

# **Town of Gibsonville**

## **Phase II Stormwater Ordinance**

Adopted by The Town of Gibsonville Board of Aldermen: June 4, 2007

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## **Article X: Phase II Stormwater Post-Construction**

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**Article X**  
**Phase II Stormwater Ordinance**

**10-1 GENERAL PROVISIONS**

**10-1.1 Title**

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

**10-1.2 Authority**

The Town of Gibsonville is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174.

**10-1.3 Findings**

It is hereby determined that:

*Development and redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

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

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

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

#### 10-1.4 Purpose

##### (A) General

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

##### (B) Specific

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

- (1) Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
- (2) Requiring that new *development* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
- (3) Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
- (5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;

- (6) Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- (8) Controlling illicit discharges into the municipal separate stormwater system.

### **10-1.5 Applicability and Jurisdiction**

#### **(A) General**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (b) of this Section, Exemptions.

#### **(B) Exemptions**

*Development* that cumulatively disturbs less than one acre and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

*Redevelopment* that is not part of a larger common plan of *development or sale* is exempt from the provisions of this ordinance.

*Developments* that disturb less than 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.

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 ordinance.

#### **(C) No Development Until Compliance and Permit**

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

(D) Map

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

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

### 10-1.6 Interpretation

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 87-4, Purpose. If a different or more specific meaning is given for a term defined elsewhere in The Town's code of ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

(D) References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Stormwater BMP Design Manual*), or

document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) Computation of Time

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

(F) Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of The Town of Gibsonville may be carried out by his or her designee.

(G) Usage

(1) Mandatory and Discretionary Terms

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

(2) Conjunctions

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

(3) Tense, Plurals, and Gender

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

(4) Measurement and Computation

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

### **10-1.7 Stormwater Best Management Practices (BMPs) Design Manual**

(A) Reference to Stormwater BMP Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the latest published edition or revision of the North Carolina Department of the Environment and Natural Resources-Division of Water Quality's *Manual of Stormwater Best Management Practices* (referred to herein as the *Stormwater BMP Design Manual*) as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater Best Management Practices (BMPs)*.

The Stormwater *BMP Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

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

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

(C) Changes to Standards and Specifications

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

### **10-1.8 Relationship to Other Laws, Regulations and Private Agreements**

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever

provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

(B) Private Agreements

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

**10-1.9 Severability**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

**10-1.10 Effective Date and Transitional Provisions**

(A) Effective Date

This Ordinance shall take effect on \_\_\_\_\_, 2007.

(B) Final Approvals, Complete Applications

All *development* projects for which complete and full Preliminary Plats were submitted and approved by the Town of Gibsonville prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions

A phased development plan shall be deemed approved prior to the effective data of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

- (1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the

boundaries of the project and a subdivision plan that has been approved.

- (2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

(C) Violations Continue

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

## **10-2 ADMINISTRATION AND PROCEDURES**

### **10-2.1 Review and Decision-Making Entities**

#### **(A) Stormwater Administrator**

##### **(1) Designation**

A Stormwater Administrator shall be designated by the Town Manager to administer and enforce this ordinance.

##### **(2) Powers and Duties**

In addition to the powers and duties that may be conferred by other provisions of the Town of Gibsonville and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- (a) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- (b) To make determinations and render interpretations of this ordinance.
- (c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Town of Gibsonville on applications for *development* approvals.
- (d) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (e) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- (f) To provide expertise and technical assistance to the Gibsonville Town Board of Aldermen, upon request.
- (g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- (h) To take any other action necessary to administer the provisions of this ordinance.

### **10-2.2 Review Procedures**

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

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued

subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(B) Effect of Permit

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

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

(C) Authority to File Applications

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

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

(1) Application Contents and Form

The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(2) Submission Schedule

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

(3) Permit Review Fees

The board of planning and adjustment shall establish permit review fees as well as policies regarding refund of any fees upon

withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Stormwater BMP Design Manual in an Administrative Manual, which shall be made available to the public.

