

Ordinance 06-10

Lexington County

Stormwater Management Ordinance



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ORDINANCE # 06-10 Stormwater Management

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DIVISION 1 – GENERAL PROVISIONS

Sec. 1-1. Title.

This ordinance shall be known as the “Stormwater Management Ordinance of Lexington County, South Carolina.

Sec. 1-2. Authority.

This ordinance is adopted pursuant to the authority conferred upon Lexington County by the South Carolina Constitution, Act No. 194 of the Acts and Joint Resolutions of 1971 enacted by the General Assembly of the State of South Carolina, approved April 23, 1971, in 1976 South Carolina Code of Laws Sections 4-9-30, 4-9-40 and understate and Federal Stormwater Requirements.

Sec. 1-3. Jurisdiction.

The provisions of this Ordinance shall apply to all portions of the unincorporated Lexington County, as they may exist from time to time and such additional areas lying inside the limits of those jurisdictions within the incorporated areas as approved by Lexington County Council.

The floodplain management provisions of this ordinance shall apply to all areas of special flood hazard within the jurisdiction of Lexington County as identified by the Federal Emergency Management Agency in the latest versions of its Lexington County Flood Insurance Study.

Sec. 1-4. Findings.

The Lexington County Council makes the following findings:

- (a) Uncontrolled stormwater runoff may have significant, adverse impact on the health, safety and general welfare of Lexington County and the quality of life of its citizens. The potential impacts of uncontrolled stormwater can lead to the degradation of water quality and general riverine ecosystem through excessive or illegal pollutant discharges, erosion, and flooding thereby limiting or removing its designated and potential uses.
- (b) Lexington County is required by federal law [33 U.S.C 1342(p) and 40 CFR 122.26] to obtain a National Pollutant Discharge Elimination System permit from the South Carolina Department of Health and Environmental Control

(“SCDHEC”) for stormwater discharges from the Lexington County Stormwater system. The NPDES permit requires Lexington County to impose controls to reduce the discharge of pollutants in stormwater to maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are determined to be appropriate for the control of such pollutants.

(c) Additionally, certain facilities that discharge stormwater associated with an industrial activity, including construction activities, are required by the South Carolina Code of Regulations 61-9-122 to obtain NPDES permits.

Sec. 1-5. Purpose.

(a) It is the purpose of this ordinance to protect, maintain, and enhance water quality and the environment of Lexington County and the short-term and long-term public health, safety, and general welfare of the citizens of Lexington County and minimize property damage by establishing requirements and procedures to control the potential adverse effects of increased stormwater runoff and related pollutant loads associated with both future development and existing developed land. Proper management of stormwater runoff will further the purpose of this Ordinance to minimize damage to public and private property, insure a functional drainage system, reduce the effects of development on land and stream channel erosion, attain and maintain water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, maintain to the maximum extent practical predeveloped runoff characteristics of the area in terms of flow rate, volume and pollutant concentration, and facilitate economic development while mitigating associated pollutant, flooding, erosion, and drainage impacts.

(b) It is further the purpose of this ordinance to direct the development of a Stormwater Management Program. and establish legal authority to authorize Lexington County at a minimum to:

- (1) Comply with State and Federal requirements related to stormwater management developed pursuant to the Clean Water Act;
- (2) Prohibit illicit discharges to the Lexington County MS4 and receiving waters;
- (3) Control the discharge to the Lexington County MS4 and receiving waters of spills, dumping, or disposal of materials other than stormwater;
- (4) Address specific categories of non-stormwater discharges and similar other incidental non-stormwater discharges listed in the SWMP;

- (5) Require erosion and sediment controls to protect water quality on all applicable new and re-development projects;
- (6) Where necessary, require stormwater discharge rate and volume control during and following development, redevelopment, or construction;
- (7) Define and implement procedures for and carry out such procedures of site plan review and site inspection of all construction projects within Lexington County. Such procedures may include defining bonding, development phases, property transfer, ownership of the stormwater management system, and enforcing the provisions of this Ordinance;
- (8) Control the discharge to the Lexington County MS4 and receiving waters of pollutants in such quantity that water quality standards are not being met or to other wise address post-construction, long-term water quality. This includes the necessary means needed to comply with State and Federal regulations regarding stormwater management quantity and quality;
- (9) Define procedures for addressing citizen complaints within Lexington County;
- (10) Define procedures to require adequate long term operation and maintenance of Best Management Practices (BMPs);
- (11) Carry out inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the Lexington County storm sewer system and receiving waters;
- (12) Encourage to the maximum extent practicable the use new design and treatment strategies to control the release of stormwater discharges;
- (13) Encourage to the maximum extent practicable the creation of stream buffers and preservation of natural spaces to provide areas that could be used for flood storage, stormwater treatment and control, and recreation. Such areas may be required in special protection areas needed to protect, maintain, or enhance water quality and protect property from flooding problems;
- (14) Develop, implement, and enforce action plans to address pollutant load reductions required in impaired waterbodies and to comply with Total Maximum Daily Loads (TMDL) established by EPA or SCDHEC and to otherwise meet water quality standards.
- (15) Enable enforcement of all said authorizations.

- (c) It is still further the purpose of this ordinance to establish and maintain delegated review authority status from SCDHEC to the Lexington County Public Works Department for issuing Land Disturbance permits for construction projects.
- (d) The application of this Ordinance and the provisions and references expressed herein shall be the minimum stormwater and floodplain management requirements and shall not be deemed a limitation or repeal of any other powers granted by statute. In addition, if site characteristics on new development, redevelopment, and existing developments indicate that complying with these minimum requirements will not provide adequate designs or protection for local property, residents, or the environment, it is the property owner, lessee or person responsible for land disturbing activities to exceed management practices, control techniques and system, design and engineering methods and such other programs and controls as are required by the Lexington County NPDES permit.

Sec. 1-6. Construction and Scope

- (a) The provisions of this Ordinance shall apply throughout the unincorporated areas of Lexington County.
- (b) The Director of Public Works or his designee shall be primarily responsible for the coordination and enforcement of the provisions of this Ordinance, the SWMP.
- (c) The Floodplain Manager or his designee shall be primarily responsible for the coordination and enforcement of the provisions of the floodplain management sections of this Ordinance and for submittal of the Biennial Report to the Federal Emergency Management Agency (FEMA).

Sec. 1-7. Severability.

Should any word, phrase, clause or provision of this ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such declaration shall not affect this ordinance as a whole or any part hereof except that specific provision declared by such court to be invalid or unconstitutional.

Sec. 1-8. Rules of Language and Interpretation

- (a) The word "shall" is mandatory; the word "may" is permissive.
- (b) The particular shall control the general.

(c) Words used in the present tense shall include the future, and words used in the singular include the plural, and the plural the singular, unless the context clearly indicates the contrary.

(d) All public officials, bodies and agencies to which reference is made are those of Lexington County, unless otherwise indicated.

Sec. 1-9. Relationship with other laws, regulations and ordinances

Whenever the provisions of this Ordinance impose more restrictive standards than are required in or under any other law, regulation or ordinance, the requirements contained in this article shall prevail. Whenever the provisions of any other law, regulation or ordinance require more restrictive standards than are required in this article, the requirements of such law, regulation or ordinance shall prevail.

Sec. 1-10. Amendments

This Ordinance may be amended in the same manner as prescribed by law for its original adoption.

