

Article 6. ENVIRONMENTAL PROTECTION

6.1 Purpose and Intent

A primary and fundamental element of this Article is the protection of our existing environmental resources including floodplains and other stream corridors, wetlands, watersheds and groundwater recharge areas, soils, forest stands, specimen trees and other significant vegetation and wildlife, and navigable airspace. These elements are of economic value to the Town and make it a desirable place to live and visit.

6.2 Land Suitability

Land subject to flood hazard, improper drainage, erosion or that is for topographical or other reasons unsuitable for residential use as determined by the Town of Fletcher, shall not be platted or developed for residential use nor for any other uses that will continue or increase the danger to health, safety, or property unless the hazards can be and are corrected.

A. Flood Hazard Area Development

1. The land designated within the Areas of Special Flood Hazard the subject to periodic inundation by 100-year flood as shown on FEMA flood insurance rate maps for the Fletcher area shall be identified on all plats. Land designated as Special Flood Hazard Areas shall be built on only in accordance with Section 6.5.
2. No grading, clearing, removal of significant vegetation, the placement of structures, fill, or any other encroachment activity shall occur within designated Special Flood Hazard Areas zones which would interfere with the natural water course without approval from the Administrator based upon certification that such activity mitigates the potential adverse impact of flood hazard. Streets and utility lines and structures may be placed within the flood hazard area only if their elevation is raised above maximum flood heights or if they are otherwise flood protected.

B. Demolition Landfill Areas

Areas that have been used for the disposal of solid waste shall not be subdivided into commercial or residential building sites. This includes areas that have been used for the disposal of trash, demolition waste, construction debris, stumps, and other waste materials.

6.3 Sedimentation and Erosion Control

- A. In order to prevent soil erosion and sedimentation pollution of streams, springs, flat waterbodies, drainage networks, or off site sedimentation damage, and when there are plans for land disturbing activity of one (1) acre or more, the Owner shall show proof of an erosion and sedimentation control plan which has been approved by the delegated permitting authority having jurisdiction in accordance with the North Carolina Administrative Code, Title 15A Chapter 4, as adopted by the North Carolina Sedimentation commission, January 11, 1978, as amended.

The Town of Fletcher (the Town) through resolution has authorized Henderson County to be the permitting authority for all land disturbing activities with-in the Town and ETJ limits. Persons disturbing one (1) acre or more shall comply with Henderson County Erosion Control Local Program including permitting procedures, the County Code, Ordinance Article 7, Subpart E of Chapter 42 as amended, and inspection and enforcement protocols.

- B. The developer shall cause all grading, excavations, open cuts, side slopes, and other land surface disturbances to be mulched, seeded, sodded, or otherwise protected. Temporary erosion and sedimentation control measures shall be placed in accordance with the approved Erosion Control Plan prior to any construction.
- C. Erosion and sedimentation from land disturbance activities shall be controlled with appropriate methods as indicated in the NCDEQ NC Erosion and Sediment Control Planning and Design Manual or any other method approved by the Administrator to prevent sediment runoff and siltation of adjoining parcels, lots, and streets.
- D. In accordance with 15A NCAC 02H .0153, the Town of Fletcher relies upon the North Carolina Sedimentation Pollution Control Act (SPCA) of 1973 as a qualifying alternative program to meet a portion of the NPDES MS4 Permit requirements for construction site runoff control measures. The SPCA requirements include reducing pollutants in stormwater runoff from construction activities that result in land disturbance of greater than or equal to one acre and includes any construction activity that is part of a larger common plan of development that would disturb one acre or more. The State SPCA Program has designated Henderson County as a delegated county. In addition to the Henderson County Program, the Town of Fletcher implements the following measures to meet NPDES MS4 Permit Requirements:
 - 1. A stormwater hotline is available for reporting sediment run-off from construction sites and for questions concerning construction site activities.
 - 2. Construction site operators are required to control and manage waste at the construction site. Waste items such as building materials, concrete truck washout, chemicals, litter and sanitary waste shall be handled appropriately so as not to impact water quality. (See Town of Fletcher Code of Ordinances Title V, Chapter 50, 50.3 and 50.4, and NCG01 waste handling.)
- E. The NPDES (NCG01) Construction Stormwater Permit process shall be followed, and the permit acquired prior to start of construction for all construction sites requiring an Erosion and Sediment Control Approval from the State or Henderson County.

