

**Section 6.8 - Post-Construction Ordinance**

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**6.8.1 GENERAL PROVISIONS**

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**(101) TITLE**

This ordinance shall be officially known as the “Post-Construction Storm Water Ordinance.” It is referred to herein as “this ordinance.”

**(102) AUTHORITY**

The Town of Mint Hill is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.1, 143-214.7, 143-215.3(a)(1), 143-215.8 A., and rules promulgated by the N.C. Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185; Session Law 2006-246; and Session Law 2015- 246.

**(103) FINDINGS**

It is hereby determined that:

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,

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,

The Goose Creek District in the Yadkin Pee-Dee River Basin provides habitat for the Carolina heelsplitter, an aquatic animal species that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544. Maintenance and recovery of the water quality conditions required to sustain and recover the Carolina heelsplitter thereby protects the biological integrity of the waters; and

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

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 N.C. Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including the Town of Mint Hill, to adopt storm water controls such as those included in this ordinance.



Therefore, the Town of Mint Hill establishes this set of water quality and quantity regulations to meet the requirements of State and federal law regarding the control of storm water runoff and protection of the Carolina heelsplitter.

**(104) PURPOSE**

**(A) General**

The purpose of this ordinance 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. Additionally, the purpose of this ordinance is for the maintenance and recovery of the water quality conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*) species. It has been determined that proper management of construction related, and post-construction storm water runoff and maintenance of stabile stream banks 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 ordinance seeks to meet its general purpose through the following specific objectives and means:

- (1) Establishing decision-making processes for development that protect 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 ordinance 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 best management practices (BMPs) that may be used to meet the minimum post-development storm water management standards,

- (5) Managing the streamside buffer zones to stabilize streambanks and prevent sedimentation is critical to restoring water quality to sustain and enable recovery of the federally endangered Carolina heelsplitter,
- (6) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for storm water and preservation of greenspace, stream buffers and other conservation areas to the maximum extent practicable,
- (7) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural storm water BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose minimum risk to public safety, and
- (8) 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.

**(105) APPLICABILITY AND JURISDICTION**

**(A) Goose Creek District**

As of March 11, 2010 (effective date of this ordinance), all developments and redevelopments within the corporate limits and extraterritorial jurisdiction of the Town of Mint Hill in the Goose Creek District as defined in the “Post-Construction Ordinance Map of the Town of Mint Hill” described in Section 105(E) of this ordinance are subject to the applicability provisions contained in Section 305(A)(2) for storm water controls requirements and Section 305(C)(2) for stream buffer requirements.

**(B) Catawba District and Clear Creek District**

The requirements of this ordinance shall apply to all developments and redevelopments within the corporate limits and extraterritorial jurisdiction of the Town of Mint Hill in the Catawba District and Clear Creek District as defined in the “Post-Construction Ordinance Map of the Town of Mint Hill” described in Section 105(E) of this ordinance, unless one of the following exceptions applies to the development or redevelopment as of June 30, 2007:

- (1) For residential development, Major and Minor preliminary subdivision plan complete application submitted and accepted for review,
- (2) For nonresidential development, preliminary subdivision plan application submitted and accepted for review, provided that subdivision-wide water quality and quantity features required at the time of submittal are

contained within the submittal and provided the plan is subsequently approved and all necessary easements are properly established,

- (3) Zoning use application submitted and accepted for review for uses that do not require a building permit,
- (4) Certificate of Building Code Compliance issued by the proper governmental authority,
- (5) Valid building permit issued pursuant to North Carolina General Statute 153A-344, so long as the permit remains valid, unexpired, and unrevoked,
- (6) 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
- (7) A conditional zoning district (including those districts which previously were described variously as conditional district, conditional use district, parallel conditional district and parallel conditional use district) approved prior to June 30, 2007, provided formal plan submission has been made and accepted for review either prior to 5 years from June 30, 2007 in the case of conditional zoning districts approved on or after July 20, 2000, or prior to 2 years from June 30, 2007 in the case of conditional zoning districts approved prior to July 20, 2000, and provided such plans encompass either a minimum of 25% of the area of the project, or any phase of a project so long as such phase is part of a project that includes project-wide water quality requirements to achieve 85% TSS removal from developed areas. If no such formal plan submission occurs within the above-described 5-year or 2-year time frames, the requirements of this ordinance shall be applied to the project, except for undisturbed open space and stream buffer requirements not in effect at the time of the approval of the conditional zoning district, all of which do not apply. Any change deemed to be a minor change to a conditional zoning district necessary to comply with the requirements of this ordinance shall be made through administrative amendment and not through a rezoning.

**(C) Catawba District and Clear Creek District Exemptions**

The following exemptions shall apply to all developments and redevelopments within the corporate limits and extraterritorial jurisdiction of the Town of Mint Hill in the Catawba District and Clear Creek District as of June 30, 2007:

- (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 ordinance.

- (2) Redevelopment or expansion 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 ordinance.
- (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 requirements of this ordinance.
- (4) Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
- (5) Activities exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).
- (6) The Undisturbed Open Space requirements of this ordinance shall not apply to any redevelopment or to development that has less than 20% built-upon area.

**(D) No Development or Redevelopment Until Compliance and Permit**

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

**(E) Map**

The provisions of this ordinance shall apply within the areas designated on the map titled “Post-Construction Ordinance Map of the Town of Mint Hill, 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 ordinance. 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 ordinance and the geographic location of all structural BMPs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by appeal through the Storm Water Administrator.

**(106) INTERPRETATION**

**(A) Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Zoning Ordinance, Subdivision Regulations or other adopted land use regulations for the Town of Mint Hill, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

**(B) Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance 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 ordinance. 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 ordinance.

**(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 of Mint Hill, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Mint Hill. References to days are calendar days unless otherwise stated.

**(F) Delegation of Authority**

Any act authorized by this ordinance to be carried out by the Storm Water Administrator of the Town of Mint Hill 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**

Disturbed area refers to the amount of horizontal land area contained inside the limits of the land disturbance. Lot area refers to the amount of horizontal land area contained inside the limits of the lot lines of a lot or site.

**(107) DESIGN MANUAL**

**(A) Reference to Design Manual**

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.

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 ordinance and the federal Phase II Storm Water Rules. Failure to construct storm water treatment practices in accordance with

these criteria may subject the violator to a civil penalty as described in Section 6 of this ordinance.

**(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 ordinance with regard to the application.

**(D) Amendments to Design Manual**

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.

The Storm Water Administrator may amend or update the Design Manual from time to time. Prior to amending or updating the Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided.

**(108) RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS**

**(A) Conflict of Laws**

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance 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 ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall

govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town of Mint Hill be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

**(109) SEVERABILITY**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance 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 ordinance.

**(110) EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

**(A) Effective Date**

This ordinance shall take effect on March 11, 2010.

**(B) Violations Continue**

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



**6.8.2 ADMINISTRATION AND PROCEDURES**

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**(201) REVIEW AND DECISION MAKING ENTITIES**

**(A) Storm Water Administrator**

**(1) Designation**

The Mecklenburg County Water Quality Program Manager has been designated as the Storm Water Administrator by the Town of Mint Hill for the purpose of administering and enforcing this ordinance.