Sec. 1-11. Conflicting Ordinances Repealed

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed. This Ordinance shall prevail in any and all conflicts with guidelines, manuals, or other publications.

Sec. 1-12. Definitions.

For the purpose of this Ordinance, definitions contained in South Carolina regulations 61-9.122.2 and 72-301 are incorporated herein by reference. Where the same words are defined in both the aforementioned regulations, but are not the same, the definitions contained in R. 61-9.122.2 and 72-301 shall be used for the purposes of this Ordinance. Additional terms, phrases and words shall have the meaning given in the Appendix.

Sec. 1-12 Reserved.

DIVISION 2 – ORGANIZATION AND ADMINISTRATION

Sec. 2-1. Lexington County Stormwater Management Program.

The SWMP, developed by Lexington County to implement the provisions of this Ordinance serves as the basis for Lexington County's program implementation and administration. The SWMP, as amended from time to time by Lexington County, plan shall be viewed as an extension of this Ordinance and is hereby given identical authority to see that its requirements are both complied with and enforced.

Sec 2-2. Lexington County Floodplain Management Program

The Floodplain Management Program developed by Lexington County to comply with the National Flood Insurance Program (NFIP) serves as the basis for Lexington County's program implementation and administration. The Public Works Department is hereby given authority to develop, implement and administer this Program, as amended from time to time by Lexington County, for the life of Lexington County's participation in the NFIP.

Sec. 2-3. Coordination with Other Agencies.

The Public Works Department shall coordinate Lexington County's activities with other federal, state, and local agencies, which manage and perform functions relating to the protection of receiving waters. Authority not expressly reserved for other agencies or restricted by statute is placed with the Public Works Department for the protection and preservation of receiving waters. The Public Works Department shall coordinate with State and Federal Agencies having jurisdiction.

Sec. 2-4. Cooperation with Other Governments.

Lexington County may enter into agreements with other governmental and private entities to carry out the purposes of this ordinance.

Nothing in this Ordinance or in this Section shall be construed as limitation or repeal of any ordinances of these local governments or of the powers granted to these local governments by the South Carolina Constitution or South Carolina statutes.

Sec. 2-5. Inspection during Construction

The Public Works Department shall periodically inspect the work completed under the approved Land Disturbance Permit Application. Frequency of such inspections shall be established for all land disturbing activities within the jurisdiction of Lexington County. Project closure procedures shall include inspection procedures to assess if the work has been carried out in accordance with the permit and this Ordinance. The project closure process may consider phasing so that portions of a project can be closed at various time periods, provided that the necessary documentation is submitted for approval. This process and documentation requirements are detailed in the Land Development Manual.

Sec. 2-6. Right-Of-Entry

- (a) The Director of Public Works or his designee shall have right-of-entry on or upon the property of any person subject to this Article and any permit/document issued hereunder. The Director of Public Works or his designee shall be provided ready access to all parts of the premises for the purposes of inspecting, monitoring, sampling, inventorying, examining and copying of records, and performing any other duties necessary to determine compliance with this Ordinance.
- (b) Where a the property owner or lessee has security measures in force requiring proper identification and clearance before entry onto the premises, the person shall make necessary arrangements with the necessary parties so that, upon presentation of suitable identification, the Director of Public Works or his designee will be permitted to enter without delay for the purposes of performing such responsibilities identified in (a).
- (c) The Public Works Department shall have the right to set up on the person's property such devices as are necessary to conduct sampling and/or metering of the person's operations as they relate to stormwater management.
- (d) Any temporary or permanent obstruction to access to the necessary areas to perform the said responsibilities shall be removed promptly by the property owner or lessee at the written or verbal request of the Director of Public Works or his designee. The costs of clearing such access shall be borne by the property owner or lessee.
- (e) In cases where an imminent threat to the health or safety of the general public or the environment is suspected, the Director of Public Works or his designee shall perform said responsibilities to determine if immediate action is necessary. Such responsibilities shall be made with or without the consent of the property owner or lessee. If such consent is refused, the Director of Public Works or his designee may seek issuance of an administrative search warrant or other enforcement measures authorized in this Ordinance to remove such threat. In such cases, the property owner or Lessee, as the case may be, shall reimburse the County for its direct and related expenses. If the property owner or Lessee, as the case may be,

fails to reimburse the County, the County is authorized to file a lien for said costs against the property or the Lessee's leasehold interest, as the case may be, and to enforce the lien by judicial foreclosure proceedings.

Sec. 2-7 **Reserved.**

DIVISION 3 – STORMWATER QUANTITY AND QUALITY MANAGEMENT REQUIREMENTS

Sec. 3-1. **Regulations.**

- (a) Federal regulations governing stormwater management, as specified in State Code of Laws 40 C.F.R. 122.26, and State Code of Regulations R. 61-9 et. seq. and R. 72.300 et seq. are adopted as the minimum requirements for the management of stormwater within Lexington County as defined in the respective regulations.
- (b) The Public Works Department shall be responsible for day to day coordination, implementation and enforcement of this Ordinance and the SWMP and well as the long-term management of the County's drainage. Without limitation, the Public Works Department shall have the following specific authority:
 - (1) To issue any permit, certification or license that may be required to comply with this Ordinance and Federal and State regulations pertaining to stormwater management.
 - (2) To deny a facility connection to the MS4 or discharge to waters of the State if State, Federal Regulations and this Ordinance are not met.
 - (3) To create and enact the Lexington County Land Development Manual as an extension of this ordinance. The Development Manual shall be used to convey design and engineering standards, construction management processes and procedures, and other aspects necessary for compliance with this Ordinance. The original adoption and subsequent revisions of this Manual shall include approval by County Council.
 - (4) To require the submittal of a Land Disturbance Permit Application for all applicable land disturbing activities, to include a plan to control stormwater and pollutants and other components detailed in the Lexington County Land Development Manual.

- (5) Provide for the protection of the natural resources of sensitive and highly susceptible areas to the impacts of excessive and polluted stormwater. This may include the creation of watershed-specific plans that will limit or otherwise direct land development activities and require the reduction of excessive and polluted stormwater from any area.
- (6) To require the development of a Stormwater Pollution Prevention Plan (SWPPP) for all applicable new and re-development projects and enforcement of such SWPPP.
- (7) To approve land disturbing plans and to require as a condition of such approvals, structural or non-structural controls, practices, devices, operating procedures, or other mechanisms to protect public and private property from flooding and erosion and attain TMDL-mandated pollutant load reductions and water quality standards.
- (8) To require performance bonds when necessary of any person to secure that person's compliance with Land Disturbance Permit, as well as other permits, certificate, license or authorization issued or approved by the Public Works Department pursuant to this Ordinance, the SWMP and Federal and State laws. The Public Works Department shall develop a process that organizes the closure of bonds and Land Disturbance permits to accommodate development phases and property ownership transfer.
- (9) To comply with all Federal and State regulatory requirements, promulgated or imposed pursuant to the Clean Water Act and the SC Stormwater Management and Erosion Reduction Act, applicable to the management of stormwater discharges to or from the Lexington County MS4.
- (10) To conduct all activities necessary to carry out the SWMP and other requirements included in the Lexington County NPDES permit, the SWMP and this Ordinance, and to pursue the necessary means and resources required to properly fulfill this responsibility.
- (11) To develop and implement strategic plans for complying with TMDLs. Such plans shall include an initial due diligence procedures to fully assess the problem and alternative solutions so as to proceed with cost-effective solutions.
- (12) To enact special cost- and credit-sharing programs that would assist land developers and the Public Works Department in meeting the water quantity and quality discharge requirements of this Ordinance and the Land Development Manual.

