

ORDINANCE AMENDING CHAPTER 75 OF THE CITY CODE OF ORDINANCES  
RELATED TO STORMWATER

BE IT ORDAINED, by the City Council of Winston-Salem as follows:

**SECTION 1.** SECTION 75 OF THE CITY CODE OF ORDINANCES IS AMENDED BY ADDING ARTICLE IV (POST CONSTRUCTION STORMWATER ORDINANCE) THERETO

**ARTICLE IV: POST CONSTRUCTION STORMWATER**

**SECTION 1: GENERAL PROVISIONS**

***75-101 TITLE***

This Ordinance shall be officially known as “The Post Construction Stormwater Ordinance.” It is referred to herein as *Ordinance*.

***75-102 AUTHORITY***

The *City* 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; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission there under Session Law 2006-246; Chapter 160A, §§ 174, 185 ; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulation); Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18.

***75-103 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 which are harmful to public health and safety as well as to the natural environment;

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

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 the *City*, to adopt the minimum stormwater controls such as those included in this *Ordinance*.

Therefore, the *City’s* Council establishes this *Ordinance* to regulate the quality and quantity of stormwater runoff and discharge to meet the state and federal requirements.

***75-104 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 Construction* stormwater runoff and nonpoint and point source pollution associated with *Development* and *Redevelopment*. It has been determined that proper management of construction-related and *Post Construction* stormwater runoff can safeguard the public health, safety, and general welfare; minimize damage to public and private property and infrastructure; and protect water and aquatic resources. This *Ordinance* is intended to not contradict the intent or direction of the Legacy Comprehensive Plan.

**(B) Specific**

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

- (1) Establish decision-making processes and standards for *Development* and *Redevelopment* that protects the integrity of watersheds and preserves the health of water resources;
- (2) Require that new *Development* and *Redevelopment* maintain the pre-construction hydrologic response in their *Post Construction* state as nearly as practicable for the applicable design storm(s) in order to reduce flooding, streambank erosion, point and nonpoint source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establish minimum *Post Construction* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (4) Establish design and review criteria for the construction, function, and use of *Structural BMPs* that may be used to meet the minimum *Post Construction* stormwater management standards;
- (5) Encourage the use of low impact site design practices, such as the use of vegetated stormwater conveyances and the preservation of green space and other conservation areas to the maximum extent practicable;
- (6) Establish provisions for the long-term responsibility for and maintenance of the *Stormwater Management Systems* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety or public health;
- (7) Establish administrative procedures for the submission, review, and approval of *Stormwater Management Systems*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- (8) Assign responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

**75-105 APPLICABILITY AND JURISDICTION**

**(A) General**

- (1) Beginning with and subsequent to its effective date, this *Ordinance* shall be applicable to all *Developments* and *Redevelopments*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt or excluded pursuant to Subsections (D) and (E) below. Nothing contained in this *Ordinance* shall relieve an *Owner* of any obligations or duties imposed under any other statutory or common law, such as, but not limited to, duties imposed by the riparian rights of adjoining property owners.
- (2) Regardless of reference to a specific state statute, violation of this *Ordinance* shall not subject the *Owner* or person in violation to a misdemeanor or infraction, but any remedy due the *City* or penalty imposed by the *City* shall be limited to Section 5, Enforcement and Violations of this *Ordinance*.

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

No *Development* or *Redevelopment* shall occur unless it is in compliance with the provisions of this *Ordinance* and any permit issued pursuant to this *Ordinance*.

**(C) Geographic Application**

The provisions of this *Ordinance* shall apply within the corporate limits of the *City*, as well as extraterritorial jurisdictional areas.

The Stormwater Director shall keep on file a map that shows the locations of all Structural BMP's permitted under this ordinance.

