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ENVIRONMENTAL REGULATIONS

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PART I. FLOOD DAMAGE PREVENTION ORDINANCE (Coastal Regular Phase)

SECTION 12.01 STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

- (A) *Statutory Authorization.* The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the **Town Council** of Sunset Beach, North Carolina, does ordain as follows:
- (B) *Findings of Fact.*
- (1) The **flood prone areas** within the jurisdiction of the Town of Sunset Beach are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of **flood** protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - (2) These **flood** losses are caused by the cumulative effect of obstructions in **floodplains** causing increases in **flood** heights and velocities and by the occupancy in **flood prone areas** of uses vulnerable to **floods** or other hazards.
- (C) *Statement of Purpose.* It is the purpose of this article is to promote public health, safety, and general welfare and to minimize public and private losses due to **flood** conditions within **flood prone areas** by provisions designed to:
- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, **flood** heights, or velocities.
 - (2) Require that uses vulnerable to **floods**, including facilities that serve such uses, be protected against **flood** damage at the time of initial construction.
 - (3) Control the alteration of natural **floodplains**, stream channels, and natural protective barriers, which are involved in the accommodation of **flood** waters.
 - (4) Control filling, grading, dredging, and all other **development** that may increase erosion or **flood** damage.

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- (5) Prevent or regulate the construction of **flood** barriers that will unnaturally divert **flood** waters or which may increase **flood** hazards to other lands.
- (D) *Objectives.* The objectives of this article are:
- (1) To protect human life and health.
 - (2) To minimize expenditure of public money for costly **flood** control projects.
 - (3) To minimize the need for rescue and relief efforts associated with **flooding** and generally undertaken at the expense of the general public.
 - (4) To minimize prolonged business losses and interruptions.
 - (5) To minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, **streets**, and bridges) that are located in **flood prone areas**.
 - (6) To help maintain a stable tax base by providing for the sound use and **development** of **flood prone areas**.
 - (7) To ensure that potential buyers are aware that property is in a **Special Flood Hazard Area**.

SECTION 12.02 GENERAL PROVISIONS

- (A) *Lands to Which This Article Applies.* This article shall apply to all **Special Flood Hazard Areas** within the jurisdiction, including Extraterritorial Jurisdictions (ETJs) if applicable, of the Town of Sunset Beach.
- (B) *Basis for Establishing the Special Flood Hazard Areas.* The **Special Flood Hazard Areas** are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its **Flood Insurance Study (FIS)** and its accompanying **Flood Insurance Rate Maps (FIRM)**, for Brunswick **County** dated June 2, 2006, which are adopted by reference and declared to be a part of this Ordinance. The initial **Flood Insurance Rate Map** for the Town of Sunset Beach was November 18, 1972, and May 15, for Brunswick **County**. Summary of map actions are identified as follows: Case No. 04-04-A517A; 02-04-6548A; 01-04-5280A; 01-04-5282A; and 00-04-5372A.
- (C) *Establishment of Floodplain Development Permit.* A **Floodplain Development Permit** shall be required in conformance with the provisions of this article prior to the

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commencement of any **development** activities within **Special Flood Hazard Areas** determined in accordance with Section 12.02(B).

- (D) *Compliance.* No **structure** or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.
- (E) *Abrogation and Greater Restrictions.* This article is not intended to repeal, abrogate, or impair any existing **easements**, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (F) *Interpretation.* In the interpretation and application of this article, all provisions shall be:
- (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under State statutes.
- (G) *Warning and Disclaimer of Liability.* The degree of **flood** protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger **floods** can and will occur. Actual **flood** heights may be increased by man-made or natural causes. This article does not imply that land outside the **Special Flood Hazard Areas** or uses permitted within such areas will be free from **flooding** or **flood** damages. This article shall not create liability on the part of the Town of Sunset Beach or by any officer or employee thereof for any **flood** damages that result from reliance on this article or any administrative decision lawfully made hereunder.
- (H) *Penalties for Violation.* **Violation** of the provisions of this article or failure to comply with any of its requirements, including **violation** of conditions and safeguards established in connection with grants of **variance** or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$50.00 or imprisoned for not more than thirty (30) days, or both. Each day such **violation** continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Sunset Beach from taking such other lawful action as is necessary to prevent or remedy any **violation**.

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SECTION 12.03 ADMINISTRATION

- (A) *Designation of **Floodplain Administrator**.* The Town Administrator or his/her designee, hereinafter referred to as the "**Floodplain Administrator**," is hereby appointed to administer and implement the provisions of this part.
- (B) ***Floodplain Development Application, Permit and Certification Requirements.***
- (1) *Application Requirements.* Application for a **Floodplain Development Permit** shall be made to the **Floodplain Administrator** prior to any **development** activities located within **Special Flood Hazard Areas**. The following items shall be presented to the **Floodplain Administrator** to apply for a **Floodplain Development Permit**:
- (a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed **floodplain development**:
- (i) The nature, location, dimensions, and elevations of the area of **development/disturbance**; existing and proposed **structures**, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other **development**;
- (ii) The boundary of the **Special Flood Hazard Area** as delineated on the **FIRM** or other **flood** map as determined in Section 12.02(B), or a statement that the entire **lot** is within the **Special Flood Hazard Area**;
- (iii) **Flood zone(s)** designation of the proposed **development** area as determined on the **FIRM** or other **flood** map as determined in Section 12.02(B);
- (iv) The **Base Flood Elevation (BFE)** where provided as set forth in Section 12.02(B); Section 12.03(C)(10) and (11);
- (v) The old and new location of any **watercourse** that will be altered or relocated as a result of proposed **development**;
- (vi) The boundary and designation date of the **Coastal Barrier Resource System (CBRS)** area or **Otherwise Protected Areas (OPA)**, if applicable; and

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- (vii) Certification of the plot plan by a registered land surveyor or professional engineer.
 - (viii) The boundary of the **floodway(s)** or **non-encroachment area(s)** as determined in Section 12.02(B).
- (b) Proposed elevation, and method thereof, of all **development** within a **Special Flood Hazard Area** including but not limited to:
- (i) Elevation in relation to **mean sea level** of the proposed **reference level** (including **basement**) of all **structures**;
 - (ii) Elevation in relation to **mean sea level** to which any non-residential **structure** in Zone AE will be **flood-protected**; and
 - (iii) Elevation in relation to **mean sea level** to which any proposed utility systems will be elevated or **flood-protected**;
- (c) If **floodproofing**, a **Floodproofing** Certificate (FEMA Form 81-65) is mandatory with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of **floodproofing** measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include but are not limited to:
- (i) The proposed method of elevation, if applicable (i.e., solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
 - (ii) Openings to facilitate equalization of hydrostatic **flood** forces on walls in accordance with Section 12.04(B)(4), when solid foundation perimeter walls are used in Zone AE;
 - (iii) The following, in **Coastal High Hazard Areas**, in accordance with Section 12.04(B)(4)(d):
 - (1) V-Zone Certification with accompanying plans and specifications verifying the engineered **structure** and any **breakaway wall** designs;

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- (2) Plans for open wood latticework or insect screening, if applicable;
 - (3) Plans for non-structural fill, if applicable. If non-structural fill is proposed, it must be demonstrated through coastal engineering analysis that the proposed fill would not result in any increase in the **Base Flood Elevation** or otherwise cause adverse impacts by wave ramping and deflection on to the subject **structure** or adjacent properties.
- (e) Usage details of any enclosed areas below the **lowest floor**.
 - (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize **flood** damage;
 - (g) Copies of all other Local, State and Federal permits required prior to **Floodplain Development Permit** issuance (**Wetlands**, Endangered Species, Erosion and Sedimentation Control, **CAMA**, **Riparian Buffers**, Mining, etc.)
 - (h) A description of proposed **watercourse** alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the **flood**-carrying capacity of the **watercourse** and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed **watercourse** alteration or relocation. The engineering report must show that the **flood**-carrying capacity within the altered or relocated channel will be maintained.
- (2) *Permit Requirements.* The **Floodplain Development Permit** shall include, but not be limited to:
 - (a) A description of the **development** to be permitted under the **Floodplain Development Permit**.
 - (b) The **Special Flood Hazard Area** determination for the proposed **development** per available data specified in Section 12.02(B).
 - (c) The **regulatory flood protection elevation** required for the **reference level** and all attendant utilities.