- (13) To enter into agreements with other governmental entities or private persons or entities to provide or procure services to conduct and carry out such activities as authorized by this Ordinance.
- (14) To maintain the stormwater system consistent with the provisions of the Lexington County NPDES permit, the SWMP and this Ordinance.
- (15) To direct, review and recommend for approval by Lexington County Council, the stormwater management operating budget.
- (16) To direct, review and recommend for approval by Lexington County Council necessary changes to the existing stormwater management programs.
- (17) To determine appropriate fees, to impose penalties, and to take necessary and appropriate actions to collect any fee or enforce any penalty assessed pursuant to this Ordinance. The Public Works Department shall seek approval from County Council on development and revision of the fee and penalty schedules through resolution from the Director.
- (18) To require encroachment permits as necessary.

Sec. 3-2. Prohibitions and Exemptions

No person shall (1) develop any land, (2) engage in any industry or enterprise, (3) construct, operate or maintain any landfill, hazardous waste treatment, disposal or recovery facility, or any other industrial or related facility, (4) dispose of any hazardous or toxic substance or other pollutant or (5) otherwise prevent the transport of sediment and other pollutants associated with stormwater runoff beyond property boundaries without having provided for compliance with this Ordinance.

The following development activities are exempt from the provisions of this Ordinance.

- (1) Land disturbing activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices and minimum erosion protection measures established by the South Carolina Forestry Commission pursuant to Section 48-18-70 of the 1976 Code of Laws of South Carolina, as amended.
- (2) Activities undertaken by persons who are otherwise regulated by the provisions of Chapter 20 of Title 48, the South Carolina Mining Act.
- (3) Certain land disturbing activities undertaken by persons who are exempt from the provisions of the Stormwater Management and Sediment Reduction

Act as set forth in Section 48-14-40 of the 1976 Code of Laws of South Carolina, as amended.

- (4) Land disturbing activities on agricultural land for production of plants and animals, including but not limited to: forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts; dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, swine, horses, ponies, mules, or goats, including the breeding and grazing of these animals; bees, fur animals, and aquaculture. The construction of an agricultural structure that requires the disturbance of one or more acres, such as, but not limited to, broiler houses, machine sheds, repair shops, coops, barns, and other major buildings shall require the submittal and approval of a Land Disturbance permit prior to the start of the land disturbing activity.

Sec. 3-3. Design and Engineering Standards.

Design and engineering standards define the desired level of quality and performance for stormwater management systems on all land disturbance projects and existing facilities in order to meet the purpose of this Ordinance. The standards establish the minimum technical requirements needed to express compliance through calculations, maps and drawings, or others as necessary.

The Public Works Department is authorized to develop and adopt policies, criteria, specifications, and standards for the proper implementation of the requirements of this Ordinance, Federal and State laws and the SWMP and to provide a sound technical basis for the achievement of stormwater management, including water quality and quantity objectives. These standards shall be presented for use in the Land Development Manual. The standards defined in the most current version of the Manual shall serve as the requirements to meet this Ordinance.

It shall be the responsibility of the property owner, lessee or person responsible for land disturbing activities to provide adequate controls to meet the design and engineering standards.

Sec 3-4. Land Disturbance Permit Application Process

All land disturbing activities shall require the creation and submittal of a Land Disturbance Permit Application for review by the Public Works Department. The entire application process and requirements shall be detailed in the Land Development Manual.

It shall be the responsibility of the applicant (property owner, lessee or person responsible for land disturbing activities) to provide a complete Land Disturbance

Application Package that meets all the requirements of this Ordinance, the SWMP, and other State and Federal regulations.

Sec. 3-5. Land Development Manual

To establish the minimum requirements, processes and guidance on the design, evaluation and implementation of land disturbing or pollutant discharging activities and stormwater management conveyances and facilities in Lexington County, The Public Works Department is authorized to develop and adopt additional policies, criteria, processes, specifications, and standards for the proper implementation of the requirements of this Ordinance, Federal and State laws and the SWMP in a Land Development Manual. The Manual shall include design standards, procedures and criteria for conducting hydrologic, hydraulic, pollutant load evaluations, and downstream impact for all components of the stormwater management system. Although the intention of the manual is to establish uniform design practices, it neither replaces the need for engineering judgment nor precludes the use of information not presented. Other accepted engineering procedures may be used to conduct hydrologic, hydraulic and pollutant load studies if approved by the Public Works Department.

The Design Manual shall contain at a minimum the following components:

- (a) Permit application and site project closure processes;
- (b) Permit approval requirements;
- (c) Hydrologic, hydraulic, and water quality design criteria (i.e., design standards) for the purposes of control runoff rate, volume, and pollutant load. Suggested reference material shall be included for guidance in computations needed to meet the design standards;
- (d) Information and requirements for new and re-development projects in special protection areas that will be created to address TMDLs, known problem areas and other areas necessary to protect, maintain, and enhance water quality and the environment of Lexington County and the public health, safety, and general welfare of the citizens of Lexington County.
- (e) Land Disturbance Permit Application requirements;
- (f) Construction document requirements;
- (g) Required and recommended inspection and maintenance schedules and activities for all components of the stormwater management system, including construction-related BMPs.

The Manual may be updated periodically to reflect the advances in technology and experience gathered with time. The most current version shall be the used by Lexington County for conveyance and BMP design, construction and maintenance.

Sec. 3-6 Ownership and Lexington County Participation

Prior to the issuance of a Land Disturbance Permit, the responsible party shall execute a legal document to cover all necessary maintenance of the stormwater management system. Property owners and Lessees are responsible for maintaining stormwater quantity and quality facilities and all conveyance structures located on commercial property. Lexington County will accept maintenance responsibilities of stormwater systems in residential areas after the two year warranty/guarantee period.

The property owner or lessee shall grant to Lexington County a perpetual, non-exclusive, transferable easement from a public street that allows for public inspection and emergency repair of all components of the drainage system, including all conveyances and all water quantity and quality control facilities. At the request of the Director of Public Works or his designee, the property owner or lessee shall grant to Lexington County right-of-ways.

Lexington County shall own and maintain all drainage system components that are constructed under or collect stormwater runoff from a County-owned road.

Stormwater quantity and quality control facilities shall be located so that required easements can be effectively used and ownership and maintenance responsibility can be clearly defined in deeds and plats.

Lexington County shall reserve the right to accept or deny ownership and maintenance of all or part of a stormwater system.

The Covenants shall specify minimum maintenance requirements to be performed at necessary intervals by the property owner or lessee, as the case may be. Failure to perform such activities will constitute a violation of this Ordinance.

If a facility or any portion of the stormwater system is not being maintained as required, the Director of Public Works or his designee will notify the property owner or Lessee, as the case may be, in writing. If property owner or Lessee, as the case may be, fails to repair or maintain the facility within the allotted time, the Public Works Department is authorized to precede with applicable enforcement proceedings. The Public Works Department may authorize the work to be performed by the County or others. In such cases, the property owner or Lessee, as the case may be, shall reimburse the County for its direct and related expenses. If the property owner or Lessee, as the case may be, fails to reimburse the County, the County is authorized to proceed with applicable judicial proceedings.

