

# ARTICLE 9: NATURAL RESOURCES

## 9.1. PURPOSE

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Natural resources provide for the livelihood (through agriculture, silviculture, ranching, commercial and recreational hunting and fishing, ecotourism, artistic inspiration, and art-related economy, etc.) and well-being (through drinking water, safe environmental conditions, quality of life, and outdoor recreation and enjoyment, etc.) of the community. The protection of these resources and mitigation of hazards they can pose is necessary for the protection of the well-being and safety of the residents and the financial security for people's investments.

## 9.2. FLOOD DAMAGE PREVENTION

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### 9.2.1. Statutory Authorization, Findings of Fact, Purpose and Objectives

#### A. Statutory Authorization

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D (Effective July 1, 2021) of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Board of Commissioners of Franklin County, North Carolina, does ordain as follows:

#### B. Findings of Fact

1. The flood prone areas within the jurisdiction of Franklin County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
2. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or other hazards.

#### C. Statement of Purpose

It is the purpose of this Ordinance to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion, flood heights or velocities
2. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters
4. Control filling, grading, dredging, and all other development which may increase erosion or flood damage
5. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

D. Objectives

The objectives of this Ordinance are:

1. To protect human life, safety, and health.
2. Minimize expenditure of public money for costly flood control projects.
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
4. Minimize prolonged business losses and interruptions.
5. Minimize damage to public facilities and utilities (i.e., water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas.
6. Minimize damage to private and public property due to flooding.
7. Reduce barriers to participation in the National Flood Insurance Program.
8. To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas.
9. To insure that potential home buyers are notified that property is in a Special Flood Hazard Area, as appropriate.

9.2.2. Definitions

The defined terms in this section only apply to the application and administration of the Flood Damage Prevention provisions of this ordinance.

See Article 10, Definitions for all other definitions and terms not associated with Flood Damage Prevention.

“Accessory Structure (Appurtenant Structure)” means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building.

“Addition (to an existing building)” means an extension or increase in the floor area or height of a building or structure.

“Alteration of a watercourse” means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard, or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

“Area of Shallow Flooding” means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from 1 to 3 feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

“Area of Special Flood Hazard” see “Special Flood Hazard Area (SFHA)”.

“Area of Future-Conditions Flood Hazard” means the land area that would be inundated by the 1%-annual-chance (100-year) flood based on future-conditions hydrology.

“Base Flood” means the flood having a 1% chance of being equaled or exceeded in any given year.

“Base Flood Elevation (BFE)” means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a “Special Flood Hazard Area”, it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the “Freeboard”, establishes the “Regulatory Flood Protection Elevation”.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Building” see “Structure”.

“Chemical Storage Facility” means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

“Design Flood” See “Regulatory Flood Protection Elevation.”

“Development” means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Development Activity” means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

“Digital Flood Insurance Rate Map (DFIRM)” means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

“Disposal” means, as defined in G.S. § 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

“Elevated Building” means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

“Encroachment” means the advance or infringement of uses, fill, excavation, buildings, structures or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

“Existing building and existing structure” means any building and/or structure for which the “start of construction” commenced before the effective date of the floodplain management regulations adopted by a community, dated March 18, 2013.

“Existing Manufactured Home Park or Manufactured Home Subdivision” means a manufactured home park or subdivision for which the

construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community., dated March 18, 2013.

“Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

“Flood Boundary and Floodway Map (FBFM)” means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

“Flood Hazard Boundary Map (FHBM)” means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

“Flood Insurance” means the insurance coverage provided under the National Flood Insurance Program.

“Flood Insurance Rate Map (FIRM)” means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (see also DFIRM)

“Flood Insurance Study (FIS)” means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

“Flood Prone Area” see “Floodplain”

“Flood Zone” means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

“Floodplain” means any land area susceptible to being inundated by water from any source.

“Floodplain Administrator” is the individual appointed to administer and enforce the floodplain management regulations.

“Floodplain Development Permit” means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

“Floodplain Management” means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

“Floodplain Management Regulations” means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

“Floodproofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

“Flood-resistant material” means any building product [material, component or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

“Floodway” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot.

“Floodway encroachment analysis” means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries

and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.

“Freeboard” means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, precipitation exceeding the base flood, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the “Regulatory Flood Protection Elevation”.

“Functionally Dependent Facility” means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

“Hazardous Waste Management Facility” means, as defined in G.S. § 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

Highest Adjacent Grade (HAG)” means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

“Historic Structure” means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a local inventory of historic landmarks in communities with a “Certified Local Government (CLG) Program”;  
or
4. Certified as contributing to the historical significance of a historic district designated by a community with a “Certified Local Government (CLG) Program.”

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

“Letter of Map Change (LOMC)” means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

1. Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
2. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
3. Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community’s floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

“Light Duty Truck” means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is one of the following:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle



2. Designed primarily for transportation of persons and has a capacity of more than 12 persons
3. Available with special features enabling off-street or off-highway operation and use.

“Lowest Adjacent Grade (LAG)” means the lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

“Lowest Floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

“Manufactured Home” means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

“Manufactured Home Park or Subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“Map Repository” means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

“Market Value” means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

“New Construction” means structures for which the “start of construction” commenced on or after the effective date of the initial

floodplain management regulations and includes any subsequent improvements to such structures.

“Non-Encroachment Area (NEA)” means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 1 foot as designated in the Flood Insurance Study report.

“Post-FIRM” means construction or other development for which the “start of construction” occurred on or after the effective date of community’s first FIRM.

“Pre-FIRM” means construction or other development for which the “start of construction” occurred before insert date of community’s first FIRM the effective date of the initial Flood Insurance Rate Map.

“Principally Above Ground” means that at least 51% of the actual cash value of the structure is above ground.

“Public Safety” and/or “Nuisance” means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

“Recreational Vehicle (RV)” means a vehicle, which is:

- a. Built on a single chassis
- b. 400 square feet or less when measured at the largest horizontal projection
- c. Designed to be self-propelled or permanently towable by a light duty truck
- d. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use
- e. Is fully licensed and ready for highway use.

“Reference Level” is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, A99. The reference level is the bottom of the lowest horizontal structural member of the lowest floor for structures within Special Flood Hazard Areas designated as Zone VE.

“Regulatory Flood Protection Elevation” means the “Base Flood Elevation” plus the “Freeboard”. In “Special Flood Hazard Areas” where

Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus 4' freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least 4' above the highest adjacent grade.

"Remedy a Violation" means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in G.S. § 130A-290(a)(35).

"Solid Waste Disposal Site" means, as defined in G.S. § 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a 1% greater chance of being flooded in any given year.

"Start of Construction" includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor,

or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

“Structure” means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

“Substantial Damage” means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. See definition of “substantial improvement”.

“Substantial Improvement” means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50% of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

1. Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Article 4 of this ordinance.

“Technical Bulletin and Technical Fact Sheet” means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

“Temperature Controlled” means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

“Variance” is a grant of relief from the requirements of this Article.

“Violation” means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this section is presumed to be in violation until such time as that documentation is provided.

“Water Surface Elevation (WSE)” means the height, in relation to NAVD 1988 (or currently accepted vertical datum) mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

“Watercourse” means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

### 9.2.3. General Provisions

#### A. Land to Which this Ordinance Applies

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including extraterritorial jurisdictions (ETJs) if applicable, of Franklin County and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

#### B. Basis for Establishing the Areas of Special Flood Hazard

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated January 16, 2004 shown on FIS for Franklin County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

#### C. Establishment of a Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this Ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of this Article.

#### D. Compliance

No structure of land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

#### E. Abrogation and Greater Restrictions

This Ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this

Ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

F. Interpretation

In the interpretation and application of this ordinance, all provisions shall be:

1. Considered as minimum requirements
2. Liberally construed in favor of the governing body
3. Deemed neither to limit nor repeal any other powers granted under State statutes.

G. Warning and Disclaimer of Liability

The degree of flood protection required by this Ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This Ordinance shall not create liability on the part of Franklin County or by any officer or employee thereof for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

H. Penalties for Violation

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent Franklin County from taking such other lawful action as is necessary to prevent or remedy any violation.

9.2.4. Administration

A. Designation of Floodplain Administrator

The Franklin County Planning Director or Designee, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's

overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

B. Floodplain Development Application, Permit and Certification Requirements

1. Application Requirements

Application for a Floodplain Development Permit shall be made to the floodplain administrator on forms furnished by him or her prior to any development activities proposed to be located within flood prone areas. The following items/information shall be presented to the floodplain administrator to apply for a floodplain development permit.

2. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
  - a. The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, the location of utility systems, proposed grading/pavement areas, fill materials, storage areas, drainage facilities, and other proposed development.
  - b. The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in this section or a statement that the entire lot is within the Special Flood Hazard Area
  - c. Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in this Section
  - d. The boundary of the floodway(s) or non-encroachment area(s) as determined in this Section
  - e. The Base Flood Elevation (BFE) where provided as set forth in this Section
  - f. The old and new location of any watercourse that will be altered or relocated as a result of proposed development
  - g. The certification of the plot plan by a registered land surveyor or professional engineer.
  - h. Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

- i. Elevation in relation to NAVD 1988 (or currently accepted vertical datum) of the proposed reference level (including basement) of all structures
  - ii. Elevation in relation to NAVD 1988 (or currently accepted vertical datum) to which any non-residential structure in Zones A, AE, AH, AO, A99 will be flood-proofed
  - iii. Elevation in relation to NAVD 1988 (or currently accepted vertical datum) to which any proposed utility systems will be elevated or floodproofed.
- i. If floodproofing, a floodproofing certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercises, and maintenance of floodproofing measures.
  - j. A Foundation Plan drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
    - i. Proposed method of elevation, if applicable (i.e. fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/piers)
    - ii. Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with this Section.
  - k. Usage details of any enclosed areas below the lowest floor.
  - l. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
  - m. Certification that all other local, state, and federal permits required prior to floodplain development permit issuance have been received.
  - n. Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions this Section of this ordinance are met.
  - o. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.



### 3. Permit Requirements

The Floodplain Development Permit shall include, but not be limited to:

- a. A complete description of all the development to be permitted under the floodplain development permit (e.g., house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- b. The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in this Section.
- c. The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
- d. The Regulatory Flood Protection Elevation required for the protection of all public utilities.
- e. All certification submittal requirements with timelines.
- f. A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of this Section have been met.
- g. The flood openings requirements.
- h. Limitations of below BFE enclosure uses (i.e., parking, building access and limited storage only), if applicable.
- i. A statement, that all materials below BFE/RFPE must be flood resistant materials.

### 4. Certification Requirements

#### a. Elevation Certificates

A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built

construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

b. Floodproofing Certificate

A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988 (or currently accepted vertical datum). Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

- c. If a manufactured home is placed within Zones A, AE, AH, AO, A99 and the elevation of the chassis is more than 36" in height above grade, an engineered foundation certification is required in accordance with the provisions of this Section.
- d. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

e. Certification Exemptions

The following structures, if located within A, AO, AE, or A1-30 zones, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

- i. Recreational Vehicles meeting requirements of this Section
- ii. Temporary Structures meeting requirements of this Section

- iii. Accessory Structures less than 150 square feet meeting requirements of this Section

5. Determinations for Existing Buildings and Structures

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- a. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- b. Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure.
- c. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- d. Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the North Carolina Building Code and this ordinance is required.

C. Duties and Responsibilities of the Floodplain Administrator

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- 1. Review all floodplain development applications and issue permits for all proposed development within flood prone areas to assure that the requirements of this ordinance have been satisfied.
- 2. Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state, and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

3. Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered and relocated portion of said watercourse so that the flood-carrying capacity is maintained.
5. Prevent encroachments with floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of this Section are met.
6. Obtain actual elevation (in relation to NAVD 1988, or currently accepted vertical datum) of the reference (including basement) of all attendant utilities of all new or substantially improved structures, in accordance with this Section.
7. Obtain the actual elevation (in relation to NAVD 1988, or currently accepted vertical datum) to which the new or substantially improved structures and all utilities have been floodproofed, in accordance with this Section.
8. Obtain actual elevation (in relation to NAVD 1988, or currently accepted vertical datum) of all public utilities, in accordance with this Section.
9. When flooding is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with this Section.
10. Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
11. When Base Flood Elevation (BFE) data has not been provided in accordance with this Section obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data and/or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to this Section in order to administer the provisions of this Ordinance.

12. When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with this Section, review, and reasonably utilize any floodway data, and/or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
13. Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection recognizing that such information may be subject to the Privacy Act of 1974, as amended.
14. Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
15. Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.
16. Revocation of floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or Local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or Local law may also be revoked.
17. Make periodic inspections throughout all Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper

credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

18. Follow through with corrective procedures of this Article.
19. Review, provide input, and make recommendations for variance requests.
20. Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with the provisions of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
21. Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

D. Corrective Procedures

1. Violations to be Corrected

When the Floodplain Administrator finds violations of applicable State and Local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law pertaining to their property.

