CHAPTER 9. - STORMWATER CONTROL AND WATERCOURSE BUFFER REGULATIONS

ARTICLE A. - GENERAL PROVISIONS.
ARTICLE B. - ESTABLISHMENT OF STORMWATER CONTROLS.

ARTICLE A. - GENERAL PROVISIONS.

Sec. 10-9001. - TITLE; PURPOSE.
Sec. 10-9002. - DEFINITIONS.
Sec. 10-9003. - SCOPE AND EXCLUSIONS.
Sec. 10-9004. - INCORPORATION OF RALEIGH STORMWATER CONTROL AND WATERCOURSE BUFFER MANUAL.
Sec. 10-9005. - CITY INSPECTION.
Sec. 10-9006. - ENFORCEMENT.
Sec. 10-9007. - SPECIFIC CIVIL PENALTIES.
Sec. 10-9008. - VARIANCES.
Sec. 10-9009. - APPEALS.
Secs. 10-9010—10-9020. - RESERVED.

Sec. 10-9001. - TITLE; PURPOSE.

(a) This chapter *shall* constitute and be known and *may* be cited as the "Stormwater Control and Watercourse Buffer Regulations" of the *City* of Raleigh, North Carolina.

(b) The purpose of this chapter is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development, to aide in the reduction of nutrient pollution in the Neuse River, and to promote water quality, reduction of nitrogen loads and proper management of stormwater runoff and establishment of watercourse buffers will minimize damage to public and private *property*, insure a functional drainage system, reduce the effects of development on land and watercourse channel erosion, assist in the attainment and maintenance of water quality standards, enhance the local environment associated with the drainage system, reduce local flooding and drainage problems, and reduce nitrogen load from new developments, maintain the pre-developed runoff characteristics of the area, and facilitate economic development by mitigating associated flooding and drainage impacts.

(c) The application of this chapter and the provisions contained herein *shall* be the minimum stormwater control and watercourse buffer requirements and *shall* not be deemed a limitation or repeal of any other obligations imposed by Federal or State regulations or judicial decisions.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

State law reference: Authority to regulate stormwater, *G.S.* 143-214.7(c) and 1989 Session laws Chapter 1043.

Sec. 10-9002. - DEFINITIONS.

As used in this chapter, unless the context clearly indicates otherwise, the *following* terms, phrases and words, and their derivatives, *shall* have the meaning given herein:

Development. Any site plan or subdivision.

Ephemeral (stormwater) stream. A feature that carries only stormwater in direct response to precipitation with waters 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 the continuous or intermittent conveyance of water.

Impervious surface. Any material that significantly reduces and prevents natural infiltration of water into the soil. Impervious surfaces include but are not limited to roof, patios, balconies, decks, *streets*, parking areas, driveways, sidewalks, and any concrete stone, brick, asphalt, or compacted gravel surface. For purposes of this chapter, the effective impervious coverage of certain surfaces listed below are:

(1) Asphalt, concrete, crush and run gravel, masonry, marl, wood, and other impermeable surfaces which prevent land area from infiltrating stormwater are one hundred (100) per cent impervious.

(2) Porous surfaces which permit direct infiltration of unconcentrated stormwater into ground areas which are prepared in accordance with plans approved by the Inspections Department of the *City* so that the first one-half (½) inch of stormwater infiltrates into the ground are seventy (70) per cent through ten (10) per cent impervious, depending on:

- Compaction;
- Condition of subgrade;
- Extent of land disturbance;
- Extent of porous openings;
- Protection from siltation and clogging;
- Slope of the ground area;
- Volume of stormwater stored.

(3) Slatted wood decks that allow the drainage of water through the slates to an unpaved surface below are fifty (50) per cent impervious. If the area covered by the deck is wash graveled, the deck is thirty (30) per cent impervious.

(4) Ungraveled natural footpaths, water surfaces of swimming pools, and drain fields are zero (0) per cent impervious.

All other necessary determinations about impervious surfaces will be based on hydrological tests based on existing subgrade soils, slope, rainfall intensity and rainfall duration.

Land-disturbing activity. Any use of the land by any *person* in residential, recreational, industrial, educational, service, institutional, civic, office, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography or alters the nature structure of the land mass and that *may* cause or contribute to sedimentation.

Maintain* or *Maintenance. Any action necessary to keep stormwater control measures and devices in proper working condition, so that such facilities *shall* continue to comply with the standards of this chapter to prevent failure of stormwater control measures and devices and function as intended. Maintenance includes activities undertaken to prevent failure of stormwater control measures and devices, and includes maintenance activities identified on approved stormwater control plans, maintenance manuals, and the ***Raleigh Stormwater Control and Watercourse Buffer Manual***.

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 the continuous conveyance of water.

No practical alternatives. A determination made by a public official that:

(1) The basic purpose of the project cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

(2) The project cannot practically be reduced in size or intensity, reconfigured, or redesigned to better minimize disturbance, preserve aquatic life and habitat and protect water quality.

Off-site stormwater control facilities. The overall design, construction and maintenance of one (1) or more devices and measures and associated drainage easements, conduits, inlets, channels, pipes and ditches, level spreaders, filters, buffers, bioretention areas, sand filters, detention basins, wetlands, and ponds necessary to collect, convey, store, and control stormwater runoff and pollutants for more than one (1) lot. Stormwater control facilities serving contiguous *properties*, a *subdivision*, or a portion of a *subdivision* greater than one (1) lot are examples of off-site stormwater control facilities.

On-site stormwater control facilities. The overall design, construction and maintenance of one (1) or more devices and measures and associated drainage easement, conduits, inlets, channels pipes, ditches, level spreaders, filters, buffers, bioretention areas, sand filters, detention basins, wetlands, and ponds, necessary to collect, convey, store, and control stormwater runoff and pollutants within and for a single *lot*.

Open space area. Primarily vegetated areas where development is restricted and no additional impervious surface *may* be placed without first obtaining a permit from the *City* of Raleigh. The *following* are *open space areas:* greenways and public parks, natural protective yards set forth in conditional use zoning districts, and permanently protected undisturbed *open space areas*.

Pre-development conditions. The land use, drainage, and impervious surface conditions existing on the site at the time plans are submitted for approval, including any previously approved development plans for the site which has not sunsetted, projects which have an outstanding valid building permit in compliance with *G.S.* §160A-418 and *G.S.* 160A-422 or *G.S.* 153A-358 and *G.S.* 153A-362, and projects that have obtained a state permit such as landfills, land application of residuals on the site.

Post-development conditions. Pre-development conditions together with the land use, drainage and impervious conditions that would exist on the site if all proposed development plans for the site are fully completed.

Raleigh Stormwater Control and Watercourse Buffer Manual. A manual adopted by the *City Council* by reference, as fully as though set forth in this chapter which includes plan and data submission requirements, presents design procedures and criteria for conducting natural, hydrologic and hydraulic evaluations, best management practice designs, regulations for *riparian surface water* buffers, standards for managing the volume and quality of stormwater runoff and standards for *maintenance*.

Regional stormwater control facilities. The overall design, construction and maintenance of measures and devices and associated drainage easement, conduits, inlets, channels, pipes, ditches, filters, buffers, bioretention areas, and ponds, necessary to collect, convey, store, and control stormwater runoff and pollutants within or outside a *development* and for one (1) or more *developments*, as shown on the *stormwater control master plans* approved by *the State of* North Carolina.

Residential development. Any lot devoted to *single family* or *duplex* land use.

Riparian surface water. Actual surface water that is shown as a feature on either the most recent version of (a) the soil survey map prepared by the Natural Resources Conservation Services of the United States Department of Agriculture or (b) the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS) except for the *following* surface waters:

(1) Man-made channels, such as ditches and canals, other than a modified natural stream.

(2) Man-made ponds and lakes that are located outside natural drainage ways.

(3) *Ephemeral (stormwater) streams*.

Site plan. *shall* be as defined in §10-2002.

Stormwater control facilities. *Off-site stormwater control facilities*, *on-site stormwater control facilities*, *regional stormwater control facilities*, or any combination thereof.

Stormwater control master plan. A conceptual plan approved by the Raleigh *City Council*, which establishes stormwater control policies and recommendations for an entire watershed or region as an alternative to individual site specific *stormwater control plans*. The purpose of this plan is to meet or exceed the urban stormwater requirements of the Neuse River Basin Nutrient Sensitive Waters Management Strategy in a more coordinated and cost effective manner through the use of *regional stormwater control facilities* as opposed to the exclusive use of on-site or off-site stormwater control facilities.

Stormwater control plan. The set of drawings and other documents that comprise all of the information and specifications for the drainage systems, structures, concepts, techniques, measures and devices that will be used to control nitrogen loads and stormwater runoff, as required by this chapter and the ***Raleigh Stormwater and Watercourse Buffer Design Manual***. Also included are the supporting engineering calculations, input data for any computer analysis, and results of any computer analysis.