**(2) Powers and Duties**

In addition to the powers and duties that may be conferred by other provisions of the Town of Mint Hill Zoning Ordinance and other laws, the Storm Water Administrator shall have the following powers and duties under this ordinance:

- (a) To review and approve or disapprove applications submitted pursuant to this ordinance.
- (b) To make determinations and render interpretations of this ordinance.
- (c) To establish application requirements and schedules for submittal and review of applications and appeals.
- (d) To enforce this ordinance in accordance with its enforcement provisions.
- (e) To maintain records, maps, and official materials as related to the adoption, amendment, enforcement, or administration of this ordinance.
- (f) To provide expertise and technical assistance upon request to the Town of Mint Hill and the Storm Water Advisory Committee (SWAC).
- (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 SWAC in response to appeals.
- (i) To take any other action necessary to administer the provisions of this ordinance.
- (j) To provide information to the EMC in response to appeals and variances within the Goose Creek Watershed.

**(202) 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 ordinance. 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**

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.

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 ordinance, 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 ordinance.

**(C) Authority to File Applications**

All applications required pursuant to this ordinance shall be submitted to the Storm Water Administrator by the landowner or the landowner'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 ordinance.

**(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 of Mint Hill 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 ordinance, 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 ordinance, and where to obtain the Design Manual, as well as other information and materials necessary for the effective administration of this ordinance. This Administrative Manual shall be made available to the public.

**(E) Submittal of Complete Application**

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.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, 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 ordinance.

**(1) Approval**

If the Storm Water Administrator finds that the application complies with the standards of this ordinance, 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 ordinance. 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 ordinance, 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 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.

If a revised application is not re-submitted within sixty (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.

**(203) APPLICATIONS FOR APPROVAL**

**(A) Concept Plan and Consultation Meeting**

A Concept Plan shall be submitted to and approved by the Storm Water Administrator prior to approval of the preliminary plan for a project and prior to submittal of a Storm Water Management Permit Application. The Concept Plan should be submitted for review along with Sketch Plans for the project. The purpose of the Concept Plan is to demonstrate how a proposed project shall comply with the post-construction ordinance requirements in the early stages of project design.

At the time of submittal of a Concept Plan, the Storm Water Administrator or landowner or the landowner'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 the 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.

To accomplish this goal, 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:

**(1) Existing Conditions / Proposed Site Plans**

A Concept Plan shall include 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 Undisturbed Open Space area; and location of existing and proposed roads, buildings, parking areas and other built-upon areas.

**(2) Natural Resources Inventory**

A Concept Plan submitted prior to a consultation meeting shall include 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, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

**(3) Storm Water Management System Concept Plan**

A Concept Plan shall include the proposed post-development 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 Undisturbed Open Space areas; location of all floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; location of all stream buffers; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

**(B) Storm Water Management Permit Application**

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 ordinance, including Section 3, Standards. 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 ordinance.

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 Section 202(E).

**(C) As-Built Plans and Final Approval**

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 Section 6, Violations and Enforcement. 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.

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, and location and size of all Open Space areas and tree plantings. 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 ordinance.

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 ordinance. 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.

**(204) 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.

**(1) Time Limit/Expiration**

A Storm Water Management Permit and accompanying plan approved under the provisions of this ordinance 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.

**(205) APPEALS AND VARIANCES**

The provisions of this Section shall apply to appeals and variances in the Catawba, Clear Creek, and Goose Creek Districts as described in Section 105(E) of this ordinance with the exception of appeals and variances pertaining to stream buffers located in the Goose Creek District, which shall be subject to the requirements contained in Section 305(C)(10) of this ordinance.

**(A) Powers and Duties of the Storm Water Advisory Committee**

The Storm Water Advisory Committee, hereinafter referred to as SWAC, shall have the following powers and duties:

**(1) Administrative Review**

To hear and decide appeals according to the procedures set forth in this Section where it is alleged there is an error in any order, decision, determination, or interpretation made by the Storm Water Administrator in the enforcement of this ordinance, including assessments of remedies and/or penalties.

**(2) Variances**

To grant variances in specific cases from the terms of this ordinance according to the standards and procedures herein.

**(B) Petition to SWAC for Appeal or Variance**

An appeal may be initiated by any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance. A petition for variance from the requirements of this ordinance may be initiated by the owner of the affected property, an agent authorized in writing to act on the owner's behalf, or a person having written contractual interest in the affected property.

**(1) Filing of Notice of Appeal**

A notice of appeal shall be filed with the Storm Water Administrator contesting any order, decision, determination or interpretation within 30 working days of the day of the order, decision, determination or interpretation made or rendered by the Storm Water Administrator in the enforcement of this ordinance, including assessments of remedies and penalties. SWAC may waive or extend the 30-day deadline only upon determining that the person filing the notice of appeal received no actual or constructive form of notice of the order, decision, determination or interpretation being appealed. The notice filed with the Storm Water Administrator shall be accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each owner. Failure to timely file such notice and fee shall constitute a waiver of any rights to appeal under this ordinance.

Upon receipt of a notice of appeal, the Storm Water Administrator shall transmit to SWAC copies of all administrative papers, records, and other information regarding the subject matter of the appeal.

The filing of such notice shall stay any proceedings in furtherance of the contested action, except the Storm Water Administrator may certify in writing to SWAC that because of facts stated in the certificate, a stay imposes an imminent peril to life or property or would seriously interfere with the enforcement of this ordinance. SWAC shall then review such certificate and may override the stay of further proceedings.

**(2) Filing a Variance Petition**

A petition for variance, in the form prescribed by SWAC, shall be filed with the Storm Water Administrator accompanied by a nonrefundable filing fee as established by SWAC as well as a list of adjoining properties including tax parcel numbers and the name and address of each owner. Upon receipt of a variance petition, the Storm Water Administrator shall transmit to SWAC copies of all information regarding the variance.

**(3) Notice and Hearing**

SWAC shall, in accordance with the rules adopted by it for such purposes, hold public hearings on any appeal or variance petition which comes before it. SWAC shall, prior to the hearing, mail written notice of the time, place and subject of the hearing to the person or persons filing the notice of appeal or variance petition, to the owners of the subject property and to the owners of property adjacent to the subject property. The



hearing shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

**(4) Standards for Granting an Appeal**

SWAC shall reverse or modify the order, decision, determination or interpretation under appeal only upon finding an error in the application of this ordinance on the part of the Storm Water Administrator. In modifying the order, decision, determination or interpretation, SWAC shall have all the powers of the Storm Water Administrator from whom the appeal is taken.

If SWAC finds that a violation of this ordinance has occurred, but that in setting the amount of the penalty the Storm Water Administrator has not considered or given appropriate weight to either mitigating or aggravating factors, SWAC shall either decrease or increase the per day civil penalty within the range allowed by this ordinance. Any decision of SWAC that modifies the amount of a civil penalty shall include, as part of the findings of fact and conclusions of law, findings as to which mitigating or aggravating factors exist and the appropriate weight that should have been given to such factors by the Storm Water Administrator in setting the amount of the civil penalty levied against the Petitioner.