(E) Submittal of Complete Application

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

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(F) Review

Within **30** working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval

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

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the

application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator within **30** working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

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

### **10-2.3 Applications for Approval**

(A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process.

The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced.

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

(1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant

vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

Existing and proposed topography shall be shown at two-foot contour intervals on the tract to be developed and a minimum of 100-feet beyond the property lines. All contour information shall be based on mean sea level and accurate to within one-half foot. The benchmark, with its description and the datum, shall be clearly shown on the plan.

(2) Natural Resources Inventory

A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

(3) Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low-impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of any proposed stream channel modifications, such as bridge or culvert crossings.

(B) Stormwater Management Permit Application

The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater

management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Stormwater BMP Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 10-2.2(E).

(C) As-Built Plans and Final Approval

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

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

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the Town of Gibsonville without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Town may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

#### **10-2.4 Approvals**

(A) Effect of Approval

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

(B) Time Limit/Expiration

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

**10-2.5 Appeals**

(A) Right of Appeal

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the Board of Adjustment as specified in Section 8-3.2 of the Town's Development Ordinance.

## **10-3 STANDARDS**

### **10-3.1 General Standards**

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

### **10-3.2 Development Standards for Low-Density Projects**

*Low-density projects* (no more than two dwelling units per acre or twenty-four percent built-upon area for all residential and non-residential development) shall comply with each of the following standards

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* maintains the site consistent with the approved project plans.

### **10-3.3 Development standards for High-Density Projects**

*High-density projects* shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Stormwater BMP Design Manual*;
- (D) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* maintains the site consistent with the approved project plans.

In the event new development or redevelopment has, in the opinion of the Stormwater Administrator or his designee, the potential to cause increased downstream flooding and erosion, a structural stormwater management

system will be required that does not allow stormwater to leave the project site at a rate greater than the predevelopment discharge rate for the ten-year, 24-hour storm.

#### **10-3.4 Protection of Existing Riparian Buffers**

This shall apply to 50-foot wide riparian buffers directly adjacent to surface waters within the Town's jurisdiction (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 2H .0506. Parties subject to this Ordinance shall abide by all State rules and laws regarding waters of the state including but not limited to Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act. The riparian buffers protected by this Ordinance shall be measured pursuant to Section 10-3.4(A) of this Ordinance.

A 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 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 surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology

##### **(A) Zones of the Riparian Buffer.**

The protected riparian buffer shall have two zones as follows:

- (1) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in Section 10-3.4(D) of this Ordinance. The location of Zone 1 shall be as follows:
  - (a) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of the bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank.
  - (b) For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and

extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the edge of the surface water or rooted herbaceous vegetation.

- (2) Zone 2 shall consist of a stable, vegetated area that is undisturbed except for uses provided for in Section 10-3.4(D) of this Ordinance. Grading and re-vegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

(B) Diffuse Flow Requirement.

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation. Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone 2 of the riparian buffer. Corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies. No new stormwater conveyances are allowed through the buffers except for stormwater management ponds provided for in Section 10-3.4(D) of this Ordinance.

(C) Exemptions

Riparian buffers adjacent to surface waters that appear on the maps shall be subject to this Ordinance unless one of the following applies.

(1) On-site Determination

When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall submit a site assessment and on-site determination made by other parties who have successfully completed a Division training course and are sanctioned by the North Carolina Department of Environment and Natural Resources, Division of Water Quality to make such determinations. Any disputes over on-site determinations shall be referred to the Board of Adjustment in writing. Surface waters that appear on the maps shall not be subject to this Ordinance if an on-site determination shows that they fall into one of the following categories:

- (a) Manmade ponds and lakes that are located outside natural drainage ways; and
- (b) Ephemeral (stormwater) streams.

(2) Existing Uses Are Present and Ongoing.