Structural flooding. Crawlspace, finish floor, garage, and basement flooding caused by concentrated stormwater flows and not groundwater infiltration. *Structural flooding* also includes sheds and outbuildings on a permanent, enclosed foundation that cannot be easily moved. Sheds and outbuildings not on permanent, enclosed foundations, or that can be easily moved, and where moving the structure is the least cost alternative to prevent flood damage to the structure, are not defined as having *structural flooding. Structural flooding* does not include those portions of residential and commercial structures located in a floodplain area and designed and constructed to flood or a commercial structure that has a *City* approved floodproofing plan.

Subdivision. *Shall* be as defined in §10-3003.

Two-year, ten-year, twenty-five-year and one hundred-year storms. The stormwater runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in two (2) *years*, ten (10) *years,* twenty-five (25) *years* or one hundred (100) *years* respectively, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.

Undertake. The initiating of, conducting of, or continuing of, or being financially responsible for placement of any *impervious surface*, any *land-disturbing activity*, or any construction.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §§1—3, TC-1-03, 4-15-03; Ord. No. 2009-593-TC-324, §1, TC-8-08, 5-19-09; Ord. No. 2010-739-TC-332, §9, TC-11(A)-09, 5-18-10; Ord. No. 2010-791-TC-337, §15, TC-5-10, 10-5-10, eff. 12-1-10)

Sec. 10-9003. - SCOPE AND EXCLUSIONS.

No *person shall* develop any *property*, *subdivide* any *property*, place any *impervious surface* nor *undertake* any *land-disturbing activity* on any *property* without having provided for appropriate stormwater control measures, watercourse buffers, or both to control stormwater in conformity with the requirements of this chapter. Except as otherwise excluded by this chapter, this chapter *shall* apply to all *property* within the territorial and extraterritorial jurisdiction of the *City*.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2010-791-TC-337, §16, TC-5-10, 10-5-10, eff. 12-1-10)

Sec. 10-9004. - INCORPORATION OF RALEIGH STORMWATER CONTROL AND WATERCOURSE BUFFER MANUAL.

The ***Raleigh Stormwater Control and Watercourse Buffer Manual***, and amendments thereto, on file in the *City* Clerk's Office, is hereby adopted by referenced as fully as though set forth herein. If any standard, requirement, or procedure in this manual is in conflict with any provision of this *Code*, then the most stringent *shall* apply.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

Sec. 10-9005. - CITY INSPECTION.

Agents and officials of the *City shall* have the right to inspect sites subject to the requirements of this chapter to determine whether the measures, devices and *open space areas* required by this chapter to control the rate and quality of stormwater are installed and operating as approved, whether such measures, devices and *open space areas* are being *maintained*, and to determine if any

encroachments or activities in any watercourse buffer area not permitted by this chapter have occurred. Notice of this right to make inspections *shall* be included in the stormwater control and watercourse buffer permits. No *person shall* obstruct, hamper, delay, resist or interfere with *City* agents or officials while in the process of carrying out their official duties.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

Sec. 10-9006. - ENFORCEMENT.

(a) Civil Penalties.

(1) Any *person* who violates any of the provisions of this chapter, any regulation, rule or order duly adopted pursuant to this chapter; or who *undertakes* or continues any activity for which a *stormwater control plan* is required except in accordance with the terms, conditions, and provisions of an approved plan *shall* be subject to the specific civil penalties set forth in §10-9008. Said penalties *shall* be assessed by the Stormwater Utility Division of the Public Works Department. The initial civil penalty *shall* be assessed from the date of the violation. No penalty *shall* be assessed until the *person* alleged to be in violation is served by registered mail, certified mail-return receipt requested, personal service notice of violation, or any other means authorized under *G.S.* 1A-1, Rule 4. The notice *shall* specify a time by which the *person* must comply with this chapter or any regulation, rule, or order, duly adopted pursuant to this chapter and inform the *person* of the actions that need to be taken to comply. In setting the time for compliance, the *City shall* take into consideration the quantity and complexity of the work, the consequences of delay, the effectiveness of action taken by the violator, and the staff investigative costs, but in no event *shall* the specified time limits be more than ten (10) consecutive calendar days for compliance, except a shorter time period *may* be required by the *City* inspector for an imminent threat to either severely degrade a watercourse or cause severe runoff. The notice *shall* state that failure to correct the violation within the specified time period will result in the additional civil and criminal penalties for a continuing violation. If, after the allotted time period has expired, corrective action has not been completed, the additional civil penalties *shall* be assessed from the date of the initial violation. Each day of continuing violation thereafter *shall* constitute a separate violation.

(2) The Stormwater Utility Division of the Public Works Department *shall* make *written* demand for payment upon the *person* in violation and *shall* set forth the amount of the penalty and the reason for assessing the penalty; the department, for continuous violations, *shall* send within each ten-day period additional notices to the *person* in violation. Notice of the assessment *shall* be by registered or certified mail or any other means authorized under *G.S.* 1A-a, Rule 4. If the payment is not received within thirty (30) days after demand for payment is made, the matter *shall* be referred to the *City* Attorney for institution of a civil action in the name of the *City*, in the appropriate division of the general court of justice in Wake County for recovery of the penalty. Such civil actions must be filed within three (3) *years* of the date the assessment was due.

(b) Stop-work.

A stop-work order *may* be issued if an activity is being conducted or was conducted in violation of this chapter, any regulation, rule or order duly adopted pursuant to this chapter, or is being *undertaken* or continued for which a *stormwater control plan* is required except in accordance with the terms, conditions and provisions of an approved plan and that either:

(1) The activity is being conducted without an approved plan, a permit, or both;

(2) The violation endangers life, *property*, or both or that such endangerment is imminent;

(3) The activity is being conducted without installing all protective measures and devices in accordance with the approved *stormwater control plan*.

All stop-work orders *shall* be *in writing* served on and directed to the *person* doing the work and *shall* state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work *may* be resumed. The stop-work order *shall* be rescinded by *written* notice if all the violations for which the stop-work order were issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken.

(c) Criminal penalties.

Any *person* who knowingly or willfully violates any provision of this chapter, rule, regulation, order duly adopted or issued pursuant to this chapter or who knowingly or willfully *undertakes* or continues an activity for which a *stormwater control plan* is required, except in accordance with the terms, conditions, and provisions of an approved plan, *shall* be guilty of a misdemeanor punishable by imprisonment not to exceed ninety (90) days, or by a fine not to exceed five thousand dollars ($5,000.00), or both, in the discretion of the court.

(d) Injunctive relief.

(1) Whenever the *City Council* has reasonable cause to believe that any *person* is violating or threatening to violate this chapter, rule, regulation, or order duly adopted or issued pursuant to this chapter, or any term, condition or provision of an approved *stormwater control plan*, the *City may*, either before or after the institution of any other action or preceding authorized by this *Code*, institute a civil action to restrain the violation or threatened violation. The action *shall* be brought in the Superior Court of Wake County.

(2) Upon determination by a court that an alleged violation is occurring or is threatened, the court *shall* enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this subsection 10-9007(d) *shall* not relieve any party to the proceeding from any civil or criminal penalty prescribed for violations to this *Code*.

(e) Restoration.

Any *person* who violates any of the provisions of this chapter, any regulation, rule or order duly adopted pursuant to this chapter; or who *undertakes* or continues an activity except in accordance with the terms, conditions, and provisions of an approved *stormwater control plan* is required to restore the waters, land, and vegetation affected by the violation so as to minimize detrimental effects. The restoration plan *shall* first be approved by the *City*. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this section. The *owner* of any land on which unauthorized tree clearing or tree damaging, in whole or in part has occurred within a watercourse buffer established pursuant to Article B, Division 2, of this chapter or within a permanently protected undisturbed *open space area*, *shall* re-stabilize the land and plant nine (9) inches of tree circumference for every one hundred (100) square feet of disturbed land area or disturbed vegetative area. All replacement trees *shall* be native woodland species. Any watercourse that has been unlawfully piped, relocated or otherwise unlawfully disturbed *shall* be re-established. These plantings *shall* be installed within the time limit specified by the Inspections

Department Director. In setting the time limit for compliance, the Chief Zoning Inspector *shall* take into consideration the quantity of work, planting season, and the consequences of delay.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §44, TC-23-02, 2-4-03; Ord. No. 2003-432, §4, TC-1-03, 4-15-03; Ord. No. 2010-791-TC-337, §17, TC-5-10, 10-5-10, eff. 12-1-10)

Sec. 10-9007. - SPECIFIC CIVIL PENALTIES.

(a) Civil penalties for specific violations of Part 10, Chapter 9 *shall* be assessed as follows:

(1) Work without a permit. Five thousand dollars ($5,000.00) per day for failure to secure a valid required stormwater control permit and/or watercourse buffer permit prior to conducting any *land-disturbing activity*, any *development* or expansion thereof, any placement of *impervious surfaces*, or any new use or construction.

(2) Failure to follow plan. Three thousand dollars ($3,000.00) per day for failure to conduct a *land-disturbing activity*, placement of *impervious surfaces*, *development* or expansion thereof in accordance with the provisions of an approved *stormwater control plan*.

(3) Failure to *Maintain Stormwater Control Facilities.* Two thousand five hundred dollars ($2,500.00) per day for failure to *maintain stormwater control facilities*.