**(5) Standards for Granting a Variance**

Before granting a variance, SWAC shall have made all the following findings:

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

**(6) Variance Conditions**

SWAC may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

**(7) Action by SWAC**

SWAC bylaws will determine the number of concurring votes needed to grant an appeal or request for variance. SWAC shall grant or deny the variance or shall reverse, affirm or modify the order, decision,

determination or interpretation under appeal by recording in the minutes of the meeting the reasons that SWAC used, and the findings of fact and conclusions of law made by SWAC to reach its decision.

**(8) Rehearing**

SWAC shall refuse to hear an appeal or variance petition which has been previously denied unless it finds there have been substantial changes in the conditions or circumstances relating to the matter.

**(C) Review by Superior Court**

Every decision of SWAC 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 thirty (30) days after the later occurring of the following:

- (1) The decision of SWAC is filed; or
- (2) A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with SWAC at the time of its hearing of the case.

**6.8.3 STANDARDS**

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**(301) GENERAL STANDARDS**

All development and redevelopment to which this ordinance applies shall comply with the standards of this Section.

**(302) WATERSHED DISTRICTS**

Standards for development and redevelopment vary depending on the watershed district in which a project is located as described in the “Post-Construction Ordinance Map of the Town of Mint Hill, North Carolina,” which is adopted simultaneously herewith as described in Section 105(E). The Town of Mint Hill is divided into the following watershed districts for purposes of this ordinance.

**(A) Catawba District**

That area of land that drains to Irvins Creek in the Catawba River basin in the Town of Mint Hill and its extraterritorial jurisdiction, including all creeks and tributaries.

**(B) Clear Creek District**

That area of land that drains to Clear Creek, including Sherman Branch and Long Branch in the Yadkin River basin in the Town of Mint Hill and its extraterritorial jurisdiction, including all creeks and tributaries.

**(C) Goose Creek District**

That area of land that drains to Goose, Stevens and Duck Creeks in the Yadkin River basin in the Town of Mint Hill and its extraterritorial jurisdiction, including all creeks and tributaries.

**(303) DEVELOPMENT STANDARDS FOR CATAWBA DISTRICT**

**(A) Development Standards for Low Density Projects**

Any drainage area within a project is considered low density when said drainage area has less than 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.

**(1) Vegetated Conveyances**

Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

**(2) Stream Buffers**

(a) Stream Buffer Delineation

The S.W.I.M. Stream Buffer requirements apply as described in the Town of Mint Hill’s Zoning Ordinance. S.W.I.M. Stream Buffers shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than 10-foot cells. This stream buffer delineation including buffer widths shall be periodically updated as new data becomes available. The most recent delineation shall be maintained for public use on Mecklenburg County’s website.

(b) Stream Buffer Widths

All streams draining less than 50 acres shall have a minimum 30-foot vegetated stream buffer including a 10-foot zone adjacent to the bank. Disturbance of the stream buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-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 stream buffer with two (2) zones, including a 20-foot stream side and 15-foot upland zone. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot stream buffer with three (3) zones, including a 20-foot stream side, 20-foot managed use and 10-foot upland zone. Stream buffers for streams draining greater than or equal to 640 acres shall be 100 feet in width or include the entire floodplain, whichever is greater. This stream buffer shall consist of a 30-foot stream side, 45-foot managed use and 25-foot upland zone or the entire FEMA floodplain, whichever is greater. Stream 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. The table below provides a summary of minimum stream buffer widths.

**Minimum Stream Buffer Widths by Basin Size and Buffer Zone.**

<b>Area Designation</b>	<b>Stream Side Zone</b>	<b>Managed Use Zone</b>	<b>Upland Zone</b>	<b>Total Buffer Width each side of Stream</b>
< 50 acres	N/A	N/A	N/A	30 feet (vegetated)
≥ 50 acres	20 feet	None	15 feet	35 feet
≥ 300 acres	20 feet	20 feet	10 feet	50 feet
≥ 640 acres	30 feet	45 feet	25 feet or floodplain	100 feet or floodplain, whichever is greater

**(B) Development Standards for High Density Projects**

Any drainage area within a project is considered high density when said drainage area has greater than or equal to 24% built upon area as determined by the methodology established in the Design Manual. Such high-density projects shall implement storm water treatment systems that comply with each of the following standards.

**(1) Storm Water Quality Treatment Volume**

Storm water quality treatment systems shall treat the runoff generated from the first inch of rainfall.

**(2) 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 can be used to meet this requirement.

**(3) 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.

**(4) Stream Buffers**

**(a) Stream Buffer Delineation**

The S.W.I.M. Stream Buffer requirements apply as described in the Town of Mint Hill's Zoning Ordinance. S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Mint Hill, shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than 10-foot cells. This stream buffer delineation including stream 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.

**(b) Stream Buffer Widths**

All streams draining less than 50 acres shall have a minimum 30-foot vegetated stream buffer including a 10-foot zone adjacent to the bank. Disturbance of the stream buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-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 stream buffer with two (2) zones, including a 20-foot stream side and 15-foot upland zone. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot stream buffer with three (3) zones, including a 20-foot stream side, 20-foot managed use and 10-foot upland zone. Stream buffers for streams draining greater than or equal to 640 acres shall be 100 feet in width or include the entire floodplain, whichever is greater. This stream buffer shall consist of a 30-foot stream side, 45-foot managed use and 25-foot upland zone or the entire FEMA floodplain, whichever is greater. Stream 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. The table below provides a summary of minimum stream buffer widths.

**Minimum Stream Buffer Widths by Basin Size and Buffer Zone.**

<b>Area Designation</b>	<b>Stream Side Zone</b>	<b>Managed Use Zone</b>	<b>Upland Zone</b>	<b>Total Buffer Width each Side of Stream</b>
< 50 acres	N/A	N/A	N/A	30 feet (vegetated)
≥ 50 acres	20 feet	None	15 feet	35 feet
≥ 300 acres	20 feet	20 feet	10 feet	50 feet
≥ 640 acres	30 feet	45 feet	25 feet or balance of floodplain	100 feet or entire FEMA floodplain, whichever is greater

**(5) Storm Water Volume Control**

Storm water treatment systems shall be installed to control the volume leaving the project site at post-development for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

**(6) 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-yr, 6-hr) 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-yr and 25-yr, 6-hr storms. For commercial development exceeding 24% built-upon area, peak control shall be installed for the 10-yr, 6-hr storm and additional peak control provided for the appropriate storm frequency (i.e., 25, 50 or 100-yr, 6-hr) 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-yr and 25-yr, 6-hr 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.

**(304) DEVELOPMENT STANDARDS FOR CLEAR CREEK DISTRICT**

**(A) Development Standards for Low Density Projects**

Any drainage area within a project is considered low density when said drainage area has less than 12% 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.

**(1) Vegetated Conveyances**

Storm water runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.

**(2) Stream Buffers**

**(a) Stream Buffer Delineation**

The S.W.I.M. Stream Buffer requirements apply as described in the Town of Mint Hill's Zoning Ordinance. S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Mint Hill, shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than 10-foot cells. This stream buffer delineation including stream 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.