This Ordinance shall not apply to portions of the riparian buffer where a use is existing and ongoing according to the following:

- (a) A use shall be considered existing and ongoing if it was present within the riparian buffer as of the effective date of this Ordinance and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from this Ordinance. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of this Ordinance, and existing diffuse flow is maintained. Grading and re-vegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised, the ground is stabilized and existing diffuse flow is maintained.
- (b) A use shall be considered as existing if projects or proposed development have been determined by the Town to meet at least one of the following criteria:
  - i. Project requires a 401 Certification/404 Permit and these were issued prior to the effective date of this Ordinance;
  - ii. Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of this Ordinance;
  - iii. Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of this Ordinance;

iv. Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Town prior to the effective date of this Ordinance;

- (c) A project that can be documented to the Town that it has vested rights that were established or recognized for that project under the common law or by G.S. 153A-344(b), 153A-344.1, 160A-385(b) or 160A-385.1 prior to the effective date of this Ordinance. This Ordinance does not confer or restrict a vested right established or recognized under common law or G.S. 153A-344(b), 153(A)-344.1, 160A-385(b), or 160A-385.1.
- (d) This Ordinance shall apply at the time an existing use is changed to another use. Change of use shall involve the initiation of any activity not defined as existing and ongoing as defined previously in this Section.

(D) ACCEPTABLE USES

The Stormwater Administrator will maintain a *Riparian Buffer Table of Uses* which sets out permitted uses within the riparian buffer and their designation as exempt or allowable. All uses not designated as exempt or allowable are considered prohibited and may not proceed within the riparian buffer unless a variance is granted pursuant to this Ordinance.

(E) REQUIREMENTS FOR CATEGORIES OF USES.

Uses designated as exempt or allowable in Section 10-3.4(D) of this Ordinance shall have the following requirements:

- (1) EXEMPT. Uses designated as exempt are allowed within the riparian buffer. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, exempt uses shall meet requirements listed in Section 10-3.4(D) of this Ordinance for the specific use.

- (2) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to 10-3.4(F) of this Ordinance. This includes construction, monitoring, and maintenance activities.

(F) DETERMINATION OF “NO PRACTICAL ALTERNATIVES.”

Persons who wish to undertake uses designated as allowable shall submit a request for a “no practical alternatives” determination to the Stormwater Administrator. The applicant shall certify that the criteria identified in Section 10-3.4(F)(1) of this Ordinance are met. The Town shall grant an Authorization Certificate upon a “no practical alternatives” determination. The procedure for making an Authorization Certificate shall be as follows:

(1) Authorization Certificate

For any request for an Authorization Certificate, the Town shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a “no practical alternatives” determination:

- (a) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
- (b) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
- (c) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

- (2) Requests for an Authorization Certificate shall be reviewed and either approved or denied based on the criteria in Section 10-3.4(F)(1) of this Ordinance. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated “no practical alternatives.” An Authorization Certificate shall be issued to the applicant, unless:

- (a) The applicant agrees, in writing, to a longer period; and
- (b) Applicant fails to furnish requested information necessary to the Town’s decision.

- (3) The Town may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program. Complete submissions shall include the following:
- (a) The name, address and phone number of the applicant;
  - (b) The nature of the activity to be conducted by the applicant;
  - (c) The location of the activity, including the jurisdiction;
  - (d) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;
  - (e) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and
  - (f) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
  - (g) Any disputes over determinations regarding Authorization Certificates shall be referred to the Town Board of Adjustment for a decision.

(G) VARIANCES.

A variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 10-3.4(F)(1) of this Ordinance by the Town pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The Town may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program.

(H) REQUIREMENTS SPECIFIC TO FOREST HARVESTING.

Forest harvesting operations and practices shall apply for forest harvesting operations and practices.

- (1) The following measures shall apply in the entire riparian buffer:
- (a) Logging decks and sawmill sites shall not be placed in the riparian buffer.
  - (b) Access roads and skid trails shall be prohibited except for temporary and permanent stream crossings established in accordance with 15A NCAC 11 .0203. Temporary stream

crossings shall be permanently stabilized after any site disturbing activity is completed.