(4) Failure to file inspections report. Two thousand five hundred dollars ($2,500.00) per day for failure to file required inspection report.

(5) Failure to submit as-built plans. Two thousand five hundred dollars ($2,500.00) per day for failure to submit required as-built plans.

(6) Failure to certify that installed stormwater measures and piped devices are in compliance. Two thousand five hundred dollars ($2,500.00) per day for failure to certify that installed stormwater measures and devices are in compliance with the ***Raleigh Stormwater Control and Watercourse Buffer Manual*** and *City* approved the *stormwater control plan*, including modifications thereto approved by the *City*.

(7) Falsified certification. Three thousand dollars ($3,000.00) for making a falsified certification.

(8) Failure to record, or timely record, with local register of deeds required plats, maintenance covenants, and escrow agreements. Two thousand five hundred dollars ($2,500.00) per day for failure to record, or timely record with the local register of deeds required plats identifying *stormwater control facilities* and/or required maintenance covenants, and/or required escrow agreements.

(9) Failure to revise plan. Two thousand five hundred dollars ($2,500.00) per day for failure to file an acceptable, revised *stormwater control plan* within the established deadline after being notified of the need to do so.

(10) Failure to correct a violation after notice. Five thousand dollars ($5,000.00) per day for failure to correct a violation within the time limitations established in a notice of violation.

(11) Failure to obey a stop-work order. Five thousand dollars ($5,000.00) per day for a violation of a stop-work order.

(12) Any other action or failure to act that constitute a violation of this chapter. Two thousand five hundred dollars ($2,500.00) per day for any other action or failure to act that constitutes a violation of this chapter.

An additional civil penalty of one thousand dollars ($1,000.00) per day *shall* be charged to any *person* assessed a civil penalty for any violation of this chapter within the prior two (2) *years*. No initial civil penalty *shall* exceed seven thousand five hundred dollars ($7,500.00); this limitation *shall* be inapplicable to continuous violations.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

Sec. 10-9008. - VARIANCES.

(a) The *City Council may* grant an exception from the requirements of this chapter if:

(1) There are unique circumstances applicable to the site such that strict adherence to the provisions of the chapter will result in unnecessary hardship or create practical difficulties; and

(2) The variance is in harmony with the general purpose and intent of this chapter; and

(3) In granting this variance, water quality has been protected, public safety and welfare has been assured, and substantial justice has been done.

(b) A *written* request for an exception *shall* be submitted to the *City* Clerk and *shall* state the specific variance sought, the justification for the variance, and what measures will be taken to insure the requirements of this chapter have been met to the maximum extent practicable. It *shall* include descriptions, drawings, calculations and any other information that is necessary to evaluate the proposed variance.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §5, TC-1-03, 4-15-03)

Sec. 10-9009. - APPEALS.

The disapproval or required modification of any proposed *stormwater control plan*, or the determination by the *City* of noncompliance, or failure to *maintain shall* entitle the aggrieved *person* to appeal this decision or lack of action to the *City Council*. Such appeal must be made *in writing* to the *City* Clerk and the *City* Manager within fifteen (15) days of *written* notice of disapproval or modification of a *stormwater control plan*, or determination of either noncompliance or failure to *maintain*.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

Secs. 10-9010—10-9020. - RESERVED.

ARTICLE B. - ESTABLISHMENT OF STORMWATER CONTROLS.

Division 1. - Active Stormwater Control Measures.
Division 2. - Watercourse Buffers.

Division 1. - Active Stormwater Control Measures.

Sec. 10-9021. - EXEMPTIONS.
Sec. 10-9022. - NITROGEN REDUCTION.
Sec. 10-9023. - STORMWATER RUNOFF CONTROLS.
Sec. 10-9024. - STORMWATER CONTROL PERMITS.
Sec. 10-9025. - STORMWATER CONTROL PLANS.
Sec. 10-9026. - PRESERVATION OF OPEN SPACE AREAS.
Sec. 10-9027. - MAINTENANCE OF STORMWATER CONTROL MEASURES AND DEVICES.
Sec. 10-9028. - ANNUAL INSPECTIONS AND INSPECTION REPORT, REQUIRED.
Secs. 10-9029 — 10-9039. - RESERVED.

Sec. 10-9021. - EXEMPTIONS.

The *following* are exempt from the requirements of this division:

(1) Any *single-family* detached *dwelling*, any *single-family* attached *dwelling* not exceeding two (2) *dwelling units*, and any *duplex dwelling*, including their accessory uses, placed on any lot which was recorded either at the time of application of this regulation* or was a *subdivision* approved for recordation prior to the application of this regulation and which has not sunsetted*;

(2) Any plot plan and *site plan*, including their accessory uses, situated on any lot of one-half (½) acre or less in size which was either recorded at the time of application of this regulation* or was a *subdivision* approved for recordation prior to the application of this regulation and which has not sunsetted*;

(3) Any *single-family* detached *dwelling*, any *single-family* attached *dwelling* not exceeding two (2) *dwelling units*, and any *duplex dwelling*, including their accessory uses, placed within any *subdivision* of one (1) acre or less in aggregate size approved after application of this regulation*;

(4) Any plot plan and *site plan*, including their accessory uses, placed within any *subdivision* of one-half (½) acre or less in aggregate size approved after the application of this regulation* which cumulatively contains less than twelve thousand (12,000) square feet of *impervious surface*, including *impervious surfaces* of related on-site or off-site facilities;

(5) Any *land-disturbing activity* that does not require a land-disturbing permit under §10-5008 provided that, upon application of any *impervious surfaces* this exemption *shall* not apply;

(6) Substitution of *impervious surfaces* when all the standards of §10-2146.2(a)(5) is met.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §6, TC-1-03, 4-15-03)

***Editor's Note:** This regulation first became applicable on May 1, 2001, Ordinance No. (2001)-991-TC-206.

Cross reference: All *subdivisions* approved after the application of this ordinance with any lot less than one (1) acre in size are subject to stormwater controls, §10-3051(d).

Sec. 10-9022. - NITROGEN REDUCTION.

(a) Requirement.

Unless otherwise exempted by §§10-9003(b) and 10-9021, *following* the application of this regulation*, no *development* nor any expansion of an existing *development*, use, facility, building, structure, nor any new or expanded vehicular surface area *shall* contribute a nitrogen export load exceeding three and six-tenths (3.6) pounds per acre per *year*.

(b) Alternate means of compliance.

Developments that comply with the *stormwater control master plan* approved for its drainage basin are exempted from the requirements of subsection (a) above. Compliance with *stormwater control master plan shall* include the installation within the *development* of all stormwater control measures shown on the *stormwater control master plan*, payment of fees in lieu of installation, when allowed by the *City*, and payment of any applicable drainage fees.

(c) Payment to North Carolina Riparian Buffer Restoration Fund as an offset.

Developers *shall* have the option of offsetting their nitrogen export load limitations of subsection (a) above by paying monies to the North Carolina Riparian Buffer Restoration Fund based on the latest fee adopted by the State. For *residential development*, a one-time offset payment *may* be paid to the North Carolina Riparian Buffer Restoration Fund to bring the nitrogen export load down from six (6) pounds per acre per *year* to three and six-tenths (3.6) pounds per acre per *year*. For all other *developments*, a one-time offset payment *may* be paid to the North Carolina Riparian Buffer Restoration Fund to bring the nitrogen export load down from ten (10) pounds per acre per *year* to three and six-tenths (3.6) pounds per acre per *year* . Installation of *City* approved stormwater control measures or payments or a combination of both *may* be used. *Residential developments* which exceed nitrogen export loads of six (6) pounds per acre per *year* and other *developments* which exceed nitrogen export loads of ten (10) pounds per acre per *year* must install *City* approved stormwater control measures to reduce the nitrogen export load of their *development* to the applicable six (6) or ten (10) pounds per acre per *year* limitation to become eligible for payment offsets. All payments are to be paid to the North Carolina Riparian Buffer Restoration Fund at the time of *subdivision* recordation for those *subdivisions* with an approved unified *off-site stormwater control facilities* plan. For all other *developments*, payments *shall* be paid to the North Carolina Riparian Buffer Restoration Fund prior to the issuance of applicable *development* permits.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2006-92-TC-292, §1, TC-3-06, 9-5-06)

***Editor's Note:** This regulation first became applicable on May 1, 2001, Ordinance No. (2001)-991-TC-206.

Sec. 10-9023. - STORMWATER RUNOFF CONTROLS.

(a) Runoff limitation.

Following the application of this regulation*, the peak stormwater runoff leaving any site for the *two-year* and *ten-year storms shall* be no greater for *post-development* conditions than *pre-development conditions*. The same methodologies used to calculate stormwater runoff must be *used for* both *pre-development* and *post-development conditions*.