6.4 Stormwater Runoff Provisions

A. Affected Property

Any disturbed ground area over 1 acre in size located in a non-residential development or any development which exceeds 20,000 square feet of impervious area shall adhere to the following provisions except those properties which are located adjacent to a perennial stream where a determination has been made by the Administrator that runoff from the site will not negatively affect downstream property.

B. Provisions

1. A 2-year and 10-year frequency storm, considered individually, shall be used in determining the amount of storm water runoff.
2. The impoundment of storm water runoff shall be incorporated in the design of parking lots, loading areas, engineered BMP's, ponds, and lakes, and may be located on or off site.
3. In all instances engineered storm water runoff structures and devices shall be designed to complement a development and surrounding community. If ponds or lakes are used, such areas shall be landscaped as amenities as prescribed in Article 8 or hidden from view.
4. The structures, devices, and methods used shall be planned, designed, constructed, and maintained so as to provide effective protection from peak runoff rates.
5. Open drainage channel requirements shall be based upon a 100-year storm and enclosed systems shall be based upon a ten-year storm for collectors and upon a 25-year storm for street crossing conduits and immediately downstream of such crossings. The design of storm drainage systems and plans, including calculations, shall clearly indicate the easements and dedicated areas required for the construction and maintenance of the drainage system.
6. During construction and after completion of site improvements, the peak runoff rates shall approximate those presently existing.
7. The calculated difference in runoff rate from the site developed, less the site as it is not developed shall determine the size of the retention area(s).
8. All subdivision projects must comply with the North Carolina Sedimentation Pollution Control Act and all attendant regulations.

6.5 Water Quality Protection

A. Statutory Authorization

The Town of Fletcher is authorized to adopt the requirements of this Section (Section 6.5) pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.

B. Findings of Fact

It is hereby determined that:

Development and redevelopment alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel

erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge. These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment. These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.

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

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

C. Statement of Purpose

The purpose of these requirements is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment, as well as illicit discharges into the Town of Fletcher’s municipal stormwater systems. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

These requirements establish storm water management requirements and controls to prevent surface water quality degradation to the extent practicable in the streams and lakes within the Town Limits and Extraterritorial Jurisdiction of Fletcher. This Section seeks to meet this purpose by fulfilling the following objectives:

1. Minimize increases in storm water runoff from new development or redevelopment to the maximum extent practicable for the applicable design storm in order to reduce flooding, siltation, streambank erosion, increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats.
2. Minimize increases in non-point and point source pollution caused by storm water runoff from development or redevelopment that would otherwise degrade local water quality; Minimize the total volume of surface water runoff that flows from any specific site during and following development in order to replicate pre-development hydrology to the maximum extent practicable through the use of structural and nonstructural Stormwater Control Measures (SCMs), previously referred to as BMPs.
3. Establish minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.

4. Establish design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards.
5. Establish design and review criteria for low density projects that include deed restrictions and protective covenants to ensure compliance with long term stormwater management.
6. Ensure that structural and nonstructural stormwater SCMs are properly maintained and pose no threat to public health or safety.
7. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety.
8. Meet the requirements of the National Pollution Discharge Elimination System (NPDES) Storm Water Permit and other requirements as established by the Clean Water Act.

D. Applicability and Jurisdiction

1. Applicable Lands

Beginning with and subsequent to its effective date, these requirements are applicable to all development and redevelopment located within the Town Limits and Extraterritorial Jurisdiction of Fletcher, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Section 6.5.D.2, Exemptions to Applicability.

No building, structure, or land shall be used, occupied or altered, and no building, structure, or part thereof shall be erected, constructed, reconstructed, moved, enlarged, or structurally altered, unless in conformity with these requirements and all other applicable requirements, except as otherwise provided in this Section.

2. Exemptions to Applicability

All development and redevelopment are subject to these requirements, except those which, as of the effective date of June 30, 2007, fit into one of the following categories:

- a. Cumulatively disturbs less than (1) one acre and is not part of a larger common plan of development or sale.
 - i. Development and redevelopment that disturb less than (1) one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or

distinct activities take place at different times on different schedules.