2. Actions in Event of Failure to Take Corrective Action

- a. If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - i. That the building or property is in violation of the floodplain management regulations, including this Flood Damage Prevention Ordinance
  - ii. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
  - iii. That following the hearing, the Floodplain Administrator may issue such order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

b. Order to Take Corrective Action

If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall make an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than 60 days, nor more than 180 calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

3. Appeal

Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the Floodplain Administrator and the clerk within 10 days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

4. Failure to Comply with Order

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been made or fails to comply with an order of the governing body following an appeal, they shall be guilty of a Class 1 misdemeanor pursuant to G.S. § 143-215.58 and shall be punished in the discretion of the court.

E. Variance Procedures

1. The Board of Adjustment as established by Franklin County, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this Ordinance.
2. Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in G.S. § 7A.
3. Variances may be issued for any of the following:
  - a. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

- b. Functionally dependent facilities if determined to meet the definition as stated in this Article, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
  - c. Any other type of development provided it meets the requirements of this Section.
4. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this Ordinance.
- a. The danger that materials may be swept onto other lands to the injury of others
  - b. The danger to life and property due to flooding or erosion damage;
  - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner
  - d. The importance of the services provided by the proposed facility to the community;
  - e. The necessity to the facility of a waterfront location as defined in this Article as a functionally dependent facility, where applicable
  - f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use
  - g. The compatibility of the proposed use with existing and anticipated development
  - h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area
  - i. The safety of access to the property in times of flood for ordinary and emergency vehicles
  - j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site
  - k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
5. A written report addressing each of the above factors shall be submitted with the application for a variance.



6. Upon consideration of the factors listed above and the purposes of this Ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Ordinance.
7. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
8. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.
9. Conditions for Variances
  - a. Variances may not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
  - b. Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
  - c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - d. Variances shall only be issued prior to development permit approval.
  - e. Variances shall only be issued upon
    - i. A showing of good and sufficient cause
    - ii. A determination that failure to grant the variance would result in exceptional hardship
    - iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
10. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and

chemical storage facilities that are in Special Flood Hazard Areas provided that all of the following conditions are met.

- a. The use serves a critical need in the community.
- b. No feasible location exists for the use outside the Special Flood Hazard Area.
- c. The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.
- d. The use complies with all other applicable federal, state, and local laws.
- e. Franklin County has notified the Secretary of the North Carolina Department of Public Safety of its intention to grant a variance at least 30 calendar days prior to granting the variance.

#### 9.2.5. Provisions for Flood Hazard Reduction

##### A. General Standards

In all Special Flood Hazard Areas, the following provisions are required:

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
2. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
3. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages.
4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (i.e., washers, dryers, refrigerator, etc.), hot water heaters, electric outlets/switches.
  - a. Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
  - b. Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original

location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

5. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
6. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
7. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
8. Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
9. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted except by variance as specified in this Article. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified according to this Article.
10. All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
11. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
12. All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
13. All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law,

including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

14. When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
15. When a structure is located in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.
16. Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.

B. Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set for in this Article the following provisions are required:

1. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in 9.3.2.

2. Nonresidential Construction

New construction or substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation. Structures located in Zones A,, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with this Section. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in this Section.

3. Manufactured Homes

- a. New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation.
  - b. Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement in accordance with the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis 36" or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36" in height, an engineering certification is required.
  - c. All foundation enclosures or skirting shall be in accordance with this Section.
  - d. An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management coordinator.
4. Elevated Buildings Fully enclosed areas, of new construction and substantially improved structures, which is below the lowest floor:
- a. Shall not be designed to be used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas
  - b. Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation
  - c. Shall include flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must

either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

- i. A minimum of 2 flood openings on different sides of each enclosed area subject to flooding
- ii. The total net area of all flood openings must be at least 1 square inch for each square foot of enclosed area subject to flooding
- iii. If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit
- iv. The bottom of all required flood openings shall be no higher than 1' above the higher of the interior or exterior adjacent grade
- v. Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions
- vi. Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

5. Additions/Improvements.

- a. Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - i. Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages.
  - ii. A substantial improvement, with modifications/rehabilitations to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.
- b. Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

- c. Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
  - i. Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.
  - ii. A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- d. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during 1-year period, the cumulative cost of which equals or exceeds 50% of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the 1- year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
  - i. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
  - ii. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

6. Recreational Vehicles

Recreational vehicles shall either:

a. Temporary Placement

- i. Be on site for fewer than 180 consecutive days
- ii. Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and has no permanently attached additions.)

b. Permanent Placement

Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

#### 7. Temporary Non-Residential Structures

Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

- a. A specified period for which the temporary use will be permitted. Time specified may not exceed 3 months, renewable up to 1) year;
- b. The name, address and phone number of the individual responsible for the removal of the temporary structure;
- c. The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification)
- d. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed
- e. Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area to which the temporary structure will be moved.

#### 8. Accessory Structures

When accessory structures (sheds, detached garages, etc.) are to be placed in the Special Flood Hazard Area, the following criteria shall be met:

- a. Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas).
- b. Accessory structures shall not be temperature-controlled.
- c. Accessory structures shall be designed to have low flood damage potential.
- d. Accessory structures shall be constructed and placed on the building site to offer the minimum resistance to the flow of floodwaters.
- e. Accessory structures shall be firmly anchored in accordance with this Section.



- f. All services facilities such as electrical shall be installed in accordance with this Section.
- g. Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of this Section.

An accessory structure with a footprint less than 150 square feet does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with this Section.

#### 9. Tanks

When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

##### a. Underground tanks

Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

##### b. Above-ground tanks, elevated

Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

##### c. Above-ground tanks, not elevated

Above-ground tanks that do not meet the elevation requirements of this Article shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

##### d. Tank inlets and vents

Tank inlets, fill openings, outlets and vents shall be:

- i. At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood.
- ii. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

#### 10. Other Development

- a. Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of this Section.
- b. Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of this Section.
- c. Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of this Section.
- d. Commercial storage facilities are not considered "limited storage" as noted in this ordinance and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

#### C. Standards for Floodplains without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in this Section, where no BFE data has been provided by FEMA, the following provisions, in addition these provisions shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 20 feet each side from top of bank or 5 times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

- a. When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in this Section.
- b. When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of this Section.
- c. All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than 5 acres or has more than 50 lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with this Section and utilized in implementing this ordinance.
- d. When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in this Section.

#### 9.2.6. Subdivisions, Manufactured Home Parks and Major Developments

All subdivision, manufactured home parks and major development proposals located within Special Flood Hazard Areas shall:

- A. Be consistent with the need to minimize flood damages
- B. have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage
- C. have adequate drainage provided to reduce exposure to flood hazards
- D. have Base Flood Elevation (BFE) data provided if development is greater than the lesser of 5 acres or 50 lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per in this Article and be utilized in implementing this code.
- E. Standards for Floodplains without Established Base Flood Elevations

Within the Special Flood Hazard Areas established in this Section, where no Base Flood Elevation (BFE) data has been provided, the following provisions shall apply:

1. No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 25' each side from top of bank or 5 times the width of the stream whichever is greater, unless certification with supporting

technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If all applicable standards are satisfied and Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with this Ordinance. When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source, the reference level, including basement, shall be elevated at least 3' above the highest adjacent grade. Standards for Riverine Floodplains with BFE but without Established Floodways or Non-Encroachment Areas
  3. Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:
    - a. Standards of this Section
    - b. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than 1' at any point.
- F. Floodways and Non-Encroachment Areas

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Area established in this Section. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of flood waters that have erosion potential and carry debris and potential projectiles. The following provisions shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements, and other developments shall be permitted unless:
  - a. It has been demonstrated that the proposed encroachment would not result in any increase in the flood levels during the

occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or

- b. A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within 6 months of completion of the proposed encroachment.
2. If this Section is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this Ordinance.
  3. No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision provided the following provisions are met:
    - a. The anchoring and the elevation standards of this and
    - b. The encroachment standards of this Section.

G. Standards for Areas of Shallow Flooding (A0 Zones)

Located within the Special Flood Hazard Areas established in this Section are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. All new construction and substantial improvements shall meet the following requirements:

1. The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of 4' freeboard, above the highest adjacent grade; or at least 2' above the highest adjacent grade if no depth number is specified.
2. Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in this Section so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required in accordance with this Section.

3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

H. Standards for Areas of Shallow Flooding (Zone AH)

1. Located within the Special Flood Hazard Areas established in this Section are areas designated as shallow flooding areas. These areas are subject to inundation by 1% -annual-chance shallow flooding (usually areas of ponding) where average depths are one 1 to 3 feet. Base Flood Elevations are derived from detailed hydraulic analyses are shown in this zone. In addition to this Section, all new construction and substantial improvements shall meet the following requirements:
2. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

9.2.7. Legal Status Provisions

A. Effect on Rights and Liabilities under the Existing Flood Damage Prevention Ordinance

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted December 15, 2003 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of Franklin County enacted on December 15, 2003, as amended, which are not reenacted herein are repealed.

B. Effect upon Outstanding Building Permits

Nothing herein contained shall require any change in the plans, construction, size or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of 6 months subsequent to passage of this ordinance or any revision thereto, construction or use shall be in conformity with the provisions of this ordinance.

C. Severability

If any section, clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

D. Effective Date

This ordinance shall become effective March 18, 2013.

## 9.3. STORMWATER REGULATIONS

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### 9.3.1. Authority

These regulations are adopted pursuant to the authority vested in Franklin County by the Session Laws and the General Statutes of North Carolina, particularly and rules promulgated by the North Carolina Environmental Management Commission and any special local legislation enacted by the General Assembly for Franklin County.

### 9.3.2. Purpose and Intent<sup>1</sup>

A. Pursuant to requirements of the North Carolina Administrative Code Section 15A NCAC 2B .0200 Classifications and Water Quality Standards Applicable to Surface Waters and Wetlands of North Carolina, and Section 15A NCAC 2B .0730-.07362 Tar-Pamlico Nutrient Strategy, the Tar-Pamlico River Basin Stormwater Management Area has been established. This area is for lands within the Tar-Pamlico River Basin in Franklin County. Wherever other County ordinances and regulations differ from the Tar-Pamlico River Basin standards, the more restrictive provisions shall apply. Additional information may be obtained at: <https://deq.nc.gov/about/divisions/water-resources/planning/nonpoint-source-management/nutrient-strategies/tar-pamlico>

B. A small portion of southern Franklin County is located within the Falls Lake Watershed. New development within the Falls Lake Watershed must comply with the "Falls Lake Watershed Stormwater Requirements" of this Article. Additional information may be obtained at: <https://deq.nc.gov/about/divisions/water-resources/water-planning/nonpoint-source-planning/falls-lake-nutrient-strategy>

C. The purpose of the County Commissioners in adopting these regulations is to protect the water quality of the Tar-Pamlico River Basin by addressing nitrogen loading reduction by 30% from 1991 levels and hold phosphorus loading to 1991 levels. The Tar-Pamlico River Basin Stormwater Management

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<sup>1</sup> Internet hyperlinks are included in this ordinance for the benefit of the user and are subject to change.

Ordinance for Franklin County shall achieve this by utilizing the following approach:

1. Review of stormwater management plans for new developments to ensure that:
  - a. The nitrogen load contributed by the proposed new development activity shall not exceed 70% of the average nitrogen load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and nitrogen export research data. Based on 1995 land use data and available research, the nitrogen load value shall be 4.0 pounds per acre per year
  - b. The phosphorus load contributed by the proposed new development activity shall not exceed the average phosphorus load contributed by the non-urban areas in the Tar-Pamlico River basin based on land use data and phosphorus export research data. Based on 1995 land use data and available research, the phosphorus load value shall be 0.8 pounds per acre per year
  - c. Review of new developments for compliance with requirements for protecting and maintaining existing riparian areas.
  - d. Identification and removal of illegal discharges.

### 9.3.3. Definitions

The defined terms in this section only apply to the application and administration of the Stormwater Regulation provisions of this ordinance. See Article 10. Definitions for all other definitions and terms not associated with Stormwater Regulations. Also see NCDEQ Definitions:

#### 15A NCAC 02H .1002 DEFINITIONS.

**Applicator.** Any person, firm, corporation, wholesaler, retailer, distributor, any local, state or federal governmental agency, or any other person who applies fertilizer to the land of a consumer, or client, or to land they own, or to land they lease or otherwise hold rights.

