

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS OF JOHNSON COUNTY, KANSAS, HELD ON THURSDAY September 2008

A regular meeting of the Board of County Commissioners of Johnson County, Kansas was held on Thursday, 9-18, 2008 with the following members being present and participating:

	Chairman Annabeth Surbaugh	
Commissioner C. Edward Peterson		Commissioner Ed Eilert
Commissioner John P Segale		Commissioner Douglas E Wood
Commissioner David A. Lindsrom		Commissioner John M Toplikar

WHEREUPON, there came before the Board the matter of adopting certain regulations to control the discharge of pollutants into the County's Stormwater Drainage System.

The Board, being fully advised, upon a motion duly made, seconded and carried, adopted the following Resolution:

A RESOLUTION ADOPTING POST-CONSTRUCTION STORMWATER QUALITY TREATMENT REGULATIONS FOR THE UNINCORPORATED AREA OF JOHNSON COUNTY, KANSAS

Res. 069-08

WHEREAS, the federal government has adopted the Clean Water Act and implemented a National Pollutant Discharge Elimination System (NPDES) program to regulate, through the Kansas Department of Health and Environment and local governments, the discharge of pollutants into local Stormwater Drainage Systems; and

WHEREAS, the Mid-America Regional Council, in order to assist local governments comply with NPDES requirements, developed a manual of "best management practices" for the prevention of stormwater pollution which are commonly referred to as "post-construction" stormwater quality treatment practices; and

WHEREAS, K.S.A. 12-3301 *et seq.* provides that the Board may adopt a code by incorporating its contents by reference in a county resolution, and the Board desires to adopt the "*Manual of Best Management Practices for Stormwater Quality*" approved and adopted in March 2008 and published by the Mid-America Regional Council and the Kansas City Metropolitan Chapter of the American Public Works Association; and

WHEREAS, the proposed regulations were presented to and considered by the Johnson County Planning Commission on August 26, 2008, and the commission had no objections thereto; and

WHEREAS, prior to the adoption of these regulations, notice of a public hearing was given once in the official County newspaper that a public hearing before the Board of County Commissioners would be held on this date to consider the adoption of the post-construction stormwater quality treatment regulations for the unincorporated area of Johnson County, Kansas; and

WHEREAS, after the public hearing was held, and upon the recommendation of the Director of the Johnson County Public Works Department, the Board adopted the following regulations, to wit:

POST-CONSTRUCTION STORMWATER QUALITY TREATMENT REGULATION

Sections

- 1.1 Legislative Background
- 1.2 Purpose and Intent
- 1.3 Definitions
- 1.4 Interpretations
- 1.5 Applicability
- 1.6 Waivers
- 1.7 Technical Specifications and Design Criteria Adopted
- 1.8 Submittal of Studies, Plans, and Specifications
- 1.9 Permit Required
- 1.10 Issuance of Permit
- 1.11 Performance Surety Required
- 1.12 Maintenance Surety Required
- 1.13 Timing of Stormwater Treatment Facility Construction
- 1.14 Notice of Construction and Acceptance
- 1.15 Easement
- 1.16 Repairs During Maintenance Period
- 1.17 On-Going Maintenance Responsibilities
- 1.18 Disturbance of Constructed Facilities
- 1.19 Enforcement; Designation of Enforcement Officer; Abatement; Right of Entry; Penalty
- 1.20 Effective Date
- 1.21 Copies
- 1.22 Publication

1.1. Legislative Background. The Congress of the United States has amended the Clean Water Act of 1972 to reduce Pollutants discharged into the waters of the United States by extending National Pollutant Discharge Elimination System (“NPDES”) requirements regulating Stormwater Runoff discharge from construction and development activities to the County.

The County is subject to the NPDES requirements as an operator of a Municipal Separate Storm Sewer System (“MS4”), and the County is therefore obligated by federal law to develop, implement, and enforce minimum “post-construction” Stormwater quality treatment standards in compliance with the County’s Kansas Water Pollution Control General MS4 Permit.