A property owner or lessee may hire or contract others to perform necessary maintenance actions, but Lexington County will hold the person named in the Covenants as the responsible party should legal actions described in (g) be necessary.

When the Director of Public Works or his designee determines that additional storage capacity or pollution reduction beyond that required by the applicant for on-site stormwater management is necessary in order to enhance or provide for the public health, safety and general welfare, to correct unacceptable or undesirable existing conditions or to provide protection in a more desirable fashion for future development, Lexington County may:

- (1) require that the applicant grant any necessary easements over, through or under the applicant's property to provide access to or drainage for such a facility;
- (2) require that the applicant obtain from the owners of property over, through or under where the stormwater management facility is to be located, any easements necessary for the construction and maintenance of same (and failing the obtaining of such easement Lexington County may, at its option, assist in such matter by purchase, condemnation, dedication or otherwise, and subject to (3) below, with any cost incurred thereby to be paid by Lexington County);
- (3) to implement the provision of additional stormwater control, both Lexington County and developer must be in agreement with the proposed facility that includes the additional storage or treatment capacity.

Sec. 3-7 Maintenance, Construction, Inspection, and Project Closure

Maintenance of the stormwater management system is critical for the achievement of its purpose of controlling stormwater runoff quantity and quality and the short-term and long-term public health, safety, and general welfare of the citizens of Lexington County.

A permanent maintenance plan for the stormwater management system shall be included in the Land Disturbance Permit Application. As part of the maintenance plan, the property owner or lessee of such facility shall specifically agree to be responsible for permanent maintenance. In order to transfer maintenance responsibility, a letter of acceptance by the new owner(s) accepting permanent maintenance responsibility shall be filed with the Public Works Department.

As part of the Land Disturbance Permit Application, the applicant shall submit construction and BMP maintenance and inspection schedules. Required and

recommended schedules for BMP maintenance and inspection are to be provided in the Land Development Manual.

If the construction is to be phased, no stage work, related to the construction of stormwater management facilities shall proceed until the preceding stage of work is completed in accordance with the approved Land Disturbance Permit. The procedure for construction phases beginning and ending and what constitutes such conditions shall be developed and detailed in the Land Development Manual.

The permittee shall notify the Director of Public Works or his designee before commencing any work to implement the approved Land Disturbance Permit and upon completion of any phase or designated component of the site. Notification schedules shall be provided for in the Land Development Manual. All self-inspections, maintenance actions, BMP replacements, and changes to the approved Land Disturbance Permit shall be documented and presented upon request to the Director of Public Works or his designee.

The permittee shall notify the Public Works Department that the site, or portion of the site, is sufficiently stabilized to begin the closure process. If portions of the site are to close prior to others (e.g. phased construction), a proposed schedule shall be included in the approved Land Disturbance Permit. The closure process shall at a minimum require:

- a. a final plat showing the location of all stormwater easements and responsible party for the maintenance of the system. References shall be made to any all ownership and lessee Covenants established for ensuring the maintenance and long term functioning of the stormwater system. The plats shall also show conflicts with other new or existing easement;
- b. documentation from the owner of the approved Land Disturbance Permit, including any revisions and as-built construction drawings, inspection reports, and stormwater system ownership transfers;
- c. that all components of the stormwater management system meet the approved Land Disturbance Permit and specifications or achieve the function for which they were designed. In addition, the site shall be cleared of all construction trash and debris from the stormwater system and the site as a whole;
- d. a final inspection conducted by the Director of Public Works or his designee

The project closure process must be completed by the Public Works Department prior to any of the following actions, as applicable:

- (1) The use or occupancy of any newly constructed components of the site.

- (2) Acceptance of any road into the Official Lexington County Road Inventory or designation of road owner and associated stormwater management system.
- (3) Release of any bond held by Lexington County.
- (4) Approval and/or acceptance for recording of map, plat or drawing, the intent of which is to cause a division of a single parcel of land into two or more parcels.

Sec. 3-8. Watercourse Protection

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

To assist in the compliance with State and Federal laws and regulations, the Public Works Department may develop special protection areas which require additional control of stormwater quality and quantity than provided by minimum design standards. Such areas may consist of watershed corresponding to adopted TMDLs, known flooding problems and pollution impairments, or other areas necessary to protect, maintain, and enhance water quality and the environment of Lexington County and the public health, safety, and general welfare of the citizens of Lexington County. These areas can be expected to change with time as development continues and federal and state law demands.

New stormwater systems created as the result of any new and re-development project shall be connected to the existing drainage system in a manner to so as not degrade the integrity of the existing system, whether natural or manmade, and shall have demonstrated this to the Public Works Department prior to issuance of the project closure. Discharge points shall be confined to connections with an existing natural or man-made drainage system. When stormwater discharges are to flow into collection systems not owned and maintained by Lexington County, the owners of all such systems, private or public, shall be notified and provided the opportunity to review such plans. The owners of these systems shall maintain the right to disapprove new connections to their system. Private systems shall include all those on private property, including private controls. Inline ponds shall be included as jurisdictional waters of State and are not included as private systems, but instead protected by this Ordinance as any other water of the State.

Sec. 3-9. Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation and maintenance, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or waters of the State, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials, including but not limited to oils, greases, engine fluids and fuels, chemicals, herbicides and pesticides, and fertilizers, said person shall immediately notify all necessary agencies of the occurrence via emergency dispatch services. This shall include the Lexington County Public Safety Department and Public Works Department. Notifications shall be confirmed by written notice addressed and mailed to the Public Works Department within **5** business days of the spill event. In the event of a release of non-hazardous materials, said person shall record an onsite written record of the spill. The owner or operator of such establishment shall retain an on site written record of any and all spills that will include information on cleanup measures taken and the actions to prevent its recurrence. Such records shall be retained for at least **5** years.

Failure to provide notification of a release as provided above is a violation of this ordinance.

The owner, operator, or other designated responsible party will bear all costs of cleaning up any spills. In the event that Lexington County departments clean up a spill, the owner, operator, or designated responsible party will be required to reimburse the County for funds used in the clean-up.

Sec. 3-10. Reserved.

DIVISION 4 – DETECTION AND REMOVAL OF ILLICIT CONNECTIONS AND DISCHARGES AND IMPROPER DISPOSAL

Sec. 4-1. Illicit Connections, Illicit Discharges and Improper Disposal.

- (a) It is unlawful for any person to connect any pipe, open channel, or any other conveyance system that discharges anything, except stormwater or unpolluted water which is approved by the Public Works Department, into the MS4 or a Water of the State.