**(D) Exemptions**

The following instances of *Development or Redevelopment* are determined to be exempt and not subject to the provisions of this *Ordinance*:

- (1) A *Development* that cumulatively disturbs less than one acre and is not part of a *Larger Common Plan of Development, Redevelopment or Sale* is exempt from the quality management provisions of this *Ordinance* (Section 75-302);
- (2) A *Development or Redevelopment* that cumulatively disturbs less than one acre is not exempt if such activities are part of a *Larger Common Plan of Development, Redevelopment or Sale*, even though multiple, separate or distinct activities take place at different times on different schedules;
- (3) A *Development* that cumulatively disturbs less than 20,000 square feet for residential and nonresidential uses is exempt from the quantity management provisions of this *Ordinance* (Section 75-303);
- (4) Any *Redevelopment* activity for which the proposed impervious area is equal to or less than the preexisting impervious area; and
- (5) Activities 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).
- (6) For a *Development or Redevelopment* that i) cumulatively disturbs less than 3 acres; ii) is not part of a *Larger Common Plan of Development, Redevelopment or Sale*; and iii) is less than 24 percent *Built-upon area*; the standards for stormwater quantity management, as set out in Section 75-303 below, shall be limited to controlling only the 2 year and 10 year design storms. However, all other provisions of this ordinance shall apply.

**(E) Exclusions**

*Development or Redevelopment* conducted pursuant to one of the following authorizations that was obtained prior to the effective date of this *Ordinance* is determined to be excluded and is not subject to the provisions of this *Ordinance*:

- (1) A grading permit or building permit;
- (2) A site-specific *Development or Redevelopment* plan or site specific phased *Development or Redevelopment* plan submitted prior to the effective date of this *Ordinance*, and approved within 6 months of the effective date of this ordinance and which has *Substantial Progress* made within two years of the site plan approval;
- (3) Any *Development or Redevelopment* activity which has received stormwater management plan approval prior to the effective date of this *Ordinance* and *Substantial Progress* is made within two years of the effective date of this *Ordinance*;
- (4) A right that has vested under statutory or local law prior to the effective date of this *Ordinance*.

**75-106 INTERPRETATION**

**(A) Authority for Interpretation**

The *City's Stormwater Director* has authority to determine the interpretation of this *Ordinance*. Any person may request an interpretation by submitting a written request to the *Stormwater Director* who should respond in writing within 30 days. The *Stormwater Director* shall keep on file a record of all written interpretations of this *Ordinance*.

**(B) Delegation of Authority**

Any act authorized by this *Ordinance* to be carried out by the *Stormwater Director* may be carried out by his or her designee.

**(C) 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 75-104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the *City's* Code of Ordinances, the meaning and application of the term in this *Ordinance* shall control for purposes of application of this *Ordinance*.

**(D) 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.

**(E) 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.

**(F) Usage of Words**

(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 word “should” is an indication of what action the ordinance encourages to be taken. The word “may” is 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 or 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.

**(G) Computation of Time**

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

**75-107 Definitions**

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.

**Building Inspector**

The Director, or his designee, of the Forsyth County/Winston-Salem Building Inspection Department established and authorized pursuant to Part 5. Building Inspection of Article 19. Development of Chapter 160A of the North Carolina General Statutes.

**Built-upon area (BUA)**

That portion of a *Development* or *Redevelopment* 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. The *BUA* 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.

**City**

The City of Winston-Salem, a North Carolina Municipal Corporation located in Forsyth County.

**City Manager**

The Manager of the City as appointed by the City Council.

**Department**

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

**Design Manual**

The stormwater design manual prepared and disseminated by the *Department* for the proper implementation of the requirements of the federal Phase II stormwater program.

**Development**

Any land disturbing activity for construction of one or more buildings, structures or parking lots which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as *Redevelopment*.

**Disturbed Area**

Any land area which had been cleared, grubbed, graded, disturbed or otherwise altered for the purposes of *Development or Redevelopment*.

**Division**

The North Carolina Division of Water Quality, a division of the *Department*.

**High-density project**

Any project that exceeds the *Low Density Project* threshold, as defined below, for dwelling units per acre or *BUA*.

**Larger Common Plan of Development, Redevelopment 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 document, including, but not limited to, a site plan, marketing plan, sign, public notice or hearing, sales presentation or promotion, advertisement, loan application, drawing, permit application, zoning request, or computer design, or any physical demarcation, including, but not limited to, boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on one or more tracts of land.

**Lot area**

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

**Low-density project**

A project that has no more than two dwelling units per acre or twenty-four percent *BUA* for all residential and non-residential *Development or Redevelopment*.

**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.

**Owner**

The legal or beneficial owner of property on which a Development or Redevelopment is to occur or any other person or entity holding proprietary or possessory rights in the property or having legal power of management and control of the property. Unless shown otherwise, the person or entity making application for a Stormwater Management Permit for the property or the person or entity who is contractually responsible to operate and maintain a Stormwater Management System on the property shall be deemed to be an "Owner" for enforcement purposes.