For any land disturbing activity on *sites*, as defined in Part 10 Chapter 5, between 5 and 15 acres in size the peak stormwater runoff leaving the site at each discharge point for the *two-year storm* and *ten-year storm shall* be no greater during construction than for pre-development conditions. For any *land disturbing activity* on *sites*, as defined in Part 10 Chapter 5, greater than 15 acres in size the peak stormwater runoff leaving the site at each discharge point for the *two-year storm, ten-year storm, and twenty- five-year storm shall* be no greater during construction than for *pre-development conditions*. However, this regulation shall not be applicable when the development site conforms to all of the following:

(1) The disturbed acreage is less than five (5) acres;

(2) The two-year peak discharge for the disturbed condition, for all points of discharge, is less than ten (10) per cent of the peak discharge from the contributing watershed as measured at the nearest receiving watercourse.

(b) Exemptions.

In addition to those activities exempted by §10-9003(b) and §10-9021, the stormwater runoff control requirements of this section *shall* not apply to one (1) or more of the *following*:

(1) The increase in peak stormwater runoff between *pre-development* and *post-development conditions* for the *two-year* and *ten-year* and *twenty-five-year storms* is ten (10) per cent or less at each point of discharge.

(2) The maximum *impervious surface* coverage of the lot, including any existing impervious surfaces, is no more than fifteen (15) per cent and the remaining pervious portions of the lot are utilized to convey and control the stormwater runoff of the lot to the maximum extent practical. Any lot which is exempted from the runoff control requirements by subsection (b)(2), *shall* comply with all the requirements of subsection (a) whenever:

a. The exempted lot is subdivided; or

b. The exempted lot size is reduced by recombination; or

c. *Impervious surfaces* on the exempted lot equal or exceed fifteen (15) per cent.

(3) Compliance with the runoff limitations in subsection (a) above would result in greater adverse downstream impact, such as local flooding, as determined by *City* approved engineering studies.

(4) Compliance with the *ten-year storm* and *twenty-five-year storm* runoff limitations in subsection (a) above results in no benefit to current and future downstream development, as determined by *City*-approved engineering studies.

Projects exempted by subsection (b) *shall* protect all affected lands and receiving watercourses from accelerated erosion as defined in Chapter 5, Part 10.

(c) Additional runoff controls.

Notwithstanding subsections (a) and (b), the *City* reserves the right to require stormwater runoff control measures for projects without any measures, and the *City* reserves the right to require additional stormwater runoff control measures for projects which are complying with subsection (a) if stormwater runoff from the site will cause adverse effects on other *properties* including without

limitation public *streets,* greenway, and utility easements.

A stormwater impact analysis *shall* be submitted to the City's Public Works Department that are upstream of documented *structural flooding* cases for all rezoning applications except those which initially zones property added to the territorial coverage of Part 10 Chapter 2 as a result of annexation, extraterritorial jurisdictional expansion or otherwise or application of any overlay zoning districts, other than Planned Development Conditional Use Overlay Districts. A stormwater impact analysis *shall* also be submitted to the City's Public Works Department for all *subdivision* and *site plan* applications that are upstream of documented *structural flooding* cases. This analysis *shall* look at the flood level differences between *pre-development* and *post-development conditions* for the twenty-five (25), fifty (50) and *one hundred (100) year storm events.* If the analysis shows an increase greater than 0.04 feet between pre-development and post-development flood levels at the site of *structural flooding* then offsite and/or onsite mitigation to pre-development flood conditions will be required to prevent further damage to the affected property. In the case where the area of the subject property is less than five (5) percent of the drainage area, measured to the location of the documented *structural flooding,* then this analysis *shall* not be required. In the event flood levels are increased, then the affected property owners will be notified in writing of any increase by the applicant.

(d) Alternate means of compliance.

Developments that comply with the *stormwater control master plan* approved for its drainage basin are exempted from the requirements of subsection (a) above. Compliance with *stormwater control master plan shall* include the installation within the *development* of all stormwater control measures shown on the *stormwater control master plan*, payment of fees in lieu of installation, when allowed by the *City*, and payment of any applicable drainage fees.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §§7, 8, TC-1-03, 4-15-03; Ord. No. 2004-571-TC-243A, §§ 4—7, TC-2-04, 2-17-04; Ord. No. 2005-940-TC-277, §1, TC-15-05, 12-6-05; Ord. No. 2009-593-TC-324, §2, TC-8-08, 5-19-09; Ord. No. 2010-739-TC-332, §§10—12, TC-11(A)-09, 5-18-10)

***Editor's Note:** This regulation for the *two-year storm* first became applicable on May 1, 2001, Ordinance No. (2001) 991-TC-206. This regulation for the *ten-year storm* first became applicable on February 29, 2004, Ordinance No. (2004) 571-TC-243A.

Cross reference: *Site plan* approval, §10-2132.2(d).

Sec. 10-9024. - STORMWATER CONTROL PERMITS.

(a) For all activities which are subject to Part 10, Chapter 9, Article B, Division 1 of this *Code*, no *person shall* initiate, proceed, or *undertake* one (1) or more of the *following*:

(1) Any *land-disturbing activity* for which a permit is required under §10-5008

(2) Any *development* or expansion thereof unless otherwise exempted by §10-9021

(3) Any placement of more than twelve thousand (12,000) square feet of new *impervious surfaces* in any continuous twelve-*month* period unless otherwise exempted by §10-9021, subsections (1) through (3)

without first being issued a *written* stormwater control permit from the Department of Inspections.

All stormwater control permits *shall* be obtained from the Department of Inspections in accordance with Article C, Chapter 6 of Part 10 of this *Code*. No permit will be issued except in strict conformity with Chapter 9, Part 10 of this *Code*, the ***Raleigh Stormwater Control and Watercourse Buffer Manual***, and Article C, Chapter 6, Part 10 of this *Code*.

(b) No stormwater control permit *shall* be issued until the boundaries of any natural resource buffer yard, *riparian surface water* buffers, natural resource buffer yards in Metro-Park Protective and Reservoir Watershed Protection Area Overlay Districts, and Urban Water Supply Watershed Protection Area Overlay Districts, and Conservation Management Districts, and permanently protected undisturbed *open space areas* which are adjacent to or encompass a work site are clearly and accurately demarcated by a protective fence in the field.

(c) No stormwater control permit *shall* be issued until a *stormwater control plan* is first approved by the *City* in accordance with §10-9025

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §9, TC-1-03, 4-15-03; Ord. No. 2005-817-TC-267, §21, TC-7-05, 4-19-05)

Sec. 10-9025. - STORMWATER CONTROL PLANS.

(a) General requirements.

When plans are required by this chapter, all such *stormwater control plans shall* be prepared by a qualified registered North Carolina professional engineer, surveyor, or landscape architect; the engineer, surveyor or landscape architect *shall* perform services only in areas of their competence. All plans, including data calculation design and installation of storm control measures and devices *shall* be in strict compliance with the ***Raleigh Stormwater Control and Watercourse Buffer Manual***. The *stormwater control plan shall* show how the nitrogen reduction and stormwater runoff control requirements of §10-9022 and §10-9023 are being met. The plan *shall* also show how watercourse buffers are being protected in accordance with Division 2, Article B of this chapter.

(b) Maintenance manual and budget.

The *stormwater control plan shall* be accompanied by a stormwater operations maintenance manual and budget. Prior to either grading any portion of the *development* or submitting construction drawing plans of any applicable *stormwater control facility* to the *City*, whichever event first occurs, a stormwater operations maintenance and budget *shall* be submitted to the Stormwater Utility Division of the Public Works Department. The maintenance manual *shall* contain a narrative describing each installed measure and device and its design specifications. The maintenance manual *shall* indicate for each installed measure and device what operation and maintenance actions are needed and what specific quantitative criteria will be used to determine when these actions will be taken. The maintenance manual must indicate the steps that will be taken to restore a measure or device to the design specifications if a failure occurs. The maintenance manual must contain a statement about the expected life of each *stormwater control facility*, and a replacement schedule derived by dividing the initial construction cost of each *stormwater control facility* by the expected life of that *stormwater control facility.* The budget *shall* include annual costs - such as routine maintenance, repair, periodic sediment removal and replenishment of rip-rap, insurance premiums associated with the *stormwater control facilities*, taxes levied against the *stormwater control facilities*, mowing and reseeding, required inspections.

(c) As-built plans and certification.

The designer of the *stormwater control plans shall* provide to the Central Engineering Department as-built plans of all *stormwater control plans* showing the field location, size, depth, and planted vegetation of all measures and devices as installed. The as-built plans state, in tabular form, the amount of *impervious surface*, the amount of pervious surface, and the amount of *open space areas* for the as-built condition. No certificate of compliance or occupancy *shall* be issued by the Department of Inspections without said as-built plans.

The designer of the *stormwater control plan shall* certify, under seal, that the as-built stormwater measures and devices and their installation are in compliance with the ***Raleigh Stormwater Control and Watercourse Buffer Manual*** and the *City* approved or modified *stormwater control plan*.

(d) Compliance with plan requirements.

Any *person* who fails to file a *stormwater control plan* in accordance with this *Code* or who *undertakes* a *land-disturbing activity* placement of *impervious surfaces* or a *development* except in accordance with provisions of the *stormwater control plan* approved under this *Code shall* be deemed in violation of this *Code*.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §45, TC-23-02, 2-4-03; Ord. No. 2003-432, §§10, 11, TC-1-03, 4-15-03; Ord. No. 2010-791-TC-337, §18, TC-5-10, 10-5-10, eff. 12-1-10)

Sec. 10-9026. - PRESERVATION OF OPEN SPACE AREAS.