- (c) Timber felling shall be directed away from the stream or water body.
  - (d) Skidding shall be directed away from the stream or water body and shall be done in a manner that minimizes soil disturbance and prevents the creation of channels or ruts.
  - (e) Individual trees may be treated to maintain or improve their health, form or vigor.
  - (f) Harvesting of dead or infected trees or application of pesticides necessary to prevent or control extensive tree pest and disease infestation shall be allowed. These practices must be approved by the Division of Forest Resources for a specific site pursuant to the rule. The Division of Forest Resources must notify the local government of all approvals.
  - (g) Removal of individual trees that are in danger of causing damage to structures or human life shall be allowed.
  - (h) Natural regeneration of forest vegetation and planting of trees, shrubs, or ground cover plants to enhance the riparian buffer shall be allowed provided that soil disturbance is minimized. Plantings shall consist primarily of native species.
  - (i) High-intensity prescribed burns shall not be allowed.
  - (j) Application of fertilizer shall not be allowed except as necessary for permanent stabilization. Broadcast application of fertilizer or herbicides to the adjacent forest stand shall be conducted so that the chemicals are not applied directly to or allowed to drift into the riparian buffer.
- (2) In Zone 1, forest vegetation shall be protected and maintained. Selective harvest as provided for below is allowed on forest lands that have a deferment for use value under forestry in accordance with G.S. 105-277.2 through 277.6 or on forest lands that have a forest management plan prepared or approved by a registered professional forester. Copies of either the approval of the deferment for use value under forestry or the forest management plan shall be produced upon request. For such forest lands, selective harvest is allowed in accordance with the following:
- (a) Tracked or wheeled vehicles are not permitted except at stream crossings designed, constructed and maintained in accordance with 15A NCAC 11 .0203;
  - (b) Soil disturbing site preparation activities are not allowed; and

- (c) Trees shall be removed with the minimum disturbance to the soil and residual vegetation.
- (3) The following provisions for selective harvesting shall be met:
  - (a) The first 10 feet of Zone 1 directly adjacent to the stream or waterbody shall be undisturbed except for the removal of individual high value trees as defined provided that no trees with exposed primary roots visible in the streambank be cut.
  - (b) In the outer 20 feet of Zone 1, a maximum of 50 percent of the trees greater than five inches DBH may be cut and removed. The reentry time for harvest shall be no more frequent than every 15 years, except on forest plantations where the reentry time shall be no more frequent than every five years. In either case, the trees remaining after harvest shall be as evenly spaced as possible.

In Zone 2, harvesting and regeneration of the forest stand shall be allowed in accordance with 15A NCAC 01I .0100 through .0200 as enforced by the Division of Forest Resources.

### **10-3.5 Standards for Stormwater Control Measures**

- (A) Evaluation According to Contents of *Stormwater BMP Design Manual*

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Stormwater BMP Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.
- (B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the *Stormwater BMP Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Stormwater BMP Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for

the Stormwater Administrator to determine whether such an affirmative showing is made.

(C) Separation from Seasonal High Water Table

For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

**10-3.6 Dedication of BMPS, Facilities & Improvements**

Unless otherwise approved, ownership of any existing or future stormwater management facilities shall remain with the owner of the property or a legally established property owner's association. Such facilities shall meet all the requirements of this ordinance and include adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

**10-3.7 Variances**

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

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

(B) The Town of Gibsonville may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

Notwithstanding subdivision (A) of this section, exceptions from the Floodplain or 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as

it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

#### **10-3.8 Nutrient Sensitive Waters Program**

In addition to the standards for stormwater handling set out in the *Stormwater BMP Design Manual, development and redevelopment* shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

#### **10-3.9 Nutrient Management and Application Program**

##### **(A) Applicability**

This Program shall apply to the following persons within the corporate limits and extraterritorial jurisdiction of the Town of Gibsonville as follows.

- (1) Persons who own or manage cropland areas for commercial purposes;
- (2) Persons who own or manage commercial ornamental and floriculture areas and greenhouse production areas;
- (3) Persons who own or manage golf courses, grassed public recreational lands, grassed road or utility rights-of-way, or other institutional lands totaling at least five acres in size;
- (4) Persons hired to apply nutrients to the lands described in Sub-Items (1) through (3) above or to residential, commercial, industrial or institutional properties, if the total area of the properties served exceeds 10 acres. This shall not apply to residential, commercial, or industrial landowners who apply nutrients to their own property.
- (5) Nutrient management consultants hired by persons listed in this Item to provide nutrient management advice for lands in the Town's jurisdiction.

