

CHAPTER 52: POST-CONSTRUCTION STORM WATER CONTROL REGULATIONS

Section

General Provisions

- 52.001 Title
- 52.002 Authority
- 52.003 Findings
- 52.004 Purpose
- 52.005 Applicability and jurisdiction
- 52.006 Interpretation
- 52.007 Design manual
- 52.008 Relationship to other laws, regulations and private agreements
- 52.009 Severability
- 52.010 Effective date and transitional provisions
- 52.011 Definitions

Administration and Procedures

- 52.020 Review and decision making entities
- 52.021 Review procedures
- 52.022 Applications for approval
- 52.023 Approvals
- 52.024 Appeals

Standards

- 52.035 General standards
- 52.036 Development standards for low density projects
- 52.037 Development standards for high density projects
- 52.038 Request for determination of buffer requirement
- 52.039 Standards for storm water control measures
- 52.040 Deed recordation and indications on plat
- 52.041 Dedication of BMPs, facilities and improvements
- 52.042 Variances

Maintenance

- 52.055 General standards for maintenance
- 52.056 Operation and maintenance agreement

- 52.057 Inspection program
- 52.058 Performance security for installation and maintenance
- 52.059 Records of installation and maintenance activities
- 52.060 Nuisance
- 52.061 Maintenance easement

Violations and Enforcement

- 52.075 General
- 52.076 Inspections and investigations
- 52.077 Remedies and penalties

GENERAL PROVISIONS

§ 52.001 TITLE.

This chapter shall be officially known as the "Post-Construction Storm Water Chapter." It is referred to herein as "this chapter."
(Ord. 2007-00367, passed 4-16-07)

§ 52.002 AUTHORITY.

The Town of Cornelius is authorized to adopt this chapter pursuant to North Carolina law, including but not limited to N.C. Const. Art. 14, § 5; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; and Session Law 2004-163; Chapter 160A, §§ 174,185.

(Ord. 2007-00367, passed 4-16-07)

§ 52.003 FINDINGS.

(A) It is hereby determined that:

(1) Development and redevelopment alter the hydrologic response of local watersheds and increase storm water runoff rates and volumes, flooding, soil erosion, stream channel erosion, non-point source pollution, and sediment transport and deposition, as well as reduce groundwater recharge;

(2) These changes in storm water runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

(3) These effects can be managed and minimized by applying proper design and well-planned controls to manage storm water runoff from development sites.

(B) Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Storm Water Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including the Town of Cornelius, to adopt the minimum storm water controls such as those included in this chapter.

(C) Therefore, the town establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of storm water runoff and discharge.

(Ord. 2007-00367, passed 4-16-07)

§ 52.004 PURPOSE.

(A) *General.* The purpose of this chapter is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction storm water runoff and non-point

source pollution associated with new development and redevelopment. It has been determined that proper management of construction-related and post-construction storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

(B) *Specific.* This chapter seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protects the integrity of watersheds and preserve the health of water resources;
- (2) Minimizing changes to the pre-development hydrologic response for new development and redevelopment in their post-construction state in accordance with the requirements of this chapter for the applicable design storm in order to reduce flooding, streambank erosion, and non-point and point source pollution, as well as to maintain the integrity of stream channels, aquatic habitats and healthy stream temperatures;
- (3) Establishing minimum post-construction storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;
- (4) Establishing design and review criteria for the construction, function, and use of structural storm water control facilities that may be used to meet the minimum post-construction storm water management standards;
- (5) Establishing criteria for the use of better management and site design practices, such as the preservation of greenspace and other conservation areas;
- (6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural storm water best management practices (BMPs) to ensure that they continue to function as designed, are maintained appropriately, and pose minimum risk to public safety; and
- (7) Establishing administrative procedures for the submission, review, approval and disapproval of storm water management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.

(Ord. 2007-00367, passed 4-16-07)

§ 52.005 APPLICABILITY AND JURISDICTION.

(A) *General.* The requirements of this section shall apply to all developments and redevelopments within the corporate limits or in the extraterritorial jurisdiction, unless one of the following exceptions applies to the development or redevelopment as of June 30, 2007.

- (1) Major site plans, major subdivisions and conditional use plans submitted and accepted for review;
- (2) Zoning use application submitted and accepted for review for uses that do not require a building permit;
- (3) Certificate of building code compliance issued by the proper governmental authority;
- (4) Valid building permit issued pursuant to G.S. § 153A-344 or G.S. § 160A-385(b)(i), so long as the permit remains valid, unexpired, and unrevoked;
- (5) Common law vested right established (e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project); and/or

(B) *Exemptions.* The requirements of this section shall not apply within the corporate limits or in the extraterritorial jurisdiction with respect to the following types of development or redevelopment activities:

- (1) Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this chapter.
- (2) Redevelopment or expansion that cumulatively disturbs less than one acre and is not part of a larger plan of development or

sale is exempt from the provisions of this chapter.