- b. Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this Section.
- c. Have been issued a Certificate of Building Code Compliance.
- d. Have a valid building permit.
- e. Are included on a valid preliminary subdivision plan.

3. No Development or Redevelopment Until Compliance and Permit

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

4. Conflict of Laws

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

E. Definitions

Definitions pertaining to this Section are located in Article 18: Definitions.

F. Administration and Procedures

The Town of Fletcher Planning and Development will administer this Section. The Director of Planning and Development will designate a Stormwater Administrator. In addition to the powers and duties that may be conferred, the Stormwater Administrator shall have the following powers and duties under this Section:

1. To review and approve or disapprove applications for approval of plans pursuant to the requirements of this Section.
2. To make determinations and render interpretations of the requirements of this Section.
3. To establish application requirements and schedules for submittal and review of applications and appeals, to review and approve applications.
4. To enforce the provisions of this Section in accordance with its enforcement provisions.
5. To make records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this Section.
6. To provide expertise and technical assistance to the Town of Fletcher.
 - a. To carry out the technical duties outlined in this Section, the Stormwater Administrator may contract such services to another local government or private entity.
7. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
8. To take necessary actions to administer the provisions of this Section.

G. Standards

Design standards are established for the purpose of promoting sound development practices with respect to minimizing water quality impacts and are not intended to prohibit the use of innovative and alternative techniques that demonstrate the ability to successfully achieve the objectives of this Section. Land development activities shall be performed in such a manner as to minimize the degradation of water quality conditions through compliance with the Standards listed below.

1. Required for all development and redevelopment which disturbs (1) one-acre or more.
2. All storm water treatment measures shall control and treat the runoff from the 1-year 24-hour storm event for the Town of Fletcher.
3. All storm water treatment measures used to meet the requirements of this Section shall be designed *for Runoff Treatment in a primary SCM or combination Primary and Secondary SCM* that provides equal or better treatment or for *Runoff Volume Match* as defined by NC Administrative Code 15A NCAC 02H .1002.

4. Areas designated as open space that are not, or will not be disturbed or developed do not require storm water runoff treatment.
5. Where any storm water treatment measure utilizes a temporary water quality storage pool as a part of its treatment system, the drawdown time shall be a minimum of 48-hours and a maximum of 120-hours. The minimum drawdown orifice size shall be 2-inches or equivalent, even if this results in a drawdown time faster than 48-hours.
6. All built-upon area shall be at a minimum of 30-feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when site-specific determination made using NC Division of Water Quality-approved methodology.

H. Water Quality Design Manual

The Town of Fletcher shall utilize the latest edition of the North Carolina Department of Environmental Quality (NCDEQ), Division of Energy Mineral and Land Resources (DEMLR) Stormwater Design Manual for Minimum Design Criteria (MDC) that are codified in the NC stormwater rules. The manual can be viewed at:

<https://deq.nc.gov/about/divisions/energy-mineral-and-land-resources/stormwater>

Stormwater management practices that are designed, constructed, or maintained in accord with the Stormwater Design Manual must be presumed to comply with these requirements. However, the Stormwater Administrator shall have the right to consult other engineers and duly qualified professionals, and to impose any conditions or require any modifications deemed necessary to meet the purpose, intent and requirements of this Section.

I. Stormwater Permit, Plan Submittal and Review

1. Stormwater Permit

A stormwater permit is required for all development and redevelopment which disturbs (1) one acre or more, unless exempt pursuant to this Section. For all activities which are subject to this Section, no person shall initiate, proceed, or undertake any land disturbing or development activity for which a permit is required without first being issued a written stormwater control permit.

All other required applications must be received and permits must be obtained prior to the start of the work. These may include but are not limited to Soil Erosion and Sedimentation Control, Flood Damage Prevention, Subdivision, Building Permits and Inspections, NC Department of Transportation, NC Division of Water Quality, US Army Corps of Engineers, and NC DENR-Dam Safety.