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- (d) The **regulatory flood protection elevation** required for the protection of all public utilities.
 - (e) All certification submittal requirements with timelines.
 - (f) The **flood** openings requirements, if in Zone AE.
 - (g) All uses below **lowest floor** including parking, building **access**, and limited storage only.
 - (h) A statement, if in Zone VE, that there shall be no alteration of sand dunes which would increase potential **flood** damage.
 - (i) A statement, if in Zone VE, that there shall be no fill used for structural support.
 - (j) A statement that no fill material or other **development** shall encroach into the **floodway** or **non-encroachment area** of any **watercourse**, as applicable.
- (3) *Certification Requirements.*
- (a) Elevation Certificates.
 - (i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any **new construction**. It shall be the duty of the permit holder to submit to the **Floodplain Administrator** a certification of the elevation of the **reference level**, in relation to **mean sea level**. The **Floodplain Administrator** shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a **Floodplain Development Permit**.
 - (ii) A Foundation Elevation Certificate (FEMA Form 81-31) is required after the **reference level** is established. Within seven (7) calendar days of establishment of the **reference level** elevation, it shall be the duty of the permit holder to submit to the **Floodplain Administrator** a certification of the elevation of the **reference level**, in relation to **mean sea level**. Any work done within the

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seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The **Floodplain Administrator** shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

- (iii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the **Floodplain Administrator** a certification of final as-built construction of the elevation of the **reference level** and all attendant utilities. The **Floodplain Administrator** shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (b) **Floodproofing** certificate for all A zones. If non-residential (i.e. storage sheds, etc.) **floodproofing** is used to meet the **regulatory flood protection elevation** requirements, a **Floodproofing** Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any **new construction**. It shall be the duty of the permit holder to submit to the **Floodplain Administrator** a certification of the **floodproofed** design elevation of the **reference level** and all attendant utilities, in relation to **mean sea level**. **Floodproofing** certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The **Floodplain Administrator** shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the **applicant** prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a **Floodplain Development Permit**. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (c) If a **manufactured home** is placed within Zone AE and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered foundation certification is required per Section 12.04(B)(3).

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- (d) If a **watercourse** is to be altered or relocated, a description of the extent of **watercourse** alteration or relocation, a professional engineer's certified report on the effects of the proposed project on the **flood**-carrying capacity of the **watercourse** and the effects to properties located both upstream and downstream, and a map showing the location of the proposed **watercourse** alteration or relocation shall all be submitted by the permit **applicant** prior to issuance of a **Floodplain Development Permit**. The engineering report must show that the **flood**-carrying capacity within the altered or relocated channel will be maintained.
- (e) Certification exemptions. The following **structures**, if located within Zone AE, are exempt from the elevation/**floodproofing** certification requirements specified in items (a) and (b) of this subsection:
 - (i) Temporary **structures** meeting requirements of Section 12.04(B)(7); and
 - (ii) **Accessory structures** less than one hundred fifty (150) square feet meeting requirements of Section 12.04(B)(6).
- (f) A V-Zone Certification with accompanying design plans and specifications is required prior to issuance of a **Floodplain Development Permit** within **coastal high hazard areas**. It shall be the duty of the permit **applicant** to submit to the **Floodplain Administrator** said certification to ensure the design standards of this article are met. A registered professional engineer or architect shall develop or review the structural design, plans, and specifications for construction and certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this article. This certification is not a substitute for an Elevation Certificate and an Elevation Certificate is not a substitute for the V-Zone Certification.

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- (C) *Duties and Responsibilities of the Floodplain Administrator.* The **Floodplain Administrator** shall perform, but not be limited to, the following duties:
- (1) Review all **floodplain development** applications and issue permits for all proposed **development** within **Special Flood Hazard Areas** to ensure that the requirements of this article have been satisfied.
 - (2) Advise permittee that additional Federal or State Permits (**Wetlands**, Endangered Species, Erosion And Sedimentation Control, **CAMA**, **Riparian Buffers**, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the **Floodplain Development Permit**.
 - (3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National **Flood Insurance** Program prior to any alteration or relocation of a **watercourse**, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).
 - (4) Assure that maintenance is provided within the altered or relocated portion of said **watercourse** so that the **flood**-carrying capacity is maintained.
 - (5) Obtain actual elevation (in relation to **mean sea level**) of the **reference level** (including **basement**) and all attendant utilities of all new or substantially improved **structures**, in accordance with Section 12.03(B)(3).
 - (6) Obtain actual elevation (in relation to **mean sea level**) to which all new and substantially improved **structures** and utilities have been **floodproofed**, in accordance with Section 12.03(B)(3).
 - (7) Obtain actual elevation (in relation to **mean sea level**) of all public utilities in accordance with Section 12.03(B)(3).
 - (8) When **floodproofing** is utilized for a particular **structure**, obtain certifications from a registered professional engineer or architect in accordance with Section 12.03(B)(3) and Section 12.04(B)(2).
 - (9) Where interpretation is needed as to the exact location of boundaries of the **Special Flood Hazard Areas** (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to **appeal** the interpretation as provided in this article.

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- (10) When **Base Flood Elevation (BFE)** data has not been provided in accordance with Section 12.02(B), obtain, review, and reasonably utilize any **Base Flood Elevation (BFE)** data, along with **floodway** data or **non-encroachment area** data available from a Federal, State, or other source, in order to administer the provisions of this article.
- (11) When **Base Flood Elevation (BFE)** data is provided but no **floodway** nor **non-encroachment area** data has been provided in accordance with Section 12.02(B), obtain, review, and reasonably utilize any **floodway** data or **non-encroachment area** data available from a Federal, State, or other source in order to administer the provisions of this article.
- (12) When the lowest ground elevation of a parcel or **structure** in a **Special Flood Hazard Area** is above the **Base Flood Elevation**, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the **Floodplain Development Permit** file.
- (13) Permanently maintain all records that pertain to the administration of this article and make these records available for public inspection (never destroy, keep on file in some fashion forever).
- (14) Make on-site inspections of work in progress. As the work pursuant to a **Floodplain Development Permit** progresses, the **Floodplain Administrator** shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the **Floodplain Administrator** has a right, upon presentation of proper credentials, to enter on any **premises** within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
- (15) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in **violation** of this article, the **Floodplain Administrator** may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. **Violation** of a stop-work order constitutes a misdemeanor.

