

Petition No. 99-119

Petitioner: Mecklenburg County Department of Environmental Protection

ORDINANCE NO. \_\_\_\_\_ AN ORDINANCE AMENDING APPENDIX A  
OF THE CITY CODE - ZONING ORDINANCE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHARLOTTE:**

Section 1. Appendix A, "Zoning" of the Code of the City of Charlotte is hereby amended as follows:

1. Amend CHAPTER 12: DEVELOPMENT STANDARDS OF GENERAL APPLICABILITY, by adding a new PART as follows:

PART 8: S.W.I.M. (SURFACE WATER IMPROVEMENT AND MANAGEMENT)  
STREAM BUFFERS

Section 12.801. Purpose.

The purpose of the stream buffer network in Charlotte is to ensure that the stream and adjacent lands will fulfill their natural functions. Stream systems are comprised of the stream and their drainage basins. Streams have the primary natural functions of conveying storm and ground water, storing floodwater and supporting aquatic and other life. Vegetated lands adjacent to the stream channel in the drainage basin serve as a buffer to protect the stream system's ability to fulfill its natural functions. Primary natural functions of the buffer include: Protect water quality by filtering pollutants; Provide storage for floodwaters; Allow channels to meander naturally; and Provide suitable habitats for wildlife.

Section 12.802. Definitions.

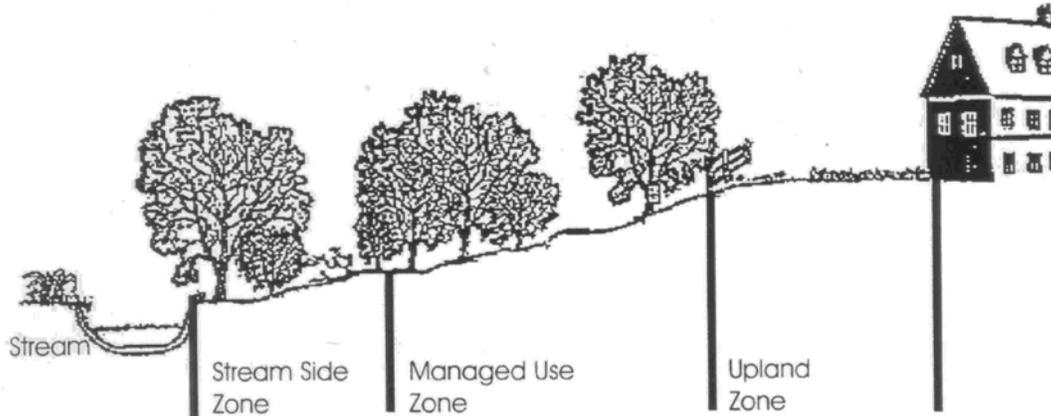
For the purposes of Chapter 12, Part 8, the following words and phrases shall be defined as specified below.

1. Best Management Practices (BMPs): A structural or nonstructural management-based practice used singularly or in combination to reduce non-point source input to receiving waters in order to achieve water quality protection goals.

Non-structural BMPs. Non-engineered methods to control the amount of non-point source pollution. These may include land-use controls and vegetated buffers.

Structural BMPs. Engineered structures that are designed to reduce the delivery of pollutants from their source or to divert contaminants away from the water supply. These may include wet detention ponds, detention basins, grass swales and ditches, and infiltration devices.

2. Buffer: A natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.
3. Buffer Zones: The stream buffer is comprised of three (3) zones as shown below.



4. Buffer Widths: Viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.
5. Drainage Basin: The area of land which drains to a given point on a body of water.
6. Floodplain Land Use Map (FLUM): A locally developed floodplain map which is used for regulation of new development.
7. FLUM Floodway: The channel of a stream or other watercourse draining equal to or greater than 640 acres (Federal Emergency Management Agency (FEMA) regulated) and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.1 feet, based on July 1999 land use conditions.
8. FLUM Floodway Encroachment Lines: The lateral limits of a floodway district, based on July 1999 land use conditions, as shown on the Floodplain Land Use Map (FLUM), along streams or other bodies of water, within which, in the direction of the stream or other body of water, no structure or fill may be added, unless specifically permitted herein. Their purpose is to preserve the flood-carrying capacity of the floodway. Their location is such that the floodway between them including the channel will handle the

base flood flow.