1.2. Purpose and Intent of this Regulation. The purpose of this Regulation is to establish post-construction minimum Stormwater quality management requirements and controls on any new Development or redevelopment projects that disturb greater than or equal to one acre of land. This Regulation also establishes a requirement for the long-term maintenance of Stormwater Quality Facilities following construction to protect the County's drainage system, streamways, and water bodies. This Regulation has the following objectives:

A. Minimize increases in Stormwater Runoff rate and volume from Development in order to reduce Pollution, Sediment, Erosion, and maintain the integrity of the County's drainage system, streamways, and water bodies;

B. Minimize increases in Non-point Source Pollution caused by Stormwater Runoff from Developments which would otherwise degrade local water quality, particularly if receiving water bodies are classified as impaired on the current version of the 303d listing of impaired waters in Kansas as identified by the Kansas Department of Health and Environment (KDHE); and to

C. Reduce post development Stormwater Runoff rates, Erosion, Sediment, and Non-Point Source Pollution to pre-development conditions, wherever possible through the use of Stormwater Best Management Practices, including Stormwater Facilities, and to ensure these Best Management Practices are properly maintained and pose no injury or threat to public safety.

1.3. Definitions: As used in this Regulation, the following terms or phrases shall have the meanings set forth below:

1.3.1. "*Approved Plan*" means a set of representational drawings and other documents prepared by a licensed professional engineer that comply with the provisions of this Regulation and contain the information and specifications required by the County to minimize Stormwater Runoff.

1.3.2. "*Applicant*" means any Person who makes application for a permit as required by this Regulation. An "Applicant" must be either the Landowner or the Landowner's agent.

1.3.3 "*As-Built Plan*" means a drawing or plan prepared and certified by a licensed Professional Engineer or Land Surveyor that represents the actual dimensions, contours, and elevations of a completed Stormwater Facility.

1.3.4. "*Best Management Practices*" (BMP) means Stormwater management techniques or methods used to prevent and control the discharge of Pollutants, including Sediment, and to minimize Stormwater Runoff, both directly and indirectly, to Stormwater-receiving waters, Stormwater Drainage Systems, waters of the United States, or any water body in the unincorporated area of the County. BMP may include structural or nonstructural solutions, including Stormwater Facilities, a schedule of activities, prohibition of practices, and maintenance procedures.

1.3.5. “*Design Manual*” refers to the “*Manual of Best Management Practices for Stormwater Quality*” and all appendices dated March 2008 published by the Mid-America Regional Council and the Kansas City Chapter of the American Public Works Association.

1.3.6. “*Development*” means any activity, change in land use, or improvement on any parcel of land, including any subdivision, which alters the surface of the land that increases the imperviousness of or creates additional Impervious Cover. The term does not include:

A. Expansion of a lawful, previously-existing, non-residential use of land if expansion in Impervious Cover is less than 15,000 square feet and such expansion is approved by the Director of Planning prior to January 1, 2009.

B. Agricultural land uses and buildings.

1.3.7. “*Director*” means the Director of the County’s Public Works Department or the Director’s designee.

1.3.8. “*Erosion*” means the process by which the ground surface is worn away by the action of the wind, water, ice, gravity, or artificial means.

1.3.9. “*Impervious Cover*” means those surfaces that cannot effectively infiltrate rainfall, including building rooftops, pavement, sidewalks, and driveways.

1.3.10. “*Infiltration*” means the process of percolating Stormwater into the subsoil.

1.3.11. “*Land Disturbance*” means any activity that changes the physical conditions of land form, vegetation and hydrology, creates bare soil, or otherwise may cause Erosion or Sedimentation. Such activities include, but are not limited to, clearing, removal of vegetation, stripping, grading, grubbing, excavating, filling, logging and storing of materials.

1.3.12. “*Landowner*” means the legal or beneficial owner of a Site, including those holding the right to purchase or lease the Site, or any other person holding proprietary rights to the Site.