**(b) Stream Buffer Widths**

All streams draining less than 50 acres shall have a minimum 30-foot vegetated stream buffer including a 10-foot zone adjacent to the bank. Disturbance of the stream buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-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 stream buffer with two (2) zones, including a 20-foot stream side and 15-foot upland zone. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot stream buffer with three (3) zones, including a 20-foot stream side, 20-foot managed use and 10-foot upland zone. Stream buffers for streams draining greater than or equal to 640 acres shall be 100 feet in width or include the entire floodplain, whichever is greater. This stream buffer shall consist of a 30-foot stream side, 45-foot managed use and 25-foot upland zone or the entire FEMA floodplain, whichever is greater. Stream 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. The table below provides a summary of minimum stream buffer widths.

**Minimum Stream Buffer Widths by Basin Size and Buffer Zone.**

<b>Area Designation</b>	<b>Stream Side Zone</b>	<b>Managed Use Zone</b>	<b>Upland Zone</b>	<b>Total Buffer Width each Side of Stream</b>
< 50 acres	N/A	N/A	N/A	30 feet (vegetated)
≥ 50 acres	20 feet	None	15 feet	35 feet
≥ 300 acres	20 feet	20 feet	10 feet	50 feet
≥ 640 acres	30 feet	45 feet	25 feet or balance of floodplain	100 feet or entire FEMA floodplain, whichever is greater

**(B) Development Standards For High Density Projects**

Any drainage area within a project is considered high density when said drainage area has greater than or equal to 12% built upon area as determined by the methodology established in the Design Manual. Such high-density projects shall implement storm water treatment systems that comply with each of the following standards.

**(1) Storm Water Quality Treatment Volume**

Storm water quality treatment systems shall treat the runoff generated from the first inch of rainfall.

**(2) 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 can be used to meet this requirement.



**(3) 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.

**(4) Stream Buffers**

**(a) Stream Buffer Delineation**

The S.W.I.M. Stream Buffer requirements apply as described in the Town of Mint Hill’s Zoning Ordinance. S.W.I.M. Stream Buffers, throughout the jurisdiction of the Town of Mint Hill, shall be delineated by Mecklenburg County through its geographic information system (GIS) using the most current digital elevation model (DEM) of no greater than 10-foot cells. This stream buffer delineation including stream 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.

**(b) Stream Buffer Widths**

All streams draining less than 50 acres shall have a minimum 30-foot vegetated stream buffer including a 10-foot zone adjacent to the bank. Disturbance of the stream buffer is allowed; however, any disturbed area must be revegetated and disturbance of the 10-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 stream buffer with two (2) zones, including a 20-foot stream side and 15-foot upland zone. Streams draining greater than or equal to 300 acres and less than 640 acres shall have a 50-foot stream buffer with three (3) zones, including a 20-foot stream side, 20-foot managed use and 10-foot upland zone. Stream buffers for streams draining greater than or equal to 640 acres shall be 100 feet in width or include the entire floodplain, whichever is greater. This stream buffer shall consist of a 30-foot stream side, 45-foot managed use and 25-foot upland zone or the entire FEMA floodplain, whichever is greater. Stream 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. The table below provides a summary of minimum stream buffer widths.

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≥ 50 acres	20 feet	None	15 feet	35 feet
≥ 300 acres	20 feet	20 feet	10 feet	50 feet
≥ 640 acres	30 feet	45 feet	25 feet or balance of floodplain	100 feet or entire FEMA floodplain, whichever is greater

**(5) Storm Water Volume Control**

Storm water treatment systems shall be installed to control the volume leaving the project site at post-development for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

**(6) Storm Water Peak Control**

For residential developments exceeding 12% built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10, 25, 50 or 100-yr, 6-hr) 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-yr and 25-yr, 6-hr storms. For commercial development exceeding 12% built-upon area, peak control shall be installed for the 10-yr, 6-hr storm and additional peak control provided for the appropriate storm frequency (i.e., 25, 50 or 100-yr, 6-hr) 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-yr and 25-yr, 6-hr 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.

**(305) DEVELOPMENT STANDARDS FOR GOOSE CREEK DISTRICT**

**(A) Storm Water Control Requirements**

**(1) Delegation of Authority**

The storm water control requirements contained in Section 305(A) of this ordinance are adopted pursuant to the adoption by the N.C. Environmental Management Commission of the “Site Specific Water Quality Management Plan for the Goose Creek Watershed” (hereinafter referred to

as “the Plan”) promulgated under 15A NCAC 02B .0601 and 15A NCAC 02B .0602. The authority to implement and enforce the Plan has been delegated by the N.C. Environmental Management Commission to the N.C. Division of Water Quality. The Plan authorizes the N.C. Environmental Management Commission to grant and rescind local government delegation of the authority to implement and enforce the storm water control requirements within the Plan in accordance with the provisions of 15A NCAC 02B.0602(c). In the absence of such local delegation of authority, the provisions of Section 305(A) of this ordinance shall apply; however, plan approvals and determinations for storm water control requirements shall be performed by the Director of the N.C. Division of Water Quality for compliance with the Plan as well as the local Storm Water Administrator for the Town of Mint Hill for compliance with this ordinance. Upon issuance of local delegation of authority, plan approvals and determinations for storm water control requirements shall be made by the Storm Water Administrator. The following conditions shall apply to this local delegation of authority:

- (a) The Storm Water Administrator has the authority to implement and enforce the State’s storm water control requirements within the Town of Mint Hill’s jurisdiction following the delegation of such authority by the N.C. Environmental Management Commission.
- (b) The Storm Water Administrator shall maintain on-site records for a minimum of five years and must furnish a copy of these records to the Director of the N.C. Division of Water Quality within 30 days of receipt of a written request for the records. The N.C. Division of Water Quality may inspect Mint Hill’s storm water programs to ensure that the programs are being implemented and enforced in keeping with an approved delegation.
- (c) The N.C. Environmental Management Commission, upon determination that the Storm Water Administrator is failing to implement or enforce the requirements in keeping with a delegation, shall notify the Storm Water Administrator in writing of the inadequacies. If the Storm Water Administrator has not corrected the deficiencies within 90 days of receipt of the written notification, then the N.C. Environmental Management Commission shall rescind the delegation of authority to the Storm Water Administrator and shall implement and enforce the State's storm water requirements.
- (d) The N.C. Environmental Management Commission shall have jurisdiction to the exclusion of the Storm Water Administrator to implement the State's storm water protection requirements for the following types of activities:
  - (i) Activities undertaken by the State,
  - (ii) Activities undertaken by the United States,
  - (iii) Activities undertaken by multiple jurisdictions, and
  - (iv) Activities undertaken by local units of government.

**(2) Applicability**

As of March 11, 2010 (effective date of this ordinance), the following storm water control requirements shall apply to all development and redevelopment activity that disturbs one acre or more of land within the Goose Creek District and that will result in the addition of built-upon area, with the exception of NC Department of Transportation and N.C. Turnpike Authority activities that shall be regulated in accordance with provisions of that agency's NPDES Storm Water Permit. The Undisturbed Open Space requirements contained in Section 403 of this ordinance shall not apply to any redevelopment or to development that has less than 20% built-upon area.

**(3) Storm Water Quality Treatment Volume**

Structural storm water quality treatment systems shall be used to control and treat the difference in the storm water runoff from the predevelopment and post-development conditions for the 1-year, 24-hour storm.