**Approved Accounting Tool.** The accounting tool for calculating nutrient loading and reduction approved by the Department for the relevant geography and development type under review. Refer to the most recent NCDEQ Stormwater Nutrient Accounting Tool, <https://www.deq.nc.gov/about/divisions/water-resources/water-planning/nonpoint-source-planning/nutrient-practices-and-crediting#StormwaterNutrientAccountingTools-2786>



Stormwater Control Measure (SCM). Means a structural or non-structural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

Buffer. 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 of pollutants.

Built-upon area (BUA). That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (e.g. tennis courts), etc., that significantly impedes or prevents natural infiltration of water through the surface into the subsoil. For the purposes of this Article all areas within perimeter fencing of vehicle sales, vehicle storage or similar uses shall be considered built-upon areas. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious). "Built-upon area" does not include pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Channel. A natural water-carrying trough eroded vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

Design Manual. The North Carolina Department of Environmental Quality (DEQ), Stormwater Design Manual, and all amendments thereto. Note that in any discrepancy between the NCDEQ Design Manual and Franklin County ordinances, the more stringent of the requirements apply. Refer to: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design>

Development. Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law [GS 143-214.7].

Department. Unless otherwise specified, the phrase "The Department" shall refer to NCDEQ.

Discharge. The addition of any human-induced effluent either directly or indirectly to surface waters.

Ditch or canal. A constructed channel, other than a modified natural stream constructed for drainage purposes, that is typically dug through inter-stream divided areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.

Disturbed Area. Any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation including, but not limited to: grubbing, stump removal, grading or removal of structures.

Domestic wastewater discharge. The discharge of sewage, non-process industrial wastewater, other domestic wastewater, or any combination of these items. Domestic wastewater includes, but is not limited to, liquid waste generated by domestic water using fixtures and appliances, from any residence, place of business, or place of public assembly, even if it contains no sewage. Examples of domestic wastewater include once-through non-contact cooling water, seafood packing facility discharges, and wastewater from restaurants.

NCDEQ. NC Department of Environmental Quality.

Effluent channel. A discernable, confined, and discrete conveyance that is used for transporting treated wastewater to a receiving stream or other body of water.

Engineered stormwater control. A physical device designed to trap, settle out, filter, or otherwise remove 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. Engineered stormwater control includes physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control" is synonymous with "structural practice," "Primary SCM", "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. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

Ephemeral (stormwater) stream. A feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel; the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical

characteristics commonly associated with continuous or intermittent conveyance of water.

Existing Development. Development not otherwise exempted by this ordinance that meets one of the following criteria:

1. It either is built or has established a statutory or common-law vested right as of the effective date of this ordinance
2. It occurs after the effective date of this ordinance, but does not result in a net increase in built-upon area and does not decrease the infiltration of precipitation into the soil

Fence or Fencing. Fencing shall be installed around above ground SCMs unless otherwise approved by the Stormwater Administrator on a case by case basis. Fencing shall be constructed of high-quality materials, such as decorative blocks, brick, stone, treated wood, wrought iron, black vinyl coated chain link fence, or vinyl or treated wood privacy fence and details shall be provided to demonstrate compliance with Article 6.7.1B.

Fertilizer. Any substance containing nitrogen or phosphorous which is used primarily for its plant food content.

Forest plantation. An area of planted trees that may be conifers (pines) or hardwoods. On a plantation, the intended crop trees are planted rather than naturally regenerated from seed on the site, coppice (sprouting), or seed that is blown or carried into the site.

Forest vegetation. The plants of an area which grow together in disturbed or undisturbed conditions in various wooded plant communities in any combination or trees, saplings, shrubs, vines, and herbaceous plants. This includes mature and successional forests as well as cutover stands.

Industrial discharge. The discharge of industrial process treated wastewater or wastewater other than sewage. Stormwater shall not be considered to be an industrial wastewater unless it is contaminated with industrial wastewater. Industrial discharge includes:

1. Wastewater resulting from any process of industry or manufacture, or from the development of any natural resource
2. Wastewater resulting from processes of trade or business, including wastewater from Laundromats and car washes, but not wastewater from restaurants
3. Wastewater discharged from a municipal wastewater treatment plant requiring a pretreatment program.

Intermittent stream. A natural drainage way, which appears as a blue line on the USGS 7.5-minute quadrangle maps and has a contributing drainage area of 300 acres or more shall be considered an intermittent stream for the

purposes of this ordinance. NCDEQ defines an intermittent stream as a “well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.” [15A NCAC 02B.0233(2)(g)].

Land-disturbing activity. Any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation [15A NCAC 02B .0202]. This may include the grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock, involves the diversion or piping of any natural or man-made watercourse, or the establishment of new impervious surface. The term “land disturbing” shall also include the term “land disturbance.”

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 [15A NCAC 02H .1002].

Load. The mass quantity of a nutrient or pollutant released into surface waters over a given time period. Load in this ordinance refers to pounds of nitrogen or phosphorus per year.

Loading rate. The mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this ordinance refers to pounds of nitrogen or phosphorus per acre per year.

Major variance. A variance from the minimum statewide watershed protection or Falls rules that results in the relaxation, by a factor greater than 5% of any buffer, density or built upon area requirement under the high-density option; any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or relaxation by a factor greater than 10% of any management requirement under the low-density option. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Falls rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum requirements. [15A NCAC 2B.202 and 15A NCAC 2B.104].

Minor variance. A variance from the minimum statewide watershed protection or Falls rules that results in a relaxation, by a factor of up to 5% of any buffer, density or built upon area requirement under the high density option; or that results in a relaxation by a factor up to 10%, of any management requirement under the low density option.

Modified natural stream. An on-site channelization or relocation of a stream channel and subsequent relocation of the intermittent or perennial flow as evidenced by topographic alterations in the immediate watershed. A modified natural stream must have the typical biological, hydrological, and physical characteristics commonly associated with continuous conveyance of water.

Nonpoint source pollution. Pollution which enters waters mainly because of precipitation, and subsequent runoff from lands, which have been disturbed by human activity, and includes all sources of water pollution which are not required to have a permit in accordance with G.S. § 143-215.1(c).

Nutrients. Nitrogen and phosphorus, which if present in excessive amounts within a water body, can lead to large growths of algae, low dissolved oxygen concentrations, and other water quality problems.

Nutrient sensitive waters. Those waters which are so designated in the classification schedule to limit the discharge of nutrients (usually nitrogen and phosphorous). They are designated by "NSW" following the water classification.

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 [SL 2004-163].

Operation and Maintenance Agreement (O&M). A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance or stormwater management practices.

Outfall. A point at which stormwater (1) enters surface water or (2) exits the property of a particular owner.

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.

**Perennial stream.** Perennial streams are streams that have essentially continuous flows. NCDEQ defines a perennial stream as “a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological and physical characteristics commonly associated with continuous conveyance of water.” 15A NCAC 02B .0233(2)(i)

**Perennial water body.** A natural or constructed basin that stores surface water permanently at depths sufficient to preclude growth of rooted plants, including lakes, ponds, sounds, non-stream estuaries, and oceans.

**Person.** Includes, without limitation, individuals, firms, partnerships, associations, institutions, corporations, municipalities and other political subdivisions, and governmental agencies [G.S. §143-212(4)].

**Pollutant.** Means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

**Redevelopment.** Any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control to that of the previous development [GS 143-214.7].

**Redevelopment Area.** Any area, such as a historic crossroads community or other existing developed area, for which the Board of County Commissioners establishes a redevelopment strategy that is conducive to the goals of the Tar-Pamlico nutrient strategy, addressing the following criteria:

1. A “fix it first” policy that reserves public funds for repair of existing infrastructure in these areas before investing in new infrastructure of the same type in new growth areas.
2. Mixed use/mixed density zoning provisions.
3. Retrofits are consistent with NCDOT definitions for pedestrian scale in traditional neighborhood developments (e.g., 80% of users are

within a ¼-mile walk from schools, libraries, and recreational/athletic facilities, 60% of students and 50% of teachers are within ½-mile walk from schools, and 40% of congregants are within ¼ mile from churches).

4. Parking maximums or shared parking rations.
5. Residential density bonuses where parking maximums, pedestrian scale, or "fix it first" are proposed.

Residential Development. Buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, townhouses, cottages, and their associated outbuildings such as garages, storage buildings, and gazebos.

Stormwater Administrator: For the purposes of this ordinance the Stormwater Administrator shall be the Franklin County Planning Director or Designee also referred to as the "Administrator."

Stormwater collection system. Any conduit, pipe, channel, curb, or gutter for the primary purpose of transporting (not treating) run-off. A stormwater collection system does include vegetated swales, swales stabilized with armoring or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review), curb outlet systems or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H 1002(18).

Stormwater Control Measure. "Stormwater Control Measure" or "SCM," also known as "Best Management Practice" or "BMP," means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapotranspiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

Stormwater Treatment Practices (STP's). Measures, either structural or nonstructural, that are determined to be the most effective, practical means or preventing or reducing point source or non-point source pollution inputs to stormwater runoff and water bodies.

Stormwater System. All engineered stormwater controls owned or controlled by a person that drain to the same outfall, along with the conveyances between those controls. A system may be made up of one or more stormwater controls.

Stream. A body of concentrated flowing water in a natural low area or natural channel on the land surface.

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.

Tree. A woody plant with a DBH equal to or exceeding 5".

Waste disposal. The use of waters for disposal of sewage, industrial waste or other waste after approved treatment.

Wetlands. "Waters" as defined by G.S. § 143-212(6) and are areas that inundated or saturated by an accumulation of surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands do generally include swamps, marshes, bogs and similar areas. Wetlands classified as waters of the State are restricted to waters of the United States as defined by 33 CFR 328.3 and 40 CFR 230.3.

#### 9.3.4. Watershed Requirements

Also see Section 9.4. Watershed Protection in the Article.<sup>2</sup>

##### A. Tar-Pam vs. Falls Lake Watershed Requirements

Developers may refer to the Stormwater Jurisdiction Map or the NCDEQ Interactive Stormwater Map to help identify their location within the following watersheds in Franklin County:

##### 1. Neuse River Basin

Development and redevelopment within the Neuse River Basin is exempt from Stormwater Review [15A NCAC 2B .0235]. However, any encroachment within a Neuse River Basin riparian buffer, wetland or stream is subject to NCDEQ and/or U.S. Army Corps of Engineers approval. Developments within the Neuse River Basin are required to submit a Stormwater Management Review Application. Additional information about Neuse Nutrient Strategy may be

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<sup>2</sup> Development and redevelopment must comply with all requirements of this Ordinance. Wherever other County or State ordinances and regulations differ, the more restrictive provisions shall apply.



obtained at: <https://deq.nc.gov/about/divisions/water-resources/planning/nonpoint-source-management/nutrient-strategies/neuse>

## 2. Tar-Pamlico River Basin

New development or redevelopment within the Tar/Pamlico Basin must comply with the following:

a. Riparian areas must be protected and maintained in compliance with the Division of Water Quality rules and regulations 15A NCAC 2B .0259.

### b. NITROGEN AND PHOSPHORUS LOADING RATE TARGETS

i. The project shall meet either a nitrogen stormwater loading rate target of 4.0 pounds per acre per year (lb/ac/yr) and a phosphorus stormwater loading rate target of 0.8 lb/ac/yr, OR meet “runoff volume match” as defined in 15A NCAC 02H .1002.

ii. The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area. The project density used for determining stormwater requirements is the amount of built-upon area subject to this ordinance at project completion divided by the project area.

iii. The developer shall determine the nitrogen and phosphorus load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen or phosphorus load reduction to meet nutrient targets by using the Approved Accounting tool.

### c. CONTROL AND TREATMENT OF RUNOFF VOLUME:

i. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than **twenty-four (>24%) percent built-upon area**, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State’s Minimum Design Criteria, 15A NCAC 02H .1050 through .1062.

ii. Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat

the volume of runoff generated from all built-upon area by one (1) inch of rainfall or equivalent runoff volume in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.

- iii. Where high-density stormwater design is not required, stormwater systems shall meet the low-density stormwater design standards set forth in 15A NCAC 02H .1003(2).
- d. Additional information about Tar-Pamlico Nutrient Strategy may be obtained at: <https://deq.nc.gov/about/divisions/water-resources/planning/nonpoint-source-management/nutrient-strategies/tar-pamlico>

### 3. Falls Lake Watershed

New development or redevelopment within the Falls Lake Watershed portion of southern Franklin County must comply with the Falls Lake Watershed references this Article and Article 9.3.8.