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- (16) Revoke **Floodplain Development Permits** as required. The **Floodplain Administrator** may revoke and require the return of the **Floodplain Development Permit** by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any **Floodplain Development Permit** mistakenly issued in **violation** of an applicable State or local law may also be revoked.
 - (17) Make periodic inspections throughout all **Special Flood Hazard Areas** within the jurisdiction of the community. The **Floodplain Administrator** and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any **premises** within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
 - (18) Follow through with corrective procedures of Section 12.03(D).
 - (19) Review, provide input, and make recommendations for **variance** requests.
 - (20) Maintain a current map repository to include, but not limited to, the FIS Report, **FIRM** and other official **flood** maps and studies adopted in accordance with Section 12.02(B), including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
 - (21) Coordinate revisions to FIS reports and **FIRMs**, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).
- (D) *Corrective Procedures.*
- (1) **Violations to be Corrected.** When the **Floodplain Administrator** finds **violations** of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the **violation**. The owner or occupant shall immediately remedy each of the **violations** of law cited in such notification.
 - (2) *Actions in Event of Failure to Take Corrective Action.* If the owner of a building or property shall fail to take prompt corrective action, the **Floodplain Administrator** shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
 - (a) That the building or property is in **violation** of the **Flood** Damage Prevention Ordinance;

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- (b) That a hearing will be held before the **Floodplain Administrator** at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,
 - (c) That following the hearing, the **Floodplain Administrator** may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.
 - (3) *Order to Take Corrective Action.* If, upon a hearing held pursuant to the notice prescribed above, the **Floodplain Administrator** shall find that the building or **development** is in **violation** of the **Flood** Damage Prevention Ordinance, he/she shall issue an order in writing to the owner, requiring the owner to remedy the **violation** within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days or less. Where the **Floodplain Administrator** finds that there is imminent danger to life or other property, he/she may order that corrective action be taken in such lesser period as may be feasible.
 - (4) **Appeal.** Any owner who has received an order to take corrective action may **appeal** the order to the local elected governing body by giving notice of **appeal** in writing to the **Floodplain Administrator** and the Town Clerk within ten (10) days following issuance of the final order. In the absence of an **appeal**, the order of the **Floodplain Administrator** shall be final. The local governing body shall hear an **appeal** within a reasonable time and may affirm, modify and affirm, or revoke the order.
 - (5) *Failure to Comply with Order.* If the owner of a building or property fails to comply with an order to take corrective action for which no **appeal** has been made or fails to comply with an order of the governing body following an **appeal**, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the Court.
- (E) **Variance Procedures.**
- (1) The Sunset Beach Board of Adjustment as established by the Town of Sunset Beach, hereinafter referred to as the "**Appeal** Board," shall hear and decide requests for **variances** from the requirements of this article.
 - (2) Any person aggrieved by the decision of the **Appeal** Board may **appeal** such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

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- (3) **Variations** may be issued for:
- (a) The repair or rehabilitation of **historic structures** upon the determination that the proposed repair or rehabilitation will not preclude the **structure's** continued designation as an **historic structure** and that the **variance** is the minimum necessary to preserve the historic character and design of the **structure**.
 - (b) **Functionally dependant facilities** if determined to meet the definition as stated in Appendix A of this Ordinance, provided provisions of Section 12.03(E)(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize **flood** damages.
 - (c) Any other type of **development**, provided it meets the requirements stated in this section.
- (4) In passing upon **variances**, the **Appeal** Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
- (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to **flooding** or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to **flood** damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location as defined in Appendix A of this Ordinance as a **functionally dependant facility**, where applicable;
 - (f) The availability of alternative locations, not subject to **flooding** or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated **development**;

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- (h) The relationship of the proposed use to the comprehensive plan and **floodplain management** program for that area;
 - (i) The safety of **access** to the property in times of **flood** for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the **flood**waters and the effects of wave action, if applicable, expected at the site; and
 - (k) The costs of providing governmental services during and after **flood** conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and **streets** and bridges.
- (5) A written report addressing each of the above factors shall be submitted with the application for a **variance**.
- (6) Upon consideration of the factors listed above and the purposes of this article, the **Appeal** Board may attach such conditions to the granting of **variances** as it deems necessary to further the purposes of this article.
- (7) Any **applicant** to whom a **variance** is granted shall be given written notice specifying the difference between the **Base Flood Elevation (BFE)** and the elevation to which the **structure** is to be built and that such construction below the **Base Flood Elevation** increases risks to life and property, and that the issuance of a **variance** to construct a **structure** below the **Base Flood Elevation** will result in increased premium rates for **flood insurance** up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all **variance** actions, including justification for their issuance.
- (8) The **Floodplain Administrator** shall maintain the records of all **appeal** actions and report any **variances** to the Federal Emergency Management Agency and the State of North Carolina upon request.
- (9) Conditions for **Variances**:
- (a) **Variances** shall not be issued when the **variance** will make the **structure** in **violation** of other Federal, State, or local laws, regulations, or ordinances.

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- (b) **Variations** shall not be issued within any designated **floodway** or **non-encroachment area** if the **variance** would result in any increase in **flood** levels during the **base flood** discharge.
 - (c) **Variations** shall only be issued upon a determination that the **variance** is the minimum necessary, considering the **flood** hazard, to afford relief.
 - (d) **Variations** shall only be issued prior to **development** permit approval.
 - (e) **Variations** shall only be issued upon:
 - (i) a showing of good and sufficient cause;
 - (ii) a determination that failure to grant the **variance** would result in exceptional hardship; and
 - (iii) a determination that the granting of a **variance** will not result in increased **flood** heights, additional threats to **public safety**, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (10) A **variance** will not be issued for solid waste **disposal** facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in **Special Flood Hazard Areas** provided that all of the conditions of Section 12.04 are met.

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SECTION 12.04 PROVISION FOR FLOOD HAZARD REDUCTION

- (A) *General Standards.* In all ***Special Flood Hazard Areas*** the following provisions are required:
- (1) All ***new construction*** and ***substantial improvements*** shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the ***structure***.
 - (2) All ***new construction*** and ***substantial improvements*** shall be constructed with materials and utility equipment resistant to ***flood*** damage.
 - (3) All ***new construction*** and ***substantial improvements*** shall be constructed by methods and practices that minimize ***flood*** damages.
 - (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of ***flooding***. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
 - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of ***flood*** waters into the system.
 - (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of ***flood*** waters into the systems and discharges from the systems into ***flood*** waters.
 - (7) On-site waste ***disposal*** systems shall be located and constructed to avoid impairment to them or contamination from them during ***flooding***.
 - (8) Any alteration, repair, reconstruction, or improvements to a ***structure***, that are in compliance with the provisions of this article, shall meet the requirements of "***new construction***" as contained in this Ordinance.
 - (9) Nothing in this article shall prevent the repair, reconstruction, or replacement of a building or ***structure*** existing on the effective date of this Ordinance and located totally or partially within the ***floodway, non-encroachment area***, or stream ***setback***, provided there is no additional ***encroachment*** below the ***regulatory flood protection elevation*** in the ***floodway, non-encroachment area***, or

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stream **setback**, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