9. FEMA Fringe: The land area of a stream draining equal to or greater than 640 acres located between the limits of the FLUM floodway encroachment lines and the maximum elevation subject to inundation by the base (1% chance) flood based on July 1999 land use conditions.
10. Floodplain: The low, periodically flooded lands adjacent to streams. For land use planning purposes, the regulatory floodplain is usually viewed as all lands that would be inundated by the Regulatory Flood.
11. Mitigation: Actions taken either on-site or off-site as allowed by this Part to offset the effects of temporary or permanent loss of the buffer.
12. Stream: A channel on the land surface for conveying water. As used in this Part, the main channel of the Catawba River, Lake Norman, Mountain Island Lake and Lake Wylie, is not a stream and this Part does not apply.
13. Top Of Bank: The landward edge of the stream channel during high water or bankfull conditions at the point where the water begins to overflow onto the floodplain.

#### Section 12.803. Applicability.

1. All properties shall be subject to the buffer requirements of this PART 8 except those properties which, as of the effective date of November 15, 1999, fit into one of the following categories:
  - (a) Have been issued a Certificate of Building Code Compliance.
  - (b) Have a valid building permit.
  - (c) Have been subdivided by a recorded subdivision plat.
  - (d) Have been described by metes and bounds in a recorded deed which: If to be used for residential purposes:
    - Are 1 acre or less in size.If to be used for nonresidential purposes:
    - Are 4 acres or less in size if located on a non-FEMA regulated floodway, or
    - Are 7 acres or less in size if located on a FEMA regulated floodway.
  - (e) Are included on a valid preliminary subdivision plan.
  - (f) Have otherwise secured a vested property right under State law or local ordinance.
2. Redevelopment or expansions to uses included in the above categories are not subject to the buffer requirements of this Part unless it would result in an increase in the total impervious area within the buffer.
3. In the event that stream buffers are required by another Section of this Ordinance, the

more stringent stream buffer requirements apply.

Section 12.804. Buffer Standards.

Required stream buffer widths vary based on the size of the upstream drainage basin. Mecklenburg County’s Geographic Information System (GIS) will serve as a tool to delineate the size of drainage basins and specify the corresponding buffer widths. S.W.I.M. stream buffer requirements specified in this PART 8 begin at the point where the stream drains 100 acres or greater. Refer to the Charlotte-Mecklenburg Storm Water Design Manual for optional buffers on streams which drain less than 100 acres.

1. Buffer widths for streams draining equal to and greater than 100 acres

Buffers are required for streams draining areas equal to or greater than 100 acres as specified below. Buffer widths for these streams are measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

Drainage Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Width of Buffer on each side of Stream
≥ 100 acres	20 feet	None	15 feet	35 feet
≥ 300 acres	20 feet	20 feet	10 feet	50 feet
≥ 640 acres <sup>(1)</sup>	30 feet	45 feet	25 feet PLUS 50% of the <u>area</u> of the FEMA fringe beyond 100 feet	100 feet PLUS 50% of the <u>area</u> of the FEMA fringe beyond 100 feet

Footnotes:

- <sup>(1)</sup> Buffer widths for drainage areas of ≥ 640 acres:
1. The FEMA fringe and FLUM floodway encroachment lines will be used for floodplain and buffer calculations.
  2. If the floodplain is less than 100 feet wide, the total width of the buffer on that side of the stream will be 100 feet except as provided in 4. below.
  3. The landowner/developer has discretion to designate the buffer zone beyond the 100-foot minimum. The additional buffer area beyond 100 feet must be contiguous with at least a portion of the required 100-foot buffer and be configured in such a manner as to benefit water quality.
  4. So long as the total buffer width is maintained, the buffer may vary in width on either side of the stream based on individual stream side topography provided that the owner(s) control both sides of the stream and

- the stream side zone is maintained on both sides of the stream.
5. Buffer requirements do not apply to the main channel of the Catawba River including Lake Norman, Mountain Island Lake and Lake Wylie.

2. Buffer description

Buffer function, vegetation and use vary according to the different buffer zones as described in the following table.

Characteristics	Stream Side Zone	Managed Use Zone	Upland Zone
Function	Protect the integrity of the ecosystems	Provide distance between upland development and the stream side zone	Prevent encroachment and filter runoff
Vegetative Targets <sup>(1)</sup>	<b><u>Undisturbed (no cutting or clearing allowed)</u></b> - If existing tree density is inadequate, reforestation is encouraged	<b><u>Limited clearing</u></b> - Existing tree density must be retained to a minimum of 8 healthy trees of a minimum 6 inch caliper per 1000 square feet - If existing tree density is inadequate, reforestation is encouraged	<b><u>Grass</u></b> or other herbaceous ground cover allowed - Forest is encouraged
Uses <sup>(2)</sup>	<b><u>Very restricted</u></b> - Permitted uses limited to: flood control structures and bank stabilization as well as installation of utilities and road crossings with stabilization of disturbed areas as specified in Section 12.806.2	<b><u>Restricted</u></b> - Permitted uses limited to: all uses allowed in the Stream Side Zone, as well as storm water best management practices (BMPs), bike paths, and greenway trails (not to exceed 10 feet in width)	<b><u>Restricted</u></b> - Permitted uses limited to: all uses allowed in the Stream Side and Managed Use Zones, as well as grading for lawns, gardens, and gazebos and storage buildings (non-commercial and not to exceed 150 square feet)