(3) Redevelopment or expansion that results in no net increase in built-upon area and provides equal or greater storm water control than the previous development is exempt from the provisions of this chapter.

(4) Activities exempt from permit requirements of § 404 of the federal Clean Water Act, as specified in 40 C.F.R. § 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this chapter.

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

(D) *Map.* The provisions of this chapter shall apply within the areas designated on the map titled "Post-Construction Ordinance Map of the Town of Cornelius, North Carolina" (hereafter referred to as the "post-construction ordinance map"), which is adopted simultaneously herewith. The post-construction ordinance map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. The post-construction ordinance map shall be kept on file by the Storm Water Administrator or designee (hereinafter referred to as the "Storm Water Administrator") and shall be updated to take into account changes in the land area covered by this chapter and the geographic location of all structural BMPs permitted under this chapter. In the event of a dispute, the applicability of this chapter to a particular area of land or BMP shall be determined by appeal through the Storm Water Administrator.

(Ord. 2007-00367, passed 4-16-07)

§ 52.006 INTERPRETATION.

(A) *Meaning and intent.* All provisions, terms, phrases, and expressions contained in this chapter shall be construed according to the general and specific purposes set forth in § 52.004. If a different or more specific meaning is given for a term defined elsewhere in the town's ordinances, the meaning and application of the term in this chapter shall control for purposes of application of this chapter.

(B) *Text controls in event of conflict.* In the event of a conflict or inconsistency between the text of this chapter and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) *Authority for interpretation.* The Storm Water Administrator has authority to interpret this chapter. Any person may request an interpretation by submitting a written request to the Storm Water Administrator who shall respond in writing within 30 days. The Storm Water Administrator shall keep on file a record of all written interpretations of this chapter.

(D) *References to statutes, regulations, and documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design and Administrative Manuals), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

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

(F) *Delegation of authority.* Any act authorized by this chapter to be carried out by the Storm Water Administrator of the town may be carried out by his or her designee.

(G) *Usage.*

(1) *Mandatory and discretionary terms.* The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

(2) *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: the word "and" indicates that all connected items, conditions, provisions or events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

(3) *Tense, plurals, and gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly

indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) *Measurement and computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. 2007-00367, passed 4-16-07)

§ 52.007 DESIGN MANUAL.

(A) *Reference to Design Manual.*

(1) The Storm Water Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about storm water management permits and about the design, implementation and performance of structural and non-structural storm water BMPs.

(2) The Design Manual includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Storm water treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of this chapter and the Phase II laws. Failure to construct storm water treatment practices in accordance with these criteria may subject the violator to a civil penalty as described in §§ 52.075 through 52.077.

(B) *Relationship of Design Manual to other laws and regulations.* If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the Design Manual.

(C) *Changes to standards and specifications.* Standards, specifications, guidelines, policies, criteria, or other information in the Design Manual in affect at the time of acceptance of a complete application shall control and shall be utilized in reviewing the application and in implementing this chapter with regard to the application.

(D) *Amendments to Design Manual.*

(1) The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

(2) Prior to amending or updating the Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

(Ord. 2007-00367, passed 4-16-07)

§ 52.008 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.

(A) *Conflict of laws.* This chapter is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this chapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this chapter imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

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

(Ord. 2007-00367, passed 4-16-07)

§ 52.009 SEVERABILITY.

If the provisions of any section, subsection, or clause of this chapter shall be adjudged invalid by a court of competent jurisdiction,

such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this chapter.

(Ord. 2007-00367, passed 4-16-07; Am. Ord. 2013-00522, passed 2-18-13)

§ 52.010 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(A) *Effective date.* This chapter shall take effect on June 30, 2007.

(B) *Violations continue.* Any violation of the provisions of this chapter existing as of the effective date of this chapter shall continue to be a violation under this chapter and be subject to penalties and enforcement unless the use, development, construction, or other activity complies with the provisions of this chapter.

(Ord. 2007-00367, passed 4-16-07; Am. Ord. 2013-00522, passed 2-18-13)

§ 52.011 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATIVE MANUAL. A manual developed by the Storm Water Administrator and distributed to the public to provide information for the effective administration of this chapter, including but not limited to application requirements, submission schedule, fee schedule, maintenance agreements, criteria for mitigation approval, criteria for recordation of documents, inspection report forms, requirements for submittal of bonds, a copy of this chapter, and where to obtain the design manual.