1.3.13. “*Licensed Land Surveyor*” means an individual who is duly licensed by the Kansas State Board of Technical Professions, pursuant to K.S.A 74-7001 *et seq.* to practice surveying.

1.3.14. “*Maintenance Agreement*” means a recorded document that acts as a property deed restriction and which provides, *inter alia*, for long-term maintenance of a Stormwater Facility. A stormwater easement, if appropriate terms and conditions are incorporated into the document, may be deemed by the county a “Maintenance Agreement” for purposes of this Regulation.

1.3.15. “*Municipal Separate Storm Sewer System (MS4)*” means the publicly-maintained Stormwater Drainage System within the unincorporated area of Johnson County, including all appurtenances and ancillary structures thereto, any conveyance or system of

conveyances for Stormwater, including road drainage systems, streets, catch basins, detention basins, curbs, gutters, ditches, man-made channels or storm drains, as well as any system that meets the definition of a "Municipal Separate Storm Sewer System" or "MS4" as defined by the Environmental Protection Agency in 40 C.F.R. 122.26, or amendments thereto.

1.3.16. "*Non-point Source Pollution*" means Pollution from any source other than from a discernible, confined, and discrete conveyance, and shall include, but not be limited to, Pollutants from agricultural, forestry, mining, Development, subsurface disposal, and urban Stormwater Runoff sources.

1.3.17. "*NPDES Stormwater Discharge Permit*" means a National Pollutant Discharge Elimination System permit issued under authority delegated pursuant to 33 USC 1342(b) that authorizes the discharge of Pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

1.3.18. "*Pollutant*" and "*Pollution*" are synonyms for the purposes of this Regulation and mean hazardous waste, industrial waste, paints, varnishes, and solvents; petroleum hydrocarbons; automotive fluids; cooking grease; detergents (biodegradable or otherwise); degreasers; cleaning chemicals; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to Pollution; floatables; pesticides, herbicides, and fertilizers; liquid and solid wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; soil, sediment, dirt or wastes and residues that result from Development; asphalt based materials; concrete and cement; and noxious or offensive matter of any kind. "Pollution" or "Pollutant" means the contamination or other alteration of any water's physical, chemical or biological properties by the addition of any constituent and includes but is not limited to, a change in temperature, taste, color, turbidity, pH, or odor of such waters, or the discharge of any liquid, gaseous, solid, radioactive, or other substance into any such waters as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to the public health, safety, welfare, or environment, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life. The term "Pollution" and "Pollutant" shall include those items defined as "Pollutants" in Section 502(6) of the federal Clean Water Act, or any amendments thereto, (33 U.S.C. §1362(6)), Pesticides as defined by K.S.A. 2-2438a and any amendments thereto, and insecticides, fungicides, herbicides, rodenticides, nematocides, defoliant, plant regulators, or desiccants, as defined by K.S.A. 2-2202 and any amendments thereto. The term "Pollution" and "Pollutant" shall not include uncontaminated Stormwater, potable water or reclaimed water generated by a lawfully permitted water treatment facility. The term "Pollution" or "Pollutant" also shall not include any substance identified in this definition, if through compliance with the Best Management Practices available; the discharge of such substance has been reduced or eliminated to the maximum extent practicable. In an enforcement action, the burden shall be on the person who is the subject of such action to establish the reduction or elimination of the discharge to the maximum extent practicable through compliance with the Best Management Practices.

1.3.19. “*Professional Engineer*” means an engineer duly licensed by the Kansas State Board of Technical Professions pursuant to K.S.A. 74-7001 *et seq.* to practice engineering.

1.3.20. “*Regulation*” means this Post Construction Stormwater Quality Treatment Regulation (2008 Edition) for the unincorporated area of Johnson County, Kansas.

1.3.21. “*Sediment*” means any solid material, organic, or inorganic, that has been deposited in water, is in suspension in water, is being transported or has been removed from its site of origin by wind, water, ice or gravity as result of soil Erosion. Sedimentation is the process by which eroded material is transported and deposited by the action of wind, water, ice or gravity.