**(4) Storm Water Quality Treatment**

All structural storm water quality treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids. Structural storm water quality treatment systems that promote the infiltration of flows and groundwater recharge as defined in the Charlotte-Mecklenburg Design Manual shall be used within the Goose Creek District to maintain stream base flow. If it is not practical to use these infiltration practices, a written explanation must be submitted to the Storm Water Administrator along with the Concept Plan Application described in Section 203(A) of this ordinance.

**(5) Storm Water Volume Control**

Storm water treatment systems shall be installed to discharge the difference in the storm water runoff volume from the predevelopment and post-development conditions for the 1-year, 24-hour storm at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but no more than 120 hours.

**(6) Storm Water Peak Control**

For residential developments exceeding 10% built-upon area, peak control shall be installed for the appropriate storm frequency (i.e., 10, 25, 50 or 100-yr, 6-hr) 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-yr and 25-yr, 6-hr storms. For commercial development exceeding 10% built-upon area, peak control shall be installed for the 10-yr, 6-hr storm and additional peak control provided for the appropriate storm frequency (i.e., 25, 50 or 100-yr, 6-hr) 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-yr and 25-yr, 6-hr 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; and

**(7) 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 described in Section 107 of this ordinance.

**(8) Appeals and Variances**

Pursuant to the local delegation of authority described in Section 305(A)(1) above, appeal and variance requests for storm water control requirements within the Goose Creek District shall comply with Section 205 of this ordinance.

**(B) Control Toxicity Including Ammonia**

No activity that results in direct or indirect discharge is allowed if it causes toxicity to the Carolina heelsplitter (*Lasmigona decorata*) endangered mussel as promulgated under 15A NCAC 02B .0604. For any direct or indirect discharge that may cause ammonia toxicity to the Carolina heelsplitter freshwater mussel, action shall be taken to reduce ammonia (NH<sub>3</sub>-N) inputs to achieve 0.5 milligrams per liter or less of total ammonia based on chronic toxicity defined in 15A NCAC 02B .0202. This level of total ammonia is based on ambient water temperature equal to or greater than 25 degrees Celsius.

**(C) Stream Buffer Requirements**

**(1) Delegation of Authority**

The stream buffer requirements contained in Section 305(C) of this ordinance are adopted pursuant to the adoption by the N.C. Environmental Management Commission of the “Site Specific Water Quality Management Plan for the Goose Creek Watershed” (hereinafter referred to as “the Plan”) promulgated under 15A NCAC 02B .0605, 15A NCAC 02B .0606, 15A NCAC 02B .0607, 15A NCAC 02B .0608, and 15A NCAC 02B .0609 effective February 1, 2009. The authority to implement and enforce the Plan has been delegated by the N.C. Environmental Management Commission to the N.C. Division of Water Quality. The Plan authorizes the N.C. Environmental Management Commission to grant and rescind local government delegation of the authority to implement and enforce portions of the Plan in accordance with the provisions of 15A NCAC 02B.0607(f), including the stream buffer protection requirements contained in this Section. In the absence of such local delegation of authority, the provisions of Section 305(C) of this ordinance shall apply; however, plan approvals and determinations for stream buffer requirements shall be performed by the Director of the N.C. Division of Water Quality for compliance with the Plan as well as the local Storm Water Administrator for the Town of Mint Hill for compliance with this ordinance. Upon issuance of local delegation of authority, plan approvals and determinations for stream buffer requirements shall be made by the Storm Water Administrator. The following conditions shall apply to this local delegation of authority:

- (a) The Town of Mint Hill has designated the Storm Water Administrator to coordinate the implementation and enforcement of the stream buffer protection program as described in Section 305(C) of this ordinance. The Storm Water Administrator shall attend an initial training session by the N.C. Division of Water Quality and subsequent annual training sessions. The Storm Water Administrator shall ensure that local government staffs working directly with the program receive training to understand, implement and enforce the program.
- (b) The Storm Water Administrator has the authority to implement and enforce the State’s stream buffer protection requirements within the Town of Mint Hill’s jurisdiction following the delegation of such authority by the N.C. Environmental Management Commission.
- (c) The Storm Water Administrator shall maintain on-site records for a minimum of five years and must furnish a copy of these records to the Director of the N.C. Division of Water Quality within 30 days of receipt of a written request for the records. The N.C. Division of the Water Quality may inspect the Storm Water Administrator’s buffer protection programs to ensure that the programs are being implemented and enforced. The Storm Water Administrator’s records shall include the following:
  - (i) A copy of variance requests,

- (ii) The variance request's finding of fact,
  - (iii) The result of the variance proceedings,
  - (iv) A record of complaints and action taken as a result of the complaint,
  - (v) Records for stream origin calls and stream ratings, and
  - (vi) Copies of requests for authorization, records approving authorization and Authorization Certificates.
- (d) The N.C. Environmental Management Commission, upon determination that the Storm Water Administrator is failing to implement or enforce the stream buffer protection requirements in keeping with an approved delegation, shall notify the Storm Water Administrator in writing of the inadequacies. If the Storm Water Administrator has not corrected the deficiencies within 90 days of receipt of the written notification, then the N.C. Environmental Management Commission shall rescind the delegation of authority to the Storm Water Administrator and shall implement and enforce the State's stream buffer protection requirements.
- (e) The N.C. Environmental Management Commission has jurisdiction to the exclusion of the Storm Water Administrator to implement the requirements of the State's program for the following types of activities:
- (i) Activities undertaken by the State,
  - (ii) Activities undertaken by the United States,
  - (iii) Activities undertaken by multiple jurisdictions,
  - (iv) Activities undertaken by local units of government, and
  - (v) Forestry operations.

**(2) Applicability**

As of March 11, 2010 (effective date of this ordinance), the stream buffer requirements contained in this Section shall apply to all properties located within the Goose Creek District unless one of the following applies:

- (a) A use is existing and ongoing within the stream buffer. Only the portion of the stream buffer that contains the footprint of the existing and ongoing use is exempt. Pursuant to Section 305(C)(1) above, the determination of whether a use is existing and ongoing shall be made by the Storm Water Administrator. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:
- (i) A use that was present within the stream buffer as of February 1, 2009 (effective date N.C. Site Specific Water Quality Management Plan for Goose Creek) and has continued since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial

areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no built-upon area is added within the stream buffer area where it did not exist as of as February 1, 2009 and existing diffuse flow is maintained.

- (ii) A use that can be documented to the Storm Water Administrator that meets at least one of the following criteria prior to February 1, 2009:
  - (I) Project requires a 401 Certification/404 Permit, and such permits are still valid,
  - (II) Project requires a State permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required State permits,
  - (III) Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization, or
  - (IV) Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality.
- (iii) At the time an existing use is changed to another use, the stream buffer requirements contained in this Section shall apply. Change of use includes the following:
  - (I) To add built-upon area within the stream buffer,
  - (II) An agricultural operation within the stream buffer is converted to a non-agricultural, or



- (III) A lawn within the stream buffer that ceases to be maintained.
- (b) Redevelopment of a structure that was present within the stream buffer as of February 1, 2009 and has continued to exist since that time provided the following conditions are met:
  - (i) The redevelopment occurs on the same footprint as the existing development.
  - (ii) Existing storm water controls remain, including diffuse flow conditions.
  - (iii) The redevelopment of nonresidential structures results in the disturbance of less than a half-acre.
  - (iv) The site remains vegetated in a manner similar to existing conditions.
  - (v) Applicable storm water control requirements of Section 305(A) of this ordinance are met.
- (c) Land within a riparian buffer area in which neither the State nor its subdivisions hold any property interest may be used by the property owner to satisfy any other development-related regulatory requirements based on property size, including, but not limited to:
  - (i) Residential density and nonresidential intensity calculations and yields.
  - (ii) Tree conservation purposes.
  - (iii) Open space or conservation area requirements.
  - (iv) Setbacks.
  - (v) Perimeter buffers.
  - (vi) Lot area requirements.