BEST MANAGEMENT PRACTICES (BMPs). A structural management facility used singularly or in combination for storm water quality and quantity treatment to achieve water quality protection goals.

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.

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.

BUFFER ZONES. Areas of the buffer with varying widths, uses and vegetative targets.

BUILT-UPON AREA (BUA). That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. **BUILT-UPON AREA** does not include a wooden slatted deck or the water area of a swimming pool.

DESIGN MANUAL. The storm water design manual shall be approved for use in the town by the North Carolina Department of Environment and Natural Resources and shall be at least as stringent as the storm water design manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the federal Phase II storm water program. All references herein to the **DESIGN MANUAL** are to the latest published edition or revision.

DEVELOPMENT. New development created by the addition of built upon area to land void of built upon area as of the effective date of this chapter.

DISTURBANCE. Any use of the land by any person or entity which results in a change in the natural cover or topography of the land.

DRAINAGE AREA. That area of land that drains to a common point on a project site.

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.

LARGER COMMON PLAN OF DEVELOPMENT OR SALE. Any contiguous area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to public notice or hearing, drawing, permit application, zoning request, or site design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

LOW IMPACT DEVELOPMENT (LID). The integration of site ecology and environmental goals and requirements into all phases of urban planning and design from the individual residential lot level to the entire watershed.

NON-POINT SOURCE (NPS) POLLUTION. Forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by surface runoff.

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

PERSON(S). Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

REDEVELOPMENT. Rebuilding activities on portions of land containing built-upon area as of the effective date of this chapter.

STORM WATER ADMINISTRATOR. The Planning Director that has been designated by the town to administer and enforce this chapter.

STORM WATER MANAGEMENT PERMIT. A permit required for all development and redevelopment unless exempt pursuant to this chapter, which demonstrates compliance with this chapter.

S.W.I.M. An acronym for the surface water improvement and management initiative by the Mecklenburg County Board of Commissioners for the purpose of restoring the quality and usability of Mecklenburg County's surface water resources. The **S.W.I.M.** initiative resulted in the adoption of county wide buffers on streams that are termed S.W.I.M. Buffers.

TOTAL SUSPENDED SOLIDS (TSS). Total suspended matter in water which includes particles collected on a filter with a pore size of two microns as measured by Standard Method 2540-D, which is commonly expressed as a concentration in terms of milligrams per liter (mg/l) or parts per million (ppm).

(Ord. 2007-00367, passed 4-16-07; Am. Ord. 2013-00522, passed 2-18-13)

ADMINISTRATION AND PROCEDURES

§ 52.020 REVIEW AND DECISION MAKING ENTITIES.

(A) *Storm Water Administrator.*

(1) *Designation.* The Planning Director has been designated as the Storm Water Administrator by the town for the purpose of administering and enforcing this chapter.

(2) *Powers and duties.* In addition to the powers and duties that maybe conferred by other provisions of the Cornelius Land Development Code and other laws, the Storm Water Administrator shall have the following powers and duties under this chapter:

- (a) To review and approve or disapprove applications submitted pursuant to this chapter;
- (b) To make determinations and render interpretations of this chapter;
- (c) To establish application requirements and schedules for submittal and review of applications and appeals;
- (d) To enforce this chapter in accordance with its enforcement provisions;
- (e) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this chapter.
- (f) To provide expertise and technical assistance upon request to the Board of Adjustment of the Town of Cornelius;
- (g) To designate appropriate other person(s) who shall carry out the powers and duties of the Storm Water Administrator.

(h) To provide information and recommendations relative to variances and information as requested by the Board of Adjustment in response to appeals; and

(i) To take any other action necessary to administer the provisions of this chapter.

(Ord. 2007-00367, passed 4-16-07)

§ 52.021 REVIEW PROCEDURES.

(A) *Permit required; must apply for permit.* A storm water management permit is required for all development and redevelopment unless exempt pursuant to this chapter. A permit may only be issued subsequent to a properly submitted, reviewed and approved permit application, pursuant to this section. The content and form of the permit shall be established by the Storm Water Administrator.

(B) *Effect of permit.*

(1) A storm water management permit shall govern the design, installation, and construction of storm water management and control practices on the site, including structural BMPs and elements of site design for storm water management other than structural BMPs.

(2) The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of storm water for the development or redevelopment site consistent with the requirements of this chapter, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. Compliance after project construction is assured by the maintenance provision of this chapter.