1.3.22. “*Site*” means any lot or parcel of land, or multiple lots or parcels of land, upon on which Development is planned to be undertaken and for which a Stormwater Quality Management Plan and a Stormwater Facility Permit are required. “*Site*,” if the context requires, shall also mean the parcel of land upon which a Stormwater Facility is located.

1.3.23. “*Stormwater Drainage System*” means surface water and storm sewers and all appurtenances necessary in the maintenance, operation, regulation, and improvement of the same, including, but not limited to, pipes, culverts, bridges, open improved channels, street gutters, inlets, pumping stations, enclosed storm sewers, outfall sewers, surface drains, street, curb and alley improvements associated with storm or surface water improvements, natural and manmade wetlands, channels, ditches, rivers, streams, floodplains, water bodies, detention and retention facilities, and other flood control facilities and works for the collection, conveyance, pumping, infiltration, treating, controlling, managing and disposing of Stormwater.

1.3.24. “*Stormwater Easement*” means a legal right granted by a Landowner to a grantee to allow the use of private land for Stormwater management purposes.

1.3.25. “*Stormwater*” or “*Stormwater Runoff*” means any surface flow, runoff, and drainage consisting of water from any form of natural precipitation, and resulting from such precipitation.

1.3.26. “*Stormwater Facility*” means both structural and non-structural methods including Best Management Practices used to control Stormwater Runoff and Pollution. A non-structural Stormwater Facility includes, but is not limited to, stream buffers, native soil and vegetation preservation, and native soil restoration. A structural Stormwater Facility includes, but is not limited to, wetlands, wet or dry detention basins, bio-retention cells, porous pavement, and infiltration basins. Both non-structural and structural Stormwater Facilities require routine maintenance as provided in the Design Manual or these Regulations.

1.3.27. “*Stormwater Facility Permit*” means the permit required by the County for Development on any Site subject to this Regulation.

1.3.28. “*Stormwater Quality Management Plan*” (“SQMP”) means the proposal prepared by a licensed professional engineer and submitted by the Applicant for the installation of Stormwater Facilities, control of Stormwater Runoff, Pollutants, and Sediment for a Site, which proposal shall establish controls sufficient to comply with the Design Manual and shall include drawings, specifications, Development documents, schedules, inspection reports, copies of permits and other related documents to demonstrate compliance with this Regulation and the proposed implementation of Best Management Practices for the Site.

1.4. Interpretation. This Regulation establishes the minimum requirements for the promotion of the public health, safety, and general welfare. Whenever any requirement of this Regulation conflicts with the requirements of any other lawfully-adopted statute, ordinance, resolution, regulation, or rule, the most restrictive, i.e., that which imposing the higher standard, shall govern. For the purposes of interpretation, the County’s Street Construction and Storm Drainage Standards for Subdivisions, including provisions relating to the installation of curb and gutter, shall be deemed more restrictive than this Regulation. The Director shall be responsible for the administration and enforcement of these Regulations and shall have the authority to adopt guidelines and procedures to implement the intent and purpose of this Regulation.

1.5. Applicability. This Regulation shall apply to all Development within the unincorporated areas of Johnson County, Kansas, with the following exceptions:

- A. Sites upon which Land Disturbances will be less than one acre, unless such Site is part of a larger common plan of Development.
- B. This Regulation shall not apply to property if a preliminary plat has been approved by the Board of County Commissioners prior to August 1, 2009, and a final plat containing a portion of that preliminary plat has been recorded in the Johnson County Office of Records and Tax Administration prior to August 1, 2010. If a Stormwater Facility Permit is not obtained for all parts of the Site within two (2) years of the Final Plat approval, all requirements of this Regulation shall apply to all Sites within the Final Plat area.
- C. This Regulation shall not apply to a site plan approved by the Board of County Commissioners prior to August 1, 2009, and for which a building permit has been obtained and Development begun prior to August 1, 2011.