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

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 Section, whether the approach consists of structural SCMs 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 operation and maintenance provisions of this Section, and/or restrictions on property usage that runs with the land, such as recorded deed restrictions or protective covenants.

2. Stormwater Permit Application

a. Content

The Stormwater Administrator shall establish requirements for the content and form of all Stormwater Permit Applications and establish submittal checklist.

At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this Section.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator.

b. Preparer

The stormwater permit application and plans pursuant to this Section shall be prepared by a qualified registered North Carolina professional engineer or landscape architect, and the engineer or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with the requirements of this Section.

3. Fees

The Stormwater Administrator shall establish permit review fees applicable to the specific development or redevelopment. Additional permit reviews fees shall be required for permit reviews that are contracted to another local government or private entity.

4. Schedule

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

5. Submittal

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 subsection.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this Section, 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.

6. Review

The Stormwater Administrator shall review the application for completeness and determine whether the application complies with the requirements of this Section.

a. Approval

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

b. Failure to Comply

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

c. Revision and Subsequent Review

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 thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially

the same project shall be required along with the appropriate fee for a new submittal.

d. Concept Plan and Pre-submittal Meeting

Before a Stormwater Permit Application is deemed complete, the Stormwater Administrator or developer may request a pre-submittal meeting on a concept plan for the post-construction stormwater management system to be utilized in the proposed development or redevelopment project. This pre-submittal meeting should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced.

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

- i** Existing conditions / proposed site plans.
- ii** Natural resources inventory.
- iii** Stormwater management system concept plan.

J. Variances

1. Conditions

The Town of Fletcher may impose reasonable and appropriate conditions and safeguards upon any variance it grants. Additional fees shall be required for the technical evaluation of variances that are contracted to another local government or private entity.

2. Applicability

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

- a.** Unnecessary hardships would result from strict application of the requirements of this Section.
- b.** The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- c.** The hardships did not result from actions taken by the petitioner.
- d.** The requested variance is consistent with the spirit, purpose, and intent of this Section; will secure public safety and welfare; and will preserve substantial justice.

3. Statutory Exceptions

Notwithstanding 6.5.D.2, , Exemptions to Applicability, exceptions from the 30-foot landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- a. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of (SCMs).
- b. When there is a lack of practical alternatives for stormwater treatment measures.
 - i. These measures shall be located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable.
 - ii. The implementation of the stormwater treatment measures shall not disturb existing vegetation.
 - iii. Minor understory may be disturbed in order to accommodate these measures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.
- c. When there is a lack of practical alternatives for utilities, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.
- d. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

K. Operations and Maintenance Agreement

1. Private Development

Prior to the conveyance or transfer of any private lot or building site to be served by a structural SCM pursuant to this Section, and prior to issuance of any permit for development or redevelopment requiring a structural SCM pursuant to this Section, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural SCM. Until the transference of all property, sites, or lots served by the structural SCM, the

original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

2. Public Development

SCMs that are constructed on public land within public rights-of-way, and/or within public easements shall be maintained by the public body with ownership/jurisdiction of the subject property.

3. Agreement Requirements

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

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator following its recordation.

L. Construction of Stormwater Management Measures

Stormwater management facilities shall be constructed in accordance with approved plans and maintained in proper working condition. The applicant/property owner is responsible for ensuring that the construction of drainage structures and stormwater management measures are completed in accordance with the approved plan and specifications.

Inspections which may be performed by the Town of Fletcher during construction will not relieve the developer of the responsibility to install stormwater management and drainage facilities in accordance with the approved plan.

Revisions which affect the intent of the design or the capacity of the system shall require prior written approval by the Stormwater Administrator.

M. As-Built and Final Plat Requirements

1. As-Built Requirements

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater management measures after final construction is completed.

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

As-built certifications by the professional designer for low density projects shall be submitted and approved by the permitting authority.

2. Final Plat Requirements

The exact boundary of all stormwater management SCMs and a maintenance access to the stormwater facility from the nearest public R/W, shall be shown on final plats prepared by a registered surveyor. The boundary shall be shown as a maintenance and inspection easement with terms for right of entry and access to the SCM for the permitting authority and jurisdictional municipality. These plats shall contain the following statement: “This lot contains a stormwater management measure that must be maintained by the Owner in accordance with the recorded Operations and Maintenance Agreement.” For each SCM, the final plat shall reference the applicable recorded operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable.