- (10) New solid waste **disposal** facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by **variance** as specified in Section 12.03(E)(10). A **structure** or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a **Special Flood Hazard Area** only if the **structure** or tank is either elevated or **floodproofed** to at least the **regulatory flood protection elevation** and certified according to Section 12.03(B)(3).
 - (11) All **subdivision** proposals and other **development** proposals shall be consistent with the need to minimize **flood** damage.
 - (12) All **subdivision** proposals and other **development** proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **flood** damage.
 - (13) All **subdivision** proposals and other **development** proposals shall have adequate drainage provided to reduce exposure to **flood** hazards.
 - (14) All **subdivision** proposals and other **development** proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water **Pollution** Control Act Amendments of 1972, 33 U.S.C. 1334.
- (B) *Specific Standards.* In all **Special Flood Hazard Areas** where **Base Flood Elevation (BFE)** data has been provided, as set forth in Section 12.02(B), or Section 12.04(C)(10) and (11), the following provisions, in addition to Section 12.04(A), are required:
- (1) *Residential Construction.* **New construction** and **substantial improvement** of any residential **structure** (including **manufactured homes**) shall have the **reference level**, including **basement**, elevated no lower than the **regulatory flood protection elevation**, as defined in Appendix A of this Ordinance.
 - (2) *Non-Residential Construction.* **New construction** and **substantial improvement** of any commercial, **industrial**, or other non-residential **structure** shall have the **reference level**, including **basement**, elevated no lower than the **regulatory flood protection elevation**, as defined in Appendix A of this Ordinance. **Structures** located in the AE Zone may be **floodproofed** to the **regulatory flood**

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protection elevation in lieu of elevation provided that all areas of the **structure**, together with attendant utility and sanitary facilities, below the **regulatory flood protection elevation** are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the **Floodplain Administrator** as set forth in Section 12.03(B)(3), along with the operational and maintenance plans.

(3) **Manufactured Homes.**

- (a) New or replacement **manufactured homes** shall be elevated so that the **reference level** of the **manufactured home** is no lower than the **regulatory flood protection elevation**, as defined in Appendix A of this Ordinance.
- (b) **Manufactured homes** shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for **Manufactured Homes**, adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15 or a certified engineered foundation. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (c) All enclosures or skirting below the **lowest floor** shall meet the requirements of Section 12.04(B)(4)(a), (b), and (c).
- (d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged **manufactured home parks or subdivisions** located within **flood prone areas**. This plan shall be filed with and approved by the **Floodplain Administrator** and the local Emergency Management Coordinator.

(4) **Elevated Buildings.** Fully enclosed areas of **new construction** and substantially improved **structures**, which are below the **lowest floor**.

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- (a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building **access**, or limited storage of maintenance equipment used in connection with the **premises**. **Access** to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b) Shall be constructed entirely of **flood** resistant materials, up to the **regulatory flood protection elevation**;
- (c) Shall include, in Zone AE, **flood** openings to automatically equalize hydrostatic **flood** forces on walls by allowing for the entry and exit of **flood** waters. To meet this requirement, the openings must either be certified by a professional engineer or architect, or meet or exceed the following minimum design criteria;
 - (i) A minimum of two (2) **flood** openings on different sides of each enclosed area subject to **flooding**;
 - (ii) The total net area of all **flood** openings must be at least one (1) square inch for each square foot of enclosed area subject to **flooding**;
 - (iii) If a building has more than one (1) enclosed area, each enclosed area must have **flood** openings to allow **flood** waters to automatically enter and exit;
 - (iv) The bottom of all required **flood** openings shall be no higher than one (1) foot above the adjacent grade;
 - (v) **Flood** openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of **flood** waters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require **flood** openings. Masonry or wood underpinning, regardless of structural status, is

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considered an enclosure and requires **flood** openings as outlined above.

- (d) Shall allow, in **Coastal High Hazard Areas** (Zones VE), **breakaway walls**, open wood latticework or insect screening, provided it is not part of the structural support of the building and is designed so as to breakaway, under abnormally high tides or wave action, without causing damage to the structural integrity of the building, provided the following design specifications are met:
 - (i) Material shall consist of open wood latticework or insect screening; or
 - (ii) **Breakaway walls** shall meet the following design specifications:
 - (1) Design safe loading resistance of each wall shall be not less than ten (10) nor more than twenty (20) pounds per square foot; or
 - (2) **Breakaway walls** that exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by State or local codes) shall be certified by a registered professional engineer or architect that the **breakaway wall** will collapse from a water load less than that which would occur during the **base flood** event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). The water loading values used shall be those associated with the **base flood**. The wind loading values used shall be those required by the North Carolina State Building Code.

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- (5) **Additions/Improvements.**
- (a) **Additions** and/or improvements to **pre-FIRM structures** when the **addition** and/or improvements in combination with any interior modifications to the existing **structure** are:
- (i) not a **substantial improvement**, the **addition** and/or improvements must be designed to minimize **flood** damages and must not be any more non-conforming than the existing **structure**.
 - (ii) a **substantial improvement**, both the existing **structure** and the **addition** and/or improvements must comply with the standards for **new construction**.
- (b) **Additions** to **post-FIRM structures** with no modifications to the existing **structure** other than a standard door in the common wall shall require only the **addition** to comply with the standards for **new construction**.
- (c) **Additions** and/or improvements to **post-FIRM structures** when the **addition** and/or improvements in combination with any interior modifications to the existing **structure** are:
- (i) not a **substantial improvement**, the **addition** and/or improvements to the **post-FIRM structures** shall require the non-substantial **additions** and/or improvements to comply with the standards for **new construction** at the time the existing **structure's floodplain development permit** was issued for its original construction or last **substantial improvement**, whichever is later.
 - (ii) a **substantial improvement**, both the existing **structure** and the **addition** and/or improvements must comply with the standards for **new construction**.
- (d) Where an independent perimeter load-bearing wall is provided between the **addition** and the existing building, the **addition(s)** shall be considered a separate building and only the **addition** must comply with the standards for **new construction**.

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- (6) **Accessory Structures.** When **accessory structures** (sheds, detached garages, etc.) are to be placed within a **Special Flood Hazard Area**, the following criteria shall be met:
- (a) **Accessory structures** shall not be used for human habitation (including working, sleeping, living, cooking, or restroom areas).
 - (b) **Accessory structures** shall not be temperature-controlled.
 - (c) **Accessory structures** shall be designed to have low **flood** damage potential.
 - (d) **Accessory structures** shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of **flood** waters.
 - (e) **Accessory structures** shall be firmly anchored in accordance with Section 12.04(A)(1).
 - (f) All service facilities such as electrical shall be installed in accordance with Section 12.04(A)(4).
 - (g) **Flood** openings to facilitate automatic equalization of hydrostatic **flood** forces shall be provided below **regulatory flood protection elevation** in conformance with Section 12.04(B)(4)(c).

An **accessory structure** with a **footprint** less than one hundred fifty (150) square feet that satisfies the criteria outlined above does not require an elevation or **floodproofing** certificate. Elevation or **floodproofing** certifications are required for all other **accessory structures** in accordance with Section 12.04(B)(3).