(C) *Authority to file applications.* All applications required pursuant to this chapter shall be submitted to the Storm Water Administrator by the land owner or the land owner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner.

(D) *Establishment of application requirements, schedule, and fees.*

(1) *Application contents and form.* The Storm Water Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the storm water management permit application shall describe in detail how post-construction storm water runoff will be controlled and managed, the design of all storm water facilities and practices, and how the proposed project will meet the requirements of this chapter.

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

(3) *Permit review fees.* The town shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) *Administrative manual.* For applications required under this chapter, the Storm Water Administrator shall compile into an administrative manual the application requirements, submittal checklist, submission schedule, fee schedule, maintenance agreements, a copy of this chapter, and where to obtain the Design Manual, as well as other information and materials necessary for the effective administration of this chapter. This administrative manual shall be made available to the public.

(E) *Submittal of complete application.*

(1) Applications shall be submitted to the Storm Water Administrator pursuant to the application submittal schedule in the form established by the Storm Water Administrator, along with the appropriate fee established pursuant to this section.

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

(F) *Review.* Within 30 working days after a complete application is submitted, the Storm Water Administrator shall review the application and determine whether the application complies with the standards of this chapter.

(1) *Approval.* If the Storm Water Administrator finds that the application complies with the standards of this chapter, the Storm

Water Administrator shall approve the application and issue a storm water management permit to the applicant. The Storm Water Administrator may impose conditions of approval as needed to ensure compliance with this chapter. The conditions shall be included in the permit as part of the approval.

(2) *Fails to comply.* If the Storm Water Administrator finds that the application fails to comply with the standards of this chapter, the Storm Water Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) *Revision and subsequent review.*

(a) A complete revised application shall be reviewed by the Storm Water Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

(b) If a revised application is not re-submitted within 60 calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

(Ord. 2007-00367, passed 4-16-07)

§ 52.022 APPLICATIONS FOR APPROVAL.

(A) *Concept plan and consultation meeting.*

(1) Before a storm water management permit application is submitted, the Storm Water Administrator or land owner or the land owner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner may request consultation(s) on a concept plan for the post-construction storm water management system to be utilized in the proposed development project. This consultation meeting(s) should take place at the time of the preliminary plan of the subdivision or other early step in the development process. The purpose of this meeting(s) is to discuss the post-construction storm water management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to storm water management designs before formal site design engineering is commenced. Local watershed plans and other relevant resource protection plans may be consulted in the discussion of the concept plan.

(2) At the time of concept plan submittal, the following information should be included in the concept plan, which should be submitted in advance of the meeting as specified in the Administrative Manual:

(a) *Existing conditions / proposed site plans.* Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys; boundaries of existing predominant vegetation and proposed limits of clearing and grading; proposed Open Space area; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

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

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

(B) *Storm water management permit application.*

(1) The storm water management permit application shall detail how post-construction storm water runoff will be controlled and managed and how the proposed project will meet the requirements of this chapter, including §§ 52.035 through 52.042. All such plans submitted with the application shall be prepared by a registered North Carolina professional engineer or landscape architect. The engineer or landscape architect shall perform services only in their area of competence, and shall verify that the design of all storm water management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are

sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this chapter.

(2) The submittal shall include all of the information required in the submittal checklist established by the Storm Water Administrator. Incomplete submittals shall be treated pursuant to § 52.021(E).

(C) *As-built plans and final approval.*

(1) The applicant shall certify that the completed project is in accordance with the approved storm water management plans and designs, and shall submit actual "as-built" plans for all storm water management facilities or practices after final construction is completed. Failure to provide approved as-built plans within the time frame specified by the Storm Water Administrator may result in assessment of penalties as specified in §§ 52.075 through 52.077. At the discretion of the Storm Water Administrator, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved.

(2) As-built plans shall show the final design specifications for all storm water management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the storm water management measures and plans shall certify, under seal, that the as-built storm water measures, controls, and devices are in compliance with the approved storm water management plans and designs and with the requirements of this chapter.

(3) Final as-built plans and a final inspection and approval by the Storm Water Administrator are required before a project is determined to be in compliance with this chapter. At the discretion of the Storm Water Administrator, certificates of occupancy may be withheld pending receipt of as-built plans and the completion of a final inspection and approval of a project.

(Ord. 2007-00367, passed 4-16-07)

§ 52.023 APPROVALS.