1.6. Waivers.

A request for a waiver from the Design Manual or any provision of this Regulation shall be made, in writing, on forms provided by the Director of Planning. The Zoning Board may recommend, and the Board of County Commissioners may grant, a waiver request upon a finding that the waiver will not be contrary to the health, safety, or welfare of the occupants of the Development or nearby properties, or the community at-large. In reaching a determination, the Zoning Board and the Board of County Commissioners shall consider the following non-exclusive criteria:

- A. Whether the waiver would cause the County to violate the requirements of its NPDES Phase II permit or any other local, state, or federal laws;

- B. Whether alternative methods of compliance are proposed;
- C. The extent to which the waiver may adversely affect Stormwater quality;
- D. The nature and extent of the proposed Development;
- E. Whether any conditions or constraints on the Development contribute to the need for the waiver; and
- F. The recommendation of the Director of Public Works.

The Zoning Board and the Board of County Commissioners may weigh the criteria in their considerations but not every criteria needs to be met to grant a waiver and no one factor shall be determinative or controlling. Waivers may be granted subject to reasonable conditions deemed necessary to lessen potential adverse impacts caused by the waiver.

1.7. Technical Specifications and Design Criteria. Stormwater Facilities within the unincorporated area of the County shall be designed and constructed in accordance with the Design Manual which is incorporated by reference into this Regulation. To the extent necessary or desirable, the Director may provide guidance and interpretation of the Design Manual to further the purpose and intent of this Regulation.

1.8. Submittal of Studies, Plans, and Specifications. In accordance with this Regulation, every Applicant shall submit to the County a Preliminary and a Final Stormwater Quality Management Plans ("SQMP") for the Applicant's Site.

The Preliminary Stormwater Quality Management Plan will be submitted with the preliminary plat and must include: conceptual Stormwater management plans, sufficient information to evaluate the existing environmental characteristics of the project site, impacts of the proposed development, preliminary sizing for Stormwater Facilities, and locations of any proposed access easements or conservation easements, and a description of the maintenance responsibility for proposed Stormwater Facilities. The proposed schedule for installation of Stormwater Facilities will also be submitted with the preliminary plat.

Final Stormwater Quality Management Plan Requirements: The Final Stormwater Quality Management Plan, in addition to the information from the Preliminary Stormwater Quality Management Plan, shall include all of the calculations required in the Design Manual and any other submittal requirements as determined by the Director. For subdivisions, the Final Stormwater Quality Management Plan must be submitted to, reviewed and approved by the Director, prior to execution of the improvement agreement for public improvements in the subdivision. For Developments that require a building permit the Final Stormwater Quality Management Plan must be approved by the Director prior to issuance of the Building Permit. Prior to commencing construction of a Stormwater Facility, a Professional Engineer retained by or on behalf of the Applicant shall submit a certification stating that the design of the Stormwater Facilities for the Site is in conformance with the standards, requirements, and specifications of this

Regulation. If the Director finds that a proposed Stormwater Facility will not conform to this Resolution, the Director may issue a written notice of disapproval.

1.9. Permit Required. A Stormwater Facility Permit shall be required for every Site and shall be issued by the Director. The initial permit fee shall be \$250.00 payable to the Johnson County Public Works Department. The Applicant shall submit a copy of the Applicant's contractor's firm bid identifying the total contracted cost for installing the required Stormwater Facility to the Director, who may, but shall not be obligated to, review the contract to determine whether the bid amount appears sufficient to undertake and complete the work. Any such determination shall not be a representation or assurance by the Director that the work can actually be completed for the contract amount.

1.10. Issuance of Permit. Upon the County's acceptance and approval of the SQMP, the delivery to the County of the Performance and Maintenance Surety, the execution by the Landowner of any necessary easement and Maintenance Agreement required by this Regulation, the Director shall issue a Stormwater Facility Permit for the Site. The permit shall set forth the terms and conditions of the approved SQMP.