Additional information about Falls Lake Nutrient Strategy may be obtained at: <https://deq.nc.gov/about/divisions/water-resources/water-planning/nonpoint-source-planning/falls-lake-nutrient-strategy>

### 4. Nutrient Loading Limits

	Tar-Pamlico River Basin (lbs./ac./year)	Falls Lake Watershed (lbs./ac./year)
<b>Nitrogen</b>	4.0	2.2
<b>Phosphorus</b>	0.80	0.33

### 5. Land Disturbance Permit Required

Type of Development	Tar-Pamlico River Basin	Falls Lake Watershed
<b>B. Single-family, detached, and duplex residential</b>	1.0 ac or greater	0.50 ac or greater
<b>C. Multi-family residential, commercial, and industrial</b>	0.50 ac or greater	12,000 sf or greater

D. Incorporation of the Design Manual

1. The North Carolina Department of Environmental Quality, Stormwater Design Manual and all amendments thereto, is hereby adopted by reference as fully as though set forth herein.
2. The Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the NC DEQ Stormwater Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of engineered stormwater controls and other practices for compliance with this ordinance.
3. The NC DEQ 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 Tar-Pamlico and Falls Lake Rules.
4. If the standards, specifications, guidelines, policies, criteria, or other information in the NC DEQ Stormwater 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.
5. If any standard, requirement, or procedure as set forth in the NC DEQ Design Manual conflicts with any standard, requirement, or procedure as set forth in this ordinance then the most stringent shall prevail. A copy of the NC DEQ Manual shall be available for public review in the Franklin County Planning and Inspections office and online at: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design>

E. Applicability

1. New Development

For the purposes of the Tar-Pamlico Stormwater Program, new development shall include the following:

- a. Any activity that disturbs greater than one (1) acre of land to establish, expand, or replace a single family or duplex residential development or recreational facility. New development also includes individual single family residential lots of record that are

not part of a larger common plan of development or sale that result in greater than 5% built-upon area (BUA).

- b. Any activity that cumulatively disturbs greater than one-half ( $\frac{1}{2}$ ) acre of land to establish, expand, or replace a multifamily residential development or a commercial, industrial, or institutional facility.

## 2. Exemptions

- a. Commercial, industrial, institutional, or multifamily residential or other non-residential development and redevelopment that cumulatively disturbs less than one-half ( $\frac{1}{2}$ ) acre of land, AND does not expand existing structures on a parcel.
- b. Commercial, industrial, institutional, or multifamily residential or other non-residential development and redevelopment that cumulatively disturbs less than one-half ( $\frac{1}{2}$ ) acre of land and expands existing structures on a parcel but does NOT result in a cumulative built-upon area for the parcel exceeding twenty-four percent (24%).
- c. Development that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.
- d. Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five (5%) percent built-upon area on the lot is exempt from the provisions of this ordinance.
- e. Existing development or redevelopment is exempt from the provisions of this Ordinance.
- f. Agricultural Activity  
Agricultural activities (including intensive livestock operations), mining or forestry activities are exempt from nutrient and peak flow attenuation rules.
- g. Any project with a vest right per G.S. § 160D-102.

## 3. State and Federal Entities

Franklin County interprets the Falls State and Federal Rule [Rule 15A NCAC 02B .0281] as requiring the County to apply the requirements of this rule to state and federal projects that do not have an NPDES stormwater permit. Regarding stormwater regulations, Franklin County

intends to permit state and federal projects relative to the requirements of this rule.

F. Methods to meet Nutrient Control Requirements

Projects subject to this ordinance shall meet nitrogen and phosphorus loading targets through a combination of the following methods:

1. Projects may reduce export of nitrogen or phosphorus through any combination of engineered stormwater controls treating runoff on the site, in an approved offsite regional engineered stormwater control, or through the acquisition of permanent nutrient offset credits. The developer shall calculate the nitrogen and phosphorus reduction provided by these controls using the Approved Accounting tool.
2. Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed development subject to the jurisdiction of the Surface Transportation Board, may meet nitrogen and phosphorus reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

G. Use of Permanent Nutrient Offset Credits

1. Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan.
2. The Stormwater Administrator shall issue an approval letter for the development that documents the needed nitrogen or phosphorus credits and where the development is located. All permanent nutrient offset credits permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0703.
3. Permanent nutrient offset credits shall be acquired pursuant to N.C.G.S. 143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.
4. A developer subject to this ordinance may acquire permanent nutrient offset credits through one of the following methods:
  - a. Through a private nutrient bank;
  - b. Through offsite offset provided by the developer and approved by Franklin County;
  - c. Through payment into the Riparian Buffer Restoration Fund established in N.C.G.S. 143-214.21.

5. Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

1. Drainage Easements

- a. Drainage easements are required for any development that creates public or private drainage facilities. The responsibility for maintenance of drainage easements and any structures located within the easements is the landowner, developer, property owners association or other person or association as noted in the stormwater application. Franklin County is not responsible for maintenance of any drainage easements or stormwater structures located within an easement. It is the responsibility of the developer to clearly indicate who is responsible for maintenance of proposed drainage facilities.
- b. Drainage easements are required for all culverts, all new or existing open channels or watercourses that carry water from public rights-of-way or convey water from adjoining property across the developing property.
- c. Drainage easements are required at other locations as deemed appropriate by the Stormwater Administrator.
- d. Drainage easement widths shall be a minimum of:
- e. 20 feet for storm drainage pipe up to and including 30" diameter storm drainage pipe
- f. 20 feet plus the pipe diameter for storm drainage pipe greater than 30" diameter storm drainage pipe
- g. 20 feet plus the top of bank width for open channels. Additional width may be needed for contributing drainage areas greater than 25 acres.
- h. Drainage easements shall be centered on rear or side lot lines to the maximum practical extent.
- i. SCMs shall be located within a recorded drainage easement with drivable access to public right-of-way. Per NCDEQ Stormwater Design Manual Minimum Design Criteria, the entire footprint of the SCM system must be included in the access and maintenance easement, plus an additional 10 or more feet around the SCM to provide enough room to complete maintenance tasks. The SCM system includes the side slopes, forebay, riser structure, SCM device, basin outlet, dam embankment and emergency spillway.

- j. SCMs shall not be located on private single family lots if serving other lots.
  - k. Final Plat: The following notes shall be placed on all Final Plats (in accordance with Article 4. Review Procedures, that require drainage easements or SCMs:
    - i. The drainage easements and stormwater control measures shown hereon are required on the property to meet County and state stormwater regulations. Property Owner may be subject to enforcement actions if the maintenance easement is obstructed or stormwater control measure is removed, relocated or altered without prior County approval.
    - ii. No structures, fences, walls, HVAC equipment, trees, shrubs, hardscapes or other items that obstruct maintenance vehicles may be installed within drainage easements. Per the Operation and Maintenance Agreement recorded in the Register of Deeds, the property owners grant the County the right, privilege and easement across the property for the purpose of inspecting, monitoring, etc., the stormwater control measure as needed. Note that maintenance of the drainage easement is the responsibility of the underlying property owner, who shall maintain the easement to allow positive conveyance of stormwater.
2. Conservation Easements
- a. Developers have the option of partially offsetting their nitrogen and phosphorus loads by providing legal assurance of dedicated use of on-site areas that maintains restrictions of natural vegetation upon change or ownership.
  - b. The State is required by N.C. General Statutes to acquire a conservation easement on all sites qualifying for an NCDMS project to permanently protect the site. The landowner should know that condemnation authority is not applicable and is prohibited by statute for NCDMS projects. Negotiations must be amicable and, in the event that negotiations fail, the State will not be able to acquire the property, and NCDMS will not be able to implement the project.
  - c. Donating a conservation easement does not mean giving up title to the property. The fee-simple title to the land still resides with the landowner. The landowner has the use of the property consistent with the rights specifically reserved in the easement. For example, this might include hunting, hiking and fishing, control of access, and the passive enjoyment of the property under the easement.

In general, the landowner may continue to use the land consistent with the conditions agreed upon in the easement. A permanent conservation easement applies in perpetuity and follows the land from owner to owner via the deed. The conservation easement does not restrict the owner from selling or willing their property.

- d. The conservation easement provides for permanent access to the easement area so that the County or State can ensure its success and protection. The easement does not require or imply any public access to your land.
- e. Conveying a conservation easement on wetlands or stream buffers may increase the value of the remainder of your land. Buyers will often pay more for homes near permanently protected open space. A landowner may also realize many tax benefits from dedicating a permanent conservation easement. Conservation easements are also important for protecting environmental and historical values.
- f. Easements only apply to the portion of land specifically identified and agreed upon in the easement. The easement area acquired is surveyed by a licensed N.C. land surveyor, and a plat is prepared of the total land area.
- g. There are several economic benefits of placing a conservation easement on your property, including possible NC income tax credits, federal income tax credits, and federal estate tax deductions. Interested individuals advised to consult an attorney and a financial advisory/estate planner concerning these programs.

### 3. Erosion Control

- a. All erosion and sediment control measures shall be designed in accordance with the North Carolina Erosion and Sediment Control Planning and Design Manual, latest revision (<https://deq.nc.gov/about/divisions/energy-mineral-land-resources/energy-mineral-land-permit-guidance/erosion-sediment-control-planning-design-manual>) and the NC DEQ Stormwater Design Manual <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design>
- b. These manuals contain valuable information and tools for developing plans to minimize soil erosion and prevent sedimentation pollution associated with land-disturbing activities.



- c. NC DEQ must issue a Letter of Approval prior to plan approval. Applicants are to submit a copy of the Letter of Approval to the County.
- d. No person may initiate any land-disturbing activity that will disturb one acre (43,560 sf) or greater without having an erosion and sedimentation control plan approved by NC DEQ. North Carolina General Permit NCG010000 applies to land disturbing activities and requires an approved erosion and sedimentation control plan for disturbances that equal or exceed one acre OR those that are part of a common plan of development or that disturbs a total of one acre or more.
- e. Limits of disturbance must be clearly identified on the plan and are to include any use of the land that results in a change in the natural cover or topography that may cause or contribute to sedimentation.
- f. This may include grading, digging, cutting, scraping, or excavating of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock, involves the diversion or piping of any natural or man-made watercourse, or the establishment of new impervious surface. Plans must also indicate stockpile locations, access to construction activities and adequate space for installation of erosion control measures.
- g. All land-disturbance less than one acre not requiring a NC DEQ permit are required to install silt fence on the low side of the lot, erosion and sediment control measures as needed to prevent sediment from leaving the site, and, at the discretion of the County, tree protection fence around the remaining perimeter. For those projects whose apparent disturbance exceeds one-half acre, the County also reserves the right to require an as-built survey of the disturbed area prepared by a professional land surveyor. If site disturbance is determined to exceed one-half acre "after-the-fact," then the property must comply with applicable sections of this ordinance.

#### 9.3.5. Stormwater Management Plan and Permit

##### A. Permit Required

No person shall receive any permit for land development, land disturbing activity or building permit without first meeting the requirements of this part and receiving a stormwater permit prior to commencing the proposed activity unless specifically excluded from the requirements of this ordinance.

B. Effect of Permit

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

C. 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 engineered stormwater controls 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.

D. Authority to File Applications

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

E. Establishments of Application Requirements, Schedule, and Fees

1. Application Requirements

- a. Exemption Review: Any project seeking an exemption according to Section 9.3.4 shall submit in writing the reason for the exemption with sealed supporting calculations. The Planning Director or Designee shall issue an exemption confirmation including any conditions or limitations on exemption (e.g. the date a vesting exemption expires).
- b. Preliminary Plat Review: Nutrient calculation worksheets must be submitted with preliminary plats or preliminary site plans and must show that the design will obtain the required nutrient reduction.
- c. Permit Review: Any person desiring a stormwater permit shall submit a permit application to the Planning Director or Designee on a form provided by Franklin County for that purpose. Unless otherwise excepted by this ordinance, a permit application must be accompanied by the following in order for the permit application to be considered complete:
  - i. If No SCMs or Peak Flow measures are Proposed:
    - A) Professionally sealed calculation worksheets demonstrating that the proposed development complies with Tar-Pam

Nutrient Reduction Requirements as designed (include an electronic copy)

B) Site plan or preliminary plat showing land coverage (transportation and roof impervious, managed and wooded pervious areas

C) Conservation easement with map and description, if applicable

D) A non-refundable permit review fee.

ii. If SCMs or peak flow attenuation measures are indicated or required, the application must also include:

A) Approved SCM and/or Peak flow facility design specifications, NCDEQ Supplement Forms and calculations (both hard copy and electronic copy), including narrative

B) Map showing drainage area into treatment SCM or peak flow facility (may include offsite areas)

C) Stormwater management plan

D) Operation and maintenance agreement

iii. A non-refundable permit review fee.