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

(B) *Time limit/expiration.* A storm water management permit and accompanying plan approved under the provisions of this chapter shall remain valid for a period of three years from the date of approval. If no work on the site in furtherance of the plan has commenced within the three-year period, the permit and plan approval will become null and void and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced that involves any utility installations or street improvements except grading, the permit and plan shall remain valid and in force and the project may be completed in accordance with the approved plan.

(Ord. 2007-00367, passed 4-16-07)

§ 52.024 APPEALS.

(A) *Right of appeal.* Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this chapter and made by the Storm Water Administrator may file an appeal to the Board of Adjustment within 30 days.

(B) *Filing of appeal and procedures.*

(1) Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the town. The Storm Water Administrator shall forthwith transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

(2) The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding in accordance with Chapter 16 of the Town of Cornelius Land Development Code.

(C) *Review by Superior Court.* Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within 30 days after the latter of the following:

(1) The decision of the Board of Adjustment is filed; or

(2) A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the Board of Adjustment at the time of its hearing of the case.

(Ord. 2007-00367, passed 4-16-07)

STANDARDS

§ 52.035 GENERAL STANDARDS.

All development and redevelopment to which this chapter applies shall comply with the standards of this subchapter.

(Ord. 2007-00367, passed 4-16-07)

§ 52.036 DEVELOPMENT STANDARDS FOR LOW DENSITY PROJECTS.

Any drainage area within a project is considered low density when the drainage area has less than or equal to 24% built upon area as determined by the methodology established in the Design Manual. Such low density projects shall comply with each of the following standards.

(A) *Vegetated conveyances.* Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

(B) *Stream buffers.*

(1) *Buffer delineation.* The surface water improvement and management (S.W.I.M.) stream buffer requirements apply as described in the Town of Cornelius Land Development Code, § 9.5. S.W.I.M. stream buffers, throughout the jurisdiction of the town shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than ten-foot cells. This stream buffer delineation including buffer widths shall be periodically updated as new data becomes available. The most recent delineation shall be provided for public use through Mecklenburg County's website.

(2) *Buffer widths.* All streams draining less than 50 acres shall have a minimum 30-foot vegetated buffer including a ten-foot zone adjacent to the bank. Disturbance of the buffer is allowed; however, any disturbed area must be revegetated and disturbance of the ten-foot zone adjacent to the bank shall require stream bank stabilization using bioengineering techniques as specified in the Design Manual. All perennial and intermittent streams draining greater than or equal to 50 acres and less than 300 acres shall have a 35-foot buffer. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot buffer. Streams draining greater than or equal to 640 acres shall have a buffer 100 feet in width or include the entire FEMA floodplain, whichever is greater. Buffer widths shall be measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. Passive recreational uses are allowed in the buffer, including greenway trails and bicycle paths, as well as other land uses consistent with maintaining the natural topography and vegetation. The allowed buffer impacts, buffer delineation and reforestation of disturbed buffers are described in the Town of Cornelius Land Development Code, § 9.5. A summary of minimum buffer widths is provided in the table below.

| <i>Minimum S.W.I.M. Buffer Widths by Basin Size.</i> | |
|-----------------------------------------------------------------|--------------------------------------------------------------|
| <i>Upstream Drainage Area</i> | <i>Total Buffer Width Each side of Stream</i> |
| < 50 acres | 30 feet |
| 50 acres | 35 feet |
| 300 acres | 50 feet |

| | |
|-----------|----------------------------------------------------------------------|
| 640 acres | 100 feet or entire FEMA floodplain, whichever is greater |
|-----------|----------------------------------------------------------------------|

(Ord. 2007-00367, passed 4-16-07; Am. Ord. 2013-00522, passed 2-18-13)

§ 52.037 DEVELOPMENT STANDARDS FOR HIGH DENSITY PROJECTS.

Any drainage area within a project is considered high density when said drainage area has greater than 24% built upon area as determined by the methodology established in the Design Manual. The built upon area caps specified in the water supply watershed protection requirements contained in § 11 of the Town of Cornelius Land Development Code shall apply. In situations where the water supply watershed protection requirements and the requirements of this chapter both apply, the more stringent shall govern. High density projects shall implement storm water treatment systems that comply with each of the following standards.