1.11. Performance Surety Required: The Director shall require the submittal of a performance surety in the form of an irrevocable letter of credit, cash deposit, or performance bond. If a letter of credit is provided, it shall be on the form as prescribed by the Director. The amount of the performance surety shall be 1.25 times the Applicant's contractor's firm bid identifying the total contracted cost for installing the required Stormwater Facility and approved by the Director.

Performance Surety Waiver for Single Lot developments: If Stormwater Facilities only serve a single building lot and a building is being constructed, a performance surety may be waived by the Director provided all Stormwater Facilities are constructed and certified prior to issuance of a Certificate of Occupancy.

When seasonal or environmental conditions cause a delay in constructing the Stormwater Facilities, the Director may approve issuing a Certificate of Occupancy provided a performance surety is posted.

Release of Performance Surety: The performance surety will be released only when all of the following conditions have been met:

1. At least 90% of the land area served by the Stormwater Facilities has permanent stabilization in place.
2. All of the Stormwater Facilities covered by the surety have been constructed and certified in accordance with this Chapter.
3. If the Stormwater Facility is constructed prior to final stabilization of at least 90% of the land area served by the facility, and the most recent certification of the facility is more than 90 calendar days old, an updated certification shall be required to verify that the facility is fully functional.

1.12 Maintenance Surety Required: Prior to issuance of a permit for construction of a Stormwater Facility, a letter of credit, cash deposit, or a maintenance bond shall be provided to the County to

ensure all regular maintenance and repairs to the Stormwater Facility is undertaken while the maintenance surety is in effect including, but not limited to repairs necessary due to damage caused by intentional or unintentional acts of others. The maintenance surety shall be in the amount of 50% of the construction cost of the Stormwater Facility and can be utilized for any maintenance or rehabilitation costs associated with the Stormwater Facility deemed necessary by the County, including, but not limited to; removal of siltation, mowing, replacement of vegetation, piping repairs, replacement of underdrains, other repairs to the facility, and any administrative or engineering costs associated with such maintenance and repairs. Maintenance sureties shall conform with the following:

1. If the maintenance surety is in the form of a maintenance bond, it shall remain in effect for a period of three (3) years following completion of the Stormwater Facility.
2. If the maintenance surety is in the form of a Letter of Credit, the property owner, contractor, or developer shall deposit with the County an irrevocable letter of credit from an acceptable financial institution payable to the County, collectable no later than three years from the date of completion of the Stormwater Facility.
3. If the maintenance surety is in the form of cash, the funds shall be deposited with the County. All remaining funds and any interest accrued thereon shall be returned to the Applicant no later than three (3) years after the date of completion of the Stormwater Facility.

1.13 Timing of Stormwater Facility Construction: The sequencing and protection of Stormwater Facilities during construction is an important design consideration to ensure the Facilities will perform as designed. The final SQMP shall include a schedule of construction activities that indicates the point at which the Stormwater Facilities will be constructed. In addition, the SQMP shall indicate the protection measures necessary to ensure runoff from construction operations, which typically includes an increased amount of sediment, will not adversely impact the design, operation, or maintenance of the Stormwater Facility. If the construction sequence is not known, the plan shall indicate the construction activities required to be completed prior to construction of the Stormwater Facility, and it shall indicate the protection and maintenance measures to be provided during construction activities to ensure proper Stormwater Facility function following completion of construction activities. The following provisions are allowable for timing of such facility construction:

- A. For a Stormwater Facility serving a single building lot, the facility may be constructed concurrently with the development of the site and building, subject to exceptions set forward in Section 1.11 of this Regulation.
- B. Any Stormwater Facilities which include plantings or infiltration practices shall not be constructed until 90% of the tributary watershed has been developed and permanently stabilized unless the Director approves a different Schedule. Additionally, Stormwater Facilities must be installed and certified within six (6) months of permanent stabilization of the entire land area served by the facility. "Land area served by the facility" shall mean only those areas within the common plan of development and shall not include offsite areas even if they are tributary to the facility.