3. Deed Restrictions and Protective Covenants

Deed restrictions and protective covenants shall be recorded on final plats prior to issuance of a certificate of occupancy.

N. Performance Security for Installation and Maintenance

1. Purpose

The Town of Fletcher 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 stormwater SCMs are installed as required by the approved stormwater management plan, and/or are maintained by the owner as required by the operation and maintenance agreement.

2. Amount

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

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs

approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

3. Forfeiture

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 in accordance with the requirements of this Section.

4. Default

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

5. Costs in Excess of Performance Security

If the Town of Fletcher takes action upon such failure by the applicant, the Town may collect the difference should the amount of the reasonable cost of such action exceed the amount of the security held. This difference will be collected from the applicant.

6. Refund

Within sixty (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.

O. Inspections

1. Function of SCM as Intended

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

2. Right of Entry for Inspection

When stormwater permits are obtained for private property, including approved structural SCMs, or low-density stormwater permits are obtained, the property owner shall grant to the Stormwater Administrator the perpetual right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection.

Inspections may be conducted by the Stormwater Administrator on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspections of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual dischargers of contaminants or pollutants; inspections of discharges of a type which are more likely than the typical discharge to cause violations of state or federal water quality standards or the NPDES Storm Water Permit; and joint inspections with other agencies inspecting under environmental and safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in SCMs; evaluating the condition of SCMs and storm water management practices.

3. Annual Maintenance Inspections

Inspections shall be conducted as prescribed by the Operations and Maintenance Agreement. The person responsible for maintenance of any structural SCM installed pursuant to this Section shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, landscape architect 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:

- a. The name and address of the land owner;
- b. The recorded book and page number of the lot of each structural
- c. A statement that an inspection was made of all structural SCMs;
- d. The date the inspection was made;
- e. A statement that all inspected structural SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- e. Signature and seal of a registered engineer, landscape architect or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance.

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

P. Enforcement and Violations

1. Authority to Enforce

The requirements of this Section shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Fletcher.

2. Civil Penalties

Civil penalties may be imposed as follows:

- a. Any person who violates any of the requirements of this Section, or rules or orders adopted or issued pursuant to this Section, or who initiates or continues a development for which a stormwater plan is required, except in accordance with the terms, conditions and provisions of an approved plan, is subject to a civil penalty. The maximum civil penalty for a violation of this Section is \$5,000 per day. Each day of a continuing violation shall constitute a separate violation. Additional fees may be charged for remedies and enforcement of this Section.
- b. No penalty shall be assessed until the applicant has been notified of the violation by registered or certified mail, return receipt requested, or other means reasonably calculated to give actual notice. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation can be corrected, and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action.
- c. If the violation has not been corrected within the designated time period, a civil penalty may be assessed from the date the violation is detected.
- d. Refusal to accept the notice or failure to notify the Stormwater Administrator of a change of address shall not relieve the violator's obligation to pay such a penalty.
- e. The Stormwater Administrator or other authorized agent may implement the following enforcement actions until the applicant has taken the remedial measures set forth in the notice of violation and cured the violations described therein:
 - i Issue a stop work order to the person(s) violating the requirements of this Section. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

- ii** Refuse to issue a certificate of occupancy for any building or other improvements constructed or being constructed on the site and served by the stormwater practices.
 - iii** Disapprove or withhold subsequent permits and development applications.
 - iv** Institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of the requirements of this Section. Any person violating this Section shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.
- f. It is unlawful for a property owner to fail to meet the requirements of the Operations and Maintenance Agreement. Any person or association that fails to meet the requirements of the Maintenance Covenant shall be subject to a civil penalty payable to the Town of Fletcher of not more than \$500. Each day that the violation continues shall constitute a separate violation.

6.6 Illicit Discharges

A. Prohibited Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES Permit. Prohibited substances and discharges include but are not limited to:

1. Wastewater lines (such as from washing machines)
2. Sanitary sewer lines
3. Food waste
4. Oil
5. Grease
6. Household, industrial and chemical waste
7. Anti-freeze
8. Animal waste
9. Paints
10. Paint wash water
11. Garbage
12. Litter
13. Swimming pool discharges
14. Leaves
15. Grass clippings
16. Dead plants.