- (A) *Vegetated conveyances.* Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (B) *Stream buffers.*
 - (1) *Buffer delineation.* Same as § 52.036(B)(1) above.
 - (2) *Buffer widths.* Same as § 52.036(B)(2) above.
- (C) *Storm water quality treatment volume.* Storm water quality treatment systems shall treat the runoff generated from the first inch of rainfall.
- (D) *Storm water quality treatment.* All structural storm water treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for total suspended solids. Low impact development techniques as described in the Design Manual maybe used to meet this requirement.
- (E) *Storm water treatment system design.* General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.
- (F) *Storm water volume control.* Storm water treatment systems shall be installed to control the volume leaving the project site at post-development for the one-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.
- (G) *Storm water peak control.* For residential developments exceeding 24% built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10, 25, 50 or 100-year, 6-hour) as determined by the Storm Water Administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the Design Manual or if a downstream analysis is not performed the peak shall be controlled for the 10-year and 25-year, 6-hour storms. For commercial development exceeding 24% built-upon area, peak control shall be installed for the 10-year, 6-hour storm and additional peak control provided for the appropriate storm frequency (i.e., 25, 50 or 100-year, 6-hour) as determined by the Storm Water Administrator based on a downstream flood analysis provided by the owner or designee using the criteria specified in the Design Manual or if a downstream analysis is not performed the peak shall be controlled for the 10-year and 25-year, 6-hour storms. Controlling the 1-year, 24-hour volume achieves peak control for the 2-year, 6-hour storm. The emergency overflow and outlet works for any pond or wetland constructed as a storm water BMP shall be capable of safely passing a discharge with a minimum recurrence frequency as specified in the Design Manual. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

(Ord. 2007-00367, passed 4-16-07; Am. Ord. 2013-00522, passed 2-18-13)

§ 52.038 REQUEST FOR DETERMINATION OF BUFFER REQUIREMENT.

When a landowner or other affected party believes that the S.W.I.M. stream buffer delineation maps described in § 52.036(B)(1)

inaccurately depict buffer requirements, he or she shall request a determination from the Storm Water Administrator. Such determinations shall be made by the Storm Water Administrator based on an on-site evaluation using the U.S. Army Corps of Engineers and N.C. Division of Water Quality methodology for stream delineation as well as information from databases maintained for stream delineation by Mecklenburg County. Such determinations can also be made at the discretion of the Storm Water Administrator in the absence of a request from a landowner or other concerned party. The buffer requirements of this chapter shall apply based on determinations made by the Storm Water Administrator. Surface waters that appear on the maps shall not be subject to this chapter if an on-site determination by the Storm Water Administrator shows that they fall into one of the following categories.

(A) Ditches and manmade conveyances other than modified natural streams.

(B) Manmade ponds and lakes that are not intersected by a buffered stream segment and that are located outside natural drainage ways.

(C) Ephemeral (storm water) streams.

(Ord. 2007-00367, passed 4-16-07)

§ 52.039 STANDARDS FOR STORM WATER CONTROL MEASURES.

(A) *Evaluation according to contents of Design Manual.* All storm water control measures and storm water treatment practices (also referred to as best management practices, or BMPs) required under this chapter shall be evaluated by the Storm Water Administrator according to the policies, criteria, and information, including technical specifications, standards and the specific design criteria for each storm water best management practice contained in the Design Manual. The Storm Water Administrator shall determine whether these measures will be adequate to meet the requirements of this chapter.

(B) *Determination of adequacy; presumptions and alternatives.* Storm water treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this chapter. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this chapter before it can be approved for use. The Storm Water Administrator may require the applicant to provide such documentation, calculations, and examples as necessary for the Storm Water Administrator to determine whether such an affirmative showing is made.

(C) *Submittal of digital records.* Upon submittal of as-built plans, the location of storm drainage pipes, inlets and outlets as well as the location of all BMPs must be delivered to the Storm Water Administrator in the digital format specified in the administrative manual.

(Ord. 2007-00367, passed 4-16-07)

§ 52.040 DEED RECORDATION AND INDICATIONS ON PLAT.

The approval of the storm water management permit shall require an enforceable restriction on property usage that runs with the land, such as plat, recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Streams and buffer boundaries including the delineation of each buffer zone must be specified on all surveys and record plats. The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the Mecklenburg County Register of Deeds Office upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Mecklenburg County Register of Deeds Office so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. A copy of the recorded maintenance agreement shall be provided to the Storm Water Administrator within 14 days following receipt of the recorded document. A maintenance easement shall be recorded for every structural BMP to allow sufficient access for adequate maintenance. The specific recordation and deed restriction requirements as well as notes to be displayed on final plats and deeds shall be contained in the administrative manual.

(Ord. 2007-00367, passed 4-16-07)

§ 52.041 DEDICATION OF BMPS, FACILITIES AND IMPROVEMENTS.

The town will not accept dedication of any existing or future storm water management facility for maintenance, but may, in its discretion to promote safety and health, and provided such facility meets all the requirements of this chapter and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance. Procedures for acceptance of BMPs are provided in the administrative manual.