- C. For Stormwater Facilities serving multiple development lots within a common plan of development, a building permit or Certificate of Occupancy may be withheld for any building or site unless a permit has been issued authorizing construction of required Stormwater Facility to serve the building or site.

1.14. Notice of Construction and Acceptance.

- A. The Applicant shall notify the Director before beginning construction of any Stormwater Facility. The Applicant shall keep the Director advised of the progress of the work and any changes in the work schedule as disclosed in the Applicant's SQMP.
- B. The Director shall issue a Notice of Acceptance upon the Applicant's submission of an As-Built Plan showing in detail all construction changes from the approved plans and specifications, and a written certification by a qualified Professional Engineer that the Stormwater Facility has been installed in accordance with the SQMP.

1.15. Easement. Every Stormwater Facility shall be subject to an appropriate Stormwater Easement or other agreement, the form of which shall be approved by the County Legal Department, to ensure that the Stormwater Facility, whether located on a separate, legally described lot or tract designated for such Stormwater Facility, or upon a lot or tract that is also used for other purposes, can be accessed, inspected, repaired, and maintained by public officials if necessary. The easement or agreement shall include provisions for access from public right-of-way to the Stormwater Facility by i) landowners legally responsible for the maintenance of the Stormwater Facility and ii) the Director for periodic inspection and, if necessary, maintenance of the Stormwater Facility. All easements and agreements shall be appurtenant and permanent and shall contain a provision that the terms and conditions of such easement or agreement shall not be changed, or shall the easement or agreement be terminated without the consent of the County.

The Stormwater easement or agreement, shall also provide that if, after notice by the Director to correct a situation or violation requiring maintenance work of the Stormwater Facility, satisfactory corrections are not commenced by the Landowner within a reasonable period not to exceed 30 calendar days, the County may perform all necessary work to place the Stormwater Facility in proper working condition. The owners of the lands served by the Stormwater Facility, excluding any public right-of-way, shall be assessed the cost of the work, including administrative costs, materials, personnel, and any penalties. Costs shall be apportioned to each owner based on a ratio of the area of land owned to the total area of land assessed. This assessment may be accomplished by placing a special assessment on the owners' property, placed on the owners' tax bill, and collected in the same manner as ad valorem real estate taxes.

1.16. Repairs During Maintenance Period. The principal under the performance and maintenance surety required by this resolution shall make all needed repairs arising out of defective workmanship or materials which, in the judgment of the Director or the certifying Professional Engineer, become necessary within three years following the date of completion and acceptance of a Facility by the Director. If within twenty calendar days after the mailing of a written notice, the principal under the performance and maintenance surety shall fail to make, or undertake with due

diligence necessary repairs, the County shall have the right, but not the obligation, to make necessary repairs at such principal's expense without first making any claim against such surety; provided, however, that in case of an emergency where, in the judgment of the Director, delay in making repairs would cause a serious or significant loss, create a hazard, or cause damage to others' property, such repairs may be made without prior notice being sent to such principal, and such principal nonetheless shall be responsible for the costs incurred by the County in making such repairs.

1.17. On-Going Maintenance Responsibility.

- A. Every Landowner, which may be an owners' association if such association is adequately funded and able to levy assessments for Stormwater Facility maintenance, shall maintain in good condition and promptly repair and restore every Stormwater Facility located on such Landowner's property. Such maintenance, repair, and restoration shall be undertaken in conformance with the Design Manual and the specific BMP.
- B. The SQMP shall include a maintenance schedule for each Stormwater Facility included in such plan and shall include the proposed maintenance to be completed, the scheduling for such maintenance, and the Person that shall perform such maintenance. This maintenance schedule shall be incorporated into a Maintenance Agreement or Easement.
- C. Following its completion, an annual inspection shall be undertaken by the Landowner to determine whether every Stormwater Facility on the property is functioning properly. Such inspection shall be conducted prior to October 1st by a qualified Professional Engineer and the inspection report provided to the Director along with a proposed schedule of completion for any necessary repair, restoration, or maintenance.
- D. If the Landowner shall fail to properly inspect, maintain, repair, or restore any Stormwater Facility as required by this Regulation, the Director may undertake such inspection, maintenance, repair, and restoration at the Landowner's expense and all costs incurred by the County shall be collectable from the Landowner and shall constitute a lien against the Landowner's real estate located in Johnson County, Kansas and may also be collected by as a money debt in a civil suit in Johnson County district court.