B. Allowable Discharges

Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

1. Drinking water line flushing
2. Discharge from emergency fire fighting activities
3. Irrigation water
4. Diverted stream flows
5. Uncontaminated ground water
6. Uncontaminated pumped ground water
7. Discharges from potable water sources
8. Residential foundation/footing drains
9. Air conditioning condensation
10. Uncontaminated Springs
11. Water from crawl space pumps
12. Individual non-commercial car washing operations
13. Flows from riparian habitats and wetlands
14. Street wash water
15. Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town of Fletcher.

C. Illicit Connections

Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in Section 6.7.B, are unlawful.

Prohibited connections include, but are not limited to: Industrial/commercial floor drains, waste water or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

1. Grace Period

Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within (1) one-year following the effective date of this ordinance.

However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat. Where it is determined that said connection:

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

2. Time Period of Removal

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

- a. The quantity and complexity of the work,
- b. The consequences of delay,
- c. The potential harm to the environment, to the public health, and to public and private property, and
- d. The cost of remedying the damage.

D. Spills/ Accidental Discharges

In the case of accidental discharges, the responsible party shall immediately begin to collect and remove the discharge and restore all affected areas to their original condition. The responsible party shall immediately notify the Town of Fletcher of the accidental discharge including the location of the discharge, type of pollutant, volume or quantity discharges, time of discharge and the corrective actions taken.

Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

E. Notice of Violation

When the Town Manager, Stormwater Administrator or authorized representative finds that a discharge or disposal violates any provisions of this Section, the Town Manager, Stormwater Administrator or authorized representative may issue a Notice of Violation. The Notice of Violation shall identify the nature of the violation, amount of penalty (if applicable), set forth the measures necessary to comply with this Section and provide a specific time period for compliance.

The Notice may be served by registered or certified mail, hand delivery or any other means determined to give actual notice. Refusal to accept the notice shall not relieve the violator's obligation to comply with this Section or to pay such penalty.

F. Enforcement and Penalties

Any person that violates the provisions of this Section is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.

1. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation.
2. The maximum civil penalty for each violation of this Section is \$5,000. Each day of violation shall constitute a separate violation.
3. The Town Manager, Stormwater Administrator or authorized representative shall determine the amount of the civil penalty assessment. In determining the amount of a civil penalty, all relevant mitigating and aggravating factors shall be considered including, but not limited to the following:
 - a. Degree and extent of harm caused by the violation
 - b. Cost of rectifying the damage
 - c. Whether the violator saved money through noncompliance
 - d. Whether the violator took reasonable measures to comply with this Ordinance
 - e. Whether the violator voluntarily took reasonable measures to restore any areas damages by the violation
 - f. Whether the violation was committed willfully
 - g. Whether the violator reported the violation
 - h. Prior record of the violator in complying or failing to comply with this Code or any other local or State water pollution control rule or regulation.

4. In addition to the civil penalty, penalties for costs to restore damaged property may be assessed based on restoration costs, which include but are not limited to, clean up costs, devaluation of the property, and value of animal and plant life damaged.
5. If an alleged violator does not pay a civil penalty assessed within 30 days after it is due, or does not appeal a civil penalty assessment as provided in 6.7.G, Appeals Process, the Director shall request the Division of Water Quality to administer the penalty.
6. Violation of this ordinance shall not constitute a misdemeanor or infraction punishable under the criminal laws of North Carolina.

G. Appeals Process

Any person who desires to appeal a demand for payment of the civil penalty shall have thirty (30) days from said demand of payment to appeal in writing to the Town Manager, Stormwater Administrator or authorized representative.

1. The Town of Fletcher shall then grant an appeal hearing before the Town Council within thirty (30) days after receipt of the appeal.
2. The Town of Fletcher shall provide the appellant a minimum of ten (10) days notice of the time and place of the hearing.
3. Thereafter, the appellant shall have thirty (30) days to comply with the final decision of the appeal hearing.