(a) *Open space areas* preserved.

Open space areas that are shown on approved *stormwater control plans* to be *used for* complying with this chapter *shall* be preserved and protected. The only activities allowed in such *open space areas* are those activities allowed by the approved *stormwater control plan* or allowed in *riparian surface water* buffers under Title 15A North Carolina Administrative Code Chapter 2B, section .0233, as amended from time to time. With respect to this section, determinations required by the North Carolina Administrative Code *shall* be made by the *City*. No work in *open space areas shall* proceed without a *written* watercourse buffer permit from the Department of Inspections. Permanently protected undisturbed *open space areas* identified on *stormwater control plans shall* be recorded as *open space areas* on plats recorded with the *county* register of deeds.

Cross reference: Watercourse buffer permits, §10-9044

(b) Exchange of *open space areas.*

Open space areas shall not be subsequently subdivided or conveyed by the *owner*. However, nothing herein *shall* prevent the mortgaging and hypothecating of *open space areas*; provided, the mortgage applies to all portions of the tract and not just the *open space areas*, the mortgagee is informed that the *open space areas* is *used for* complying with Chapter 9, Part 10 of the *City Code*, and the rights of the mortgagee are subordinated to the rights of any *property owner* association and its members. Furthermore, nothing herein *shall* prevent the exchanging of *open space areas* for other *properties* when all of the *following* are met:

a. If the *open space area* is owned by a *property owners* association, *written* notice of the exchange is given to each member of the association except in cases where the exchange is done to eliminate an encroachment;

b. After the notice is given, if required, the *owner* of the *open space area* approves the exchange;

c. The exchanged *properties* and other considerations are of like value and utility;

d. The acreage and configuration of the remaining *open space area* (including real *property* to be received in such exchange) equal or exceeds the requirements of this *Code*; and

e. The exchange is approved by the Public Works Director.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-432, §12, TC-1-03, 4-15-03; Ord. No. 2010-791-TC-337, §19, TC-5-10, 10-5-10, eff. 12-1-10)

Cross reference: Exchange of open space common areas, §10-3073(a)(2).

Sec. 10-9027. - MAINTENANCE OF STORMWATER CONTROL MEASURES AND DEVICES.

(a) General.

The land *owner* or *person* in possession or control of the land *shall maintain* all on-site *stormwater control facilities* and all *open space areas* required by the approved *stormwater control plan* unless those facilities and *open space areas* are accepted for *maintenance* by a governmental agency. The land *owner* entitled to the exclusive use an off-site drainage easement for one or more stormwater control facilities not accepted for *maintenance* by a governmental agency *shall maintain* said *stormwater control facilities.*

(b) Maintenance Covenant.

For off-site *stormwater control facilities* and for all other *stormwater control facilities* which serve more than one (1) lot that are not accepted for *maintenance* by a governmental agency, the developer *shall* execute and record with the local county register of deeds office a maintenance covenant with the following contents:

(1) Location of stormwater control facilities and drainage easements.

A description of portions of *property* where *stormwater control facilities* are located as well as a description of the location of all private drainage easements conveying stormwater to and from the *development* to the facilities. The maintenance covenant *shall* establish a process for relocating private drainage easements. But no relocation of a private drainage easement *shall* be valid without the prior approval of the *City*.

(2) Easement rights of lot owners.

A statement that owners and tenants of *properties* which will be served by the stormwater control facilities are granted perpetual, irrevocable and non-exclusive easement rights and privileges to use, construct, install, inspect, replace, reconstruct, repair and *maintain* those stormwater control facilities - including the right to access those stormwater control facilities, private drainage easements and other portions of the *development* as reasonably necessary

to perform the granted easement rights. And, the granting of perpetual, irrevocable and non-exclusive easement rights and privileges to transport, store, and discharge stormwater to and from the *stormwater control facilities.*

(3) City easement/right of entry/no city responsibility.

Developer, the association if any, and the lot *owners* hereby grant the *City* a permanent nonexclusive irrevocable easement over the lots, stormwater control facilities and private drainage easements for inspection, maintenance, repair, construction, installation, re-construction, replacement and other work on in, and over the *stormwater control facilities*. The developer, the association if any, and the lot *owners* also grant the *City* a permanent irrevocable nonexclusive right of ingress, egress, and regress over and across all public or private easements on the *property*, including but not limited to private roads, for inspection, maintenance, repair construction, installation, re-construction, replacement and other work on the stormwater control facilities. The term *City* as used in this provision, includes employees, agents, and contractors of the *City*. The grant of these rights does not obligate the City to exercise them or to take any other action.

(4) Stormwater operations and maintenance manual and budget.

A stormwater operations and maintenance manual and budget conforming to §10-9025(b) *shall* be attached to and incorporated into the maintenance covenant as an exhibit.

(5) Insurance.

As part of the routine costs and expenses of maintaining any stormwater control facility, the owner of the stormwater control facility (or the association or commercial lot owner responsible for maintenance, as either may be applicable) must procure and maintain in full force and effect liability insurance in an amount of not less than one million dollars ($1,000,000.00) of coverage.

(6) Standards of maintenance for stormwater control facilities.

A statement that *stormwater control facilities shall* be *maintained* in accordance with the attached stormwater operations and maintenance manual and budget, and at all times, the *stormwater control facilities shall* comply with all applicable laws, ordinances, regulations, rules and directives of governmental authorities, and that the *stormwater control facilities shall* perform as designed.

(8) Responsibility for stormwater control maintenance.

A statement that the homeowners' association, *property* owners' association, or designated commercial lot *owner shall* be responsible continually for all *stormwater control facilities* in accordance with the attached stormwater operations and maintenance manual and budget. That failure to *maintain* any *stormwater control facility* as set forth herein and in the *Code* is a violation of the Raleigh *City Code* potentially subjecting each lot *owner* subject to this legal document to significant daily civil penalties and other enforcement actions.

(9) Stormwater control facilities maintained by an association.

If an association is delegated *maintenance* responsibilities, for the *stormwater control*

facilities, then membership into the association *shall* be mandatory for each parcel served by the facility and any successive owner of the parcel, membership being appurtenant to the parcel and running with ownership of the parcel. The association *shall* have the power to levy assessments for operation and maintenance of the *stormwater control facilities* and that all unpaid assessments levied by the association *shall* become a lien on the individual parcel. Calculation of the assessment charge *shall* be set forth in a subsequent recorded document. All associations responsible for *maintenance* of *stormwater control facilities shall* be established in accordance with Chapters 47C or 47F of the North Carolina General Statutes or successor statutes, and the property owners association declaration *shall* conform to §10-3073(b), that *shall* be set forth in forms approved by the City which *may* be supplemented by subsequent documents recorded thereafter. Common expenses of the Association include, without limitation, costs and expenses for operation and *maintenance* of *stormwater control facilities,* all costs for insurance premiums and other costs listed in the stormwater operations maintenance manual and budget.

(10) Stormwater control facilities maintained by a commercial lot owner.

If a commercial lot owner is responsible for *maintenance* of the stormwater control facilities, said owner is responsible for making all repairs, replacements of the stormwater control facilities in accordance with the construction drawings approved by the *City.* Each parcel served by the stormwater control facility and any successive owner of the parcel *shall* be subject to an assessment charge levied by the designated responsible lot owner. The assessment charge *shall* include, without limitation, the actual costs for repairing and maintaining the stormwater control facility*,* all costs for insurance premiums associated with the stormwater control facility, costs of required inspections of the stormwater facility, and other costs listed in the stormwater operations maintenance manual and budget. Calculation of the assessment charge *shall* be set forth in a subsequent recorded document. Any assessment charge levied against a lot and remaining unpaid for a period of thirty (30) days or longer after the payment due date shall be delinquent and shall constitute a default of this covenant entitling the lot owner responsible for maintenance of the stormwater control facilities to bring an action at law against the defaulting party plus interest charges, together with all cost and expenses of collection incurred, such as without limitation, court costs and reasonable attorney fees actually incurred. Each parcel owner served by the *stormwater control facility shall* have the right to maintain, repair and replace the facility if after 45 days written notice the commercial lot owner responsible for maintenance repair and replacement fails to faithfully discharge its responsibility. The parcel owner doing the work *shall* have the same right as the designated commercial lot owner has to asses the other lots served by the stormwater control facility. At any time the commercial lot owner responsible for the maintenance of stormwater control facilities may assign its responsibilities and rights to a property owners association established in accordance with Chapters 47C or 47F of the North Carolina General Statutes or successor statutes; in such instance, the owners of the parcels served by the stormwater control facility *shall* be members of the created property owners association.

(11) City right to maintain and repair stormwater control facilities and city's right of reimbursement.