(B) Requirements

Persons to whom this Ordinance applies shall meet the following requirements:

- (1) Any person subject to this rule who applies nutrients to, or who is hired to provide nutrient management advice for, land within the Town's jurisdiction shall either:
  - (a) Attend and complete nutrient management training pursuant to Item (C) of this Section; or
  - (b) Complete and properly implement a nutrient management plan for all lands to which they apply or manage the application of nutrients, or for which they provide nutrient management advice, pursuant to Item (D) of this Section.
- (2) Persons who hire an applicator to apply nutrients to the land that they own or manage shall either:
  - (a) Ensure that the applicator they hire has attended and completed nutrient management training pursuant to Item (C) of this Section; or
  - (b) Ensure that the applicator they hire has completed a nutrient management plan for the land that they own or manage pursuant to Item (D) of this Section; or
  - (c) Complete a nutrient management plan for the land that they own or manage pursuant to Item (D) of this Section and ensure that the applicator they hire follows this plan.

(C) Nutrient Management Training

Persons who choose to meet this requirement by completing nutrient management training shall meet the following requirements.

- (1) Persons who are subject to this Ordinance as of its effective date, and persons who become subject to this Ordinance after its effective date, shall complete training provided by either the Cooperative Extension Service or the North Carolina Department of Environment and Natural Resources - Division of Water Quality within five years and obtain a certificate from the training entity to that effect. Training shall be sufficient to provide participants with an understanding of the value and importance of proper management of nitrogen and phosphorus, and the water quality impacts of poor nutrient management, and the ability to understand and properly carry out a nutrient management plan.
- (2) Persons who become subject to this Ordinance after its effective date shall complete the training provided by either the Cooperative Extension Service or the North Carolina Department of Environment and Natural Resources - Division of Water Quality and obtain a certificate to that effect from the training entity within one year from the date that they become subject verifying completion of training that addresses the elements identified in Sub-Item (C)(1).
- (3) Persons who fail to obtain the nutrient management certificate within the required timeframes or who are found by the Stormwater Administrator to have knowingly failed to follow nutrient management requirements as referenced in Sub-Items (D)(1)(a) through (D)(1)(c) of this section shall develop and properly implement nutrient management plans pursuant to Item (D) of this Section.
- (4) Training certificates must be kept on-site, at the job site, or be produced within 24 hours of a request by the Town of Gibsonville.

(D) Nutrient Management Plans

Persons who choose to meet the nutrient application requirement by completing and implementing a nutrient management plan shall meet the following requirements.

- (1) Persons who are subject to this Ordinance as of its effective date and persons who become subject to this Ordinance after its effective date shall develop and implement a nutrient management plan that meets the following standards within five years of the effective date or within 6 months from the date that they become subject, whichever is later.
  - (a) Nutrient management plans for cropland shall meet the standards and specifications adopted by the NC Soil and Water Conservation Commission, including those found in 15A NCAC 06E .0104 and 15A NCAC 06F .0104, which are incorporated herein by reference, including any subsequent amendments and additions to such rules that are in place at the time that plans are approved by a technical specialist as required under Sub-Item (D)(2) of this section.
  - (b) Nutrient management plans for turfgrass shall follow the North Carolina Cooperative Extension Service guidelines in "Water Quality and Professional Lawn Care" (NCCES publication number WQMM-155), "Water Quality and Home Lawn Care" (NCCES publication number WQMM-151), or other equivalent or more stringent guidance distributed by land-grant universities for turfgrass management.
  - (c) Nutrient management plans for nursery crops and greenhouse production shall follow the Southern Nurserymen's Association guidelines promulgated in "Best Management Practices Guide For Producing Container-Grown Plants" or guidelines distributed by land-grant universities. The materials related to nutrient management plans for turfgrass, nursery crops and greenhouse production are hereby incorporated by reference including any subsequent amendments and editions and are available for inspection at the Department of Environment and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina.
- (2) The person who writes the nutrient management plan shall have the plan approved in writing by a technical specialist. Appropriate technical specialists shall be as follows.
  - (a) Nutrient management plans for cropland using either inorganic fertilizer or organic nutrients shall be approved by a technical specialist designated pursuant to the process and criteria specified in Rules adopted by the Soil and Water Conservation Commission for nutrient management planning, including 15A NCAC 06F .0105, excepting Sub-Item (a)(2) of that Rule.