- (7) **Temporary Non-Residential Structures.** Prior to the issuance of a **floodplain development permit** for a temporary **structure**, the **applicant** must submit to the **Floodplain Administrator** a plan for the removal of such **structure(s)** in the event of a hurricane, flash **flood** or other type of **flood** warning notification. The following information shall be submitted in writing to the **Floodplain Administrator** for review and written approval:
- (a) A specified time period for which the **temporary use** will be permitted. Time specified should not exceed three (3) months, renewable up to one (1) year;

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- (b) The name, address, and phone number of the individual responsible for the removal of the temporary **structure**;
 - (c) The time frame prior to the event at which a **structure** will be removed (i.e., minimum of seventy-two (72) hours before landfall of a hurricane or immediately upon **flood** warning notification);
 - (d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the **structure**; and
 - (e) Designation, accompanied by documentation, of a location outside the **Special Flood Hazard Area**, to which the temporary **structure** will be moved.
- (C) **Coastal High Hazard Areas (Zones VE).** **Coastal High Hazard Areas** are **Special Flood Hazard Areas** established in Section 12.02(B), and designated as Zones VE. These areas have special **flood** hazards associated with high velocity waters from storm surges or seismic activity. The following provisions, in addition to standards outlined in Section 12.04(A) and Section 12.04(B), shall apply to all **development** within such areas.
- (1) All **new construction** and **substantial improvements** shall:
 - (a) be located landward of the reach of mean high tide.
 - (b) be located landward of the first line of stable natural vegetation.
 - (c) comply with all applicable **CAMA setback** requirements.
 - (2) All **new construction** and **substantial improvements** shall be elevated so that the bottom of the lowest horizontal structural member of the **lowest floor** (excluding pilings or columns) is no lower than the **regulatory flood protection elevation**. **Floodproofing** shall not be utilized on any **structures** in **Coastal High Hazard Areas** to satisfy the **regulatory flood protection elevation** requirements.
 - (3) All **new construction** and **substantial improvements** shall have the space below the **lowest floor** free of obstruction so as not to impede the flow of **flood** waters, with the following exceptions:
 - (a) Open wood latticework or insect screening may be permitted below the **lowest floor** for aesthetic purposes only and must be designed to wash

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away in the event of abnormal wave action and in accordance with Section 12.04(B)(4)(d)(i). Design plans shall be submitted in accordance with Section 12.03(B)(1)(d)(iii)(2); and 12.03(B)(1)(d)(iii)(3).

- (b) **Breakaway walls** may be permitted provided they meet the criteria set forth in Section 12.04(B)(4)(D). Design plans shall be submitted in accordance with Section 12.03(B)(1)(d)(iii)(1).
- (D) **Floodways and Non-Encroachment Areas.** Areas designated as **floodway** or **non-encroachment areas** are located within the **Special Flood Hazard Areas** established in Section 12.02(B). The **floodways** and **non-encroachment areas** are extremely hazardous areas due to the velocity of **flood** waters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Section 12.04(A) and (B), shall apply to all **development** within such areas:
- (1) No **encroachments**, including fill, **new construction**, **substantial improvements** and other **developments** shall be permitted unless:
 - (a) The proposed **encroachment** would not result in any increase in the **flood** levels during the occurrence of the **base flood**, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the **Floodplain Administrator** prior to issuance of **floodplain development permit**, or
 - (b) A Conditional Letter of Map revision (CLOMR) has been approved by FEMA. A Letter of Map revision (LOMR) must also be obtained upon completion of **encroachment**.
 - (2) If Section 12.04(D)(1) is satisfied, all **development** shall comply with all applicable **flood** hazard reduction provisions of this article.
 - (3) No **manufactured homes** shall be permitted, except replacement **manufactured homes** in an **existing manufactured home park or subdivision**, provided the following provisions are met:
 - (a) The anchoring and the elevation standards of Section 12.04(B)(3); and
 - (b) The no **encroachment** standard of Section 12.04(D)(1).

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SECTION 12.05 LEGAL STATUS PROVISIONS

- (A) *Effect on Rights and Liabilities Under the Existing **Flood** Damage Prevention Ordinance.* This article in part comes forward by re-enactment of some of the provisions of the **flood** damage prevention ordinance enacted November 18, 1972 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the **flood** damage prevention ordinance of the Town of Sunset Beach enacted on November 18, 1972, as amended, which are not reenacted herein are repealed.
- (B) *Effect Upon Outstanding **Floodplain Development Permits.*** Nothing herein contained shall require any change in the plans, construction, size, or designated use of any **development** or any part thereof for which a **floodplain development permit** has been granted by the **Floodplain Administrator** or his or her authorized agents before the time of passage of this Ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this Ordinance.

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PART II. STORMWATER MANAGEMENT ORDINANCE

SECTION 12.06 TITLE, PURPOSE, AND GENERAL PROVISIONS

- (A) *Title.* This section shall be known as the "**Stormwater** Quality Management and Discharge Control Ordinance" of Brunswick County and may be so cited.
- (B) *Authority.* Under Chapter 153A of the North Carolina General Statutes, Brunswick County has the responsibility and authority to regulate land use and **development**, enforce ordinances within its jurisdiction, and to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
- (C) *Purpose and Intent.* The purpose and intent of this section is to:
- (1) Ensure the health, safety, and general welfare of citizens, and protect and enhance the water quality of **watercourses** and water bodies in a manner pursuant to and consistent with the Federal **Clean Water Act** (33 U.S.C. ' 1251 et seq.) by reducing **pollutants** in **stormwater** discharges to the maximum extent practicable and by prohibiting **non-stormwater discharges** to the **storm drain system**.
 - (2) Establish minimum criteria to control and minimize the quantitative and qualitative impacts of **stormwater** runoff from **development** within Brunswick County.
 - (3) Encourage sustainable **development**. Prudent site planning should include special consideration for preserving **natural drainage ways**, maximizing infiltration, slowing **stormwater** runoff from individual sites in route to streams and rivers by use of effective runoff management, structural and non-structural **best management practices, drainage structures, and stormwater facilities**.
- (D) *Applicability.* The provisions of the Ordinance shall apply to all areas within the planning jurisdictional limits of Brunswick County. This Ordinance shall be permanently on file in the office of the Brunswick County Engineering Department.
- (E) *Exceptions to Applicability.* This **Stormwater** Management Ordinance shall not apply to those land use activities identified in the specific sections of this Ordinance or as identified below:
- (1) Existing **development** may be continued and maintained. Expansion to existing **structures** classified, as existing **development** must meet the provisions of this Ordinance.
 - (2) Activities on a **bona fide farm** unless the activity is for non-farm purpose.
- (F) *Interpretation.*

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- (1) In interpreting and applying this Ordinance, the requirements are intended to be minimum requirements that are imposed and are to be conformed to, and are in addition to, and not in lieu of, all other legal requirements.
 - (2) This Ordinance shall not be deemed to interfere with or annul or otherwise affect in any manner whatsoever any ordinance, rules, regulations, permits, or **easements**, covenants, or other agreements between parties, provided however that, where this Ordinance imposes greater restrictions and controls with respect to **stormwater** management, the provisions of this Ordinance shall prevail.
- (G) *Permits.*
- (1) Except where provided elsewhere, **development** shall not commence without obtaining a **Stormwater** Permit pursuant to the provisions of this Ordinance.
 - (2) The **Stormwater** Permit Application shall be made by, or on behalf of, the owner(s) or developer(s) of the site for which the permit is sought. The application shall be filed with the **County** on a form supplied by the **County** and shall be accompanied with the information identified in the **Brunswick County Stormwater Management Manual**.
 - (3) A **Stormwater** Permit shall not be issued until the following conditions are met:
 - (a) Approval by the **Stormwater Administrator** of the supporting information.
 - (b) Submission and approval of any required **easements**.
 - (c) Submission and approval of any required inspection and maintenance agreements.
 - (d) Payment of all fees.
 - (4) If the **development** requires a Sediment and Erosion Control Permit, the **Stormwater** Permit will be conditional upon the owner receiving such sediment and erosion permit and upon the filing of a copy of the approved Sediment and Erosion Control Plan and associated Permit to the **Stormwater Administrator**.
 - (5) The **Stormwater** Permit will be valid for one (1) year from the date of issuance or if significant changes in the **development** are made that change the intent of the permit. Significant changes shall be determined by the **Stormwater**

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Administrator. If significant changes are made, the original **Stormwater** Permit shall not be valid and a new permit shall be required.