If *stormwater control facilities* are not performing adequately or as intended or are not properly *maintained* or replaced the *City*, in its sole discretion, *may,* after written notice sent

to the lot owners and any association, enter the development and perform such construction, installation, repair, reconstruction, replacement and maintenance of the *stormwater control facilities* as is necessary to remedy the situation. In such instances, the *City shall* be fully reimbursed for its costs of inspecting, monitoring, designing, constructing, repairing, reconstructing, replacing and installing the *stormwater control facility* of facilities. Such costs include the costs of administration, overhead, contracting and public advertising. In addition to any other rights the *City* has to be reimbursed for its costs, the *City may* levy an assessment against each lot served by the noncompliant stormwater control facility. No assessment will be levied by the *City* without prior notice to affected lot *owners*. Any unpaid assessment levied by the *City shall* be, as allowed by law, a lien against the delinquent lot.

(12) City's right to private assessments.

In addition to all of the remedies set forth herein, if the *City* has not been fully repaid for the work the *City* performed on any *stormwater control facility* owned, in fee or easement, by either an association, or a commercial lot owner with the power to assess lot owners for maintenance of the stormwater control facility, the association and the private commercial lot owner hereby assign to the *City* its right to receive common expense assessments, including stormwater assessments. The association and private commercial lot owner hereby designate and appoint the *City* as attorney in fact for the expressed and limited purpose of assessing and pursuing collection of such unpaid paid reimbursement owed to the *City.* No assignment of assessment rights *shall* become effective without sixty (60) days prior written notice to the applicable private commercial lot owner, association and its members.

(13) Action for specific performance.

Recognizing the consequences to the *City* of non-compliance with the obligations of this maintenance covenant, the *City shall* have the right to seek, in any court of appropriate jurisdiction, judicial action for specific performance of any of the obligations, and remedies established in this maintenance covenant. This right of the *City shall* not limit any other remedies or enforcement options available to the *City* under this covenant, the *City Code* or State law.

(14) No public adoption.

The *City's* exercise of its rights under this maintenance covenant, or its abatement of public nuisance, or its repair of unsafe structures does not constitute adoption of any *stormwater control facility* by the *City*. The legal authority of the *City* is not intended to impede or prohibit the association or lot *owners* from taking all necessary actions to inspect, maintain, repair, replace, and reconstruct *stormwater control facilities* so that they function safely and perform the function for which they were created.

(15) City's right of non-action.

A statement that this maintenance covenant *shall* not obligate the *City* to monitor, *maintain*, repair, reconstruct, install, replace, any *stormwater control facility* or measure, and that the *City shall* not be liable to any *person* for the condition or operation of *stormwater control facilities*.

(16) Governmental functions; superseding regulations.

A statement that nothing contained in this maintenance covenant *shall* be deemed or construed to in any way stop, diminish, limit, or impair the *City* from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions. In addition, this maintenance covenant does not restrict or prevent the application of later adopted ordinances or other enactments which may supplement or supersede the provisions of this covenant.

(17) Joint and several liability.

A statement that each lot *owner* served by one or more *stormwater control facilities* is jointly or severally responsible for repairs, replacement and *maintenance* of the *stormwater control facilities*, including payment of any unpaid ad valorem taxes, public assessments for improvements, and unsafe building and public nuisance abatement liens charged against the *stormwater control facility* and/or the lots served by the facility — including all interest charges thereon, together with all cost and expenses of collection incurred, such as without limitation, court costs and reasonable attorney fees actually incurred. The maintenance covenant *shall* establish against all other *owners* whose portions of *real property* are served by the same stormwater control facility a right of contribution in favor of each *owner* who pays more than the *owner's* pro rata share of costs and expenses. Pro-rata sharing being determined either by maintenance assessment provisions for *stormwater control facilities* in subsequently recorded documents or by dividing the acreage of such *owner's* portion of the *real property* served by the *stormwater control facilities* by the total acreage of the portion of the *development* served by the same *stormwater control facility* when no maintenance assessment covenants apply to the *property*. That failure to maintain *stormwater control facilities* is a violation of the *City Code* potentially subjecting each lot *owner* subject to this legal document to significant daily civil penalties and other enforcement actions.

(18) Permanently protected undisturbed open space areas.

A statement that within permanently protected undisturbed *open space areas* and permanently preserved undisturbed open space areas no land-disturbing activity, no tree disturbing activity as defined in the Raleigh Zoning Code, placement of impervious surface, removal of vegetation, encroachment, construction or erection of any structure *shall* occur except in accordance with a watercourse buffer permit first being issued by the *City* of Raleigh.

(19) Severability.

That the sections, paragraphs, sentences, clauses and phrase of this maintenance covenant are severable, and if any phrase, clause, sentence, paragraph or section of this covenant is declared invalid by the valid judgment, order or decree of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this covenant

(20) Subordination.

To protect the interests of the *City* and the public at large, any existing deed of trust mortgage or lien encumbering the property, other than tax liens for the current tax year or governmental improvement assessments, must be subordinated to this maintenance covenant.

Prior to recording the maintenance covenant, the attorney who prepared the maintenance covenant *shall* certify in *writing* to the *City* that the maintenance covenant was prepared on a *City* form that contains all the contents required by Raleigh *City Code* §10-9027(b). Certifications *shall* be on forms approved by the *City* and *shall* include a *City* form maintenance covenant.

The maintenance covenant *shall* be recorded with the local county register of deeds office prior to the recording of any new lot served by the stormwater control facility or prior to the issuance of any *development* permit for any existing lot except for improvements made pursuant to Part 10, Chapter 3 of this *Code*. The maintenance covenant *shall* be binding on all subsequent *owners* of land served by the *stormwater control facilities*. A recorded copy of the maintenance covenant *shall* be given to the Stormwater Utility Division of the Public Works Department of the *City* within fourteen (14) days *following* the recordation of the maintenance covenant, but no building permit *shall* be issued for the *property* until a recorded copy of the maintenance covenant is provided to the Department of Inspections.

(c) Payment to Stormwater Facility Replacement Fund.

At the time of either of recording a subdivision plat or issuance of a building permit for a lot not established by subdivision, whichever event first occurs, the developer *shall* pay to the *City* a stormwater facility replacement fund payment, which payment *shall* equal twenty-four percent (24%) of the estimated cost of constructing all *stormwater control facilities* shown on applicable development plans. The purpose of the stormwater replacement fund is to ensure that adequate funds are available for the maintenance, repair replacement and reconstruction of *stormwater control facilities* required by this *Code.* To that end, funds expended from the stormwater facility replacement fund *shall* be made for no other purpose other than for repair, maintenance, reconstruction and replacement of *stormwater control facilities* together with the cost of the *City* to bid the work and redesign the facilities. No funds from the stormwater facility replacement fund *shall* be used for administration of this fee program. Monies collected from the stormwater replacement fund can be spent for maintenance, repair, reconstruction and replacement of any stormwater control facility required by this *Code* located anywhere in the *City* limits and its extra-territorial jurisdiction

Payments collected by the *City* pursuant to this *Code* section *shall* be kept separate from other revenue of the *City*. Any funds on deposit not immediately necessary for expenditure *shall* be invested as allowed in *G.S.* 159-30; all income derived *shall* be deposited in the separate account and can only be used for repair, maintenance, reconstruction, and replacement of *stormwater control facilities* together with the cost of the *City* to bid the work and redesign the facilities*.* Monies, expended from the stormwater facility replacement fund together with interest *may* be recouped by the *City* from lot *owners* served by *stormwater water control facilities* maintained, repaired, reconstructed and replaced by the *City* or its contractors. All recouped monies and interest *shall* be returned to the stormwater facility replacement fund.

The payment of stormwater facility replacement fees is not intended as a substitute for security that ensures the construction of the facilities, which security *may* be required at such point in the development process as specified in *City* ordinances and policies.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §46, TC-23-02, 2-4-03; Ord. No. 2003-432, §§13—17, TC-1-03, 4-15-03; Ord. No. 2005-897-TC-272, §§38, 39, TC-12-05, 9-20-05; Ord. No. 2008-438-TC-314, §1, TC-10-08, 8-5-08; Ord. No. 2008-439-TC-315, §17, TC-12-08,

8-5-08; Ord. No. 2010-791-TC-337, §§20—22, TC-5-10, 10-5-10, eff. 12-1-10)

Sec. 10-9028. - ANNUAL INSPECTIONS AND INSPECTION REPORT, REQUIRED.

The *person* responsible for maintenance of the stormwater control measures or devices *shall* submit to the Stormwater Utility Division of the Public Works Department of the *City* an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect. The inspections report *shall* contain all of the *following*:

(a) The name, address of the land *owner*;

(b) The recorded book and page number of the lot of each required stormwater control facility and required *open space areas*;

(c) A statement that an inspection was made of all required *stormwater control facilities*, including *open space areas*;

(d) The date the inspection was made;

(e) A statement that all inspected *stormwater control facilities* and *open space areas* are performing properly and are in compliance with the approved *stormwater control plan*, the applicable maintenance manual required by §10-9025 and the ***Raleigh Stormwater Control and Watercourse Buffer Manual***. No sampling of pollutant loading is required as part of the inspection;

(f) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspections report *shall* be on forms supplied by the *City*. An original inspection report *shall* be given to the Stormwater Utility Division of the Public Works Department of the *City* beginning from the date of the as-built was first certified under §10-9025(c) and each *year* thereafter on the anniversary date of said certification.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §47, TC-23-02, 2-4-03; Ord. No. 2010-791-TC-337, §17, TC-5-10, 10-5-10, eff. 12-1-10)

Secs. 10-9029 — 10-9039. - RESERVED.