1.18. Disturbance of Constructed Facilities. It shall be unlawful for any Person to modify, obstruct, damage, or materially interfere with the use or operation of a Stormwater Facility.

1.19. Enforcement; Designation of Enforcement Officer; Abatement; Right of Entry; Penalty.

The Director and the Director's designees shall be the County's code enforcement officers charged with the administration, investigation, and enforcement of this Regulation. If it is determined that a violation of this Regulation exists, then the code enforcement officer may, in addition to issuing a citation for violation of these Regulations, declare such condition a nuisance and is authorized to pursue abatement as well as any other available enforcement procedures and remedies.

From and after the effective date of this Regulation, any Person who shall violate any provisions of this Regulation, or who fails to comply therewith, or who shall violate or fail to comply with any

code or provision contained or incorporated herein, shall be guilty for each such violation of a "Class H Infraction" under the adopted fine schedule for the Johnson County Codes Court, and may be prosecuted in said court and fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each such violation, and each day such violation shall be permitted to exist shall constitute a separate offense punishable by a separate fine.

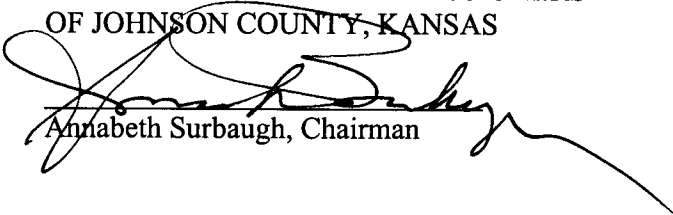
1.20. Effective Date. This Regulation shall become effective upon its adoption by the Board and its publication in the official County newspaper.

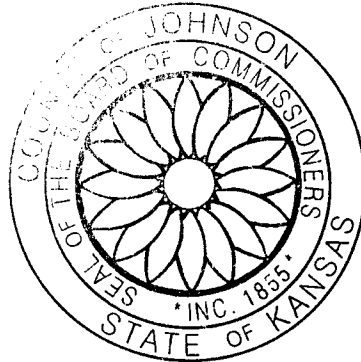
1.21. Copies. Not less than one copy of this Regulation shall be marked or stamped "official copy as incorporated by resolution" to which shall be attached a copy of this Regulation. Such copy shall be filed with the Office of the Johnson County Clerk and shall be open to inspection and available to the public at all reasonable business hours. Copies of these Regulations shall be furnished, without charge, to the courts and all administrative agencies charged with the enforcement of such standards.

1.22. Publication. This Regulation shall be published once in the official County newspaper after its adoption by the Board.

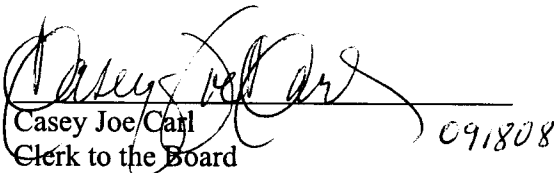
ADOPTED THIS 18 DAY OF September 2008.

BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS

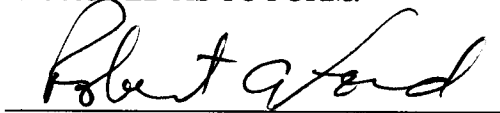

Annabeth Surbaugh, Chairman



ATTEST:


Casey Joe Carl
Clerk to the Board 091808

APPROVED AS TO FORM:


Robert A. Ford
Assistant County Counselor

APPROVED 6-0