## 2. Application Procedure

a. Applications for a stormwater permit may be filed with the Planning and Inspections Department during regular business hours.

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

c. An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance (refer to Stormwater Management Application and Checklist), 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.

d. An application for a stormwater permit may be filed simultaneously with an application for a building permit, grading

permit or other land development permit issued by Franklin County.

- e. Any applicant claiming a variance to one or more requirements of this ordinance shall submit evidence of valid approval of such variance at the time of permit application per Article 24 of the Franklin County UDO.

### 3. Stormwater Management Plan Requirements

- a. 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. All such sealed 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 under seal 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.
- b. All stormwater management plan submittals shall include:
  - i. Stormwater management plan
  - ii. Stormwater Management Review Application
  - iii. Stormwater Management Checklist
  - iv. Items identified on checklist and outlined below.
- c. All plans shall include a site plan, which at a minimum, clearly indicates the following features unless the Planning Director or Designee determines that certain elements are not appropriate or are unnecessary for a particular application:
  - i. Ownership and use of the proposed site and all surrounding properties
  - ii. The entire area of development and existing built-upon area on the site
  - iii. Existing and proposed structures and impervious surfaces
  - iv. The location of any watercourses or surface water bodies

- v. The location, extent, and dimensions of all existing and proposed stormwater conveyances on and immediately adjacent to the development site
  - vi. Existing and proposed buffer areas
  - vii. Existing and proposed open space
  - viii. Existing and proposed conservation easements
  - ix. Existing and proposed topography using 2-foot contours
  - x. Existing and proposed stormwater control measures and drainage structures
  - xi. Existing and proposed structures related to peak flow attenuation
  - xii. The extent of existing vegetation
  - xiii. Acreages of the various proposed land covers (e.g., pervious, impervious, managed open space, etc.)
  - xiv. Drainage areas flowing into SCMs and/or Peak Flow attenuation facilities (may include offsite areas)
  - xv. Runoff map
  - xvi. Diversion methods or structures if offsite drainage is diverted around site and excluded from calculations
  - xvii. Any other information that the Planning Director or Designee needs in order to determine compliance with these regulations.
- d. All plans shall clearly demonstrate protection of and diffuse flow through buffer areas.
- e. All plans shall include nutrient calculation worksheets and peak flow calculations.
- Applicants shall submit NCDEQ Nutrient Calculation Worksheets, SCM Supplement Forms and Operation and Maintenance Forms found online at: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design>
- f. All plans shall include data, site plans, and information necessary to support a proposed offsite approach, if applicable.
- g. All plans shall include a landscaping plan, which clearly shows the extent of undisturbed vegetation and the location, species, number, and planting characteristics (including height at time of planting, spacing, etc.) of proposed vegetation. The plan must

also describe the vegetative stabilization and management techniques to be used at the site after construction is completed, who will be responsible for the maintenance of vegetation, and what practices will be employed to ensure that adequate vegetative cover is preserved.

h. All plans shall include engineering details and cross sections for each stormwater control measures, including calculations and narrative, sufficient to determine compliance with this ordinance.

i. Stormwater Management Summary Statement

A Stormwater Management Summary Statement is required with all plans submissions that implement stormwater control measures controls to help the Stormwater Administrator determine how the stormwater management facility was designed. At a minimum, the Stormwater Management Summary Statement must include

- i. Development name and address.
- ii. Developer/Owner and Consultant contact information.
- iii. A description of the existing site.
- iv. A description of the proposed development or construction activity.
- v. An impervious area calculation for both existing site and proposed site conditions.
- vi. A description of the stormwater impacts the proposed development or construction activity may have on the surrounding properties. This includes identifying upstream and downstream drainage facilities potentially affected by the new development and the ability of the existing drainage ways to handle the additional runoff.
- vii. A description of the proposed stormwater management facility and how they will be designed, constructed, maintained, and operated to:
  - A) Minimize the adverse effects on the quality of stormwater runoff from the development
  - B) Provide SCMs to maximize infiltration, minimize connected impervious surfaces and minimize concentrated flows
  - C) Provide distributed stormwater runoff to minimize offsite impacts and provide sheet flow into existing vegetated buffers

- D) Extend the time of concentration to the maximum practical level
  - E) Preserve and protect the natural drainage ways
  - F) Respect the practical limits of public and private drainage facilities
  - G) Protect neighboring properties from unreasonable adverse effects resulting from the development
  - H) Prevent flooding within the development and on surrounding properties
  - I) Limit the impacts of stormwater runoff discharging into or from the site or obtain approvals and easements from the affected property owners.
- j. A vicinity map showing the location of the site. The scale of the map shall be adequate to show the area in question with reasonable depiction of streets to determine the exact location of the site. The scale shall be no less than 1" = 400'.
  - k. A USGS Quadrangle map with the site location depicted on the map.
  - l. A copy of the NRCS Franklin County Soil Survey with the site location clearly depicted on the map. Per NCDEQ Letter of Memorandum dated May 21, 2007, the hard copy paper bound version of the soil surveys are the only soil survey maps that will be accepted by NCDEQ DWQ for applicability of the Tar-Pamlico Buffer and Neuse River Basin Rules. Therefore, applicants must submit a copy of the official "hard-copy" publication with the site location clearly depicted.
4. Plan/Permit and Approval Procedure
- a. The Planning Director or Designee shall approve, approve with conditions, or deny the permit application within the specified time frame per Franklin County UDO requirements for submission.
  - b. If the permit application is denied, the Planning Director or Designee shall provide written comments to the applicant explaining the reason(s) for denial. The applicant shall have an opportunity to submit a revised application. A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions or disapproved. If a revised application is not re-submitted within 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.

- c. If the permit application is approved by the Planning Director or Designee, a stormwater permit shall be issued. 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. 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.
- d. A previously denied permit application may not be resubmitted for consideration unless the Planning Director or Designee determines that material facts, either in the ordinance or the application, have changed significantly enough to warrant reconsideration.

5. Retention of expert assistance

- a. The County may hire any consultant and/or expert necessary to assist the County in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for re-certification.
- b. Minimum qualifications are persons performing services only in their area of competence, including North Carolina registered professional engineer, professional surveyor, landscape architect, soil scientist, aquatic biologist, or a person certified by the North Carolina Cooperative Extension Service to approve stormwater management plans or to inspect SCMs.

F. Appeals

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this article may file an appeal to the Board of Adjustment as outlined in Article 4. Review Procedures.

9.3.6. Annual Maintenance

A. Overview

This section provides provisions to ensure that such maintenance occurs, including identifying who will be responsible for maintenance over the long term as well as during development, and ensuring that funds for maintenance and repair are available when appropriate.



B. Function of SCM

1. The County is required to ensure that SCMs implemented to achieve the nitrogen and phosphorus reduction and flow attenuation requirements for development are maintained and inspected on a yearly basis.
2. The owner of each stormwater control measure installed pursuant to this ordinance shall maintain and operate it to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the stormwater control measure was designed.

C. Owners Associations

An owners association shall be established for the purpose of owning all SCMs shown on the plan and for ensuring that maintenance is performed to keep SCMs functioning properly. The articles of incorporation must be submitted to the County for review and approval and must contain clear language and a means for collecting dues for the cost of SCM maintenance and yearly certification.

For all engineered stormwater controls 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 O&M Agreement shall include all of the following provisions:

1. Acknowledgment that the association shall continuously operate and maintain the engineered stormwater controls according to the specifications laid out in the Operation and Maintenance Plan.
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 engineered stormwater controls. If engineered stormwater controls are not performing adequately or as intended or are not properly maintained, the name of local government, in its sole discretion, may remedy the situation, and in such instances the name of local government 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 engineered stormwater controls, provided that the name of local government 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) percent of the initial construction cost of the engineered stormwater controls. 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 engineered stormwater controls. 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 name of local government depending on the design and materials of the engineered stormwater controls.
5. Granting to Franklin County a right of entry to inspect, monitor, maintain, repair, and reconstruct engineered stormwater controls.
6. Allowing Franklin County to recover from the association and its members any and all costs that Franklin County expends to maintain or repair the engineered stormwater controls or to correct any operational deficiencies. Failure to pay Franklin County all of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement. In case of a deficiency, Franklin County 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 Franklin County to maintain or repair any engineered stormwater controls, and Franklin County shall not be liable to any person for the condition or operation of engineered stormwater controls.
8. A statement that this agreement shall not in any way diminish, limit, or restrict the right of Franklin County to enforce any of its ordinances as authorized by law.
9. A provision indemnifying and holding harmless Franklin County for any costs and injuries arising from or related to the engineered stormwater controls, unless Franklin County has agreed in writing to assume the maintenance responsibility for the engineered

stormwater controls and has accepted dedication of any and all rights necessary to carry out that maintenance.

D. Establishment and Elements of the Maintenance Agreement

1. Prior to the conveyance or transfer of any lot or building site to be served by a engineered stormwater control pursuant to this ordinance, and prior to issuance of any permit for development requiring a engineered stormwater control pursuant to this ordinance, the applicant or owner of the site must execute a legal 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 engineered stormwater control. Until the transference of all property, sites, or lots served by the engineered stormwater control, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
2. The legal Operation and Maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the engineered stormwater control, and shall state the terms, conditions, and schedule of maintenance for the engineered stormwater control.
3. The legal Operation and Maintenance agreement and/or conservation easement must be approved by the 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. If no subdivision plat is recorded for the site, then the Operations and Maintenance agreement and/or 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. A copy of the recorded maintenance agreement shall be given to the Administrator within 14 days following its recordation.
4. The Operation and Maintenance Agreement shall be submitted at the time of final plat or site plan and executed by the Owner or Owners Association and the County prior to recordation of the final plat or issuance of a Certificate of Occupancy, and shall contain the following elements:
  - a. Annual Maintenance Plan
    - i. Name, address and contact telephone numbers of all current officers of the Owners Association. Any changes in this information during the year shall be provided to the Administrator within 30 days of the change.

- ii. Description of method used to collect dues or other payments necessary for maintenance of SCMs.
- iii. For each SCM type, description of SCM features requiring inspection, inspection frequency, types and frequencies of or basis for routine and periodic maintenance activities, actions in the event that repair is needed. Maintenance actions and frequencies shall at minimum include those identified by practice in the NCDEQ Design Manual. Franklin County utilizes the Operation and Maintenance Agreement Forms provided by NCDEQ in the Stormwater Design Manual and online at: <https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design>
- iv. Depending on the SCMs constructed the plan might include schedules or other provisions for:
  - A) Any mowing of permanent vegetation.
  - B) Any removal of bushes and trees from the dam of a wet detention pond.
  - C) Reseeding of any eroding areas of the wet detention ponds, open channel practices, riparian buffers, and vegetated filter strips.
  - D) Replacing of impaired vegetation in a constructed wetlands or riparian buffer.
  - E) Removal of debris from the "trash rack" on any wet detention pond or sand filter.
  - F) Repair of any damage to structural aspects of wet detention ponds, constructed wetlands, level spreaders, and sand filters.
  - G) Repairs of any damage to fencing or security measures. Fencing shall be installed around above ground SCMs unless otherwise approved by the Stormwater Administrator on a case by case basis. Fencing shall be constructed of high-quality materials, such as decorative blocks, brick, stone, treated wood, wrought iron, black vinyl coated chain link fence, or vinyl or treated wood privacy fence and details shall be provided to demonstrate compliance with Article 6.7.1B.

b. Annual Inspection and Certification of SCMs

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

- i. The name and address of the land owner
  - ii. The recorded book and page number of the lot of each engineered stormwater control
  - iii. A statement that an inspection was made of all engineered stormwater controls
  - iv. The date the inspection was made
  - v. A statement that all inspected engineered stormwater controls are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance
  - vi. The original signature and seal of the engineer, surveyor, or landscape architect, if applicable.
- b. All inspection reports shall be on forms supplied by the Administrator (Refer to Annual SCM Inspection Report and SCM Certification Form in Appendix). An original inspection report shall be provided to the Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.
- c. Records of maintenance and/or repair activities shall be maintained by the owner for at least 5 years and shall be provided to the County upon request.
- d. Contact Information
- i. Name and address of the person or organization financially responsible for maintenance specified in the annual inspection report.
  - ii. Emergency contact information.
- e. Authority for the County to Inspect and Maintain Stormwater Facilities

- i. Legal authority for the County to routinely inspect stormwater facilities.
- ii. Legal authority for the County to require performance of maintenance activities to ensure continued operational performance of SCMs.
- iii. Legal authority for the County to place liens on common properties in the subdivision/development and maintenance if the SCMs are not properly maintained and certified.
- iv. Legal Authority for right of entry in the event that the Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the engineered stormwater control; however, in no case shall the right of entry, of itself, confer an obligation on Franklin County to assume responsibility for the engineered stormwater control.