**Post Construction**

The condition of a *Development* or *Redevelopment* once the land disturbing activity is complete as it relates to the management and control of stormwater runoff quantity and quality.

**Redevelopment**

Any land disturbing activity at an already existing *Development*, other than activity that results in no net increase in *BUA*, that provides equal or greater stormwater control than the previous *Development*.

**Stormwater Appeals Board**

The appeals board established by the City Council in Article III, Division 12 of the *City's* Code of Ordinances, pursuant to NCGS 160A-146, and whose purpose is to hear and decide appeals from and review any order, requirement, decision, or determination made by the Stormwater Director.

**Stormwater Management System**

Stormwater management practices such as *Structural BMPs*, non structural BMPs, structures, appurtenances and any form of conveyance, such as grass channels, swales, underground piping, open ditches and storm drains, that exist outside of the public right of way, whether the right of way is maintained by the *City* or the State of North Carolina, as these management practices are designed and proposed to be utilized in a proposed *Development* or *Redevelopment* to comply with the stormwater quality and quantity standards set out in this *Ordinance*.

**Structural Best Management Practice (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-construction hydrology on a developed site; or to achieve any combination of these goals. *Structural BMP* includes physical practices such as constructed wetlands, wet ponds, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. *Structural BMP* is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this *Ordinance*.

**Substantial progress**

For the purposes of determining whether substantial 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; 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.

### ***75-108 DESIGN MANUAL***

#### **(A) Reference to Design Manual**

The *Stormwater Director* shall use the policy, criteria, information and technical specifications and standards found in the *Design Manual* as the basis for approving or disapproving stormwater management permits and the design, implementation and performance of *Stormwater Management Systems*. 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 found in the *Design Manual* will be presumed to meet the minimum water quality performance standards of this *Ordinance*.

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

(Reserved for future use.)

#### **(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 amended *Design Manual* shall control and shall be utilized to review, approve or disapprove the application.

#### **(D) Amendments to Design Manual**

The *Design Manual* may be updated and expanded by the State of North Carolina from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience. Prior to amending or updating the *Design Manual*, proposed changes are expected to be publicized by the State and made available for review. An opportunity for comment by interested persons should be provided.

### ***75-109 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS***

#### **(A) Conflict of Laws**

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

#### **(B) Private Agreements**

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

### ***75-110 SEVERABILITY***

If the provisions of any section, subsection, paragraph, subdivision or clause of this *Ordinance* shall be found to be 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*.

### **75-111 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

#### **(A) Effective Date**

This *Ordinance* is effective four months after the date of adoption.

#### **(B) Final Approvals, Complete Applications**

All *Development* and *Redevelopment* projects for which complete and full site plan applications were submitted to the *City* prior to the effective date of this *Ordinance*, and approved within 6 months of the effective date of this ordinance and which has *Substantial Progress* made within two years of the site plan approval, shall be exempt from complying with all provisions of this *Ordinance*.

#### **(C) Violations Continue**

Any violation of provisions existing on the effective date of this *Ordinance* shall continue to be a violation under this *Ordinance* whereas each day shall constitute a new and separate offense and be subject to penalties and enforcement under this *Ordinance* unless the use, *Development*, *Redevelopment*, construction, or other activity complies with the provisions of this *Ordinance*.

## **SECTION 2: ADMINISTRATION AND PROCEDURES**

### **75-201 REVIEW AND DECISION-MAKING ENTITIES**

#### **(A) Stormwater Director**

##### (1) Designation

The *Stormwater Director* shall be designated by the *City Manager* 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 *City's* code of ordinances and other laws, the *Stormwater Director* 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 the standards set out in this *Ordinance*;
- b. To make determinations and render interpretations of this *Ordinance*;
- c. To establish application requirements and schedules for submittal, to review applications and appeals, and to review and make recommendations to the *Stormwater Appeals Board* 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, and official materials as related to the adoption, amendment, enforcement, interpretation, and/or administration of this *Ordinance*;
- f. To provide expertise and technical assistance to the *City's* Council and Stormwater Appeals Board, if such a Stormwater Appeals Board is established. The *City's Stormwater Appeals Board* shall function as the Stormwater Appeals Board;
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the *Stormwater Director*; and
- h. To take any other action necessary to administer the provisions of this *Ordinance*.