**(3) Stream Buffer Delineation and Protection**

The protected stream buffer shall consist of an area that is undisturbed except for uses provided for in the table in Section 305(C)(9) of this ordinance. Stream buffers are required for all intermittent and perennial streams as well as ponds, lakes and reservoirs (excluding wetlands and agricultural ponds) with hydrologic connections to these streams as approximately shown on either the most recent published version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Pursuant to Section 305(C)(1) above, perennial and intermittent streams shall be subject to the stream buffer requirements of this Section if stream evaluations made by the Storm Water Administrator determine that intermittent or perennial streams are present based on the latest version of the N.C. Division of Water Quality's publication entitled *Identification Methods for the Origins of Intermittent and Perennial Streams*. In addition, non-agricultural ponds, lakes and reservoirs with a hydrologic connection to such streams shall be subject to the stream buffer

requirements. Such determinations can also be requested from a landowner or other concerned party. Surface waters that appear on the maps shall not be subject to this ordinance if an on-site evaluation 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.
- (d) Agricultural ponds.

**(4) Stream Buffer Widths**

In the Goose Creek District, undisturbed stream buffers are required at the following widths for all intermittent and perennial streams as well as the ponds, lakes and reservoirs (excluding wetlands and agriculture ponds) with hydrologic connections to such streams:

- (a) 200-foot wide if located within the 100-Year Floodplain.
- (b) 100-foot wide if located outside the 100-Year Floodplain.

The 100-Year Floodplain is the one percent Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the N.C. Division of Emergency Management.

**(5) Stream Buffer Location**

The location of the stream buffer shall be as follows:

- (a) For intermittent and perennial streams, the stream buffer shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward on all sides of the surface water, measured horizontally on a line perpendicular to the surface water.
- (b) For ponds, lakes and reservoirs located within a natural drainage way, the stream buffer shall begin at the most landward limit of the normal water level or the rooted herbaceous vegetation and extend landward, measured horizontally on a line perpendicular to the surface water.

**(6) Requirements for Categories of Uses and Mitigation**

Uses designated as exempt, potentially allowable, and prohibited in the table in Section 305(C)(9) of this ordinance shall have the following requirements:

- (a) Exempt  
Uses designated as exempt are allowed within the stream buffer. Exempt uses shall be designed, constructed and maintained to

minimize soil disturbance and to provide the maximum water quality protection practicable. In addition, exempt uses shall meet requirements listed in the table for the specific use.

(b) Potentially Allowable

Uses designated as potentially allowable may proceed within the stream buffer provided that there are no practical alternatives to the requested use pursuant to Section 305(C)(7) of this ordinance. Pursuant to Section 305(C)(1) above, these uses require written authorization from the Storm Water Administrator. Some of these uses require mitigation, as indicated in the table provided in Section 305(C)(9) of this ordinance.

(c) Prohibited

Uses designated as prohibited or not included in the table provided in Section 305(C)(9) of this ordinance may not proceed within the stream buffer unless a variance is granted pursuant to Section 305(C)(10) of this ordinance. Site-specific mitigation may be required as one condition of a variance approval.

(d) Mitigation

Persons who wish to undertake uses designated as allowable with mitigation shall obtain approval for a mitigation proposal pursuant to Section 305(C)(11) of this ordinance.

**(7) Determination of No Practical Alternatives**

Pursuant to Section 305(C)(1) above, persons who wish to undertake uses designated as potentially allowable shall submit a request for a “no practical alternatives” determination to the Storm Water Administrator. The applicant shall certify that the criteria identified in Subsection (a) below are met. The Storm Water Administrator shall grant an Authorization Certificate upon a “no practical alternatives” determination. The procedure for making an Authorization Certificate shall be as follows:

- (a) For any request for an Authorization Certificate, the Storm Water Administrator shall review the entire project and make a finding of fact as to whether the following requirements have been met in support of a “no practical alternatives” determination:
- (i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
  - (ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
  - (iii) Plans for practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

- (iv) The Storm Water Administrator must consider the impacts that may affect conditions required to sustain and recover the federally endangered Carolina heelsplitter (*Lasmigona decorata*).
- (b) Requests for an Authorization Certificate shall be either approved or denied by the Storm Water Administrator within 60 days of receipt of a complete submission based on the criteria in Subsection (a) above. Failure to issue an approval or denial within 60 days shall constitute that the applicant has demonstrated “no practical alternatives.” The Storm Water Administrator may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the stream buffer protection program. Complete submissions shall include the following:
  - (i) The name, address and phone number of the applicant,
  - (ii) The nature of the activity to be conducted by the applicant,
  - (iii) The location of the activity, including the jurisdiction,
  - (iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in stream buffers associated with the activity, and the extent of stream buffers on the land,
  - (v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the stream buffer, preserve aquatic life and habitat and protect water quality, and
  - (vi) Plans for any practices proposed to be used to control the impacts associated with the activity.
- (c) Any disputes over determinations regarding Authorization Certificates shall be referred to the Director of the N.C. Division of Water Quality for a decision. The Director’s decision is subject to review as provided in Articles 3 and 4 of G.S. 150B.

**(8) Approval of Allowable Uses and Uses Allowable with Mitigation**

Pursuant to Section 305(C)(1) above, the Storm Water Administrator shall review proposed uses within the stream buffer and issue approvals under the following provisions if the uses meet the stream buffer protection requirements:

- (a) The Storm Water Administrator shall issue an Authorization Certificate for uses if the proposed use meets the requirements, including provisions for mitigation set forth in Section 305(C)(11) of this ordinance.
- (b) The N.C. Division of Water Quality may challenge a decision made by the Storm Water Administrator for a period of 30 days after the Authorization Certificate is issued. If the N.C. Division of Water Quality does not challenge an Authorization Certificate

within 30 days of issuance, then the Storm Water Administrator’s decision shall stand.