E. Performance Security for Installation and Maintenance

1. The County 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 engineered stormwater controls are:
  - a. Installed by the permit holder as required by the approved stormwater management plan
  - b. Maintained by the owner as required by the operation and maintenance agreement.
2. The amount of an installation performance security shall be in the amount of 110% of the cost estimate for the SCM. The performance bond may be reduced to 25% at the time the Certificate of Occupancy is issued to satisfy the requirement for the 1-year warranty period.
2. The County may elect to release the performance bond once the as-built survey and certifications are reviewed and approved.
3. Within 60 days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the SCMs 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.

4. 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.
5. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any engineered stormwater control in accordance with the applicable permit or operation and maintenance agreement, the 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 County may not return any of the unused deposited cash funds or other security.
6. If County acts upon such failure by the applicant or owner, the County 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.

F. Failure to comply with the provisions of the Maintenance Agreement

Any violation of the Maintenance agreement shall be considered a violation of the Unified Development Ordinance and shall be enforced in accordance with Article 3. Enforcement.

G. Requirement of sealed as-built drawings for stormwater facilities

1. Developers shall be required to submit the following sealed as-built drawings:
  - a. Drawings of any new or addition to a stormwater conveyance by a private developer
  - b. Drawings of all development sites to determine compliance with the "approved plan" and the requirements of the Tar-Pamlico Watershed Requirements.
  - c. As-built plans of each SCM along with a statement under seal that the SCM as constructed complies with the approved plans and this ordinance.

- d. As-built plans shall be provided in electronic PDF and .dwg format for incorporation into County GIS.
  - e. The Designer shall submit the Annual SCM Inspection Report and Certification Forms).
2. 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 field surveyed “as built” plans for all stormwater management facilities or practices after final construction is completed.
  3. The plans shall show the final design specifications for all stormwater management facilities and practices and the field surveyed location, size, depth, and planted vegetation (if applicable) 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 Administrator may be required before the release of any performance securities.

#### 9.3.7. Riparian Buffer Requirements

##### A. Overview

Riparian buffers shall be protected because in most cases they provide a measure of protection for surface waters by removal of nutrients from nonpoint sources. The riparian buffer regulations are intended to protect and preserve existing riparian buffers and maintain their nutrient removal functions within the county’s river basins.

##### B. General Requirements

All the regulations delineated in this chapter are intended to comply with the requirements of 15A NCAC 02B .0233 Neuse Buffer Rules and 15A NCAC 02B .0259 Tar Pamlico Buffer Rules. All property located in Franklin County outside of any municipal boundary or extraterritorial jurisdiction shall comply with the riparian buffer regulations.

##### C. Applicability

1. The Riparian Buffer regulations shall apply to all areas of the county outside of any municipal boundary or its extraterritorial jurisdiction.
2. Riparian Buffer Exemption – Existing and ongoing uses within the riparian buffer, if present as of January 1, 2000, may be exempt from the riparian buffer protection requirements according to the



provisions outlined in 15A NCAC 02B .0610-0612. Proposed developments, which have County approval, but have not been constructed as of January 1, 2000, may not claim an exemption to the riparian buffer protection requirements.

D. Riparian buffer protection

The purpose of this regulation is to protect and preserve existing riparian buffers to maintain their nutrient removal functions in the entire Tar-Pamlico River Basin. As required by 15A NCAC 02B .0610-0612, a fifty-foot (50') wide riparian buffer shall be maintained directly adjacent to all perennial and intermittent streams, including lakes, ponds and other bodies of water, excluding wetlands, as indicated on the most recent version of the 1:24,000 scale (7.5 minutes) quadrangle topographic maps prepared by the USGS and all other surface waters as indicated by the most recent version of the Soil Survey for Franklin County, North Carolina. Where obvious conflicts exist between actual field conditions and USGS and county soil survey maps, appeals may be made to NCDEQ.

E. Delineation of buffer zones

The buffer is divided into two zones, moving landward from the surface water, that are afforded different levels of protection. Zone 1, the first 30 feet, is to remain essentially undisturbed, while Zone 2, the outer 20 feet, must be vegetated but may be managed in certain ways, such as grading and revegetating provided that the health of the vegetation in Zone 1 is not compromised. Zones are specifically described in 15A NCAC 02B .0610-0612.

F. Activity within the buffer

1. Activity may take place within any riparian buffer zone as defined by 15A NCAC 02B .0610-0612 subject to approval from NCDEQ. No development proposal that includes impact to the riparian buffer shall be approved by Franklin County unless it includes one of the following:
  - a. Certifications from NCDEQ that surface waters are not present as determined by an on-site inspection.
  - b. An Authorization Certificate from NCDEQ for an "allowable" use such as a road crossing or utility line, or for a use that is "allowable with mitigation" along with a Division-approved mitigation plan has been obtained.
  - c. A documented opinion from NCDEQ that a vested right has been established for the proposed development activity.

- d. A letter from NCDEQ documenting that a variance has been approved for the proposed development activity.
  2. A small portion of southern Franklin County is located within the Falls Lake Watershed. New development within the Falls Lake Watershed must comply with the "Falls Lake Watershed Stormwater Ordinance," Section 8. Additional information may be obtained at: <https://deq.nc.gov/about/divisions/water-resources/water-planning/nonpoint-source-planning/falls-lake-nutrient-strategy>
- G. Buffers depicted on plans
1. Required riparian buffers shall be shown on all plans submitted with a note indicating the protected nature of the buffer and how diffuse flow is to be maintained. When required by the Administrator, the placement of adequate signage shall be required to relay the buffer protection to the public.
  2. In addition, the following items must be addressed, where applicable, on Stormwater Management Plans:
    - a. All surface waters, as shown on the USGS Quadrangles or Franklin County Soil Survey (published paper copy), must be shown on the proposed plan.
    - b. All riparian buffers must be appropriately labeled on the proposed plan and final plat. Riparian buffers must extend 50 feet from the top of bank for streams or the edge of normal water levels for ponds and other impoundments.
    - c. Where development requires the disturbance of a riparian buffer, documentation of approval from NCDEQ is required. If the project is considered exempt, documentation or an explanation should be provided noting this, utilizing the conditions stated in NCDEQ rules.
    - d. Diffuse flow must be provided for all stormwater runoff entering the riparian buffer. The following guidelines should be utilized:
      - i. Development located near riparian buffers should minimize large concentrated discharge points. By providing multiple outlets for stormwater runoff and maintaining natural drainage patterns, the stormwater runoff impacts from new development can be minimized.
      - ii. Documentation must be provided, indicating that the proposed development has provided sheet flow at all discharge points where required. Appropriate calculations and details should be included.

- iii. Additional methods to provide diffuse flow will be reviewed and approved on an individual basis. Developers and design professionals may request a pre-design conference to determine if a proposed facility will be accepted.
  - iv. The NCDEQ\_Level Spreader Design Guidelines, latest revision, shall be utilized as necessary. Refer to the NCDEQ Stormwater Design Manual.
  - v. Discharge that will flow into an existing, non-buffered draw or stream, prior to entering the riparian buffer will be exempt from the diffuse flow requirement.
- e. All stormwater facilities proposed to create sheet flow must be contained within permanent drainage easements and have Operation and Maintenance Agreement and/or guidelines provided in the restrictive covenants. The Operation and Maintenance Agreements and the restrictive covenants must be recorded.

H. Variances to the riparian buffer rule

Requests for variances to the Riparian Buffer Rule shall be directed to, and approval sought from NCDEQ.

I. Amendments and variances to the tar-pam watershed regulations

The County may not amend the program or grant a variance in a manner that fails to meet the minimum requirements of the rule without prior approval from NCDEQ.

9.3.8. Falls Lake Stormwater Regulations (Specific to Falls Lake Watershed Area Only)

A. Findings

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

4. Further, the NC Environmental Management Commission has identified Falls of Neuse reservoir, a water supply reservoir, as nutrient sensitive waters; has identified all or a portion of the reservoir as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the "Falls Rules") to reduce the average annual loads of nitrogen and phosphorus delivered to Falls Reservoir from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development in this jurisdiction; [15 NCAC 02B .0275-.0282 as amended].

B. Purpose

1. The purpose of this chapter 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 nitrogen and phosphorus in stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment in the watershed of Falls of Neuse reservoir. 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.
2. This Chapter seeks to meet its general purpose through the following specific objectives and means:
  - a. Establishing decision-making processes for development that protects the integrity of watersheds and preserve the health of water resources.
  - b. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state 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
  - c. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality
  - d. 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

- e. 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;
- f. 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;
- g. 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.

## C. Applicability and Jurisdiction

### 1. General

Beginning with and subsequent to its effective date, this chapter 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 this ordinance.

### 2. Exemptions

- a. Single family and duplex residential and recreational development and redevelopment that cumulatively disturbs less than one half acre (<1/2 acre) and is not part of a larger common plan of development or sale.
- b. Commercial, industrial, institutional, multifamily residential or local government development and redevelopment that cumulatively disturbs less than 12,000 square feet and is not part of a larger common plan of development or sale.
- c. Development and redevelopment that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules.
- d. Development that is 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).

Type of Development	Falls Lake Watershed
D. <b>Single-family, detached and duplex residential</b>	0.50 ac or greater
E. <b>Multi-family residential, commercial and industrial</b>	12,000 sf or greater

1. 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 or redevelopment for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

2. Map

The provisions of this chapter shall apply within the areas designated on the map titled "Falls Watershed Stormwater Map of Franklin County, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

F. General Standards

All development and redevelopment to which this chapter applies shall comply with the standards of this section. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

G. Nitrogen and Phosphorus Loading

1. Nitrogen and phosphorus loads contributed by the proposed new development shall not exceed the following unit-area mass loading rates: 2.2 and 0.33 pounds per acre per year for nitrogen and phosphorus, respectively.

	<b>Falls Lake Watershed (lbs./ac./year)</b>
<b>Nitrogen</b>	2.2
<b>Phosphorus</b>	0.33

2. Calculations within the Falls Lake Watershed are to follow the model and worksheets described in this article, with the nutrient loading limits described above.
3. Notwithstanding 15A NCAC 02B .0104, redevelopment subject to this article that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the nutrient loading standards identified above OR meeting a loading rate that achieves the following nutrient loads compared to the existing development : 40 percent and 77 percent reduction for nitrogen and phosphorus, respectively.
4. According to Neuse River Basin Strategy (15A NCAC 02B .0711), developers shall have the option of partially offsetting their nitrogen loads by funding wetland or riparian area restoration.
5. The developer shall determine the need for engineered stormwater controls to meet these loading rate targets by using the most recent NCDEQ Stormwater Nutrient Accounting Tool.

H. Nitrogen and Phosphorus Standard is Supplemental

The nitrogen and phosphorus loading standards in this article are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development.

I. Control and Treatment of Runoff Volume

1. Stormwater systems shall be designed to control and treat the runoff generated from all surfaces by one inch of rainfall. The treatment volume shall be drawn down pursuant to standards specific to each practice as provided in the NCDEQ Design Manual. To ensure that the integrity and nutrient processing functions of receiving waters and associated riparian buffers are not compromised by erosive flows, stormwater flows from the development shall not contribute to degradation of waters of the State.
2. At a minimum, the development shall not result in a net increase in peak flow leaving the site from pre-development conditions for the 1-year, 24-hour storm event.

J. Partial Offset of Nutrient Control Requirements

Development subject to this ordinance shall attain nitrogen and phosphorus loading rate reductions on-site that meet the following criteria prior to using an offsite offset measure:

1. 30% or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached, and duplex residential development disturbing one half acre but less than one acre.
2. 50 % or more reduction in both nitrogen and phosphorus loading from the untreated conditions for any single-family, detached and duplex residential development disturbing more than 1 acre.
3. 30% or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing 12,000 square feet but less than 1 acre.
4. 50% or more reduction in both nitrogen and phosphorus loading from the untreated condition for other development, including multi-family residential, commercial and industrial development disturbing more than 1 acre.

Type of Development	Area Disturbed	Minimum Reduction in N&P from Untreated Conditions
<b>Single-family, detached and duplex residential</b>	0.50 ac to 0.99 ac	30%
	1.0 ac or more	50%
<b>Other development, including multi-family residential, commercial and industrial development</b>	12,000 sf to 0.99 ac	30%
	1.0 ac or more	50%

5. A developer subject to this chapter may achieve the additional reductions in nitrogen and phosphorus loading required by this ordinance by making offset payments per 15A NCAC 02B .0282. A developer may use an offset option provided by Franklin County. A developer may propose other offset measures to Franklin County, including providing his or her own offsite offset or utilizing a private seller.