### **75-202 REVIEW PROCEDURES**

#### **(A) Permit Required; Must Apply for Permit**

A stormwater management permit is required for all *Development* and *Redevelopment* unless exempt or excluded pursuant to this *Ordinance*. A permit may only be issued subsequent to a properly submitted and reviewed permit application.

**(B) Effect of Permit**

A stormwater management permit shall govern the design, installation, construction and maintenance of the *Stormwater Management System* for all *Developments* and *Redevelopments*. The permit is intended to provide a mechanism for the review, approval, and inspection of the *Stormwater Management System*, consistent with the requirements of this *Ordinance*. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the operation and maintenance provisions of this *Ordinance*.

**(C) Authority to File Applications**

All applications required pursuant to this *Ordinance* shall be submitted to the *Stormwater Director* by the *Owner* or the *Owner's* duly authorized agent.

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

(1) Application Contents and Form

The *Stormwater Director* shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time as required. At a minimum, the application shall describe in detail how the *Post Construction* stormwater runoff will be controlled and managed, the design of the *Stormwater Management System*, and how the proposed project will meet the requirements of this *Ordinance*.

(2) Permit Review Fees

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

(3) Administrative Manual

For applications required under this *Ordinance*, the *Stormwater Director* 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 Director* in the form established by the *Stormwater Director*, along with the permit review fee. An application shall be considered as submitted only when it contains all elements of a complete application pursuant to this *Ordinance*, along with the permit review fee. If the *Stormwater Director* 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.

**(F) Review**

Within 30 days after a complete application is submitted, the *Stormwater Director* should review the application and determine whether the application complies with this *Ordinance*.

(1) Approval

If the *Stormwater Director* finds that the application complies with this *Ordinance*, the *Stormwater Director* shall approve the application and notify the applicant in writing. The *Stormwater Director* 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 Director* finds that the application fails to comply with this *Ordinance* or if the application is incomplete, the *Stormwater Director* shall notify the applicant in writing 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 should be reviewed by the *Stormwater Director* within 30 days after its re-submittal and shall be approved, approved with conditions, or disapproved. If a revised application is not re-submitted within 30 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 permit review fee. One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by an additional permit review fee as established pursuant to this *Ordinance*.

## **75-203 APPLICATIONS FOR APPROVAL**

### **(A) Concept Plan and Consultation Meeting**

Before a stormwater management permit application is deemed complete, the *Stormwater Director* or *Owner* may request a consultation on a concept plan for the *Stormwater Management System*. This consultation meeting should take place prior to submitting the preliminary plan of subdivision, special use re-zoning or other early step in the *Development* or *Redevelopment* process. The purpose of this meeting is to discuss generally the *Stormwater Management System* necessary for the proposed *Development* or *Redevelopment*, as well as to discuss and assess constraints, opportunities and potential approaches to *Stormwater Management System* before formal site design engineering is commenced. The meeting is not intended to provide a total review of the final development plan. Local watershed plans, and other relevant resource protection plans may 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 to the *Stormwater Director* at least five business days in advance of the consultation 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; existing and proposed drainage conveyances; existing *Stormwater Management Systems*; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and 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 and/or graphic inventory of the 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* or *Redevelopment*.

#### (3) Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed *Stormwater Management System* including the location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

### **(B) Assessment of Impact**

Each concept plan shall include an assessment of *Post Construction* stormwater impacts upon downstream and upstream properties. The assessment of stormwater quality and quantity impacts shall be based on the standards contained within this *Ordinance*, at a minimum.

#### (1) Assessment and Control of Stormwater Quality Impacts

All *Stormwater Management Systems* proposed to be include in any *Development* or *Redevelopment*, not otherwise exempt or excluded, shall assess and satisfy the applicable stormwater quality management requirements as indicated in §75-302 of this Ordinance, at a minimum.

(2) Assessment and Control of Stormwater Quantity Impacts

All *Stormwater Management Systems* proposed to be include in any *Development* or *Redevelopment*, not otherwise exempt or excluded, shall assess and satisfy the applicable stormwater quantity management requirements as indicated in §75-303 of this Ordinance, at a minimum.