- (b) It is unlawful for any person to continue the operation of any such illicit connection regardless of whether the connection was permissible when constructed. Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to the satisfaction of the Director of Public Works or his designee and any other federal, state, or local agencies or departments regulating the discharge.
- (c) It is unlawful for any person to throw, drain, or otherwise discharge to the County's MS4 or to the waters of the State or to cause, permit, or allow a discharge that is composed of anything except stormwater or unpolluted water which is approved by the Public Works Department.
- (d) The Director of Public Works or his designee may require controls for or exempt from the prohibition provision in (a), (b), and (c) above the following, provided that a reasonable determination is made that they are not a significant source of pollution:
 - (1) Unpolluted industrial cooling water, but only under the authorization and direction of the Director of Public Works or his designee and appropriate NPDES permit.
 - (2) Water line flushing performed or required by a government agency, diverted stream flows, rising ground waters, and unpolluted pumped ground waters, and unpolluted ground water infiltration.
 - (3) Discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual car washing, dechlorinated swimming pool discharges, flows from riparian habitats and wetlands, and street wash water.
 - (4) Discharges or flows from fire fighting.
- (e) Lexington County may develop procedures for allowing other non-stormwater discharges not listed in (d) (1-4).
- (f) In the event of an accidental discharge or an unavoidable spill into the Lexington County MS4 of any pollutant, the person concerned shall inform the Lexington County Director of Public Works or his designee on the same business day, or no longer than 24 hours, of the nature, quantity and time of occurrence of the discharge. The person concerned shall take immediate steps to contain the waste, treat the waste or other actions to minimize affects of the discharge on the MS4 and receiving waters. The person shall also take immediate steps to ensure no recurrence of the

discharge. The owner, operator, or other designated responsible party will bear all costs of cleaning up any spills. In the event that Lexington County departments clean up a spill, the owner, operator, or designated responsible party will be required to reimburse the County for funds used in the clean-up.

Sec. 4-2. Detection of Illicit Connections and Improper Disposal.

- (a) The Public Works Department shall take appropriate steps to detect and eliminate illicit connections to the Lexington County Stormwater System, including the adoption of a program to screen illicit discharges and identify their source or sources, perform inspections, and levy fines if not removed.
- (b) The Public Works Department shall take appropriate steps to detect and eliminate improper discharges. These steps may include programs to screen for disposal, programs to provide for public education and public information, inspection, levy fines, and other appropriate activities to facilitate the proper management and disposal of used oil, toxic materials, and household hazardous waste.

Sec 4-3. Waste Disposal Prohibitions.

- (a) No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, or maintained, in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the storm drain system, or water of the U.S., any refuse, rubbish, garbage, litter, pet fecal matter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. Yard debris, including natural foliage, may be deposited in the public right of way but not in or on any stormwater conveyance structures, including inlets and gutters, but only if a collection service is available. Wastes in proper waste receptacles may be placed in the street for collection, but again only if collection by or through the County is in place. No waste or yard debris shall be placed in the street without such a collection service.

Note:

Sec. 4-4. Discharges in Violation of Industrial or Construction Activity NPDES Storm Water Discharge Permit.

- (a) 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 Director of Public Works or his designee prior to or as a condition of the issuance of a Land Disturbance Permit, and/or a building permit.

Sec. 4-5. Reserved.

DIVISION 5 – MONITORING AND INSPECTIONS

Sec. 5-1. Monitoring.

- (a) The Public Works Department may monitor the quantity and concentration of pollutants in stormwater discharges from the areas and/or locations designated in Lexington County's SWMP.

Sec. 5-2. Inspections.

- (a) The Director of Public Works or his designee, bearing proper credentials and identification, may enter and inspect all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to effectuate the provisions of this ordinance and the SWMP programs. The Director of Public Works or his designee shall duly notify the owner of said property or the representative on site and the inspection shall be conducted at reasonable times.
- (b) Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the inspector shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The Director of Public Works or his designee shall document the refusal and the grounds for such and promptly seek appropriate compulsory process.
- (c) In the event that the Director of Public Works or his designee reasonably believes that discharges from the property into the Lexington County MS4 may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time and without notice to the owner of the property or a representative on site. The inspector shall present proper credentials upon reasonable request by the owner or representative.

- (d) Inspection reports shall be maintained in a permanent file located in the Public Works Department's office.
- (e) At any time during an inspection or at such other times as the Public Works Department or his designee may request information from an owner or representative, the owner or representative may identify areas of his facility or establishment, material, or processes that contain or might reveal a trade secret. If the Director of Public Works or his designee has no clear and convincing reason to question such identification, all material, processes and all information obtained within such areas shall be conspicuously labeled "CONFIDENTIAL – TRADE SECRET." The trade secret designation shall be freely granted to any material claimed to be such by the owner or representative unless there is clear and convincing evidence for denying such designation. In the event the Director of Public Works or his designee does not agree with the trade secret designation, the material shall be temporarily designated a trade secret and the owner or representative may request an appeal of the Public Works Department's decision in the manner in which all such appeals are handled in this ordinance.

Sec. 5-3 Reserved.

DIVISION 6 – ENFORCEMENT, PENALTIES, AND ABATEMENT

Sec. 6-1. Enforcement

- (a) When the Director of Public Works or his designee finds that work done under any Land Disturbance permit for new and re-developments issued under the provisions of this Ordinance fails to conform to the approved Land Disturbance Permit, or that the work has not been done, the Director of Public Works or his designee may, as deemed necessary and after due process, by written Notice of Violation (NOV), direct conformity to said Permit(s). Actions may include:
 - (1) issuing a written order to comply, to suspend work, or to revoke the permit issued;
 - (2) seeking redress through legal action;
 - (3) withholding the release of permanent electric power to the site; and/or
 - (4) withholding other needed permits for the site.

The NOV shall serve as a legal requirement to remove the violation(s). The written NOV shall be provided to the owner or the person responsible for land disturbing activities stating the nature of the violation, the amount of time in which to correct deficiencies, the date on which an inspection will be made to make sure that corrective action has been performed, and the proposed penalty structure if corrective action is not taken by the inspection date. After the issuance of the NOV and following due process, the Director of Public Works or his designee is hereby given the authority to levy fines as described in this section.

- (b) When the Director of Public Works or his designee determines that an owner has failed to maintain a stormwater management facility, written NOV shall be provided to the owner or the person in possession, charge or control of such property stating the nature of the violation, the amount of time in which to correct deficiencies, the date on which an inspection will be made to make sure that corrective action has been performed, and the proposed penalty structure if corrective action is not taken. It shall be sufficient notification to deliver the notice to the person to whom it is addressed, or to deposit a copy of such in the United States Mail, properly stamped, certified and addressed to the address used for tax purposes. The NOV may address the entire site, or a specific portion of the site so as not to unduly impede the development of areas being managed for the control of stormwater runoff and associated pollutants.
- (c) When the Director of Public Works or his designee determines that an owner of any property is causing or partially causing flooding, erosion, or non-compliance with water quality standards or this Ordinance, upon providing valid proof of such impacts, the Director of Public Works or his designee can require owners to remove the proven impact in a concerted, prudent manner. A written NOV shall be issued to the owner containing the information stated above. Following the issuance of the NOV and due process, the Director of Public Works or his designee is hereby given the authority to levy fines as described in this section.
- (d) The County Attorney is hereby directed to take all legal actions necessary to correct situations described in (a), (b) and (c), including actions that are necessary to remove from the property such objectionable conditions constituting non-compliance with this Ordinance.
- (e) Nothing contained in this Ordinance shall impair the right or ability of the County Attorney to exercise any and all other remedies available, at law or in equity, including without limitation, the pursuit of injunctive relief, under emergency circumstances where there exists the danger of bodily injury or death.

- (f) The authorized enforcement agency or its appointed agent may obtain injunctive relief to enjoin violations of the provisions of this Ordinance, and any person damaged as a result of such violations may, upon a proper showing of such damages, obtain payment therefore by a civil action.
- (g) This Ordinance may be enforced by any other remedy of law or equity that the Public Works Department is authorized to pursue, to include the authorities and powers conferred to local governments by the General Assembly of South Carolina. The penalties and other remedies provided in this Ordinance are cumulative and not exclusive, and may be independently and separately pursued against the same person for the activity constituting a violation of this Ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies in other provisions of this Code or other laws and regulations.
- (h) The Department of Public Works shall provide due process into the enforcement of violations so as to provide owners, lessee, and other responsible parties the abilities to resolve said violations in a timely matter before facing fines and civil and criminal penalties. It is the intent of this Ordinance that violators be given appropriate due processes.

