

**“The Universal Stormwater Management Program Ordinance” for the City of Trinity, NC,**

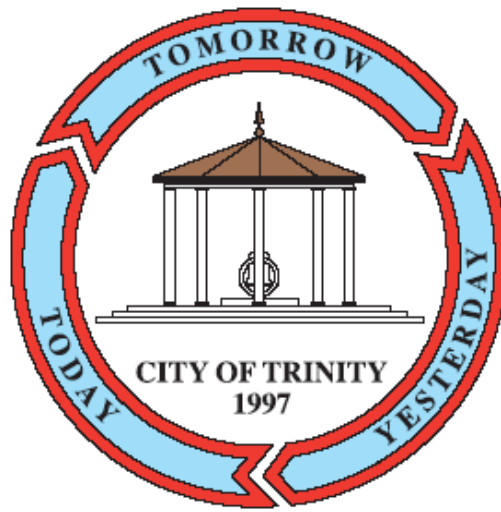


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## ARTICLE 1: GENERAL PROVISIONS

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### Sec-101 TITLE

This ordinance shall be officially known as “The Universal Stormwater Management Program Ordinance.” It is referred to herein as “this ordinance.”

### Sec-102 AUTHORITY

The (Trinity City Council) is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, ARTICLE 5 of the Constitution of North Carolina; (City of Trinity); 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 and (Chapter 143, Article 21, Part 6 (Floodway Regulation)) [; Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18].

### Sec-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 (Trinity City 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.

### Sec-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 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 protects the integrity of watersheds and preserves the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, stream bank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space, 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 (City of Trinity Subdivision Ordinance ARTICLES 6-11 and 6-18 Open Space Standards, also Zoning Ordinance ARTICLE 12-5, open space requirements).
- [9. Controlling illicit discharges into the municipal separate stormwater system.]
- [10. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.]



## Sec-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 SubARTICLE (B) of this ARTICLE, Exemptions.

### (B) Exemptions

#### (1) Thresholds

*[Residential development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale, and non-residential development that cumulatively disturbs less than one-half acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.*

*Redevelopment outside the floodplain that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance*

*Redevelopment of residential structures that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance whether or not within the floodplain.*

*Redevelopment of non-residential structures that disturbs less than one-half acre, that is not part of a larger common plan of development or sale, that is within the floodplain, and that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development is exempt from the provisions of this ordinance.*

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

#### (2) General exemption

Activities that are exempt from permit requirements of ARTICLE 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 "USMP Stormwater Map of (City of Trinity), North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompany and are hereby made a part of this ordinance.<sup>1</sup>

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.

**Sec-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 ARTICLE 1, Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in (City of Trinity's code of ordinances), the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.<sup>2</sup>

**(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 (City of Trinity), the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the (City of Trinity). 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 (City of Trinity) may be carried out by his or her designee.

**(G) Usage**

**(1) Mandatory and Discretionary Terms**

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

**(2) Conjunctions**

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

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

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

**(H) Measurement and Computation**

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

**Sec-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 NCDENR Stormwater Best Management Practices Design Manual (referred to as 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 and other applicable stormwater laws.<sup>3</sup>

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

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

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

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

**(D) [Amendments to Design Manual]**

[The *Design Manual* used by the City of Trinity was established by NCDENR, may be updated and expanded from time to time, based on advancements in technology, engineering and improved knowledge of local conditions. Prior to amending the Design Manual, proposed changes are expected to be publicized by the State and made available for review.

**Sec-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS**

**(A) Conflict of Laws**

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

**(B) Private Agreements**

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

#### **Sec-109 SEVERABILITY**

If the provisions of any ARTICLE, subARTICLE, 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 ARTICLE, subARTICLE, paragraph, subdivision or clause of this ordinance.

#### **Sec-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

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

This Ordinance shall take effect on January 21, 2009.

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

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the (City of Trinity) prior to the effective date 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.

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

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

## ARTICLE 2: ADMINISTRATION AND PROCEDURES

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

#### (A) Stormwater Administrator

##### (1) Designation

A Stormwater Administrator shall be designated by the (Trinity City 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 (City of Trinity Ordinance) 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. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond within 30 calendar days. The Stormwater Administrator shall keep on file a record of all written 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 (Trinity City 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 (Trinity City Council and the Stormwater Advisory Board), 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.

## Sec-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 ARTICLE.

### (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 or his or her designee 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 [Stormwater Advisory Board] 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. The Stormwater application and plan checklist will be available at the office of the Stormwater Administrator or Planning officer for the City of Trinity.

#### (2) Submission Schedule

The Stormwater Administrator [Stormwater Advisory Board] 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 (Trinity 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.

### **(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 ARTICLE.

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.

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

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

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 ARTICLE 202(D).

### **(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 (Randolph County) 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 (Randolph County) 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.

**Sec-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.

**Sec-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.

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

[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 (City of Trinity). The Stormwater Administrator shall transmit to the (the Board of Adjustments) all documents constituting the record on which the decision appealed from was taken.