An appropriately qualified professional for the *Owner* must prepare the assessment of stormwater quantity impacts for review by the *Stormwater Director*. The assessment of upstream impacts must be provided, at a minimum, for property or properties located immediately upstream and/or adjacent to the proposed *Development* or *Redevelopment*. The *Stormwater Director* shall require that the impact assessment be extended for properties further upstream if site-specific conditions may cause an unreasonable impact on those properties further upstream. The assessment of downstream impacts shall be made by evaluating a site's contribution to stormwater runoff to a "suitable downstream point" considering the following guidelines:

- (a) A point downstream where the proposed site *Development* or *Redevelopment* represents less than ten (10) percent of the total watershed area draining to that point (10% Guideline).
- (b) A point downstream where drainage from the *Development* or *Redevelopment* site enters a Federal Emergency Management Agency (FEMA) established floodway.
- (c) A point where the *Stormwater Director* knows of no existing stormwater problems that the proposed *Development* or *Redevelopment* is likely to exacerbate.
- (d) A point where there are no public road crossings or other public infrastructure that may be adversely impacted by an increase in runoff from the proposed *Development* or *Redevelopment*.

This determination shall not alter any requirements related to stormwater quality management. These guidelines are intended to avoid unreasonable impacts wherever they might occur.

**(C) Stormwater Management Permit Application**

The stormwater management permit application shall detail how *Development* or *Redevelopment* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this Ordinance. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor or landscape architect, and the engineer, surveyor or landscape architect shall perform services only in their area of competence, and shall verify: 1) that the design of the *Stormwater Management System* meets the submittal requirements for complete applications; 2) that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*; and 3) that the proposed *Stormwater Management System* ensures compliance with this *Ordinance*. The submittal shall include all of the information required in the submittal checklist established by the *Stormwater Director*.

**(D) As-Built Plans and Final Approval**

Upon completion of a project and before a certificate of compliance, as defined in NCGS §160A-423, shall be granted by the *Building Inspector*, the *Owner* shall, except as provided for in subsection (E) of this section, certify that the completed project is in accordance with the approved *Stormwater Management System*, and shall submit actual as-built plans for the entire *Stormwater Management System* once construction is completed. The as-built plans shall show the final design specifications for the entire *Stormwater Management System*, including the field location, size, depth, and planted vegetation of all *Structural* BMP's and other measures, controls, conveyances and devices, as installed. The designer of the *Stormwater Management System* shall certify, under seal, that the as-built *Stormwater Management System* is in compliance with the approved *Stormwater Management System* and with the requirements of this *Ordinance*. A final inspection and approval by the *Stormwater Director* shall occur before the release

of any performance securities. The final inspection shall occur within a reasonable time frame in order to expedite release of performance securities.

**(E) Other Permits**

No certificate of compliance shall be issued by the *Building Inspector* working in consultation with the *Stormwater Director* without final, as-built plans and a final inspection and approval by the *Stormwater Director*, except where multiple units are served by the *Stormwater Management System*, in which case the *Building Inspector* may elect to withhold a percentage of certificates of compliance until as-built plans are submitted and approved by the *Stormwater Director*.

**75-204 APPROVALS**

**(A) Effect of Approval**

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

**(B) Time Limit/Expiration**

An approved stormwater plan and permit shall become null and void if the *Owner* has failed to make *Substantial Progress* on the site within two years after the date of approval. The *Stormwater Director* may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the *Owner* before the expiration of the approved plan. In granting an extension, the *Stormwater Director* shall require compliance with standards adopted since the original application was submitted unless the change in standards would infringe upon the applicant's vested rights.

**75-205 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 and made by the *Stormwater Director* may file an appeal to the *Stormwater Appeals Board* within 30 days of the *Stormwater Director's* decision, order, requirement or determination.

**(B) Filing of Appeal and Procedures**

- (1) Appeals shall be taken within the specified time period by filing with the *Stormwater Director* a notice of appeal and the grounds for the appeal. The *Stormwater Director* shall transmit the appeal, the grounds therefore and all documents related to the appeal (the record on appeal) to the *Stormwater Appeals Board*.
- (2) An appeal stays all proceedings in furtherance of the action appealed from, unless the *Stormwater Director* certifies to the *Stormwater Appeals Board*, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of this *Ordinance*. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the *Stormwater Appeals Board* or by a court of record on application, on notice to the *Stormwater Director* and on due cause shown.
- (3) The *Stormwater Appeals Board* shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The *Stormwater Appeals Board* may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion complies with this *Ordinance*. To this end the *Stormwater Appeals Board* shall have all the powers of the *Stormwater Director*.
- (4) The concurring vote of four-fifths of the members of the *Stormwater Appeals Board* shall be necessary to reverse any order, requirement, decision, or determination of the *Stormwater Director*.

or to decide in favor of the applicant any matter upon which it is required to pass under this *Ordinance*, or to grant a variance from the provisions of the *Ordinance*. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(5) A member of the *Stormwater Appeals Board* shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(6) Witnesses shall testify under oath or affirmation to be administered by the court reporter, notary or another duly authorized official.