(Ord. 2007-00367, passed 4-16-07)

§ 52.042 VARIANCES.

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

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

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

(Ord. 2007-00367, passed 4-16-07)

MAINTENANCE

§ 52.055 GENERAL STANDARDS FOR MAINTENANCE.

(A) *Function of BMPs as intended.* The owner of a structural BMP installed pursuant to this chapter shall maintain and operate the BMP so as to preserve and continue its function in controlling storm water quality and quantity at the degree or amount of function for which the structural BMP was designed.

(B) *Annual maintenance inspection and report.* The person responsible for maintenance of any BMP installed pursuant to this chapter shall submit to the Storm Water Administrator an inspection report from a qualified registered North Carolina professional engineer or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

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

(C) All inspection reports shall be on forms supplied by the Storm Water Administrator that are contained in the administrative manual. An original inspection report shall be provided to the Storm Water Administrator beginning one year from the date of as-built certification and each year thereafter on or before the anniversary date of the as-built certification.

(Ord. 2007-00367, passed 4-16-07)

§ 52.056 OPERATION AND MAINTENANCE AGREEMENT.

(A) *General.*

(1) At the time that as-built plans are provided to the Storm Water Administrator as described in § 52.022(C) and prior to final approval of a project for compliance with this chapter, but in all cases prior to placing the BMPs in service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Failure to execute an operation and maintenance agreement within the time frame specified by the Storm Water Administrator may result in assessment of penalties as specified in §§ 52.075 through 52.077. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. At the discretion of the Storm Water Administrator, certificates of occupancy may be withheld pending receipt of an operation and maintenance agreement.

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

(3) Standard operation and maintenance agreements for BMPs shall be developed by the Storm Water Administrator and made available in the administrative manual. The operation and maintenance agreement must be approved by the Storm Water Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded by the applicant or owner with the Mecklenburg County Register of Deeds upon final plat approval as described in § 52.040. A copy of the recorded maintenance agreement shall be given to the Storm Water Administrator within 14 days following its recordation.

(B) *Special requirement for homeowners' and other associations.* For all structural BMPs required pursuant to this chapter and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include the provisions described in the administrative manual.

(Ord. 2007-00367, passed 4-16-07)

§ 52.057 INSPECTION PROGRAM.

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

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

(Ord. 2007-00367, passed 4-16-07)

§ 52.058 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE.

The town may require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in accordance with the provisions contained in the administrative manual.

(Ord. 2007-00367, passed 4-16-07)

§ 52.059 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Storm Water Administrator.

(Ord. 2007-00367, passed 4-16-07)

§ 52.060 NUISANCE.

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

(Ord. 2007-00367, passed 4-16-07)

§ 52.061 MAINTENANCE EASEMENT.

Every structural BMP installed pursuant to this chapter shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement. The easement shall be recorded as described in § 52.042 and its terms shall specify who may make use of the easement and for what purposes.

(Ord. 2007-00367, passed 4-16-07)

VIOLATIONS AND ENFORCEMENT

§ 52.075 GENERAL.

(A) *Authority to enforce.* The provisions of this chapter shall be enforced by the Storm Water Administrator, his or her designee, or any authorized agent of the town. Whenever this subchapter refers to the Storm Water Administrator, it includes his or her designee as well as any authorized agent of town.

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

(C) *Each day a separate offense.* Each day that a violation continues shall constitute a separate and distinct violation or offense.

(D) *Responsible persons/entities.* Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this chapter, as well as any person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this subchapter. For the purposes of this subchapter, responsible person(s) shall include but not be limited to:

(1) *Person maintaining condition resulting in or constituting violation.* Any person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this chapter, or fails to take appropriate action, so that a violation of this chapter results or persists.

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

(Ord. 2007-00367, passed 4-16-07)

§ 52.076 INSPECTIONS AND INVESTIGATIONS.

(A) *Authority to inspect.* The Storm Water Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the activity is being conducted in accordance with this chapter and the approved storm water management plan, Design Manual and Administrative Manual and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the Storm Water Administrator while the Storm Water Administrator is inspecting or attempting to inspect an activity under this chapter.

(B) *Notice of violation and order to correct.*

(1) When the Storm Water Administrator finds that any building, structure, or land is in violation of this chapter, the Storm Water Administrator shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this chapter, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in § 52.077. In determining the measures required and the time for achieving compliance, the Storm Water Administrator shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The Storm Water Administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

(2) If a violation is not corrected within a reasonable period of time, as provided in the notification, the Storm Water Administrator may take appropriate action, as provided in § 52.077 to correct and abate the violation and to ensure compliance with this chapter.