6.7 Steep Slopes

This section regulates development on mountains and hillsides to ensure growth occurs in a manner that will preserve the Town's visual character, protect the public health, safety and welfare, and promote environmentally sound design and planning. The regulations established in this section recognize development in hilly or mountainous areas involves special considerations due to the slope of the land. The following objectives serve as general guidelines to fulfill the purpose of this section.

- To reduce the likelihood of slope failures by promoting safe and stable slopes on developed or disturbed land
- To prevent inappropriate development and to protect life and property from potentially hazardous conditions
- To protect the quality of wetlands and watercourses from increased sedimentation
- To minimize grading, cut and fill operations, and impervious surfaces
- To protect plant and animal habitat from disturbance, development, and the removal of vegetation
- To preserve the aesthetic and qualities of the natural terrain and to respect the exiting topography and natural conditions
- To require disclosure of landslide hazards to purchasers of properties located in area vulnerable to landslides as indicated on maps prepared by the North Carolina Geological Survey (NCGS)

A. Definition

Slope shall be defined as an inclined ground or earth material surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance. Slope calculations shall be sealed by a licensed surveyor, engineer, or landscape architect.

Steep slope areas shall be defined as any lot, parcel, or tract of land which a) has an average slope of thirty-three percent (33%) or more, or b) is designated with a slide hazard ranking of 'moderate' or 'high' on a Stability Index Map prepared by the NCGS. Steep slope areas refer to natural grades and shall not include man-made grades. Steep slope areas shall be determined irrespective of tract boundaries.

B. Application

The provisions of this section apply in the following circumstances.

1. Any portion of a lot, parcel, or tract of land which has been approved for development or subdivision after the date of adoption of this section shall be required to comply with the provisions of this section.
2. Additions to structures greater than 600 square feet of disturbed area.
3. Site disturbances encompassing more than 600 square feet of disturbed area.

C. Exemptions

The following land uses or activities are exempt from the requirement of this section provided they comply with any limitations or conditions specified herein and all other articles of the LDC.

- Agricultural and forestry uses or activities consistent with all state and federal laws and the latest Best Management Practices for those activities
- Landscape maintenance activities, including the removal of diseased, dead or damaged trees.
- Previously approved developments are exempt for a period of two years subsequent to the effective date of this article.
- Any legally non-conforming lots of record, referring to the owner or any successor in interest of a vacant lot of record existing as of the effective date of this section, shall be entitled to build one single-family home thereon, provided the development of such residence shall be done in compliance with the LDC and the following Sections: 6.8.D.5 – Land Disturbance, 6.8.D.6 – Impervious Surface Area, 6.8.D.7 – Structure Height/Ridgeline Protection, and 6.8.D.8 – Partial Screening.
- Non-regulatory lots containing an average natural slope of less than thirty-three percent (33%).

D. General Regulations for All Development and Other Land-Disturbing Activity

1. Plan Requirements

Steep slope areas shall be clearly indicated on all site plans, development plans, preliminary plats, final plats, major special use permits and minor special use permits. When a property owner or developer believes the presence or location of a steep slope area is different than what is shown on the appropriate topographic map, the discrepancy shall be documented by a licensed surveyor, engineer, or landscape architect and submitted to the Administrator for approval pursuant to the requirements of the following section (Section 6.2.B.2).

2. Requirements for Roads and Driveways

- a. All new public and private roads and driveways shall be designed and constructed to minimize the potential for landslides, erosion and runoff.
- b. Roads and driveways shall be located to preserve the maximum number of existing trees on the site.
- c. Roads and driveways shall be designed to create the minimum feasible amounts of land coverage and the minimum feasible soil disturbance. Variations in road design and construction specified by the Town in its LDC regulations shall be permitted, as approved by the Administrator, to prevent the dedication of unnecessarily large amounts of land to such roads or driveways.

3. Development Limitations

Development and land disturbance on steep slope areas shall be conducted in accordance with the following requirements. Compliance with these requirements shall be determined by the approving authority.