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

**(C) [Review by Superior Court]**

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

- (1) The decision of the (Board of Adjustments) is filed; or
- (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the (Chair or Secretary of the Board of Adjustments) at the time of its hearing of the case.]

## ARTICLE 3: STANDARDS

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### Sec-301 GENERAL STANDARDS

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

### Sec-302 IMPERVIOUS SURFACE REQUIREMENTS

#### (A) Setback requirement

All impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters.

A perennial or intermittent surface water shall be deemed present if the feature is 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 complete 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.

#### (B) No new impervious or partially pervious surface in floodplain

For development activities outside the counties subject to the Coastal Area Management Act of 1974, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the floodplain

### Sec-303 STRUCTURAL STORMWATER CONTROL REQUIREMENTS

*Owners* of property subject to this ordinance and required to install structural stormwater control measures shall implement those measures in compliance with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time for wet detention ponds 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) The measure shall discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm.
- (E) The approval of the stormwater permit shall require enforceable restrictions on property usage that runs with the land, including recorded deed restrictions and protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

#### **Sec-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 review whether proposed BMPs will be adequate to meet the requirements of this ordinance. All BMP's shall be certified to be in compliance with the *Design Manual* by the designing professional engineer.

##### **(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.<sup>4</sup>

#### **Sec-306 STREAM BUFFER REQUIRED**

A stream buffer with a minimum width as specified in the table below measured landward from the normal pool elevation of impoundments and from the top of bank of each side of streams or rivers shall be maintained along all perennial and intermittent streams. This requirement is not applicable to enclosed subsurface drainage segments of intermittent streams, or to perennial streams outside of water supply watersheds in which the North Carolina Division of Water Quality has issued a 401 Water Quality Certification. No new

development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater BMPs. The stream buffer for the NPDES water supply districts other than Randleman Lake shall have the first (20) feet from top of bank, landward, designated as a Water Quality Conservation Easement (WQCE) and the remainder of the stream buffer shall be a vegetated area.

Randleman Lake – **These rules apply to all landowners within the Randleman Lake watershed, regardless of the threshold of land disturbance.** The Low Density Option the stream buffer shall be comprised of Zone 1, which shall be an undisturbed area of vegetation extending a distance of (30) feet landward from the top of bank along both sides of the stream and Zone 2, which begins at the outer edge of Zone 1 and extends (20) feet and shall be vegetated. Under the High Density Option, the first (50) feet of stream buffers shall conform requirements of Zone 1 and 2, the remainder shall be vegetated. All runoff shall be diffuse flow into the riparian buffer by dispersing concentrated flow and vegetating. **Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.** Concentrated flow from new ditches or manmade conveyances shall be converted to diffuse flow before entering Zone 2 of the buffer. **Periodic corrective action to restore diffuse flow shall be taken if necessary by the property owner to impede the formation of erosion gullies.**

NOTE: All stream buffers shall be labeled on recorded plats as “Drainage and Stream Buffer Easement”.

WATERSHED	LOW DENSITY DEV.		HIGH DENSITY DEV.	
	Perennial Streams, Lakes and Ponds	Intermittent Streams	Perennial Streams, Lakes and Ponds	Intermittent Streams
WS – III Uwharrie River	30 ft.	30 ft.	100 ft.	30 ft.
WS – IV Randleman Lake	50 ft.	50 ft.	100 ft.	50 ft.

#### Sec-307 VARIANCES

(A) Any person may petition the (City of Trinity) 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 (City of Trinity) may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

Notwithstanding subdivision (A) of this ARTICLE, 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.

#### **Sec-308 DEVELOPMENT REGULATIONS**

##### **(A) Establishment of Watershed Overlay Districts.**

To provide an additional layer of protection for drinking water supply watersheds, the following watershed overlay district is established

##### **Uwharrie River (Lake Reece) WS – III – BW (Balance of Watershed)**

(1) Low Density Development. In order to maintain a low to medium land use intensity pattern, single family detached uses shall development at a maximum of two (2) dwelling units per acre. However, in the absence of public sewer, all waste treatment must be permitted by the County Health Department, in which case the minimum lot size is 40,000 sq. ft. All other residential and non-residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area.

(2) Cluster Development-High Density.

(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.



(1) **[Pet waste]**

(a) Dogs At Large Prohibited

It shall be unlawful for the owner of any dog to allow the animal to be off the premises of his owner and not on a leash in (City of Trinity).

(b) 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.

## ARTICLE 4: MAINTENANCE

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### Sec-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 have an Annual Inspection performed by the (City of Trinity) Stormwater Administrator or designee. 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 or not in compliance (stating reasons and corrective action) with the terms and conditions of the approved maintenance agreement required by this ordinance.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator along with the as-built certification

### Sec-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 (City of Trinity) 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 (City of Trinity) 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. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

**(B) Special Requirement for Homeowners' and Other Associations**

For all *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 (City of Trinity), in its sole discretion, may remedy the situation, and in such instances the (City of Trinity) shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the (City of Trinity) 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 (City of Trinity) depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the (City of Trinity) a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the (City of Trinity) to recover from the association and its member's any and all costs the (City of Trinity) expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the (City of Trinity) all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the (City of Trinity) 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 (City of Trinity) to maintain or repair any *structural BMPs*, and the (City of Trinity) 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 (City of Trinity) to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the (City of Trinity) for any costs and injuries arising from or related to the structural BMP, unless the (City of Trinity) 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.