**(9) Stream Buffer Categories and Uses**

Stream buffers along surface waters in the Goose Creek District shall be maintained. Some uses within stream buffers are exempt and some uses are potentially allowable. Any exempt or potentially allowed use shall require storm water control as outlined in Section 305(A) of this ordinance if the one-acre threshold is met. The following chart sets out the uses and their designation under this ordinance as exempt, potentially allowable requiring Storm Water Administrator approval (pursuant to Section 305(C)(1) above) or potentially allowable requiring both Storm Water Administrator approval (pursuant to Section 305(C)(1) above) and mitigation or prohibited as described in Section 305(C)(6) above. The United States Environmental Protection Agency Endangered Species Protection Program at [www.epa.gov/espp](http://www.epa.gov/espp) and N.C. Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(A) Airport facilities: (i) Vegetation removal activities necessary to comply with Federal Aviation Administration requirements (e.g., line of sight requirements) provided the disturbed areas are stabilized and revegetated (ii) Airport facilities that impact equal to or less than one-third of an acre of riparian buffer (iii) Airport facilities that impact greater than one-third of an acre of riparian buffer	X	X	X	
(B) Archaeological activities	X			
(C) Bridges: (i) Impact equal to or less than one-tenth of an acre of riparian buffer (ii) Impact greater than one-tenth of an acre of riparian buffer	X	X		
(D) Dam maintenance activities: (i) Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam (ii) Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam	X	X		
(E) Drainage of a pond subject to Paragraph (c) of this Rule provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area.	X			

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Paragraph (d) of this Rule				
(F) Fences: (i) Fencing livestock out of surface waters (ii) Installation does not result in removal of trees (iii) Installation results in removal of trees	X X	X		
(G) Fertilizer application: (i) One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the surface water (ii) Ongoing fertilizer application	X			X
(H) Forest harvesting - see Rule .0608 of this Section				
(I) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation systems: (i) In outer riparian buffer (landward of 50 feet) provided that no built upon area is added within the riparian buffer (ii) In the inner riparian buffer provided that no built upon area is added within the riparian buffer and the installation does not result in the removal of tree(s) (iii) When built upon area is added to the riparian buffer, equal to or less than 10 feet wide with two-foot-wide shoulders. Shall be located landward of 50 feet unless there is no practical alternative (iv) When built upon area is added to the riparian buffer, greater than 10 feet wide with two-foot-wide shoulders. Shall be located landward of 50 feet unless there is no practical alternative	X X	X	X	
(J) Historic Preservation	X			
(K) New Landfills as defined by G.S. 130A-290				X
(L) Maintenance access on modified natural streams or canals: a grassed travel way on one side of the waterbody when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X		
(M) Mining activities: (i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section are established adjacent to any relocated channels (ii) Wastewater or mining dewatering wells with approved NPDES permit		X	X	

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
(N) On-site sanitary sewage systems - new ones that use ground absorption				X
(O) Pedestrian access trail and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure: (i) Equal to or less than six feet wide that does not result in the removal of any tree(s) within the riparian buffer and does not result in the addition of built upon area to the riparian buffer (ii) Equal to or less than six feet wide that results in the removal of tree(s) or the addition of built upon area to the riparian buffer (iii) Greater than six feet wide	X	X	X	
(P) Playground equipment: (i) Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation (ii) Playground equipment on single-family lots where installation or use results in the removal of vegetation (iii) Playground equipment installed on lands other than single-family lots	X	X	X	
(Q) Ponds created or modified by impounding streams subject to riparian buffers pursuant to Paragraph (c) of this Rule and not used as stormwater control measures (SCMs): (i) New ponds provided that a riparian buffer that meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section is established adjacent to the pond		X		
(R) Protection of existing structures and facilities when this requires additional disturbance to the riparian buffer		X		
(S) Public Safety - publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing	X			
(T) Removal of previous fill or debris provided that Paragraph (h) of this Rule is complied with and any vegetation removed is restored	X			
(U) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: <a href="http://water.epa.gov/lawsregs/guidance/wetlands">http://water.epa.gov/lawsregs/guidance/wetlands</a>				

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
mitigation_index.cfm (i) Wetland or stream restoration that is part of a compensatory mitigation bank, nutrient offset bank, or the In Lieu Fee program (ii) Wetland or stream restoration other than those listed above	X	X		
(V) Road, driveway or railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule			X	
(W) Road, driveway or railroad - perpendicular crossings of streams and other surface waters subject to this Rule: (i) Impact equal to or less than one-tenth of an acre of riparian buffer (ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer (iii) Impact greater than one-third of an acre of riparian buffer (iv) Driveway crossings in a residential subdivision that cumulatively impact equal to or less than one-third of an acre of riparian buffer (v) Driveway crossings in a residential subdivision that cumulatively impact greater than one-third of an acre of riparian buffer (vi) Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the Federal Clean Water Act	X	X	X	
(X) Road relocation of existing private access roads associated with public road projects where necessary for public safety: (i) Less than or equal to 2,500 square feet of riparian buffer impact (ii) Greater than 2,500 square feet of riparian buffer impact		X	X	
(Y) Scientific studies and stream gauging	X			
(Z) Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of Paragraph (h) of this Rule and Rule .0605 of this Section and installation does not result in removal of vegetation		X		
(AA) Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002: (i) In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is complied with (ii) In the outer riparian buffer (landward of 50 feet) if Paragraph (h) of this Rule is not complied with		X	X	
(BB) Streambank or shoreline stabilization		X		
(CC) Temporary roads, provided that the disturbed area is				



Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: (i) Less than or equal to 2,500 square feet of riparian buffer disturbance (ii) Greater than 2,500 square feet of riparian buffer disturbance (iii) Associated with culvert installation or bridge construction or replacement	X	X	X	
(DD) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in Rule .0295(i) of this Subchapter: (i) In the outer riparian buffer (landward of 50 feet) provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in the inner riparian buffer is not compromised, and that discharge is released in accordance with Paragraph (h) of this Rule (ii) In the inner and outer riparian buffer to control impacts associated with uses identified in this Table or uses that have received an Authorization Certificate with Exception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer (iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Clean Water Act	X	X		
(EE) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation): (i) Less than 150 feet of streambank disturbance (ii) Greater than 150 feet of streambank disturbance	X	X		
(FF) Utility Lines - Sewer Lines - Sanitary Sewer Overflows: (i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor: is the minimum	X			

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
<p>necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g., grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete</p> <p>(ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts are not a "Deemed Allowable Activity", an application for an Authorization Certificate shall be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities</p>		X		
<p>(GG) Utility - Sewer Lines – Vegetation maintenance activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:</p> <p>(i) Impacts outside of the inner 50 feet nearest the stream</p> <p>(ii) Impacts in the inner 50 feet nearest the stream: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide</p> <p>(iii) Impacts in the inner 50 feet nearest the stream other than those listed above</p>	X		X	
<p>(HH) Utility – Sewer Lines - Replacement/ Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable vegetation (e.g., grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:</p> <p>(i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream</p> <p>(ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide</p> <p>(iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for impacts in the inner 50 feet nearest the stream. For perpendicular crossings that disturb equal to</p>	X	X	X	

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for impacts in the inner 50 feet nearest the stream				
<p>(II) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</p> <ul style="list-style-type: none"> <li>(i) Construction corridor of less than or equal to 40 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</li> <li>(ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</li> <li>(iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</li> <li>(iv) Permanent maintenance corridor that is greater than 30 linear feet wide. For impacts other than perpendicular crossings, mitigation is only required for impacts in the inner 50 feet nearest the stream. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for impacts in the inner 50 feet nearest the stream</li> </ul>	X	X	X  X	
<p>(JJ) Utility - Sewer Lines – New Line Construction/ Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</p> <ul style="list-style-type: none"> <li>(i) Impacts outside of the inner 50 feet nearest the stream</li> <li>(ii) Less than 2,500 square feet of impacts in the inner 50 feet nearest the stream when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided</li> <li>(iii) Impacts to the inner 50 feet nearest the stream other than noted above</li> </ul>	X	X	X	
<p>(KK) Utilities – Non-Sewer Underground Lines. Vegetation maintenance activities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the</p>				