Footnotes:

<sup>(1)</sup> Re-vegetation of disturbed buffers is required as specified in the Charlotte-Mecklenburg Land Development Standards Manual when such disturbances result in the failure of the buffer system to comply with the vegetative targets specified above. The manual also contains recommended tree densities for each zone for voluntary reforestation efforts.

- (2) Fill material can not be brought into the buffer. Grading is allowed only in the Upland Zone. Commercial buildings or occupied structures are not allowed in the buffer. Permitted uses within the buffer zones should be coordinated to ensure minimal disturbance of the buffer system. For example, if it is necessary to install utilities within the buffer, every attempt should be made to build greenway trails so they follow the cleared areas instead of additional clearing.

### 3. Diffuse flow requirement

Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation. Techniques for providing diffuse flow are specified in the Charlotte-Mecklenburg Land Development Standards Manual.

- (a) Concentrated runoff from ditches or other manmade conveyances shall be converted to diffuse flow before the runoff enters the buffer.
- (b) Periodic corrective action to restore diffuse flow shall be taken by the property owner as necessary to prevent the formation of erosion gullies.

### 4. Ponds

Ponds which intersect the stream channel shall have the same buffers as the original stream measured from the top of the bank of the pond. Buffer requirements shall not apply to wet ponds used as structural BMPs.

### 5. Buffer delineation

The following buffer delineations are required:

- (a) Streams and buffer boundaries including all buffer zones must be clearly delineated on all construction plans, including grading and clearing plans, erosion, drainage and sediment control plans and site plans.
- (b) Outside buffer boundaries must be clearly marked on-site prior to any land disturbing activities.
- (c) The outside boundary of the buffer must be permanently marked at highway stream crossings.
- (d) Streams and buffer boundaries including the delineation of each buffer zone must be specified on all surveys and record plats.
- (e) Buffer requirements must be referenced in homeowners association documents.

## Section 12.805. Incentives.

### 1. Purpose

The purpose of this section is to set forth incentives to offset restrictions that buffer requirements place on development. These incentives promote open space development that incorporates smaller lot sizes to minimize total impervious area within the

development, reduce total construction costs, conserve natural areas, provide community recreational space, and promote protection of streams.

2. Reduction in lot size

Allow a one-for-one credit in lot size reduction in addition to what is allowed in Section 9.205(4)(a) provided this is not below the minimum requirement for the next lower zoning classification.

3. Relax lot setback requirements

For all lots within a development requiring a SWIM buffer, setback requirements as specified in Section 9.205(4) are reduced as follows:

- (a) Front setbacks can be reduced to a minimum of 15 feet for all lots except front loaded garages must maintain a minimum setback of 20 feet.
- (b) Rear setbacks can be 100 % within a SWIM buffer. Rear setbacks can be reduced to 30 feet on all internal lots. Rear yards forming the outer boundary of a project must conform to the minimum of subsection 9.205(1)(g) for the zoning district in which the development is located.
- (c) Side setbacks can be reduced to a minimum of 3 feet provided all fire code requirements are satisfied.

4. Open space

SWIM buffer areas can be used toward satisfying the required open space minimums for the development if dedicated.

5. Density bonus

In addition to the provisions 1 through 4 above:

- (a) Single family development projects may be granted a density bonus provided the entire required SWIM buffer area or the entire SWIM buffer area plus any additional buffer area is dedicated as common open space. Such dedication must be to a homeowners association or a public or private agency that agrees to accept ownership and maintenance responsibilities for the space. The density bonus is calculated as follows:  
The entire dedicated buffer area in acres multiplied by the maximum residential density number of the underlying zoning district.
- (b) Lots within single family projects that meet the above density bonus need not meet the minimum lot width requirements set out in subsection 9.205(1) provided that each lot meets the minimum lot width requirements set forth in Table 9.205(5).

Section 12.806. Mitigation.