Sec. 6-2. Civil Penalties

Any person violating any provision of this ordinance shall be subject to a civil penalty subject to the penalty jurisdiction of magistrate's Court. Each separate day of a violation, constitutes a new and separate violation.

Sec. 6-3. Additional Legal Measures

- (a) Where Lexington County is fined and/or placed under a compliance schedule by the state or federal government for a violation(s) of its NPDES permit, and Lexington County can identify the person(s) who caused such violation(s) to occur, Lexington County may pass through the penalty and cost of compliance to that person(s).
- (b) The Lexington County Attorney may institute injunctive, mandamus or other appropriate action or proceedings at law or equity, including criminal conviction, for the enforcement of this Ordinance or to correct violations of this Ordinance, and any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus or other appropriate forms of remedy or relief.

Sect. 6-4. Corrective Action

In the event a violation of this Ordinance has not been corrected within the applicable time period for correction, Lexington County, or its contractor, may enter upon the lot or parcel of land and correct the violation, and the costs incurred as a result of such action (including inspection, administration, labor and equipment costs) shall be collected from the bond, if in place and sufficient to cover such costs, or shall become a lien upon the property and shall be collected in the same manner as Lexington County taxes are collected.

Sect. 6-5. Stop Work

The Director of Public Works, his designee, or other authorized personnel may issue a stop work order if it is found that a land disturbance activity is being conducted in violation of this Ordinance.

The stop work order may allow or require correction of NOV issues, but shall otherwise stop all other project related activities. Any person in violation of a stop work order is subject to payment of all fees, bonds, and penalties prior to the lifting of the stop work order.

Sect. 6-6. Permit Suspension and Revocation

A Land Disturbance permit may be suspended or revoked if one or more of the following violations have been committed:

- (a) violations of the conditions of the Land Disturbance Permit Application approval,
- (b) construction not in accordance with the letter or intent of the approved plans,
- (c) non-compliance with correction notice(s) or stop work order(s), or
- (d) the existence of an immediate danger to a downstream area in the judgment of the Director of Public Works or his designee.

Sect. 6-7 Criminal Penalties

In addition to any applicable civil penalties, any person who negligently, willfully or intentionally violates any provision of this Ordinance shall be guilty of a misdemeanor and shall be punished subject to the penalty jurisdictional of Magistrate Court. Each day of a violation shall constitute a new and separate offense.

Sec. 6-8 **Reserved.**

DIVISION 7 - THE STORMWATER BOARD OF APPEALS

Sec. 7-1 **Creation of the stormwater advisory board**

The stormwater advisory board is hereby created for Lexington County and shall be referred to in this division as the board. It shall consist of nine members who are qualified by experience and training. The board shall consist of one professional engineer licensed in South Carolina, one developer, one contractor, two environmental stewards, two environmental consultants, and two stormwater professionals the board shall be appointed by Lexington County Council. No person holding any other public office or position in Lexington County or a municipality within the county shall be eligible to serve on the board concurrently.

Sec. 7-2 **Terms of office of board members**

The members of the board shall serve for overlapping four-year terms, or until their respective successors are appointed. Lexington County Council shall maintain a schedule of staggered appointments with the terms of at least two members expiring each year.

Sec. 7-3 **Removals and vacancies**

A member of the board may be removed from the board by the county council for continued absence or other just causes. Any member being so removed shall be provided, upon his request, a public hearing on the removal decision before the county council. Vacancies on the board shall be filled (for the unexpired term of those members whose positions have become vacant) in the same manner as the appointment of a new member.

Sec. 7-4 **Election of officers**

The board shall elect from its members its own chairman and vice-chairman, who shall serve for one year. The public works director or his designee shall appoint a secretary to serve the board, who may be an employee of Lexington County.

Sec. 7-5 **Powers of the board**

The board is hereby vested with the following powers:

- (a) To hear and make recommendations to the director of public works as to appeals where it is alleged in writing that there is an incorrect interpretation of any order, requirement, decision, or determination made

by the director of public works or his designee in carrying out the enforcement of this division and Chapters 1-5 of the Land Development Manual.

- (b) To hear and make recommendations to the director of public works upon applications for a variance from this division and Chapters 1-5 of the Land Development Manual, where a literal enforcement of these regulations will, in an individual case, result in an unnecessary hardship. A variance may grant relief from any of the regulations as outline in the divisions and chapters above.
- (c) To hear and make recommendations to the director of public works as to all matters referred to by provisions of this division and Chapters 1-5 of the Land Development Manual Ordinance.

Sec. 7-6 Meetings of the board

The board shall meet at least once every three months when there are appeals or applications for variances. Special meetings may be held at the call of the chairman provided that at least a 24-hour notice of such a meeting is given to every member.

Sec. 7-7 Rules and proceedings of the board

The board shall adopt rules for the conduct of its meetings. Such rules shall include at least the following requirements:

- (a) The presence of five members shall constitute a quorum and motions shall pass or fail by the majority vote of those members actually voting. Motions which receive an equal number of votes for and against shall be deemed to fail. Only members in attendance at a meeting shall be eligible to vote upon motions before the board. Proxy votes shall not be used.
- (b) All meetings shall be open to the public and the Freedom of Information Act shall be applicable to all proceedings.
- (c) The board may call upon any other agency of Lexington County for information in the performance of its duties and it shall be the duty of such other agency to render such information to the board as may be reasonably required.
- (d) An appeal must be filed within 30 days from the date of refusal by the director of public works or his designee to issue a land disturbance permit or certify compliance with this division and Land Development Manual.

- (e) Any member of the board who shall have a direct or indirect interest in any property which is the subject of, or affected by, a decision of the board shall be disqualified from participating in the discussion, decision, or proceedings of the board in connection with that case.

Sec. 7-8 Application for appeals or variances

A written application for a appeal or variance shall be filed with the director of public works or his designee by the property owner or his designated agent or the aggrieved party. Copies of the application shall be transmitted to the members of the board. A fee established by county council shall accompany every application.

Sec. 7-9 Standards for variances

The board shall consider the following factors in making its recommendation:

- (a) Are there extraordinary and exceptional conditions pertaining to the particular piece of property?
- (b) Do these conditions generally apply to other properties in the vicinity?
- (c) Because of these conditions, would the application of the Ordinance and Land Development Manual as defined in section 66-374, to the particular piece of property effectively prohibit or unreasonably restrict the utilization of the property.
- (d) Would authorization of a variance be of substantial detriment to adjacent property or to the quality of life for the residents of the county?
- (e) Would authorization of a variance cause noncompliance of the requirements set forth for the Small Municipal Separate Storm Sewer Systems (MS4) program?
- (f) Would authorization of a variance impede standard design requirements which are recognized for criteria of public safety?

Sec. 7-10 Decisions

Every recommendation of the board shall be given to the director of public works. It shall be in writing and shall indicate the vote of the recommendation. The director of public works shall consider the recommendation but the director of public works shall make the final decision on the appeal.

Sec. 7-11 Appeal of director of public works decision.

Any appeal from the decision of the director of public works shall be as provided by law.