- (b) Nutrient management plans for turfgrass and nursery crops and greenhouse production shall be approved by a technical specialist designated by the Soil and Water Conservation Commission pursuant to the process and criteria specified in 15A NCAC 06F .0105, excepting Sub-Item (a)(2) of that Rule. If the Soil and Water Conservation Commission does not designate such specialists, then the Environmental Management Commission shall do so using the same process and criteria.
- (3) Nutrient management plans and supporting documents must be kept on-site or be produced within 24 hours of a request by the Town.

### **10-3.10 On-site Wastewater Treatment Systems**

For new development and redevelopment that includes the use of on-site wastewater treatment systems, a copy of the approved system permit issued by the Alamance County Environmental Health Department shall be provided to the Stormwater Administrator. In addition, all requirements for on-site wastewater treatment systems in Article VI of the Town's Development for Maintenance shall be met.

## 10-4 MAINTENANCE

### 10-4.1 General Standards for Maintenance

#### (A) Function of BMPs As Intended

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

#### (B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall 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, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;
- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

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.

## 10-4.2 Operation and Maintenance Agreement

### (A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

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

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

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

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Gibsonville, in its sole discretion,

may remedy the situation, and in such instances the Town of Gibsonville shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the Town of Gibsonville shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Gibsonville depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Gibsonville a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Gibsonville to recover from the association and its members any and all costs the Town of Gibsonville expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the Town of Gibsonville all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Gibsonville shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both.. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the Town of Gibsonville to maintain or repair any *structural BMPs*, and the Town of Gibsonville shall not be liable to any person for the condition or operation of *structural BMPs*.

- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Gibsonville to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Gibsonville for any costs and injuries arising from or related to the structural BMP, unless the Town of Gibsonville has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

#### **10-4.3 Inspection Program**

Inspections and inspection programs by the Town of Gibsonville may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

#### **10-4.4 Performance Security for Installation and Maintenance**

##### **(A) May Be Required**

The Town of Gibsonville may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMPs* are

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 20%.

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) Uses of Performance Security

(1) Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default

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

(3) Costs in Excess of Performance Security

If the Town of Gibsonville takes action upon such failure by the applicant or *owner*, the Town of Gibsonville may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

**10-4.5 Notice to Owners**

(A) Deed Recordation and Indications On Plat

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

(B) Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

**10-4.6 Records of Installation and Maintenance Activities**

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of

the record and shall submit the same upon reasonable request to the Stormwater Administrator.

**10-4.7 Nuisance**

The *owner* of each stormwater BMP, whether *structural* or *non-structural BMP*, shall maintain it so as not to create or result in a nuisance condition.

**10-4.8 Maintenance Easement**

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

## 10-5 ENFORCEMENT AND VIOLATIONS

### 10-5.1 General

#### (A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Gibsonville. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Gibsonville.

#### (B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

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

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

#### (D) Responsible Persons/Entities

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

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

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

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates,

causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility For Land or Use of Land

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use or *development* of the property.

### 10-5.2 Remedies and Penalties

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) Remedies

(1) Withholding of Certificate of Occupancy

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town of Gibsonville may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the Town of Gibsonville for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

The Stormwater Administrator, with the written authorization of the Town of Gibsonville may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town of Gibsonville, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties will be assessed as established in Section 8-5.1 of the Town's Land Development Ordinance or up to the full amount of any penalty to which the Town of Gibsonville is subject for violations of its Phase II Stormwater permit.