- a. Artificial or reconstructed slopes shall not exceed fifty percent (50%) or 2H:1V. All fill shall be stabilized in conformance with generally accepted engineering standards, including a compacted density of at least ninety-five percent (95%). Non-load bearing retaining walls shall be encouraged to reduce the amount of disturbance to the natural slope.
- b. To accommodate building placement on steep slope areas, front and side yard setbacks on interior lots of the development may be reduced by up to 50 percent (50%) at the discretion of the Administrator or appropriate review board. Where appropriate, buildings and structures should be located as close to the road as possible to preserve the natural terrain and to minimize disturbance and the length of driveways.
- c. Sedimentation and erosion control shall be provided during and after construction consistent with the requirements of Section 6.3 and Henderson County's Erosion and Sedimentation Control Program.

4. Density and Lot Size

Densities of residential development shall be reduced in steep slope areas to support the goals and objectives of this section. Development on lands subject to this article shall meet the density requirements shown below in the table.

Maximum Density by Existing Slope		
Existing Slope	Minimum Lot Size (Acres)	Maximum Density (units per acre)
33.00% - 44.99%	0.5	1.00
45.00% - 59.99%	2.0	1.00
60.00% +	4.0	1.00

5. Land Disturbance and Impervious Surfaces

Development shall be designed and constructed to minimize land disturbance and impervious surface areas to the greatest extent possible. On any tract proposed for construction, the maximum land disturbance and maximum impervious surface areas will be established by the average steep slope area of the tract. The maximum allowable land disturbance and impervious surface area shall be as follows.

Maximum Disturbance by Existing Slope		
Existing Slope	Maximum Land Disturbance (%)	Maximum Impervious Surface (%)
33.00% - 44.99%	50.0	25.0
45.00% - 59.99%	40.0	20.0
60.00% +	30.0	15.0

6. Structure Height/Ridgeline Protection

The maximum height of any building shall not extend closer than 15 feet to the any point of a mountain ridge on which said building is constructed. For the purposes of this article mountain ridge refers to geological formations and not vegetation.

7. Partial Screening

A portion of natural on-site vegetation shall be retained sufficient to partially screen at least fifty percent (50%) of the building, structure, use, or activity from views along public roads not serving the property. If sufficient screening from natural on-site vegetation can not be achieved, landscaping shall be designed and installed to partially screen the building, structure, use, or activity from views along public roads not serving the building. View corridors from the proposed development to surrounding areas may be provided, but such corridors shall not extend for more than fifty percent (50%) of the width of building face.

6.8 Navigable Airspace

A. Affected Properties

Any property located within or underneath the boundaries of the airspace of the Asheville Regional Airport, as defined by Federal Aviation Regulation Part 77, upon which it is determined that a proposed object or structure may impact navigable airspace.

B. Limitations

The allowable height of an object or structure shall not be permitted to encroach into the airspace of the Asheville Regional Airport, unless it is determined that it is not a hazard to air navigation through an Aeronautical Study performed by the Federal Aviation Administration.

C. Procedure

- a. Prior to zoning approval, and/or issuance of a building permit, the landowner, developer, contractor, or other responsible party (collectively referred to as the Responsible Party), shall submit to the Federal Aviation Administration a request for the conduct of an Aeronautical Study on the object or structure being proposed on the property, utilizing FAA Form 7460-1 “Notice of Proposed Construction or Alteration”. In the event that multiple objects or structures are proposed for the same property, multiple submittals may be required. The Responsible Party shall include all information required on the appropriate forms in order for the study to be undertaken.

Copies of the FAA Form 7460-1 may be obtained at <http://oeaaa.faa.gov>.

- b. Aeronautical Study requests to the Federal Aviation Administration shall be submitted no less than 30 days in advance of the scheduled start of any construction on the property.
- c. Cranes and other temporary objects that may themselves encroach into navigable airspace shall require individual and separate Aeronautical Study submittals.
- d. The Responsible Party shall be required to follow any and all reporting instructions determined necessary by the Federal Aviation Administration during construction of the structure or placement of the object if identified as a result of the Aeronautical Study.

D. Lighting and Marking

All objects and structures that are determined through an Aeronautical Study by the Federal Aviation Administration that lighting or marking is required or recommended, shall light and mark the object or structure in accordance with FAA Advisory Circular 70/7460-1K “Obstruction Marking or Lighting” (or current version).