Division 2. - Watercourse Buffers.

Sec. 10-9040. - NATURAL RESOURCE BUFFER YARDS.
Sec. 10-9041. - USES ALLOWED WITHIN NATURAL RESOURCE BUFFER YARDS.
Sec. 10-9042. - REGULATIONS APPLIED TO USES ALLOWED IN WATERCOURSE BUFFERS.
Sec. 10-9043. - DIFFUSE STORMWATER FLOW REQUIRED.
Sec. 10-9044. - WATERCOURSE BUFFER PERMITS.

Sec. 10-9040. - NATURAL RESOURCE BUFFER YARDS.

(a) Reservoir Watershed Protection Area Overlay District and Conservation Management

District watercourse buffers.

After application of a Reservoir Watershed Protection Area Overlay District or a Conservation Management District, shown on the official zoning map, natural resource buffer yards are established along primary watercourses and secondary watercourses. These natural resource buffer yards provide an area where stormwater flows in a diffuse manner so that the stormwater runoff does not become channeled and infiltration of the stormwater and filtering of pollutants can take place.

(1) Primary watercourse.

All watercourses that have a concentrated flow from a drainage area of at least five (5) acres or a perennial watercourse *shall* contain a natural resource buffer yard.

Width of natural resource buffer yard:

- Sixty (60) feet along each side of any watercourse draining twenty-five (25) or more acres.

- Thirty-five (35) feet along each side of any watercourse draining five (5) or more acres but less than twenty-five (25) acres.

- Thirty-five (35) feet along each side of any watercourse which is a perennial stream draining less than five (5) acres.

Notwithstanding the minimum widths above, the width of any natural resource buffer yard *shall* not be less than one hundred (100) feet for any *property* or *subdivision* which contains any *impervious surface* lot coverage in excess of twenty-four (24) per cent in the secondary reservoir watershed protection area of the Reservoir Watershed Protection Area Overlay District and in the Conservation Management District.

(2) Secondary watercourse.

Unless already part of a primary watercourse natural resource buffer yard, secondary watercourse natural resource buffer yards consist of one (1) or more of the *following*:

a. Lands within the floodprone areas, as established according to Part 10, Chapter 4, which adjoin primary watercourse natural resource buffer yards; or

b. Lands with slopes fifteen (15) per cent or greater in grade which adjoining either primary watercourse natural resource buffers or floodprone areas set out in subsection (1) above.

The dimensions of the natural resource buffer *shall* be delineated on recorded final *subdivision* plats or at the time of *development* of the *property* if these plats are not yet recorded.

The *City Council shall* reduce the width of these yards whenever it determines that the extent of the natural resource buffer yard will deprive the landowners of reasonable use of their *property*.

(b) Metro-Park Protection Overlay District watercourse buffers.

After application of a Metro-Park Protection Area Overlay District shown on the official zoning map, natural resource buffer yards are established along all watercourses which both drain into the Metro-Park and have concentrated flow drain a drainage area of at least five (5) acres. These natural resource buffer yards provide an area where stormwater flows in a diffuse manner so that the stormwater runoff does not become channeled and infiltration of the stormwater and filtering of pollutants can take place.

Width of natural resource buffer yard:

- Fifty (50) feet along each side of any watercourse draining twenty-five (25) or more acres.

- Twenty-five (25) feet along each side of any watercourse draining five (5) or more acres but less than twenty-five (25) acres.

The width of the natural resource buffer yard *shall* be measured perpendicularly to the flow of the watercourse and horizontally from the edge of the watercourse banks except when no watercourse banks exist, in which case, the centerline of the watercourse *shall* be used.

The dimensions of the natural resource buffer *shall* be delineated on recorded final *subdivision* plats or at the time of *development* of the *property* if these plats are not yet recorded.

The *City Council shall* reduce the width of these yards whenever it determines that the extent of the natural resource buffer yard will deprive the landowners of reasonable use of their *property*.

(c) Urban Water Supply Watershed Protection Area Overlay District watercourse buffers.

After application of an Urban Water Supply Watershed Protection Area Overlay District, shown on the official zoning map, natural resource buffer yards are established. These natural resource buffer yards provide an area where stormwater flows in a diffuse manner so that the stormwater runoff does not become channeled and infiltration of the stormwater and filtering of pollutants can take place.

All perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps *shall* contain a natural resource buffer yard of a minimum thirty (30) feet in width.

A minimum hundred (100) foot wide natural resource buffer yard is required for all new development activities that exceed:

- Two *dwelling units* of *single family* detached development per acre (or twenty thousand (20,000) square foot lot excluding roadway right-of-way) or

- Twenty-four (24) percent built-upon area for all other residential and non-residential development.

The width of the natural resource buffer yard *shall* be measured perpendicularly to the flow of the watercourse and horizontally from the edge of the watercourse banks except when no watercourse banks exist, in which case, the centerline of the watercourse *shall* be used.

The dimensions of the natural resource buffer *shall* be delineated on recorded final *subdivision* plats or at the time of *development* of the *property* if these plats are not yet recorded.

The *City Council shall* reduce the width of these yards whenever it determines that the extent of the natural resource buffer yard will deprive the landowners of reasonable use of their *property*.

Within Urban Water Supply Watershed Protection Area Overlay Districts, these natural resource buffer yards of subsection (c) *shall* not apply to any:

(1) New detached single family dwelling on *nonconforming lot of record*.

(2) Redevelopment of lots containing detached single-family dwellings.

(3) Activity in a single development that disturbs less than one acre.

Editor's note: Neuse riparian buffers *shall* still apply in all cases.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2005-817-TC-267, §22, TC-7-05, 4-19-05; Ord. No. 2008-467-TC-317, §§11—13, TC-14-08, 10-7-08; Ord. No. 2009-661-TC-327, §§38, 39, TC-4-09, 10-7-09)

Sec. 10-9041. - USES ALLOWED WITHIN NATURAL RESOURCE BUFFER YARDS.

No use, encroachment, *land-disturbing activity*, placement of *impervious surface*, clearing, construction, nor installation *shall* occur within natural resource buffer yards adjoining watercourses except as allowed by the *following* subsections:

(a) *Property owners* outside of a *riparian water surface* buffer but situated within a Conservation Management District, a Metro-Park Protection Overlay District, an Urban Water Supply Watershed Protection Area Overlay District or a Reservoir Watershed Protection Area Overlay District natural resource buffer yards adjoining watercourses *shall* comply with all of the *following*:

(1) Driveways and vehicular surface areas, not including public *streets*, are allowed; provided that, all of the *following* are met:

a. Any crossing is as close to perpendicular as practicable and insures minimal impact to the surrounding buffer;

b. The provision of §10-7001 are met; and

c. The use does not constitute more than forty (40) per cent of the front yard area of any detached *single-family dwelling* except in planned *residential developments* constructed in accordance with Part 10, Chapter 2, Article F of the Zoning Code or master plan as defined in §10-2002

(2) Fences, walls, statuary, monuments, fountains or *signs shall* be located outside a primary watercourse buffer.

(3) Garden crops involving cultivation *shall* be located outside a primary watercourse buffer.

(4) Greenways, sidewalks, walkways *shall* be located within the outside of a primary watercourse buffer, and meet the requirements of §10-9042(b) or *shall* be unpaved.

(5) New drainage ditches, roadside ditches, and stormwater outfalls *shall* meet the requirements of §10-3051(b) and §10-9042(b).

(6) Playground equipment on *single-family lots*.

(7) Ponds, stormwater management ponds, reservoirs, provided that, the standards of §10-10021(c) and §10-10022(c) are met.

(8) Public *streets*, provided that the standards of §10-3053 and the Street, Sidewalk, and Driveway Access Handbook are met.

(9) Railroad crossings.

(10) *Stormwater control facilities*, stormwater outfalls *shall* meet the requirements of §10-9042(b).

(11) Utility lines.

a. Non-electric utility lines—are allowed, but if located in a Reservoir Watershed Protection Area Overlay District, Urban Water supply Watershed Protection Overlay District or in a Conservation Management District *shall* meet the standards of §10-9042 if situated within a primary watercourse buffer area;

b. Underground electrical utility lines—are allowed, but if located in a Reservoir Watershed Protection Area Overlay District, Urban Water supply Watershed Protection Overlay District or in a Conservation Management District *shall* meet the standards of §10-9042 if situated within a primary watercourse buffer area;

c. Overhead electric utility lines—are allowed, but if located in a Reservoir Watershed Protection Area Overlay District, Urban Water supply Watershed Protection Overlay District or a Conservation Management District, *shall* meet the standards of §10-9042 if situated within a primary watercourse buffer area.

