepted accounting principles consistently applied and shall fairly and accurately present your financial condition and results of operations for the period to which it pertains.

8. FAXED OR SCANNED DOCUMENTS, MISC.: You agree to submit the original duly-signed documents to us via overnight courier the same day of the facsimile or scanned transmission of the documents. Any faxed or scanned copy may be considered the original, and you waive the right to challenge in court the authenticity or binding effect of any faxed or scanned copy or signature thereon. You agree to execute any further documents that we may request to carry out the intents and purposes of this Agreement. All notices shall be mailed or delivered by facsimile transmission or overnight courier to the respective parties at the addresses shown on this Agreement or such other address as a party may provide in writing from time to time. By providing any telephone number, now or in the future, for a cell phone or other wireless device, you are expressly consenting to receiving communications, regardless of their purpose, at that number, including, but not limited to, prerecorded or artificial voice message calls, text messages, and calls made by an automatic dialing system from us and our affiliates and agents. These calls and messages may incur access fees from your provider.

9. WARRANTY DISCLAIMERS: YOU AGREE THAT YOU HAVE SELECTED THE SUPPLIER AND EACH ITEM OF EQUIPMENT BASED UPON YOUR OWN JUDGMENT AND YOU DISCLAIM ANY RELIANCE UPON ANY STATEMENTS OR REPRESENTATIONS MADE BY US. WE DO NOT TAKE RESPONSIBILITY FOR THE INSTALLATION OR PERFORMANCE OF THE EQUIPMENT. THE SUPPLIER IS NOT AN AGENT OF OURS AND WE ARE NOT AN AGENT OF THE SUPPLIER, AND NOTHING THE SUPPLIER STATES OR DOES CAN AFFECT YOUR OBLIGATION UNDER THIS AGREEMENT. YOU WILL CONTINUE TO MAKE ALL PAYMENTS UNDER THIS AGREEMENT REGARDLESS OF ANY CLAIM OR COMPLAINT AGAINST ANY SUPPLIER, LICENSOR OR MANUFACTURER, AND ANY FAILURE OF A SERVICE PROVIDER TO PROVIDE SERVICES WILL NOT EXCUSE YOUR OBLIGATIONS TO US UNDER THIS AGREEMENT. WE MAKE NO WARRANTIES, EXPRESS OR IMPLIED, OF, AND TAKE ABSOLUTELY NO RESPONSIBILITY FOR, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, CONDITION, QUALITY, ADEQUACY, TITLE, DATA ACCURACY, SYSTEM INTEGRATION, FUNCTION, DEFECTS, OR ANY OTHER ISSUE IN REGARD TO THE EQUIPMENT, ANY ASSOCIATED SOFTWARE AND ANY FINANCED ITEMS.

10. LAW, JURY WAIVER: Agreements, promises and commitments made by Owner, concerning loans and other credit extensions must be in writing, express consideration and be signed by Owner to be enforceable. This Agreement may be modified only by written agreement and not by course of performance. This Agreement will be governed by and construed in accordance with Minnesota law. You consent to jurisdiction and venue of any state or federal court in Minnesota and waive the defense of inconvenient forum. For any action arising out of or relating to this Agreement or the Equipment, **YOU AND WE WAIVE ALL RIGHTS TO A TRIAL BY JURY.**

11. MAINTENANCE AND SUPPLIES: The charges established by this Agreement include payment for the use of the Equipment, accessories, maintenance by Supplier during normal business hours, inspection, adjustment, parts replacement, drums, cleaning material required for proper operation and toner and developer. Paper and staples must be separately purchased by you. If necessary, the service and supply portion of this Agreement may be assigned by us. We may charge you a supply freight fee to cover our costs of shipping supplies to you.

12. EXCESS CHARGES AND COST ADJUSTMENTS: You agree to comply with our billing procedures including, but not limited to, providing us with periodic meter readings on the Equipment. At the end of the first 12 months after commencement of this Agreement, and once each successive 12-month period thereafter, we may increase the Payment and the "cost per copy" charge that exceeds the number of copies originally designated in this Agreement ("Excess Charges") by a maximum of 15% of the existing "cost per copy" charge.

13. UPGRADE AND DOWNGRADE PROVISION: AFTER COMMENCEMENT OF THE AGREEMENT AND UPON YOUR WRITTEN REQUEST, AT OUR SOLE DISCRETION, WE MAY REVIEW YOUR COPY VOLUME AND PROPOSE OPTIONS FOR UPGRADING OR DOWNGRADING THE EQUIPMENT TO ACCOMMODATE YOUR BUSINESS NEEDS.

14. TRANSITION BILLING: In order to facilitate an orderly transition, including installation and training, and to provide a uniform billing cycle, the start date of this Agreement (the "Effective Date") will be a date after the certification of acceptance of the Equipment, as shown on the first invoice. The payment for this transition period will be based on the base minimum usage payment, prorated on a 30-day calendar month, and will be added to your first monthly Payment.



**Town of Winterville
Town Council
Agenda Abstract**

Item Section: New Business

Meeting Date: July 14, 2014

Presenter: Terri L. Parker, Town Manager

Item to be Considered

Subject: Dedication of Private Streets to the Town of Winterville

Action Requested: Approval (potentially with conditions)

Attachments: Map delineating specific Streets

Prepared By: Terri L. Parker, Town Manager

Date: 7/9/2014

ABSTRACT ROUTING:

TC _____

FD _____

TM tlp – 07/09/2014

Final tlp – 07/09/2014

Supporting Documentation

Collice Moore, owner of the vacant land at Ange Plaza (off of Beacon Street) has requested that the Town take over certain private streets in Ange Plaza. Mr. Moore is requesting this in order to assist in marketing and facilitating a sale of the interior parcels of land.

Attached please find a map which delineates the specific streets in Ange Plaza. Mr. Moore is requesting that the Town take over Access 1, Access 3 and Access 4. There is a street naming process currently underway.

The Public Works Director is assessing these streets and will be available to give an update on their status and whether any conditions should be placed upon any acceptance of said streets.

Budgetary Impact: TBD.

Recommendation: Staff recommends approval of dedication (potentially with conditions)