DIVISION 8 – CHARGES AND FEES

Sec. 8-1. Funding.

In addition to all other charges, fees, and penalties, Lexington County shall have the right to develop and impose a Stormwater Service Fee to fund implementation of this Stormwater Management Ordinance and its associated programs and plans. Establishment and revision of such fees shall be approved by the Lexington County Council.

Sec. 8-2. Connection to Conveyances.

The Public Works Department shall have the right to establish a schedule of appropriate fees for any person or property owner establishing a new discharge to waters of the State within Lexington County or to a wet weather conveyance. Such fee shall be payable as part of any permit application or submission, regulating the discharge of stormwater runoff (i.e. plan review fees). Permit fees shall be established on the basis of facility classes relating to the quantity and quality of permitted discharge. Establishment and revision of such fees shall be approved by the Lexington County Council.

Sec.8-3 Plan Review.

Costs associated with plan review of land development construction documents other than those routinely performed by the Stormwater Division may be assessed a fee representing the cost in labor, equipment, and materials expended in the conduct of the review. Establishment and revision of such fees shall be approved by the Lexington County Council.

Sec. 8-4. Field inspection.

Costs associated with field inspection of land development or construction activities other than those routinely performed by the Public Works Department as part of compliance monitoring may be assessed a fee representing the cost in labor, equipment, and materials expended in the conduct of the inspection. Establishment and revision of such fees shall be approved by the Lexington County Council.

DIVISION 9– FLOODPLAIN MANAGEMENT PROGRAM

Sec. 9-1. Compliance

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

Sec. 9-2. Duties.

- (a) The Floodplain Manager shall be responsible for day to day coordination, implementation and enforcement of this section of the Ordinance and the Floodplain Management Program. Without limitation, the Floodplain Manager shall have the following specific powers and duties:
 - (1) Review all development permits to assure that the requirements of this ordinance have been satisfied.
 - (2) Advise permittees that additional federal or State permits may be required, and if specific federal or State permits are known, require that copies of such permits be provided and maintained on file with the development permit.
 - (3) Watercourse alterations
 - a) Notify adjacent communities and the South Carolina Department of Natural Resources, Land Resources and Conservation Districts Division, State Coordinator for the National Flood Insurance Program, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
 - b) Maintain written reports of maintenance to show that maintenance has been provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished. This maintenance must consist of a comprehensive program of periodic inspections, and routine channel clearing and dredging, or other related functions. The assurance shall consist of a description of maintenance activities, frequency of performance, and the local official responsible for maintenance performance. Records shall be kept on file for FEMA inspection.
 - c) If the proposed project will impact the configuration of the watercourse, floodway, or base flood elevation for which a detailed Flood Insurance Study has been developed, the applicant shall apply for and must receive

approval for a Conditional Letter of Map Revision with the Federal Emergency Management Agency prior to the start of actual construction.

- d) Within 60 days of completion of an alteration of a watercourse, referenced in the certification requirements, the applicant shall submit as-built certification, by a registered professional engineer, to the Federal Emergency Management Agency.
- e) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of the Stormwater Design Manual are met.
- f) Require development proposals for proposed developments prior to signing off on and CLOMRs or LOMRs.
- g) Cooperate with neighboring communities with respect to the management of adjoining floodplains and/or flood-related erosion areas in order to prevent aggravation of existing hazards.
- h) Notify adjacent communities prior to permitting substantial commercial developments and large subdivisions to be undertaken in areas of special flood hazard and/or flood-related erosion hazards.
- a. Certification requirements
 - 1) Obtain and review actual elevation (in relation to mean sea level) of the lowest floor of all new or substantially improved structures, in accordance with administrative procedures outlined in the Land Development Manual.
 - 2) Obtain the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with the floodproofing certification outlined in this section.
 - 3) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the non-residential construction requirements outlined in the Land Development Manual.
- j) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- k) Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations for flood protection

elevations (as found on an elevation profile, floodway data table, etc.) shall prevail. The correct information should be submitted to FEMA as per the map maintenance activity requirements outlined in the Land Development Manual.

- l) When base flood elevation data or floodway data has not been provided in accordance with Section # Lexington County Floodplain Management Program, obtain, review, and reasonably utilize best available base flood elevation data and floodway data available from a federal, State, or other source, including data developed pursuant to the standards for subdivision proposals outlined in the Land Development Manual, in order to administer the provisions of this ordinance. Data from preliminary, draft, and final Flood Insurance Studies constitutes best available data from a federal, state, or other source. Data must be developed using hydraulic models meeting the minimum requirement of an NFIP approved model. If an appeal is pending on the study in accordance with 44 CFR Ch. 1, Part 67.5 and 67.6, the data does not have to be used.
- m) When the exact location of boundaries of the areas special flood hazards conflict with the current, natural topography information at the site the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. The local administrator will maintain a copy of the Letter of Map Amendment issued from FEMA.
- n) Make on-site inspections of projects in accordance with the administrative procedures outlined Manual.
- o) Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with the administrative procedures in this ordinance.
- p) Maintain all records pertaining to the administration of this ordinance and make these records available for public inspection.
- q) Notify the South Carolina Department of Natural Resources Land, Water and Conservation Division, within six (6) months, of any annexations or detachments that include special flood hazard areas.
- r) The President issued Executive Order 11988, Floodplain Management May 1977. E.O. 11988 directs federal agencies to assert a leadership role in reducing flood losses and losses to environmental values served by floodplains. Proposed developments must go through an eight-step review process. Evidence of compliance with the executive order must be submitted as part of the permit review process.
- s) Perform an assessment of damage from any origin to the structure using

FEMA's Residential Substantial Damage Estimator (RSDE) software to determine if the damage equals or exceeds 50 percent of the market value of the structure before the damage occurred.

- t) Perform an assessment of permit applications for improvements or repairs to be made to a building or structure equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. Cost of work counted for determining if and when substantial improvement to a structure occurs shall be cumulative for a period of five years. If the improvement project is conducted in phases the total of all cost associated with each phase, beginning with the issuance of the first permit, shall be utilized to determine whether "substantial improvement" will occur.

The market values shall be determined by one of the following methods:

- 1) the current assessed building value as determined by the county's assessor's office or the value of an appraisal performed by a licensed appraiser at the expense of the owner; or,
- 2) one or more certified appraisals from a registered professional licensed in accordance with the laws of South Carolina and the appraisal shall indicate actual replacement value of the building or structure in its pre-improvement condition, less depreciation for functionality and obsolescence and site improvements. The Marshall & Swift Residential Cost Handbook shall be used to determine costs for buildings or structures.
- 3) Real Estate purchase contract within 12 months prior to the date of the application for a permit.

Sec. 9-3. General and Specific Standards.

Development may not occur in the floodplain where alternative locations exist due to the inherent hazards and risks involved in floodplain development. Before a permit is issued, the applicant shall demonstrate that new structures cannot be reasonably be located out of the floodplain and that encroachments onto the floodplain are minimized. In all areas of special flood hazard the provisions of the Land Development Manual shall apply:

It shall be the responsibility of the property owner, lessee or person responsible for land disturbing activities to provide adequate controls to meet the design and engineering standards.

Sec. 9-4. Variances.

The Stormwater Advisory Board may grant a variance from the requirements of the Floodplain Management Section of this Ordinance as outlined in the Land Development Manual.

Sec. 9-5. Reserved.