(12) Within a secondary watercourse of the Conservation Management District, in addition to the uses permitted in subsections (1) through (11) above, all other accessory structures and uses listed on the Schedule of Permitted Land Uses Within Types of Yard Areas, §10-2075(e), are allowed within the Conservation Management District except any display area or any gasoline pump island; provided that, no *land-disturbing activity* for any allowed use *shall* effect more than twelve (12) per cent of the portion of a lot within a secondary watercourse natural resource buffer yard and no *land-disturbing activity shall* take place on slopes averaging between fifteen (15) per cent to twenty (20) per cent closer than eighty (80) feet to the edge of a watercourse and if the slope is greater than twenty (20) per cent, closer than ninety-five (95) feet to the edge of a watercourse.

Following a recommendation of the Stormwater Advisory Board, the *City Council shall* allow *land-disturbing activities* to exceed this standard; provided that, the *person* submitting the request *shall* show that the potential for stormwater infiltration within a site, the control of stormwater velocity, and the restriction of sedimentation both during and after construction are equal to or greater than that which would have been achieved *following* standards in this section. The petitioner *shall* also prove to the *City Council* that maintenance provisions are made to *maintain* the level of infiltration, velocity control, and sedimentation on the site.

(13) Within a secondary watercourse of the Reservoir Watershed Protection Area Overlay

District, in addition to the uses permitted in subsections (1) through (11), all other accessory structures and uses listed on the Schedule of Permitted Land Uses Within Types of Yard Areas, §10-2075(e) permitted by the underlying district which are not prohibited by §10-2056(d) are allowed except any display area or any gasoline pump island; provided that, no *land-disturbing activity* for any allowed use *shall* effect more than twelve (12) per cent of the portion of a lot within a secondary watercourse natural resource buffer yard and no *land-disturbing activity shall* take place on slopes averaging between fifteen (15) per cent to twenty (20) per cent closer than eighty (80) feet to the edge of a watercourse and if the slope is greater than twenty (20) per cent, closer than ninety-five (95) feet to the edge of a watercourse.

Following a recommendation of the Stormwater Advisory Board, the *City Council shall* allow *land-disturbing activities* to exceed this standard; provided that, the *person* submitting the request *shall* show that the potential for stormwater infiltration within a site, the control of stormwater velocity, and the restriction of sedimentation both during and after construction are equal to or greater than that which would have been achieved *following* standards in this section. The petitioner *shall* also prove to the *City Council* that maintenance provisions are made to *maintain* the level of infiltration, velocity control, and sedimentation on the site.

(b) *Property* located within both a *riparian water surface* buffer, and within a natural resource buffer adjoining a watercourse located in a Conservation Management District, or a Metro-Park Protection Area Overlay District, or a Reservoir Watershed Protection Area Overlay District, or an Urban Water Supply Watershed Protection Area Overlay District *shall* comply with both subsection (a) above and Title 15A of the North Carolina Administrative Code subchapter 2B, section .0233, as amended from time to time.

(c) *Property* located inside of a *riparian water surface* buffer and outside a natural resource buffer yard adjoining watercourses of any Conservation Management District a Metro-Park Protection Overlay District or a Reservoir Watershed Protection Area Overlay District, or an Urban Water Supply Watershed Protection Area Overlay District is subject to Title 15A of the North Carolina Administrative Code subchapter 2B, section .0233, as amended from time to time.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2005-817-TC-267, §§23, 24, TC-7-05, 4-19-05; Ord. No. 2010-806-TC-338, §1, TC-8-10, 11-16-10, eff. 12-5-10)

Sec. 10-9042. - REGULATIONS APPLIED TO USES ALLOWED IN WATERCOURSE BUFFERS.

(a) Regulation applying to all natural resource buffer yards.

Persons who install utility mains *shall* submit a plan to the *City* proving that sediment loss during and after installation is less than would have been achieved if other locations outside the buffer yard were used.

(b) Regulation applying to both primary and secondary buffer areas.

Stormwater control facilities are allowed within a primary or secondary area only if: the constructed uses within the buffer area require the use of such facilities, or the provision of §10-5006(a)(8)b. require facilities in the buffer area, or a wet pond is required by subsections (b) and (c) of §§10-10021 and 10-10022, or a lake or wet pond is created or preserved.

All of the *following shall* apply to *storm control facilities* installed within the buffer area:

(1) The velocity of the stormwater *shall* not exceed a nonerodible velocity, according to §10-5006(a)(8) a.1. and 2., beyond the outlet of the *storm control facilities*.

(2) Trees over two-inch caliper (six and one-fourth (6¼) inches circumference), measured at a height of four and one-half (4½) feet above grade level, which:

a. Would be destroyed by installation of *storm control facilities*, but not including lakes or wet ponds;

b. Lie within the greater distance of either a seven-foot radius (with the tree being the center) or one (1) foot in diameter for each inch of circumference of the tree measured from the outer edge of the grading limits of a storm drainage project *shall* be replaced by one (1) new tree planted in the same general location, all to achieve the same effect as shown on an approved *site plan*. The planting must be with trees of at least eight (8) feet in height and six and one-quarter (6¼) in circumference (two (2) inches in caliper), measured at four and one-half (4½) feet above grade. This provision *shall* not require trees to be planted on cleared land forming the basin of a wet pond or lake.

(3) *Stormwater control facilities*, which are permitted in the primary and secondary buffer area, *shall* comply with subsection c. of §§10-10021 and 10-10022

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2010-806-TC-338, §1, TC-8-10, 11-16-10, eff. 12-5-10)

Sec. 10-9043. - DIFFUSE STORMWATER FLOW REQUIRED.

After application of this regulation*, all stormwater runoff from new man-made *stormwater control facilities*, including new ditches or canals, which flow into a watercourse natural resource buffer or into *riparian surface water* buffer *shall* be diffused flow so as not to concentrate stormwater or form gullies. Diffuse flow *shall* be *maintained*. The landowner or *person* in possession or control of the land *shall* be responsible for dispersing concentrated flow of stormwater runoff. The landowner *shall* take corrective action to prevent the formation of erosion gullies, and the landowner *shall* take corrective action to restore diffuse flow.

When diffuse flow is impractical to achieve, *stormwater control facilities* that attenuate the flow of stormwater runoff and control nitrogen *may* be approved by the *City* as an alternative means of compliance.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01)

***Editor's note:** This regulation first became applicable on May 1, 2001, Ordinance No. (2001)-991 TC 206.

Sec. 10-9044. - WATERCOURSE BUFFER PERMITS.

(a) No *person shall* initiate, proceed, or *undertake* one (1) or more of the *following*:

(1) Any *land-disturbing activity*;

(2) Any *development* or expansion thereof;

(3) Any placement of *impervious surfaces*;

(4) New use, construction, or encroachment

on any lot containing a natural resource buffer yard adjoining watercourses, *riparian surface water* buffers, natural resource buffer yards in Metro-Park Protection Overlay Districts, Reservoir Watershed Protection Area Overlay Districts, Urban Water Supply Watershed Protection Overlay District, and Conservation Management Districts and *open space area* required as part of an approved *stormwater control plan* without first being issued a *written* watercourse buffer permit from the Department of Inspections. All watercourse buffer permits *shall* be obtained from the Department of Inspections in accordance with Article C, Chapter 6 of Part 10 of this *Code*. No permit will be issued except in strict conformity with Chapter 9, Part 10 of this *Code*, and the ***Raleigh Stormwater Control and Watercourse Buffer Manual***.

(b) No watercourse buffer permit *shall* be issued until the boundaries of any natural resource buffer yard, *riparian surface water* buffers, natural resource buffer yards in Metro-Park Protective and Reservoir Watershed Protection Area Overlay Districts, and Urban Water Supply Watershed Protection Area Overlay Districts and Conservation Management Districts and permanently protected undisturbed *open space areas* which are adjacent to or encompass a work site are clearly and accurately demarcated by a protective fence in the field.

(c) No watercourse buffer permit *shall* be issued for work in a *riparian surface water* buffer regulated by *the State* pursuant to Title 15A of the North Carolina Administrative Code subchapter 2B, section .0233 unless:

(1) The North Carolina Division of Water Quality has determined that surface waters are not present;

(2) The applicant provides sufficient documentation to demonstrate that the requested work is exempt under the rule;

(3) The North Carolina Division of Water Quality has determined that the requested work is allowable with mitigation under the rule;

(4) The North Carolina Environmental Management Commission has issued a variance under the rule.

The applicant *shall* present to both the Departments of Central Engineering and Inspections of the *City* a *written* copy of the applicable determination of the North Carolina Division of Water Quality or a copy of the issued variance from the North Carolina Environmental Management Commission before receiving any watercourse buffer permit pursuant to this subsection.

(Ord. No. 2001-991-TC-206, §1, TC-8-00, 5-1-01; Ord. No. 2003-373-TC-231, §48, TC-23-02, 2-4-03; Ord. No. 2003-432, §9, TC-1-03, 4-15-03; Ord. No. 2005-817-TC-267, §§21, 25, TC-7-05, 4-19-05)