## 1. Purpose

The purpose of this section is to set forth the basis on which mitigation is required for unavoidable or approved buffer impacts within any of the buffer zones. This mitigation basis shall allow the property owner or other entity the opportunity to disturb a buffer, provided that steps are taken to offset the buffer loss. Prior to any buffer impact, any person or entity seeking approval of a buffer impact shall submit the requisite site and mitigation information for approval to the Mecklenburg County Department of Environmental Protection as specified below, to the extent approval is required by this Part.

## 2. Buffer impacts not requiring mitigation

The following buffer impacts do not require mitigation or specific plan approval but are required to comply with the specifications provided in the Charlotte-Mecklenburg Land Development Standards Manual for stabilization of disturbed areas to minimize negative water quality impacts.

- (a) Road crossings for connectivity or transportation links where the Charlotte-Mecklenburg Planning Commission has granted site plan approval.
- (b) Utility crossings.
- (c) Parallel water and sewer utility installation as approved by Charlotte-Mecklenburg Utilities.
- (d) Public paths and trails parallel to the stream outside the Stream Side Zone and stream crossings. Pathways must use existing and proposed utility alignments or previously cleared areas and minimize tree cutting to the maximum extent practicable. To the extent possible, pathways shall preserve existing drainage patterns and avoid drainage structures that concentrate storm water.
- (e) Incidental drainage improvements/repairs for maintenance.
- (f) Individual pedestrian paths connecting homeowners to the stream in the form of narrow, pervious footpaths with minimal tree disturbance.
- (g) New domesticated animal trails (farming) where existing trails are lost as a result of action beyond the farmers control. Stream crossings should be constructed and maintained to minimize impacts to the Stream Side Zone with fencing perpendicular and through the buffer to direct animal movement.
- (h) Mitigation approved by a State or federal agency acting pursuant to Sections 401 or 404 of the federal Clean Water Act.

## 3. Buffer impacts requiring mitigation

Impacts to stream buffers not specified in Section 12.806.2, proposed to allow development or other land use in a buffer, shall be required to mitigate or offset the proposed impact in accordance with this Section. Buffer impacts requiring mitigation and plan approval include:

Filling or piping of streams  
Removal of vegetation from the Stream Side or Managed Use Zones other than as specified by Section 12.804.2

Vegetative Targets.

Paths proposed within the Stream Side Zone

Stream relocations Fences and walls requiring tree removal in the Stream Side or Managed Use Zones

Other buffer impacts not permitted under Section 12.804.2.

The landowner or other entity proposing any of the impacts specified above shall prepare and submit for approval a site specific plan to the Mecklenburg County Department of Environmental Protection. This site plan shall show the extent of the proposed impact and clearly specify the proposed mitigation technique.

#### 4. Pre-approved mitigation techniques

The following techniques are available to landowners for mitigation of buffer impacts upon review and approval of a specific site mitigation plan by the Mecklenburg County Department of Environmental Protection. Specifications for these pre-approved mitigation techniques are provided in the Charlotte-Mecklenburg Land Development Standards Manual.

- (a) Installation of Structural BMPs: The installation of an on-site structural BMP designed to achieve specified pollutant removal targets will allow for stream buffer impacts on the specific site. The BMP should remain outside the Stream Side Zone if practical. A detailed BMP design plan must be submitted to the Mecklenburg County Department of Environmental Protection for approval based on specifications and pollutant removal targets contained in the Charlotte-Mecklenburg Land Development Standards Manual. This plan must also include a long term maintenance strategy for the BMP complete with the establishment of adequate financing to support the proposed maintenance practices.
- (b) Stream Restoration: The owner may restore and preserve the buffer area on any stream of equivalent or greater drainage area the condition of which is determined to be qualified for restoration by the Mecklenburg County Department of Environmental Protection on a 1:1 basis in linear feet of stream. This restoration shall include stream bank improvements and Stream Side and Managed Use Zone re-vegetation, in accordance with the Charlotte-Mecklenburg Land Development Standards Manual.
- (c) Stream Preservation: The owner may purchase, fee simple, other stream segments at equivalent or greater drainage area on a 1:1 linear foot basis and convey fee simple and absolute title to the land to the City/County or other conservation organization.
- (d) Wetlands Restoration: On a 2:1 acreage basis for disturbed stream and buffer area (2 acres of wetland for each acre of disturbed area), the owner may provide a combination of the preservation and/or restoration of wetlands with protective

easements, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area as specified in the Charlotte-Mecklenburg Land Development Standards Manual.