- (H) **Fees.** A list of fees associated with the Ordinance are available at the Brunswick County **Stormwater Administrator's** Office.
- (I) **Applicability.** This article shall apply to all water entering the **storm drain system** generated on any developed and undeveloped lands lying within the **County** including any amendments or revisions thereto.
- (J) **Responsibility for Administration.** The **Stormwater Administrator** of the **County** shall administer, implement, and enforce the provisions of this article. Any powers granted or duties imposed upon the **Stormwater Administrator** may be delegated in writing by the **Stormwater Administrator** to persons or entities acting in the beneficial interest of or in the employ of the **County**.
- (K) **Variations.** All applications for **variance** must be filed with, and will be considered by, the Brunswick **County** Board of Commissioners.
- (L) **Severability.** The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this article.
- (M) **Regulatory Consistency.** This article shall be construed to assure consistency with the requirements of the **Clean Water Act** and acts amendatory thereof or supplementary thereto, or any applicable implementing regulations.
- (N) **Ultimate Responsibility of Discharger.** The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore, this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, **pollution**, or unauthorized discharge of **pollutants** into waters of the U.S. caused by said person. This article shall not create liability on the part of the **County**, or any agent or employee thereof for any damages that result from any discharger's reliance on this article or any administrative decision lawfully made thereunder.

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- (O) **Stormwater Management.**
- (1) **Stormwater** shall be conveyed through **development** in an adequately designed drainage system of **natural drainage ways**, grass swales, storm sewers, culverts, inlets, and channels. Drainage systems shall be designed, constructed, and maintained so as to provide natural infiltration, control velocity, control **flooding**, extend the time of concentration of **stormwater** runoff, and to control to the maximum extent practicable the impacts of **development**. Where the above conditions are met and where a **development** does not require the preparation of a **Stormwater** Management Plan, as provided in Section 12.06(O)(2) of this Ordinance, obtaining a Brunswick County **Stormwater** Permit is not required.
- (2) **Stormwater** Management Plans must be prepared for, and shall be approved by, the **Stormwater Administrator** pursuant to the application for a **Stormwater** Permit for:
- (a) All commercial and **industrial** and other non-residential **development** and any **major subdivision** as defined in the Brunswick County **Subdivision** Ordinance.
- (b) Any activity that disturbs land within thirty (30) feet of the banks of a stream or other natural waterway within the **County**, except when such disturbance is designated as Exempt or Allowable in the Brunswick County **Stormwater Management Manual**.
- (c) Any filling or excavation of a parcel that results in a change of land surface of four (4) inches or more, except instances when said filling or excavation is required for on-site sewage treatment systems that are necessary to meet the requirements of the Brunswick County Health Department and that is specifically approved and inspected by Health Department.
- (d) Any activity or **development** that will ultimately result in the disturbance of a total area of one or more acres, except for the following:
- (1) Activity on a **bona fide farm**, unless the activity is for non-farm purposes.
- (2) Activities on forestland for the production and harvesting of timber and timber products.

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- (3) **Stormwater** Management Plans shall:
- (i) Include drawings, maps, supporting calculations, specifications, and summaries as outlined in the **Stormwater Management Manual**.
 - (ii) Demonstrate through accepted engineering practices described in the **Stormwater Management Manual** the impacts of the proposed **development**. Impacts of the proposed **developments** may include:
 - a. Effects on existing upstream and/or downstream drainage systems and property.
 - b. Ability of the **natural drainage way** to handle additional **stormwater** runoff.
 - c. Site-specific criteria.
 - (iii) Demonstrate through accepted engineering practices described in the **Stormwater Management Manual** that **stormwater** runoff is adequately conveyed through the **development** in a drainage system designed to meet the criteria described in the **Stormwater Management Manual**.
 - (iv) Demonstrate through accepted engineering practices described in the **Stormwater Management Manual** that **stormwater facilities** control the impacts of the **development** to the Maximum Extend Practicable and that those facilities are designed to meet the criteria described in the **Stormwater Management Manual**.
- (d) **Stormwater Facilities** Inspection and Maintenance Requirements.
- (i) A written inspection and maintenance agreement in a form acceptable to the **County** Attorney and executed by the **applicant** of the **Stormwater** Permit and the owners of the facility, if different than the **applicant**, shall be provided prior to receiving a **Stormwater** Permit. The agreement shall provide the following:

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- a. Shall bind the parties thereto and all subsequent owners, successors, and assigns.
- b. The required inspection maintenance and **access** of the facility as defined in the **Stormwater Management Manual**.
- c. That, if the **County** directs the correction, repair, replacement, or maintenance of the facility in writing and the actions are not satisfactorily performed within a reasonable time (but not greater than 60 days), the **County** may, after reasonable notice, enter the land and perform all the necessary work and may assess the owner(s) of the facility with the cost of the work performed. The owner(s) served by the facility shall be jointly responsible to the **County** for the maintenance of the facility and liable for any costs incurred by the **County** pursuant to the said agreement and all properties are jointly subject to the imposition of the liens for said costs.
- d. The Inspection and Maintenance Agreement shall be recorded in the **Register of Deeds** at the expense of the **applicant**.
- e. **Stormwater facilities** shall be included in an **easement**. The **easement** shall include the area of the facility, area of ponded water, and enough area for **access** and maintenance. The **easement** shall be recorded in the **Register of Deeds** at the expense of the **applicant**.

(P) **Riparian Buffers.**

- (1) **Riparian buffers** shall be maintained on all sides of perennial and **intermittent streams**, lakes and other natural waterways as provided in the **Stormwater Management Manual**.

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- (2) The following are exempt from this *riparian buffer* requirement:
- (a) Areas along streams or other waterways that are mapped on the USGS quadrangle map or NRCS soils map where such streams or waterways do not actually exist on the ground.
 - (b) Ponds and lakes created for animal watering, irrigation, or other agricultural uses that are not part of a *natural drainage way*.
 - (c) Where application of these requirements would prevent all prospective use of a *lot platted* and recorded prior to the effective date of this Ordinance.
 - (d) *Water dependent structures* provided that those *structures* shall be designed, constructed, and maintained to provide the maximum practicable nutrient and bacterial removal, have the least practicable adverse effects on aquatic habitat, and to otherwise protect water quality.
 - (e) Roads, bridges, *stormwater* management facilities, ponds, and utilities where no other practical alternative exists. These *structures* shall be located, designed, constructed, and maintained to have minimal disturbance, provide the maximum practicable nutrient and bacterial removal, have the least practicable adverse effects on aquatic habitat, and to otherwise protect water quality.
 - (f) Ditches and manmade conveyances other than modified natural streams.
- (3) The *riparian buffer* shall be an undisturbed area extending from the top of *channel bank* landward a minimum distance of thirty (30) feet measured horizontally on a line perpendicular to the water body.
- (4) The following activities shall not be allowed in *buffer* areas:
- (a) New on-site sewage systems, which utilize ground adsorption.
 - (b) New *structures*, except as specifically provided in the *Stormwater Management Manual*.
- (5) The *riparian buffer* shall be maintained by the landowner or homeowners association to maintain sheet flow to the maximum extent practical to provide for diffusion and infiltration of runoff and filtering *pollutants* into the affected stream

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and consistent with maintenance criteria as set out in the *Stormwater Management Manual*.