(C) *Extension of time.* A responsible person/entity who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Storm Water Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the responsible person/entity requesting the extension, the Storm Water Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Storm Water Administrator may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the responsible person/entity violating this chapter. The Storm Water Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(D) *Penalties assessed concurrent with notice of violation.* Penalties may be assessed concurrently with a notice of violation for any of the following in which case the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

- (1) Failure to submit a storm water management plan.
- (2) Performing activities without an approved storm water management plan.
- (3) Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
- (4) A repeated violation for which a notice was previously given on the same project and to the same responsible person/entity responsible for the violation.
- (5) Willful violation of this chapter.
- (6) Failure to install or maintain best management practices per the approved plan.

(E) *Authority to investigate.* The Storm Water Administrator shall have the authority to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting. No person shall refuse entry or access to the Storm Water Administrator who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with the Storm Water Administrator while in the process of carrying out official duties. The Storm Water Administrator shall also have the power to require written statements, or the filing of reports under oath as part of an investigation.

(F) *Enforcement after time to correct.* After the time has expired to correct a violation, including any extension(s) if authorized by the Storm Water Administrator, the Storm Water Administrator shall determine if the violation is corrected. If the violation is not corrected, the Storm Water Administrator may act to impose one or more of the remedies and penalties authorized by § 52.077.

(G) *Emergency enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of this chapter or pose an immediate danger to the public health, safety, or welfare, then the Storm Water Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Storm Water Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty specified in § 52.077.

§ 52.077 REMEDIES AND PENALTIES.

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

(A) Remedies.

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

(2) *Disapproval of subsequent permits and development approvals.* As long as a violation of this chapter continues and remains uncorrected, the Storm Water Administrator or other authorized agent may withhold, and the town may disapprove, any request for permit or development approval or authorization provided for by this chapter or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

(3) *Injunction, Abatements, and the like.* The Storm Water Administrator, upon authorization by the Board of Commissioners, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this chapter. Any person violating this chapter shall be subject to the full range of equitable remedies provided in the general statutes or at common law.

(4) *Correction as public health nuisance, costs as lien, and the like.* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by G.S. § 160A-193, the Storm Water Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) *Restoration of areas affected by failure to comply.* By issuance of an order of restoration, the Storm Water Administrator may require a person who engaged in a land development activity and failed to comply with this chapter to restore the waters and land affected by such failure so as to minimize the detrimental effects of the resulting pollution. This authority is in addition to any other civil penalty or injunctive relief authorized under this chapter.

(B) Civil penalties.

(1) *Violations of chapter.* A violation of any of the provisions of this chapter or rules or other orders adopted or issued pursuant to this chapter may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in § 52.076(D) in which case the penalty is assessed concurrently with a notice of violation. Refusal to accept the notice or failure to notify the Storm Water Administrator of a change of address shall not relieve the violator's obligation to comply with the chapter or to pay such a penalty.

(2) *Amount of penalty.* The maximum civil penalty for each violation of this chapter is \$5,000, provided, however, should the town be penalized under its Phase II Permit because of these violations in excess of \$5,000, the town may also assess such additional amount to the violator. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the Storm Water Administrator shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this chapter; whether the violation was committed willfully; whether the violator reported the violation to the Storm Water Administrator; and the prior record of the violator in complying or failing to comply with this chapter or any other post-construction ordinance or law. The Storm Water Administrator is authorized to vary the amount of the per diem penalty based on criteria specified in the administrative manual and based on relevant mitigating factors. Civil penalties collected pursuant to this chapter shall be credited to the town general fund as non-tax revenue.

(3) *Notice of assessment of civil penalty.* The Storm Water Administrator shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under G.S. § 1A-1, Rule 4 and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in division (C) below.

(4) *Failure to pay civil penalty assessment.* If a violator does not pay a civil penalty assessed by the Storm Water Administrator within 30 Days after it is due, or does not request a hearing as provided in division (C) of this section, the Storm Water Administrator shall request the initiation of a civil action to recover the amount of the assessment. The civil action shall be brought in

Mecklenburg County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

(5) *Appeal of remedy or penalty.* The issuance of an order of restoration and/or notice of assessment of a civil penalty by the Storm Water Administrator shall entitle the responsible party or entity to an appeal before the Board of Adjustment if such person submits written demand for an appeal hearing to the town within 30 days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in § 52.024.

(C) *Criminal penalties.* Violation of this chapter may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

(Ord. 2007-00367, passed 4-16-07)

Please click here to view Map