- (e) Bottom Land Hardwood Preservation: On a 2:1 acreage basis for impacted stream and buffer area (2 acres of bottomland hardwood for each acre of disturbed area), the owner may provide a combination of the preservation of existing bottom land hardwood forest or other specifically approved natural heritage area by conservation easement or other legal instrument, and the implementation of structural or non-structural BMPs to achieve specific pollutant removal targets within the impacted area as specified in the Charlotte-Mecklenburg Land Development Standards Manual.
- (f) Controlled Impervious Cover: The owner may commit to, and provide, a specific site development plan that limits overall site impervious cover equal to or less than 24%. Development on this basis shall allow for stream buffer impacts on the specific site. Preservation of the Stream Side Zone is encouraged.
- (g) Open Space Development: The submission of a specific site development plan which preserves 50% of the total land area as undisturbed open space shall allow for stream buffer impacts on the specific site.
- (h) Mitigation Credits: The purchase of mitigation credits on a 1:1 basis utilizing linear feet of stream impacted and the prevailing rate of purchase as established by the Mecklenburg County Department of Environmental Protection shall allow for stream buffer impacts on the specific site. Mitigation credits purchased under any other program (i.e., U.S. Army Corp of Engineers) shall not cover this requirement unless the issuing agency agrees to relinquish the funds to the appropriate City/County agency.

##### 5. Other mitigation techniques

No provision of this Part shall prevent the creative development of alternative mitigation plans. The owner shall submit such plan with proposed buffer impacts and detailed mitigation information to the Mecklenburg County Department of Environmental Protection for approval. The criteria used to judge the acceptability of any alternative plan shall be the degree to which the plan addresses the preservation of the four primary natural functions of stream buffers. Such plans may be submitted in conjunction with a mitigation plan submission to the U.S. Army Corp of Engineers and N.C. Department of Environment and Natural Resources for proposed stream or wetland impacts. The Mecklenburg County Department of Environmental Protection, when considering proposed mitigation alternatives, shall give equal weight to proposals which utilize the preservation of unique or endangered habitat or natural areas against proposed buffer impacts.

##### 6. Posting of financial security required for structural BMPs

When structural BMPs (wet detention ponds and other BMPs) are approved for

mitigation of a buffer disturbance, the approval shall be subject to the owner filing a surety bond or letter of credit or making other financial arrangements which are acceptable to the Mecklenburg County Department of Environmental Protection, in a form which is satisfactory to the City Attorney, guaranteeing the installation and maintenance of the required structural BMPs until the issuance of certificates of occupancy for seventy-five percent (75%) of all construction which might reasonably be anticipated to be built within the area which drains into the BMPs, allowing credit for improvements completed prior to the submission of the final plat. At such time that this level of occupancy is achieved, written notice thereof must be given by the owner to the Mecklenburg County Department of Environmental Protection. The owner must also verify the adequacy of the maintenance plan for the BMPs including the necessary financing to support the proposed maintenance practices. The Mecklenburg County Department of Environmental Protection will inspect the structural BMPs and verify the effectiveness of the maintenance plan and if found satisfactory, will within 30 days of the date of the notice notify the owner in writing.

7. Maintenance responsibilities for structural BMPs - Civil Penalties

Maintenance of all structural BMPs shall be the responsibility of the property owner or his designee. Any person who fails to maintain the required BMPs in accordance with the approved maintenance plan shall be subject to a civil penalty of not more than \$500. Each day that the violation continues shall constitute a separate violation. No penalties shall be assessed until the person alleged to be in violation has been notified in writing of the violation by registered or certified mail, return receipt requested, or by other means which are reasonably calculated to give actual notice. The notice shall describe the nature of the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected, and warn that failure to correct the violation within the time period shall result in assessment of a civil penalty or other enforcement action.

Section 12.806. Appeals and Variances.

Appeals and variances from this Part shall be subject to Chapter 5 of these regulations.

Section 2. That this Part shall become effective upon its adoption.

APPROVED AS TO FORM:

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City Attorney

I, \_\_\_\_\_, \_\_\_\_\_ City Clerk for Charlotte, North Carolina, DO HEREBY CERTIFY that the foregoing is a true and exact copy of an Ordinance adopted by the Charlotte City Council, North Carolina, in regular session convened on the 15th day of November, 1999, the reference having been made in Minute Book \_\_\_\_\_, and recorded in full in Ordinance Book \_\_\_\_\_, Page(s) \_\_\_\_\_.

WITNESS my hand and the corporate seal of Charlotte, North Carolina, this the \_\_\_\_\_ day of \_\_\_\_\_, 1999.