- (6) *Riparian buffer* areas shall be designated on recorded *plats* as *easements*. The *plat* shall be included with the *Stormwater* Permit Application.

SECTION 12.07 DISCHARGE PROVISIONS

- (A) *Prohibition of Illegal Discharges.* No person shall discharge or cause to be discharged into the *County storm drain system* or *watercourses* any materials, including but not limited to *pollutants* or waters containing any *pollutants* that cause or contribute to a *violation* of applicable water quality standards, other than *stormwater*. The commencement, conduct, or continuance of any *illegal discharge* to the *storm drain system* is prohibited except as described as follows:
- (1) Discharges from the following activities will not be considered a source of *pollutants* to the *storm drain system* and to waters of the US when properly managed to ensure that no potential *pollutants* are present, and therefore they shall not be considered *illegal discharges* unless determined to cause a *violation* of the provisions of this Ordinance: potable water line flushing; uncontaminated pumped groundwater and other discharges from potable water sources; landscape irrigation and lawn watering; diverted stream flows; rising groundwater; groundwater infiltration to the *storm drain system*; uncontaminated foundation and footing drains; uncontaminated water from crawl space pumps; air conditioning condensation; uncontaminated non-*industrial* roof drains; springs; individual residential and occasional non-commercial car washing; flows from riparian habitats and *wetlands*; dechlorinated *swimming pool* discharges; *street* wash waters; and flows from fire fighting.
 - (2) The prohibition shall not apply to any *non-stormwater discharge* permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the State of North Carolina under the authority of the Federal Environmental Protection Agency, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted by the *County* for any discharge to the *storm drain system*.
 - (3) With written concurrence of the Board of Commissioners, Brunswick County may exempt in writing other *non-stormwater discharges*, which are not a source of *pollutants* to the *storm drain system* or waters of the US.

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- (B) *Prohibition of **Illicit Connections**.*
- (1) The construction, use, maintenance, or continued existence of **illicit connections** to the **storm drain system** is prohibited.
 - (2) This prohibition expressly includes, without limitation, **illicit connections** made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (C) *Waste **Disposal Prohibitions**.* 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 US, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to **pollution**. Wastes deposited in **streets** in proper waste receptacles for the purposes of collection are exempted from this prohibition.
- (D) *Discharges in **Violation of Industrial or Construction Activity NPDES Stormwater Discharge Permit**.* Any person subject to an **industrial** or **construction activity** NPDES **stormwater** 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 **Stormwater Administrator** prior to or as a condition of a **subdivision** map, **site plan**, building permit, or **development** or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause.

SECTION 12.08 REGULATIONS AND REQUIREMENTS

- (A) *Requirement to Prevent, Control, and Reduce **Stormwater Pollutants**.*
- (1) *Authorization to Adopt and Impose **Best Management Practices**.* The **County** will adopt requirements identifying **Best Management Practices** for any activity, operation, or facility, that may cause or contribute to **pollution** or contamination of **stormwater**, the **storm drain system**, or waters of the US as documented in a separate **Stormwater Management Manual**. Where BMPs requirements are promulgated by the **County** or any Federal, State of North Carolina, or regional agency for any activity, operation, or facility which would otherwise cause the discharge of **pollutants** to the **storm drain system** or water of the US, every person undertaking such activity or operation, or owning or operating such facility shall comply with such requirements. The **Stormwater Administrator** will report to the **County** Board of Commissioners annually on the status of implementation of BMPs, the **pollutants** of concern to be addressed the next year, and any new BMPs

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to be developed. BMPs developed under this program will be incorporated as part of the **County's Stormwater Management Manual**.

- (2) **New Development and Redevelopment.** The **County** may adopt requirements identifying appropriate BMPs to control the volume, rate, and potential **pollutant** load of **stormwater** runoff from new **development** and redevelopment projects as may be appropriate to minimize the generation, transport, and discharge of **pollutants**. The **County** shall incorporate such requirements in any land use entitlement and construction or building-related permit to be issued relative to such **development** or redevelopment. The owner and developer shall comply with the terms, provisions, and conditions of such land use entitlements and building permits as required in this article.
- (3) **Responsibility to Implement Best Management Practices.** Notwithstanding the presence or absence of requirements promulgated pursuant to subsections (1) and (2), any person engaged in activities or operations, or owning facilities or property which will or may result in **pollutants** entering **stormwater**, the **storm drain system**, or waters of the US shall implement BMPs to the maximum extent practicable to prevent and reduce such **pollutants**. The owner or operator of a commercial or **industrial** establishment shall provide reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal **storm drain system** or **watercourses**. Facilities to prevent accidental discharge of prohibited materials or other wastes shall be provided and maintained at the owner's or operator's expense.

BMPs required by the **County** can be obtained from the **Stormwater Administrator's** Office by requesting the BMP information appropriate to a commercial or **industrial activity** from the **Stormwater Management Manual**.

- (B) **Requirement to Eliminate Illegal Discharges.** Notwithstanding the requirements of Section 12.10(A) herein, the **Stormwater Administrator** may require by written notice that a person responsible for an **illegal discharge** immediately, or by a specified date, discontinues the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future **illegal discharges**.
- (C) **Requirement to Eliminate or Secure Approval for Illicit Connections.**
 - (1) The **Stormwater Administrator** may require by written notice that a person responsible for an **illicit connection** to the **storm drain system** comply with the requirements of this article to eliminate or secure approval for the connection by a

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specified date, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of this article.

- (2) If, subsequent to eliminating a connection found to be in **violation** of this article, the responsible person can demonstrate that an **illegal discharge** will no longer occur, said person may request **County** approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense.
- (D) **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 reasonably free of trash, debris, excessive vegetation, 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**. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the **watercourse** to erosion. The property owner shall be responsible for maintaining and stabilizing that portion of the **watercourse** that is within their property lines in order to protect against erosion and degradation of the **watercourse** originating or contributed from the property.
- (E) **Requirement to Remediate.** Whenever the **Stormwater Administrator** finds that a discharge of **pollutants** is taking place or has occurred which will result in or has resulted in **pollution** of **stormwater**, the **storm drain system**, or water of the US, the **Stormwater Administrator** may require by written notice to the owner of the property and/or the responsible person that the **pollution** be remediated and the affected property restored within a specified time pursuant to the provisions of Sections 12.09 and 12.10.
- (F) **Requirement to Monitor and Analyze.** The **Stormwater Administrator** may require by written notice of requirement that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to **stormwater pollution, illegal discharges**, and/or **non-stormwater discharges** to the **storm drain system** or waters of the US, undertake at said person's expense such monitoring and analyses and furnish such reports to the **County** as deemed necessary to determine compliance with this article.
- (G) **Notification of Spills.** Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in **illegal discharges** or **pollutants** discharging into **stormwater**, the **storm drain system**, or waters of the US from said facility, 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 a **hazardous material**, said person shall immediately notify

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emergency response officials of the occurrence via emergency dispatch services (911). In the event of a release of non-**hazardous materials**, said person shall notify the **Stormwater Administrator's** Office in person or by phone or facsimile no later than 5:00 p.m. of the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the **County's** Engineering Services Department within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or **industrial** establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three (3) years.

SECTION 12.09 INSPECTION AND MONITORING

- (A) *Authority to Inspect.* Whenever necessary to make an inspection to enforce any provision of this article, 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 article, the Administrator may enter such **premises** at all reasonable times to inspect the same and to inspect and copy records related to **stormwater** compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the **County** 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.