DIVISION 10 – APPENDIX

Definitions

“Applicant” is a person, firm, governmental agency, partnership, or any other entity who seeks to obtain approval or a permit under the requirements of this Ordinance and who will be responsible for the land disturbing activity and related maintenance thereof.

“As-built drawings” are revised construction drawings that show in the installed location of the new facilities on a project, including the stormwater system. This term and “record drawings” shall be synonymous.

“Best Management Practices (BMPs)” are any structural or non-structural measure or facility used for the control of stormwater runoff, be it for quantity or quality control. BMPs also includes schedules of activities, prohibitions of practices, maintenance procedures, treatment requirements, operating procedures, and other management practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or otherwise prevent or reduce the pollution of waters of the State.

“Construction” or “Construction Activity” is any activity involving clearing, grading, transporting, filling, or any other activity which causes land to be exposed to the danger of erosion, or which might create an alteration to an existing drainage way or other component of the stormwater system or facility.

“Director of Public Works” means the Director of the Lexington County Public Works Department.

“Developer” means any person who acts in his own behalf, or as an owner or as an agent for an owner of property, and who makes application for the permit necessary to disturb land or vegetation or to encroach upon a major drainage channel, or to encroach upon the designated floodplain.

“Erosion” means the general process by which soils or rock fragments are detached and moved by the action of wind, water, ice, and gravity.

“Easement” is an authorization by a property owner to the general public, a corporation, or a certain person or persons for the use of any designated part of his property for a specific purpose.

“Flood/flooding” is a temporary rise in the level of water which results in the inundation of areas not ordinarily covered by water.

“Illicit connection” means a connection to the Lexington County Stormwater System which results in a discharge that is not composed entirely of stormwater runoff except discharges pursuant to an NPDES permit (other than the NPDES permit for the Lexington County Stormwater System).

“Improper disposal” means any disposal other than through an illicit connection that results in an illicit discharge, including, but not limited to the disposal of used oil and toxic materials resulting from the improper management of such substances.

“Illicit discharge” or “Illegal discharge” means any activity which results in a discharge to the Lexington County Stormwater System or receiving waters that is not composed entirely of stormwater except (a) discharge pursuant to an NPDES permit (other than the NPDES for Lexington County) and (b) discharges resulting from the fire-fighting activities.

“Land Disturbance” is any activity involving clearing, grading, transporting, filling, or any other activity which causes land to be exposed to the danger of erosion, or which might create an alteration in the natural drainageway.

“Land Disturbance Permit” means the legal document allowing land to be disturbed from its existing condition.

“Land Disturbance Permit Application” means the set of drawings, specifications, design calculations, SWPPP, and other documents that comprise all of the information for the control of stormwater for land disturbances which is required as part of the NPDES land disturbance permit, granted by Public Works Department and by this Ordinance. Approval of this application constitutes the issuance of and “Land Disturbance Permit”.

“Lexington County Stormwater System” or “Stormwater System” or “Lexington County MS4” means the conveyance or system of conveyances (including roads with drainage systems, highways, right-of-way, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, storm drains, detention ponds, and other stormwater facilities) which is (a) owned or operated by Lexington County; (b) designed or used for collecting or conveying stormwater; (c) not a combined sewer system; and (d) not part of a Publicly Owned Treatment Works (POTW).

“Lessee” means the person in a lease agreement with a property owner for use of the property.

“Low Impact Development (LID)” is a set of principles and design components used to manage stormwater runoff by mimicking natural conditions and limiting pollutant transport through source control.

“Maintenance” means any action necessary to preserve stormwater system component, including conveyances, facilities and BMPs in proper working condition, in order to serve the intended purposes set forth in this ordinance and to prevent structural failure of such components.

“MS4” means municipal separate storm sewer system.

“New Development” or “Re-Development” means any of the following actions undertaken by any person, including, without limitation, any public or private individual or entity:

- (a) division of a lot, tract, or parcels or other divisions by plat or deed;
- (b) the construction, installation, or alteration of land, a structure, impervious surface or drainage facility;
- (c) clearing, scraping, grubbing or otherwise significantly disturbing the soil, vegetation, mud, sand or rock of a site; or
- (d) adding, removing, exposing, excavating, leveling, grading, digging, burrowing, dumping, piling, dredging, or otherwise disturbing the soil, vegetation, mud, sand or rock of a site.

“NPDES” means National Pollutant Discharge Elimination System. See “Clean Water Act”

“NPDES permit” means the NPDES permit for stormwater discharges issued to Lexington County pursuant to the Clean Water Act and the federal stormwater discharge regulations (40 CFR 122.26) that allows for restricting pollutant loads as necessary to meet water quality standards.

“Outfall” or “Discharge point” means the point where Lexington County Stormwater System or other municipal and private systems discharges to waters of the State/United States.

“Owner” means any person who acts in his own behalf on an application for the permit necessary to disturb land or vegetation or to encroach upon a major drainage channel, or to encroach upon the designated floodplain and the person, if so designated by default or on legal documents, as the responsible party for maintenance of a stormwater system.

“Person” means any and all persons, natural or artificial and includes any individual, association, firm, corporation, business trust, estate, trust, partnership, two or more

persons having a joint or common interest, state or federal or an agent or employee thereof, or any other legal entity.

“Pollutant” means sediment, bacteria, and nutrients which cause exceedances of water quality standards, dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

“Property Owner” means the legal owner of the property.

“Public Works Department” means the Lexington County Public Works Department, the Director of Public Works or any of that department’s duly authorized representatives or designees.

“Receiving waters” means the waters into which the Lexington County Stormwater System outfalls flow and which are located within the jurisdictional boundaries of Lexington County and include, without limitation, any lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, , inlets, canals, and all other bodies of surface or underground water, natural or artificial, public or private.

“Regulation” means any regulation, rule or requirement prepared by and/or adopted by the Lexington County Council pursuant to this Ordinance.

“SWMP” means the Lexington County Stormwater Management Program, which contains components that are required as part of the NPDES stormwater permit. These components are documented in the SWMP Plan.

“Stormwater” means stormwater runoff, snowmelt runoff, and surface runoff and drainage.

“Stormwater management” means the collection, conveyance, storage, treatment and disposal of stormwater runoff in a manner to meet the objectives of this ordinance and its terms, including, but not limited to, measures that control the increased volume and rate of stormwater runoff and water quality impacts caused by manmade changes to the land.

“Stormwater management facility”, also referred to as BMPs, or structural BMPs, are any structure used for the control of stormwater runoff, be it for quantity or quality control.

“TMDL” is a regulatory value developed to represent the amount of a pollutant that a waterbody can incorporate while meeting water quality standards. TMDL are further defined as the legal document developed by EPA and SCDHEC designating the pollutant load a permitted discharge is allowed to input into a waterbody.

“Variance” means the modification of the minimum stormwater management requirements contained in this Ordinance and the SWMP for specific circumstances

where strict adherence to the requirements would result in unnecessary hardship and not fulfill the intent of this Ordinance.

“Watercourse” is any natural or man-made conveyance used to transport runoff from one location to the next.

“Watershed” is a drainage area or drainage basin contributing to the flow of stormwater into a receiving watercourse or water body.

“Water Quality” means those characteristics of stormwater runoff that relate to the physical, chemical, biological, or radiological integrity of water.

“Water Quantity” means those characteristics of stormwater runoff that relate to the rate and volume of the stormwater runoff.