K. Evaluation of Standards for Stormwater Control Measures

1. Evaluation According to Contents of Design Manual



All stormwater control measures, stormwater systems and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this article shall be evaluated by the Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the NC DEQ Stormwater Design Manual. The Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this article. The Design Manual is available online at: <https://deq.nc.gov/sw-bmp-manual>

L. Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the NCDEQ Stormwater Design Manual and the approved Accounting Tool 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 NCDEQ Stormwater 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 Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Administrator to determine whether such an affirmative showing is made.

9.3.9. **Illegal Discharges**

A. Discharge Prohibitions

No person shall discharge or cause to be discharged into the stormwater collection system any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater.

B. Allowable Discharges

The commencement, conduct, or continuance of any illegal discharge to the stormwater collection system is prohibited except as described below. The following discharges are exempt from discharge prohibitions established by this Ordinance provided that they do not significantly impact water quality:

1. Waterline flushing
2. Landscape irrigation
3. Diverted stream flows

4. Uncontaminated rising groundwater
5. Uncontaminated groundwater infiltration to the stormwater collection system
6. Uncontaminated pumped groundwater
7. Discharges from potable water sources
8. Foundation drains
9. Uncontaminated air-conditioning condensation
10. Irrigation water
11. Springs
12. Water from crawl space pumps
13. Footing drains
14. Lawn watering
15. Non-commercial car washing
16. Flows from riparian habitats and wetlands
17. NPDES permitted discharges
18. Street wash water
19. Firefighting emergency activities
20. Wash water from the cleaning of buildings
21. Dechlorinated backwash and draining associated with swimming pools, and
22. Flows from firefighting
23. Discharges specified in writing by the County as being necessary to public health and safety
24. Dye testing is an allowable discharge but requires verbal notification to the County prior to the time of the test. Any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or waste discharge order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the stormwater collection system.

C. Prohibited Discharges

1. It is a violation of this Ordinance for any person to discharge any substance into the stormwater collection system, which by its nature, may:
  - a. Become a public health hazard endangering human or animal health.
  - b. Interfere with the free and rapid flow of surface water.
  - c. Be flammable or explosive.
  - d. Be toxic to human, animal or plant life.
  - e. Be corrosive or damaging to the stormwater collection system.
  - f. Affect adversely the State of North Carolina classification of the stream into which the discharge flows.
2. Non-allowable discharges include, but are not limited to, the following:
  - a. Dumping of oil, anti-freeze, chemicals, garbage, paint or cleaning fluids,
  - b. Untreated animal waste,
  - c. Commercial car washes,
  - d. Industrial discharges,
  - e. Contaminated foundation drains,
  - f. Cooling water unless no chemicals are added, and a NPDES permit is in place,
  - g. Washwaters from commercial and industrial activities,
  - h. Sanitary sewer discharges,
  - i. Septic tank discharges,
  - j. Washing machine discharges, and
  - k. Chlorinated backwash and draining associated with swimming pools.
3. Prohibition of Illegal Connections
  - a. The construction, use, maintenance, or continued existence of illegal connections to the stormwater collection system are prohibited. Any connection to the stormwater collection system, which allows the discharge of non-stormwater, other than the exclusions listed in Section 7.B of this Ordinance, is prohibited.
  - b. This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the

connection was permissible under law or practices applicable or prevailing at the time of the connection.

- c. A person is considered to be in violation of this Ordinance if the person connects a line conveying sewage to the stormwater collection system, or allows such a collection to continue.
- d. Where such connections exist in violation of this Ordinance, and said connections existed prior to the adoption of this Ordinance, the property owner, or person using said connection shall remove the connection within 1 year following the adoption of this Ordinance. This 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 human, animal or plant life, and natural resources.
- e. Where it is determined that the 1-year grace period shall not apply, the Administrator shall determine the time within which the connection shall be removed. In setting the time limit for compliance, the County shall take into consideration:
  - i. The quantity and complexity of the work.
  - ii. The consequences of delay.
  - iii. The potential harm to the environment, to the public health, to public and private property, to wildlife, and to natural resources.
  - iv. The cost of remedying the damage.

#### D. Spills

1. Spills or leaks of polluting substances discharged to, or having the potential to reach the stormwater collection system, shall be contained, controlled, collected, and removed promptly. All affected areas shall be restored to their preexisting condition.
2. Notification of Spills
  - a. Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into or may reach the stormwater collection system or waters of the Tar-Pamlico River Basin in Franklin County, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such discharge. In the event of such a discharge of

hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services, and shall notify the County within twenty-four (24) hours. In the event of a discharge of non-hazardous materials, said person shall notify the County no later than the next business day. All notifications shall be confirmed by written notice addressed and mailed to the County within three (3) business days of the discharge.

- b. Notification shall not relieve said person of:
  - i. Any liability or expense related to the discharge.
  - ii. Restoration of any area affected by the discharge to preexisting conditions.
  - iii. Liability or violation of any regulatory body of the County, State or Federal government.

#### 9.3.10. Jurisdiction-Wide Collection of Illegal Discharge Information

Franklin County shall collect information related to illegal discharges from all applicable sources within its Jurisdiction within the Tar-Pamlico and Neuse River Basin.

#### 9.3.11. Inspections and Investigations

##### A. Authority to Enter

1. Officials of Franklin County shall have the right to enter property at all reasonable times to inspect sites subject to the requirements of this chapter to determine whether the development, SCMs, discharges and/or other activities on the property conform to the standards and requirements as set out herein.
2. No person shall obstruct, delay, hamper, or in any way interfere with a county agent or official while in the process of carrying out their duties under this ordinance.

##### B. Inspection of Stormwater Facilities

1. Inspection programs may be established on any reasonable basis, including but not limited to:
  - a. Routine inspections
  - b. Random inspections
  - c. Inspections based upon complaints or other notice of possible violations
  - d. Inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants

- e. Inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or an NPDES stormwater permit
  - f. Joint inspections with other agencies inspecting under environmental or safety laws.
2. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater treatment practices.
  3. If the owner or occupant of any property refuses to permit such inspection, the 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 Administrator while carrying out his or her official duties.

C. Remedies

The provisions of this chapter may be enforced by one, all, or a combination of the remedies authorized by Article 3, Enforcement of this Ordinance.

9.3.12. Effective Date and Amendments

A. Effective Date

The effective date of this Chapter shall coincide with that of the adoption date of the Franklin County UDO found in Article 1, Establishment and Administration of this Ordinance.

B. Amendments

All amendments to this Chapter shall follow the procedures outlined in Article 4, Review Procedures of this ordinance and in accordance with NC DEQ.

## 9.4. WATERSHED PROTECTION

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### 9.4.1. Jurisdiction

The provisions of this Ordinance shall apply within the areas designated as a Public Water Supply Watershed by the NC Department Environmental Quality Division of Water Resources and shall be defined and established on the map entitled, "Watershed Protection Map of Franklin County, North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the office of the County Clerk.

### 9.4.2. Exceptions to Applicability

A. Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulation pertaining thereto except any Ordinance which these regulations specifically replace; nor shall any provision of this Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of Franklin County; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in Franklin County at the time of adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance or to conflict with any of its provisions.

B. The county does not intend that these regulations interfere with any easement, covenants or other agreements between parties; however, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

C. Existing development, as defined in this Ordinance, is not subject to the requirements of this Ordinance. Expansions to structures classified as existing development must meet the requirements of this Ordinance, however, the built-upon area of the existing development is not required to be included in the density calculations.

D. If a non-conforming lot of record is not continuous to any other lot owned by the same party, then the lot of record shall not be subject to the development regulations of this Ordinance if it is developed for single-family residential purposes and subject to the following:

1. The lot was created by an approved recorded plat after August 1, 1985, or

2. The lot was created by metes and bounds deed description with a recordation number less than Deed Book 850, Page 373, Franklin County Registry.

#### 9.4.3. Criminal Penalties

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

#### 9.4.4. Remedies

A. If any subdivision, development, and/or land use is found to be in violation of this Ordinance, the Franklin County Board of Commissioners may, in addition to all remedies available either in law or in equity, institute a civil penalty in the amount of \$500.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. § 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

B. If the Administrator finds that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings, or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this Ordinance to ensure compliance with, or to prevent violation of its provisions. If a ruling of the Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board in writing within 30 days of the date of such ruling.

#### 9.4.5. Establishment of Watershed Areas

The purpose of this Article is to list and describe the watershed areas herein adopted. For purposes of this Ordinance, the County is hereby divided into the following areas as appropriate:

- A. WS-II-CA (Critical Area)
- B. WS-II-BW (Balance of Watershed)
- C. WS-IV-CA (Critical Area)
- D. WS-IV-PA (Protected Area)



#### 9.4.6. Watershed Areas Described

The following watershed area descriptions are provided for use in the administration of required activities within regulated Surface Water Public Water Supply Watersheds. Water Supply Watershed Maps on file in the office of the Administrator are included herein by reference and shall be considered to be the official records in defining the location of regulated areas.

Agricultural and forestry activities are described herein for clarity, but are not regulated by the Administrator. For information regarding bona fide agricultural activities, contact the Franklin County Soil and Water Conservation District Board. For information regarding forestry activities, contact the Franklin County Forest Ranger.

##### A. WS-I Watershed Areas

The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds by allowing only low intensity uses. No residential or nonresidential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.

###### 1. Allowed Uses

- a. Agriculture subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993, shall maintain a minimum 10-foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices of July 1, 1994, recommended by the Soil and Water Conservation Commission.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Water withdrawal, treatment, and distribution facilities.
- d. Restricted road access.
- e. Power transmission lines.

##### B. WS-II Watershed Areas - Critical Area (WS-II-CA)

In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum density of one (1) dwelling unit per eighty thousand (80,000) square feet.

The built-upon area of all residential and nonresidential development shall be allowed at a maximum Impervious Surface Ratio of six percent (6%). Projects must be constructed according to detailed development drawings which minimize built-upon surface area, protect naturally vegetated areas, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. Landfills and sludge application sites are specifically prohibited.

1. Allowed Uses

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993, shall maintain a minimum of ten (10) foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Animal operations greater than one hundred (100) animal units shall employ Best Management Practices by July 1, 1994, recommended by the Soil and Water Conservation Commission.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential development, including both single-family and all other residential.
- d. Nonresidential development.

2. Prohibited Uses

- a. All landfills
- b. Sites for land application of residuals including, but not limited to, wastewater and septic system sludge, animal waste sludge, or petroleum contaminated soils

3. Density and Built-Upon Limits

a. Single-Family Residential

Development shall not exceed 1 dwelling unit per 80,000 square feet on a project-by-project basis. Residential lots may be less than 80,000 square feet within an approved cluster development.

b. All Other Residential and Nonresidential

Development shall not exceed 6% built-upon areas on a project-by-project basis. To calculating built-upon area, total project area shall include total acreage in the tract(s) on which the project is to be developed.

C. WS-II Watershed Areas - Balance of Watershed (WS-II-BW)

In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum density of 1 dwelling unit per 40,000 square feet. The built-upon area of all residential and nonresidential development shall be allowed at a maximum Impervious Surface Ratio of 12%. Projects must be constructed according to detailed development drawings which minimize built-upon surface area, protect naturally vegetated areas, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. Landfills and sludge application sites are specifically prohibited.

1. Allowed Uses

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential development
- d. Nonresidential development

2. Prohibited Uses

- a. All landfills
- b. Sites for land application of residuals including, but not limited to, wastewater and septic system sludge, animal waste sludge, or petroleum contaminated soils

3. Density and Built-Upon Limits

- a. Single-Family Residential. Development shall not exceed 1 dwelling unit per 40,000 square feet on a project-by-project basis. Residential lots may be less than 40,000 square feet within an approved cluster development.
- b. All Other Residential and Nonresidential. Built-upon areas in any development shall not exceed 12% Impervious Surface Ratio on a project-by-project basis. To calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

c. Special Intensity Allocation SIA Option

In addition to the development allowed in this section, new nonresidential development and expansions to existing nonresidential development may occupy up to 10% of the protected area with up to 70% built-upon area, on a first come, first provided basis, when approved as a special intensity allocation (SIA). The Administrator is authorized to approve an SIA consistent with the provisions of this Ordinance until 10% of the total acreage in the watershed is expended. Projects must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed. While North Carolina watershed regulations allow Franklin County to transfer all or any portion of this 10% allocation to another jurisdiction within the watershed, Franklin County will not transfer more than 30% of any watershed's allocation to another jurisdiction within that watershed to accommodate the development of a desirable project.