#### **Sec-403 INSPECTION PROGRAM**

Inspections and inspection programs by (City of Trinity) shall 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.<sup>5</sup>

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.

## Sec-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

### (A) May Be Required

The (City of Trinity) 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.

### (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 (City of Trinity) shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

### **(3) Costs in Excess of Performance Security**

If (City of Trinity) takes action upon such failure by the applicant or *owner*, the (City of Trinity) 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.

## **Sec-405 NOTICE TO OWNERS**

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

The applicable operations and maintenance agreement, conservation easement, pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

### **(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.

## **Sec-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.<sup>6</sup>

## **Sec-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.

**Sec-408 [MAINTENANCE EASEMENT**

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a 20ft (Foot) maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

## ARTICLE 5: ENFORCEMENT AND VIOLATIONS

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### Sec-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 (City of Trinity). Whenever this ARTICLE refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of (City of Trinity).

#### (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.

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

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

#### (D) Responsible Persons/Entities

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

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

##### (1) Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

##### (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.

## **Sec-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 (City of Trinity, Planning and Zoning Board) may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the (zoning, subdivision, and/or building regulations, as appropriate) for the land on which the violation occurs.

#### **(3) Injunction, Abatements, etc.**

The Stormwater Administrator, with the written authorization of the (City 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 (City 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.

Commentary: A stop work order is an important tool where, as in the case of stormwater violations, the consequences of delay in halting illegal activity can result in significant harm to the environment and public health, safety or welfare. However, the enabling authority for use of a stop work order by local governments is unclear. As a practical matter, if a legal challenge is brought to a local government's use of a stop work order, it is unlikely to result in negative consequences for the local government, since the legal remedy would likely consist of the court's invalidation of the stop work order.

If a local government chooses to include this stop work provision, it should do so in consultation with legal counsel, and an accelerated appeal process pursuant to ARTICLE 205, Appeals, should be provided for situations where a stop work order is applied. One way to accelerate the appeal process is to shorten the timeframe for review of appeals. A special or emergency Board of Adjustment meeting could be called, so that a party seeking to challenge a stop work order would achieve a speedy resolution of the matter.

**(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 (City of Trinity) is subject for violations of its USMP Stormwater permit, or if no USMP Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

**(C) Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

**Sec-503 PROCEDURES**

**(A) Initiation/Complaint**

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

**(B) Inspection**

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

**(C) Notice of Violation and Order to Correct**

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.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the (City of Trinity code enforcement personnel), by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under 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 90 days. The Stormwater Administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

**(E) Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. 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.

**(F) Emergency Enforcement**

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

## ARTICLE 6: DEFINITIONS

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### Sec-601 TERMS DEFINED

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

#### ***Best Management Practice (BMP)***

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

#### ***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.

#### ***Conservation Easement for Drainageway***

Land designated for use as open or subsurface channel conveying the flow from a one-hundred year storm event. Conservation Easements shall be left in its natural condition or graded to a *ARTICLE* approved by the Stormwater Administrator or designee which allow economical and efficient maintenance and shall be stabilized with permanent vegetative cover.

#### ***Department***

The North Carolina Department of Environment and Natural Resources.

#### ***Design Manual***

The stormwater design manual (NCDENR) approved for use in Phase II jurisdictions by the *Department* [developed by (City of Trinity) and certified by this jurisdiction [approved by the *Division*] as at least as stringent as 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.

#### ***Development***

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

#### ***Division***

The Division of Water Quality in the *Department*.

#### ***Floodplain***

The one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management.

***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.

***1-year, 24-hour storm***

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

***Owner***

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

***Redevelopment***

Any *development* on previously-developed land, other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

***Storm, One-Hundred (100)-Year***

The surface runoff resulting from a rainfall of an intensity that has a one (1) percent chance of being equaled or exceeded in any given year and of a duration which will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions

***Stream Buffer***

A natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering pollutants. The buffer width is measured landward from the normal pool elevation of impoundments and from the top of bank of each side of the streams or rivers.

***Structural BMP***

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-*development* hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment

practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in 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.

## ARTICLE 7: ILLICIT DISCHARGES

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### Sec-701 ILLICIT DISCHARGES AND CONNECTIONS<sup>2</sup>

#### (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) De-chlorinated swimming pool discharges;
- (18) Street wash water; and

(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 (City of Trinity).

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 subARTICLE (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 ARTICLE 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 ARTICLE;

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 released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.



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 (Randolph County 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 (City of Trinity) 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 ARTICLE 1 subARTICLEs1 and 9(City of Trinity, Declaration of Public Nuisance)