**(C) REVIEW BY CITY COUNCIL** Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Stormwater Appeals Board may file an appeal to the City Council within 30 calendar days of the *Stormwater Appeals Board's* decision, order, requirement or determination. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the City of Winston-Salem. The Assistant City Manager/Public Works shall then, forthwith, transmit to the City Council all the appropriate documents explaining the decision that is being appealed and shall serve as the City Council's technical advisor. The hearing conducted by the City Council shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

#### **(D) Review by Superior Court**

Every decision of the City Council shall be subject to review by the Forsyth County General Court of Justice, Superior Court Division by proceedings in the nature of certiorari. Any petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the decision of the City Council is filed in such office as this *Ordinance* specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Assistant City Manager/Public Works at the time of its hearing of the case, whichever is later. The decision of the City Council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

### **SECTION 3: STANDARDS**

#### **75-301 GENERAL STANDARDS**

All *Development* and *Redevelopment* to which this *Ordinance* applies shall comply with the standards of this section for both quality and quantity.

#### **(A) Best Available Technology/Information**

The best available technology and information shall be used for analysis and design of a *Stormwater Management System* to meet the requirements of this *Ordinance*.

#### **(B) Stormwater Management in Perpetuity**

The approval of the stormwater management permit shall constitute an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions and protective covenants,

to ensure that future *Development* and *Redevelopment* maintains the site consistent with the approved project plans.

**(C) Operations and Maintenance Plan**

The *Owner* shall provide an operations and maintenance plan, as well as an agreement and contractual lien for the approved *Stormwater Management System*, for review and approval by the *Stormwater Director*. Once approved by the *Stormwater Director*, the operations and maintenance plan shall be implemented by the *Owner*.

**(D) Additional Requirements**

As part of the approval process, the *Stormwater Director* may impose additional requirements related to a proposed *Stormwater Management System* to address such issues as maintenance, drainage, inspection, operation, access easements, and restrictive covenants to ensure compliance with this *Ordinance*.

**(E) Low-Impact Development Practices**

*Owners* of *Development* and *Redevelopment* projects are hereby encouraged to use Low Impact Development (LID) practices where practicable that will aid stormwater quality and quantity management by reducing impervious surfaces, increasing the use of natural conveyances, maintaining natural vegetation areas, increasing infiltration of surface waters to replenish ground waters, and conserving stormwater for alternative compatible uses.

**(F) Regional Stormwater Control Facilities**

The use of regional stormwater control facilities may be allowed when space is available, in order to treat multiple parcels of land which are subject to the provisions of this *Ordinance*. Regional facilities may be allowed as joint ventures between private entities and/or public and private entities.

**75-302 STANDARDS FOR STORMWATER QUALITY MANAGEMENT**

**(A) Development Standards for Low-Density Projects**

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

- (1) Stormwater runoff from the *Development* or *Redevelopment* shall be transported from the *Development* or *Redevelopment* by vegetated conveyances to the maximum extent practicable.
- (2) Other than for those limited exceptions set out in paragraph (3) below, all *BUA* for every *Development* or *Redevelopment* shall be set back in accordance with the standards labeled “Required Landward Buffer Widths” and “Undeveloped Buffer”, at a minimum, as stated in the Table 1 below, as measured from the top of the stream bank of all perennial and intermittent surface waters.

Table 1

<i>Development</i> or <i>Redevelopment</i> Size	Required Landward Buffer Widths	Undisturbed Buffer Widths (Within Landward Buffer)
0-10 Acres	30 Feet	15 Feet
10-50 Acres	50 Feet	25 Feet
Greater than 50 Acres	100 Feet	50 Feet

(3) Right of way crossings, below ground level utility crossings or encroachments, and greenways, if approved pursuant to a stormwater management permit or pursuant to a *Development* or a *Redevelopment* site plan, may be located within the landward buffer. Other than approved right of way and utility crossings, these exceptions to the landward buffer may not be located within the undisturbed buffer.

(4) A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural



