D. WS-IV Watershed Areas - Critical Area (WS-IV-CA)

Only new development activities that require an erosion/sedimentation control plan under the State law or approved local program are required to meet the provisions of this Ordinance when located in the WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses are allowed at a maximum density of 1 dwelling unit per 20,000 square feet. The built-upon area of all residential and nonresidential development shall be allowed at a maximum Impervious Surface Ratio of 24%. Projects must be constructed according to detailed development drawings which minimize built-upon surface area, protect naturally vegetated areas, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. Landfills and sludge application sites are specifically prohibited.

1. Allowed Uses.

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993, shall maintain a minimum of 10-foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale

topographic maps or as determined by local government studies. Animal operations greater than 100 animal units shall employ Best Management Practices by July 1, 1994, recommended by the Soil and Water Conservation Commission.

- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential
- d. Nonresidential development

2. Prohibited Uses

- a. All landfills
- b. Sites for land application of residuals including, but not limited to, wastewater and septic system sludge, animal waste sludge, or petroleum contaminated soils.

3. Density and Built-Upon Limits.

- a. Single-Family Residential. Development shall not exceed 1 dwelling unit per twenty thousand 20,000 square feet as defined on a project-by-project basis. Residential lots may be less than 20,000 square feet within an approved cluster development.
- b. All Other Residential and Nonresidential. Development shall not exceed 24% built-upon areas on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

E. WS-IV Watershed Areas - Protected Area (WS-IV-PA)

Only new development activities that require an erosion/sedimentation control plan under the State law or approved local program are required to meet the provisions of this Ordinance when located in the WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential uses shall develop at a maximum density of 1 dwelling unit per 20,000 square feet. The built-upon area of all residential and nonresidential development shall be allowed at a maximum Impervious Surface Ratio of 24%. Projects must be constructed according to detailed development drawings which minimize built-upon surface area, protect naturally vegetated areas, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. Landfills and sludge application sites are allowed. A maximum density of 1 dwelling unit per 15,000 square feet or a built-upon area of 36% Impervious

Surface Ratio is allowed for projects without a curb and gutter street system.

1. Allowed Uses

- a. Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990.
- b. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
- c. Residential development
- d. Nonresidential development

2. Prohibited Uses

- a. Discharging landfills
- b. Sites for land application of residuals including, but not limited to, wastewater and septic system sludge, animal waste sludge, or petroleum contaminated soils

3. Density and Built-Upon Limits.

a. Single-Family Residential

Development shall not exceed 1 dwelling unit per 20,000 square feet as defined on a project-by-project basis. Residential lots may be less than 20,000 square feet or 15,000 square feet for projects without curb and gutter system within an approved cluster development.

- b. All Other Residential and Nonresidential. Development shall not exceed 24% built-upon areas on a project-by-project basis. For projects without a curb and gutter street system, development shall not exceed 36% built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

c. Special Intensity Allocation SIA Option

In addition to the development allowed in this section, new nonresidential development and expansions to existing nonresidential development may occupy up to 10% of the protected area with up to 70% built-upon area, on a first come, first provided basis, when approved as a special intensity allocation (SIA). The Administrator is authorized to approve an SIA consistent with the provisions of this Ordinance until 10% of the total acreage in the watershed is expended. Projects must, to the

maximum extent practicable, minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

- i. While North Carolina watershed regulations allow Franklin County to transfer all or any portion of this 10% allocation from one watershed to another, Franklin County will not transfer more than 30% of any watershed's allocation to another watershed to accommodate the development of a desirable project.

#### 9.4.7. Tar-Pam vs. Falls Lake Watershed Requirements

Developers may refer to the Stormwater Jurisdiction Map or the NCDEQ Interactive Stormwater Map to help identify their location within the following watersheds in Franklin County

##### A. Neuse River Basin

Development and redevelopment within the Neuse River Basin is exempt from Stormwater Review [15A NCAC 2B .0235]. However, any encroachment within a Neuse River Basin riparian buffer, wetland or stream is subject to NCDEQ and/or U.S. Army Corps of Engineers approval. Developments within the Neuse River Basin are required to submit a Stormwater Management Review Application.

##### B. Tar-Pamlico River Basin

New development or redevelopment within the Tar/Pamlico Basin must comply with the following:

1. Riparian areas must be protected and maintained in compliance with the Division of Water Quality rules and regulations 15A NCAC 2B .0259.
2. Nitrogen load contribution must not exceed 4.0 lbs per acre per year and Phosphorous must not exceed 0.8 lbs per acre per year
3. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (>24%) percent built-upon area, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State's Minimum Design Criteria, 15A NCAC 02H .1050 through .1062.
4. Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be

designed to control and treat the volume of runoff generated from all built-upon area by one (1) inch of rainfall or equivalent runoff volume in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.

5. Where high-density stormwater design is not required, stormwater systems shall meet the low-density stormwater design standards set forth in 15A NCAC 02H .1003(2).

C. Falls Lake Watershed

New development or redevelopment within the Falls Lake Watershed portion of southern Franklin County must comply with the regulations in this Article and Article 9.3.8.

Nutrient Loading Limits

	Tar-Pamlico River Basin (lbs/ac/year)	Falls Lake Watershed (lbs/ac/year)
<b>Nitrogen</b>	4.0	2.2
<b>Phosphorus</b>	0.80	0.33

D. Land Disturbance Permit Required

Type of Development	Tar-Pamlico River Basin	Falls Lake Watershed
<b>E. Single-family, detached and duplex residential</b>	1.0 ac or greater	0.50 ac or greater
<b>F. Multi-family residential, commercial and industrial</b>	0.50 ac or greater	12,000 sf or greater

E. Incorporation of the Design Manual

1. The North Carolina Department of Environmental Quality (DEQ), Stormwater Design Manual, and all amendments thereto, is hereby adopted by reference as fully as though set forth herein.
2. The Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the DEQ Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of engineered stormwater controls and other practices for compliance with this ordinance.



3. The NCDEQ 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 Tar-Pamlico and Falls Lake Rules.
4. If the standards, specifications, guidelines, policies, criteria, or other information in the NCDEQ 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.
5. If any standard, requirement, or procedure as set forth in the NCDEQ Design Manual is in conflict with any standard, requirement, or procedure as set forth in this ordinance then the most stringent shall prevail. A copy of the NCDEQ Manual shall be available for public review in the Franklin County Planning and Inspections office and online at: <https://www.deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater/stormwater-program/stormwater-design-manual>

#### 9.4.8. Cluster Subdivisions & Development

- A. See Article 7, Subdivision Design Criteria

#### 9.4.9. Buffer Area Required

A. A minimum 50-foot vegetative buffer for all development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial streambank or shoreline stabilization may be permitted by the Administrator where conditions existing prior to any development construction are less protective of water quality than the constructed improvements. A minimum 100-foot vegetative buffer is required for all new development activities that utilize the Special Intensity Allocation Option.

B. No new development is allowed in the buffer except water dependent structures; other structures such as flagpoles, signs, and security lights which result in only diminutive increases in the impervious area; and public projects such as road crossings and greenways. Development design and construction methods shall consider all other practical alternatives prior to conducting temporary or permanent construction activities in a required buffer area. These activities should minimize built-upon surface area, direct runoff away from the

surface water, and maximize the utilization of stormwater Best Management Practices.

#### 9.4.10. Rules Governing the Interpretation of Watershed Area Boundaries

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules apply:

- A. Where area boundaries are indicated as approximately following either street, alley, railroad, or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
- B. Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.
- C. Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.
- D. Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
- E. Where other uncertainty exists, the Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

#### 9.4.11. Application of Regulations

- A. No building or land shall hereafter be used, and no development shall take place except in conformity with the regulations herein specified, for the watershed area in which it is located.
- B. No area required for the purpose of complying with the provisions of this chapter shall be included in the area required for another building.
- C. Every residential building hereafter erected, moved, or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in this ordinance.
- D. If a use or class of use is not specifically indicated as being allowed in the watershed area, such use or class of use is prohibited.

#### 9.4.12. Existing Development

Any existing development as defined in this chapter may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of existing development is not

required to be included in the density or impervious surface ratio calculations.

A. Vacant Lots

This category consists of vacant lots for which approved plats or deeds with recordation numbers less than Deed Book 850, Page 373 have been recorded in the office of the Register of Deeds of Franklin County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:

1. Where the lot area is below the minimum specified in this Ordinance, the watershed protection permit may impose conditions intended to reduce the nonconformity.
2. Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this Ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located, the Administrator may require such lots to be combined to create one or more lots that meet the standards of this Ordinance, or if this is impossible, reduce, to the extent possible, the nonconformity of the lots.

B. Occupied Lots

This category consists of lots occupied for residential purposes at the time of the adoption of this Ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this Ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, the Administrator may require such lots to be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

C. Uses of Land

This category consists of uses existing at the time of adoption of this Ordinance where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

1. When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
2. Such use of land shall be changed only to an allowed use.

3. When such use ceases for a period of at least one year, it shall not be reestablished.

D. Reconstruction of Buildings or Built-Upon Areas

Any existing building or built-upon area not in conformance with the restrictions of this Ordinance that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:

1. Repair or reconstruction is initiated within 12 months and completed within 2 years of such damage.
2. The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

9.4.13. Watershed Protection Permit

A. This permit is a specialized version of a Zoning Compliance Permit and a similar review procedure, except as otherwise outlined herein.

B. Except where a single-family residence is constructed on a lot deeded prior to the effective date of this Ordinance, no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a Watershed Protection Permit has been issued by the Administrator. No Watershed Protection Permit shall be issued except in conformity with the provisions of this Ordinance.

C. Watershed Protection Permit applications shall be filed with the Administrator. The application shall include a completed application form, plan drawings, and supporting documentation deemed necessary by the Administrator.

D. Prior to issuance of a Watershed Protection Permit, the Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this Ordinance.

E. A Watershed Protection Permit shall expire if a Building Permit or Watershed Protection Certificate of Occupancy for such use is not obtained by the applicant within 12 months from the date of issuance.

9.4.14. Building Permit Required

A. No building permit required under the North Carolina State Building Code shall be issued for any activity for which a Watershed Protection Permit is required until the Watershed Protection Permit has been issued.

#### 9.4.15. Watershed Protection Certificate of Occupancy

- A. The Administrator shall issue a Watershed Protection Certificate of Occupancy certifying that all requirements of this Ordinance have been met prior to the occupancy or use of a building hereafter erected, altered, or moved and/or prior to the change of use of any building or land.
- B. A Watershed Protection Certificate of Occupancy shall be applied for coincident with the application for a Watershed Protection Permit.
- C. When only a change in use of land or existing building occurs, the Administrator shall issue a Watershed Protection Certificate of Occupancy certifying that all requirements of this Ordinance have been met coincident with the Watershed Protection Permit.
- D. If the Watershed Protection Certificate of Occupancy is denied, the Administrator shall notify the applicant in writing stating the reasons for denial.
- E. No building or structure which has been erected, moved, or structurally altered may be occupied until the Administrator has approved.

#### 9.4.16. Public Health, in General

No activity, situation, structure, or land use will be allowed within the watershed which poses a threat to water quality and the public health, safety, and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse; the absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

#### 9.4.17. Abatement

- A. The Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.
- B. The Administrator shall report all findings to the Watershed Review Board. The Administrator may consult with any public agency or official and request recommendations.
- C. Where the Administrator finds a threat to water quality and the public health, safety and welfare, the Administrator shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

#### 9.4.18. Administrator and Duties Thereof

The Administrator of this ordinance shall serve as the official Watershed Administrator and shall have the following duties in addition to those listed in Article 1, Establishment and Administration:

- A. Issue Watershed Protection Permits and Watershed Protection Certificate of Occupancy as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection.
- B. Serve as clerk to the Watershed Review Board.
- C. Keep records of all amendments to this chapter and overall UDO and provide copies of all amendments upon adoption to NC DEQ.
- D. Administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full police power of the county and may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him/her by this chapter.
- E. Keep a record of all variances and shall submit this record for each calendar year to the NC DEQ on or before January 1 of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

#### 9.4.19. Appeal from the Administrator for Watershed Related Decisions

An order, requirement, decision, or determination made by the Administrator must be appealed to the Watershed Review Board within thirty (30) days from the date the order, interpretation, decision, or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing any party may appear in person, by agent or by attorney.

#### 9.4.20. Establishment of Watershed Review Board

See Article 1.13.5, Watershed Review Board.

#### 9.4.21. Rules of Conduct for Members

See Article 1.13.5, Watershed Review Board.

9.4.22. Powers and Duties of the Watershed Review Board

See Article 1.13.5, Watershed Review Board.

9.4.23. Appeals from the Watershed Review Board

See Article 1.13.5, Watershed Review Board.