SECTION 12.10 ENFORCEMENT

- (A) **Violations.**
- (1) Whenever there is a failure to follow an approved **stormwater** management plan or permit, or whenever, by the provisions of this article, the performance of any act is required or prohibited, or any regulation or limitation is imposed on the use of any land, or the **erection**, alteration, use or change of use of any **structure**, a failure to comply with such provisions shall constitute a **violation** of this article.
- (2) Any owner, tenant or occupant of any land, **structure** or part thereof, and any architect, engineer, designer, builder, contractor, consultant, agent or other person who, acting individually or in concert, designs or constructs any system, **structure** or part thereof, or otherwise directs, assists, allows or participates, either directly or indirectly, in any conduct or activity which creates or maintains a situation that is contrary to the requirements contained in this article may be held responsible for the **violation** and therefore subject to the penalties and remedies contained herein.

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(B) *Notice of Violation.*

- (1) Upon determining that a **violation** of this article has occurred, the **Stormwater Administrator** shall deliver a written notice to the person(s) responsible for the **violation** by personal service or by registered or certified mail, return receipt requested, indicating the nature of the **violation** and ordering the action necessary to correct it. Such notice may require, without limitation:
 - (a) The performance of monitoring, analyses and reporting;
 - (b) The elimination of all **illicit connections**, practices, operations or discharges;
 - (c) The abatement or remediation of **stormwater pollution** or contamination hazards and the restoration of any affected property;
 - (d) Payment of a fine or civil penalty; and/or
 - (e) The implementation of source control or treatment BMPs.
- (2) The final notice of **violation**, which may also be the initial notice, shall in addition to the above, include the words FINAL NOTICE OF **VIOLATION** in the heading, state the action the **County** intends to take if the **violation** is not corrected, and shall advise that the **Stormwater Administrator's** order may be **appealed** as provided in Section 12.10(D) of this article.
- (3) If abatement of a **violation** and/or remediation of affected property are required, the notice shall set forth a deadline by which such abatement and/or remediation must be completed.

(C) *Penalties, Fines, and Remedies.*

- (1) Any **violation** of any provision of this **Stormwater** Management Ordinance, including but not limited to **illegal discharge**, shall constitute a misdemeanor and subject the violator to a criminal fine of five hundred dollars (\$500.00) or imprisonment for up to twenty (20) days as provided in N.C.G.S. ' ' 14-4 and 15A-1340.23.
- (2) Civil penalties imposed for **illegal discharge** will be as follows:

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- (a) First time offenders will be assessed a civil penalty of one hundred dollars (\$100.00) per **violation** or per day for a continuing **violation** if the quantity of the discharge is equal to or less than five (5) gallons and consists of domestic or household products. If the quantity of the discharge is greater than five (5) gallons or contains non-domestic substances the offending party will be assessed a civil penalty of two hundred fifty dollars (\$250.00) per **violation** or per day for a continuing **violation**.
- (b) Penalties imposed upon repeat offenders willfully committing **violations** which are identical or substantially similar to previous **violations** will be double the amount assessed for the prior **violation**, but will in no event exceed ten thousand dollars (\$10,000.00) per **violation** or per day for a continuing **violation**.
- (3) All other acts or conditions constituting a **violation** of this article shall subject the offender to a civil penalty of two hundred dollars (\$200.00).
- (4) The assessment of a civil penalty may be **appealed** as provided in Section 12.10(D) of this article.
- (5) Each day a **violation** continues beyond the deadline for voluntary compliance established in the final notice of **violation** shall constitute a separate and distinct offense for purposes of the penalties and remedies provided herein.
- (6) The **County** may recover, by way of a civil action in the nature of a debt, any civil penalty not paid within thirty (30) days of the violating party's receipt of written notice imposing such penalty, or within thirty (30) days of that party's receiving written notice of a decision of the Board of **County** Commissioners, or the **County** Manager if no **appeal** is taken therefrom, affirming the imposition of the penalty.
- (7) In addition to the penalties and fines set forth above, the **County** may enforce the provisions of this Ordinance by seeking appropriate equitable remedies from the General Court of Justice, including injunctions and orders of abatement.
- (D) **Appeals.** This section applies to all **appeals** except those concerning abatement by the **County** of situations dangerous or prejudicial to the public health which are discussed in Section 12.10(E) below. Any person aggrieved by a final decision of the **Stormwater Administrator**, including but not limited to the issuance of a notice of **violation**, denial of a permit or the assessment of civil penalties, may **appeal** that decision to the **County** Manager for the County of Brunswick. Such **appeals** shall be in writing, signed by the **appealing** party(ies) and shall identify with specificity the final decision being **appealed**,

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the date they received notice of that decision, and contain a detailed statement of the reason or basis for the *appeal*. All *appeals* shall be filed with the office of the **County** Manager within fifteen (15) days of receiving final notice of the **Stormwater Administrator's** decision. The time period for *appeal* from a decision of the **Stormwater Administrator** denying a permit will commence to run from the date of receipt of written notification of such denial. The time period for all other *appeals* from the **Stormwater Administrator** will commence to run from the date of receipt of the FINAL NOTICE OF **VIOLATION**. A hearing on an *appeal* to the **County** Manager will take place within ten (10) working days of the date of filing of the notice of *appeal*.

Any party(ies) not satisfied with the decision of the **County** Manager may *appeal* his/her decision to the Board of **County** Commissioners. Such *appeals* shall be filed with the Clerk to the Board of Commissioners within fifteen (15) days of receiving written notice of the **County** Manager's decision. All *appeals* must be in writing, signed by the *appealing* party(ies) and shall identify with specificity the final decision being *appealed*, the date they received notice of that decision, and contain a detailed statement of the reason or basis for the *appeal*.

- (E) *Abatement by County of Situations Dangerous or Prejudicial to the Public Health.* Pursuant to the authority contained in N.C.G.S. ' '153A-121 and 153A-140, the **Stormwater Administrator** is hereby authorized to require immediate abatement of any *violation* of this article which is dangerous or prejudicial to the health, safety and welfare of the citizens of Brunswick County. If any person or entity feels that such order for immediate abatement is in error, they may *appeal* the order to the Board of **County** Commissioners within seven (7) days of receiving written notice of the order. Such *appeals* shall be in the form of a signed writing filed with the Clerk to the Board of Commissioners and shall include a detailed statement of the reason or basis for the *appeal*. Any person or entity aggrieved by a decision of the Board of Commissioners affirming an order of immediate abatement may *appeal* such decision to the General Court of Justice within thirty (30) days of receiving written notification of such decision.

If at any point the time for an *appeal* lapses and the violating condition still exists, the **County** shall have authority to enter upon such *premises* to remove, abate, or remedy everything that is dangerous or prejudicial to the public health. The cost of such actions taken by the **County** shall be paid by the person or entity in default within thirty (30) days of receiving written notice of such costs. If these costs are not so paid, they shall thereafter become and constitute a lien upon the land or *premises* where the nuisance arose, and shall be collected as unpaid taxes.

No relief obtained by the **County** under this section shall prevent the **County** from seeking other and further relief as authorized under this article.

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- (F) *Acts Potentially Resulting in a **Violation** of the Federal **Clean Water Act**.* Any person(s) whose acts or omissions constitute **violations** of this article may also, by virtue of the same acts or omissions, be in **violation** of the Federal **Clean Water Act** and therefore subject to additional sanctions associated with that Act, including any civil and criminal penalties contained therein. Any enforcement action authorized under this article shall also include written notice to the violator of such potential liability.