(C) Criminal Penalties

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

### 10-5.3 Procedures

(A) Initiation/Complaint

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

(B) Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land,

building, structure, or premises to ensure compliance with this ordinance.

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

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

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days.

The Stormwater Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which

the violator will be subject to the penalties described in the notice of violation and correction order.

(E) Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(F) Emergency Enforcement

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

## **10-6 DEFINITIONS**

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

### ***1-year, 24-hour Storm***

A stormwater event which occurs on average once every year or statistically has a 100% chance on average of occurring in a given year. The 1-year, 24 hour storm produces approximately 3.0 inches of rain in the Gibsonville area.

### ***10-year, 24-hour Storm***

A stormwater event which occurs on average once every 10 years or statistically has a 10% chance on average of occurring in a given year. The 10-year, 24 hour storm produces 5.9 inches of rain in the Mebane area.

### ***Applicator***

Person who applies fertilizer to the land or the immediate supervisor of such person.

### ***Built-upon area (BUA)***

That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

### ***Commission***

The North Carolina Environmental Management Commission

### ***Consultant***

Person who is hired to provide professional advice to another person.

### ***Department***

The North Carolina Department of Environment and Natural Resources.

### ***Ditch or canal***

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

***Development***

Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

***Director***

The director of the Division of Water Quality or the North Carolina Department of Environment and Natural Resources.

***Division***

The Division of Water Quality in the Department.

***Ephemeral (stormwater) stream***

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

***High-density project***

Any project that exceeds the low density threshold for dwelling units per acre or built-upon area.

***Intermittent stream***

A well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the conveyance of water.

***Larger common plan of development or sale***

Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

***Low-density project***

A project that has no more than two dwelling units per acre or twenty-four percent built-upon area (BUA) for all residential and non-residential development. A project

with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

***Owner***

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

***Perennial stream***

A well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

***Runoff***

That portion of the precipitation resulting from the 1-year, 24-hour storm that is discharged from the drainage area.

***Redevelopment***

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

***Stormwater BMP Design Manual***

The Stormwater BMP Design Manual approved for use in Phase II jurisdictions by the North Carolina Department of the Environment and Natural Resources-Division of Water Quality for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the Stormwater BMP Design Manual are to the latest published edition or revision.

***Structural BMP***

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other

characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

***Surface waters***

All waters of the state as defined in G.S. 143-212 except underground waters.

***Substantial progress***

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation.

"Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

## **10-7 ILLICIT DISCHARGES**

### **10-7.1 Illicit Discharges and Connections**

#### **(A) Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Flows from emergency fire fighting;
- (12) Springs;
- (13) Water from crawl space pumps;
- (14) Footing drains;
- (15) Lawn watering;
- (16) Individual residential car washing;
- (17) Flows from riparian habitats and wetlands;
- (18) Dechlorinated swimming pool discharges;
- (19) Street wash water; and
- (20) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of

North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by The Town of Gibsonville.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) Illicit Connections

- (1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
- (2) Where such connections exist in violation of this 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 one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- (3) Where it is determined that said connection:
  - (a) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
  - (b) Was made in violation of any applicable regulation or ordinance, other than this section;
- (4) The Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:
  - (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.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Gibsonville Fire Department of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Industrial or Construction Activity Discharges

Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town of Gibsonville prior to the allowing of discharges to the MS4.

### **10-7.2 Right of entry**

(A) Authority to Inspect.

Whenever necessary to make an inspection to enforce any provision of this Ordinance, or whenever the Stormwater Administrator has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Ordinance, the Stormwater Administrator may enter such premises at all reasonable times to inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the Town is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(B) Authority to Sample, Establish Sampling Devices, and Test.

During any inspection as provided herein, the Stormwater Administrator may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

### 10-7.3 Enforcement.

#### (A) Notice of Violation.

Whenever the Stormwater Administrator finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the Town or a contractor designated by the Stormwater Administrator and the expense thereof shall be charged to the violator.

#### (B) Violations Deemed a Public Nuisance

Illicit discharges and illicit connections which exist within the Gibsonville Town Limits and Extra-territorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and may be summarily abated or restored by the Town at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the Town.