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
existing utility line maintenance corridor: (i) Impacts outside of the inner 50 feet nearest the stream (ii) Impacts in the inner 50 feet nearest the stream: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide (iii) Impacts in the inner 50 feet nearest the stream other than those listed above	X			
(LL) Utilities – Non-Sewer Underground Lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: (i) Construction corridor of less than or equal to 50 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide (iv) Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for impacts within the inner 50 feet nearest the stream)	X			
(MM) Utilities – Non-Sewer Underground Lines. Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor: (i) Impacts outside of the inner 50 feet nearest the stream (ii) Impacts in the inner 50 feet nearest the stream to less than 2,500 square feet when impacts are a result of tying to an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided (iii) Impacts to the inner 50 feet nearest the stream other than noted above	X		X	
(NN) Utilities – Non-Sewer Aerial Lines. Perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface				

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
water subject to this Rule: (i) Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a waterbody (ii) Disturb greater than 150 linear feet wide of riparian buffer	X		X	
(OO) Utilities – Non-Sewer Aerial Lines - Impacts other than perpendicular crossings of streams and other surface waters subject to this Rule or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Rule: (i) Impacts outside of the inner 50 feet nearest the stream (ii) Impacts in the inner 50 feet nearest the stream provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in the inner 50 feet nearest the stream, and that that poles or aerial infrastructure are not installed within 10 feet of a waterbody	X	X		
(PP) Vegetation management: (i) Emergency fire control measures provided that topography is restored (ii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting (iii) Planting non-invasive vegetation to enhance the riparian buffer (iv) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised (v) Removal of individual trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance (vi) Removal of individual trees that are dead, diseased or damaged (vii) Removal of poison ivy, oak or sumac. If removal is significant, then the riparian buffer	X X X X X X X			

Use Description	Deemed Allowable	Allowable Upon Authorization	Allowable with Mitigation Upon Authorization	Prohibited
shall be replanted with non-invasive species (viii) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC (available at <a href="http://portal.ncdenr.org/c/document">http://portal.ncdenr.org/c/document</a> ). If removal is significant then the riparian buffer shall be replanted with non-invasive species (ix) Removal of woody vegetation in the riparian buffer provided that Paragraph (h) of this Rule is complied with	X		X	
(QQ) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities: (i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet wide (ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet wide	X	X		
(RR) Water dependent structures (except for boat ramps) as defined in Rule .0202 of this Subchapter		X		
(SS) Water wells	X			
(TT) Wildlife passage structures		X		

**(10) Variances and Appeals for Activities Within Stream Buffers**

Persons who wish to undertake uses designated as prohibited within the protected stream buffer area may pursue a variance. The variance request procedure shall be as follows:

- (a) Pursuant to Section 305(C)(1) above, for any variance request the Storm Water Administrator shall make a finding of fact as to whether the following requirements have been met. The applicant must submit information to the Storm Water Administrator to demonstrate that:
  - (i) There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the stream buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:
    - (I) If the applicant complies with the provisions of the stream buffer requirements, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property is

not adequate justification for a variance. Moreover, the Storm Water Administrator shall consider whether the variance is the minimum possible deviation from the terms of the stream buffer requirements that will make reasonable use of the property possible.

- (II) The hardship results from application of the stream buffer requirements to the property rather than from other factors such as deed restrictions or other hardship.
  - (III) The hardship is due to the physical nature of the applicant's property and is unique to the applicant's property, such as its size, shape, or topography, such that compliance with the provisions of this ordinance would not allow reasonable use of the property.
  - (IV) The applicant did not cause the hardship by knowingly or unknowingly violating the stream buffer requirements.
  - (V) The applicant did not purchase the property after February 1, 2009 and then request a variance.
- ii) The variance is in harmony with the general purpose and intent of the State's stream buffer protection requirements and preserves its spirit; and
  - iii) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.
- (b) A variance request pertains to any activity that is proposed to impact any portion of the stream buffer. Pursuant to Section 305(C)(1) above, if the Storm Water Administrator has determined that a variance request meets the requirements in Section 305(C)(10)(a) above, then a preliminary finding shall be prepared within 30 days of the receipt of the request and submitted to SWAC for approval. Once that approval is obtained, then the Storm Water Administrator shall submit the variance to the Director of Division of Water Quality (DWQ) to present to the N.C. Environmental Management Commission. Preliminary findings on variance requests shall be reviewed by the N.C. Environmental Management Commission within 90 days after receipt by the DWQ. Requests for appeals of determinations that the requirements of Section 305(C)(10)(a) have not been met shall be made to the Office of Administrative Hearings for determinations made by the Division of Water Quality or the Storm Water Advisory Committee as described in Section 205 of this ordinance for determinations made by the Storm Water Administrator. The purpose of the N.C. Environmental

Management Commission's review is to determine if it agrees that the requirements in Section 305(C)(10)(a) above have been met. Requests for appeals of decisions made by the N.C. Environmental Management Commission shall be made to the Office of Administrative Hearings. The following actions shall be taken depending on the N.C. Environmental Management Commission's decision on the variance request:

- (i) Upon the N.C. Environmental Management Commission's approval, the Storm Water Administrator shall issue a final decision granting the variance.
  - (ii) Upon the N.C. Environmental Management Commission's approval with conditions or stipulations, the Storm Water Administrator shall issue a final decision, which includes these conditions or stipulations.
  - (iii) Upon the N.C. Environmental Management Commission's denial, the Storm Water Administrator shall issue a final decision denying the variance.
- (c) Pursuant to Section 305(C)(1) above, requests for appeals of determinations made by the Storm Water Administrator regarding the stream buffer requirements contained in Section 305(C) of this ordinance shall be made to the Storm Water Advisory Committee as described in Section 205 of this ordinance.

**(11) Mitigation Requirements for Stream Buffer Impacts**

(a) Purpose

The purpose of this Section is to set forth the mitigation requirements that apply to the Goose Creek District existing stream buffer protection program, as described in Section 305(C) of this ordinance in accordance with 15A NCAC 02B .0295.

(b) Applicability

This Section applies to persons who wish to impact a stream buffer in the Goose Creek District when one of the following applies:

- (i) A person has received an Authorization Certificate pursuant to Section 305(C)(9) above for a proposed use that is designated as potentially allowable requiring both Storm Water Administrator approval and mitigation pursuant to Section 305(C)(1) above.
- (ii) A person has received a variance pursuant to Section 305(C)(10) and is required to perform mitigation as a condition of a variance approval.

(c) The Area of Mitigation

Pursuant to Section 305(C)(1) above, the required area of mitigation shall be determined by the Storm Water Administrator according to the following:

- (i) The impacts in square feet to the stream buffer shall be determined by the Storm Water Administrator by adding the following:



- (I) The area of the footprint of the use causing the impact to the stream buffer.
- (II) The area of the boundary of any clearing and grading activities within the stream buffer necessary to accommodate the use.
- (III) The area of any ongoing maintenance corridors within the stream buffer associated with the use.

The Storm Water Administrator shall deduct from this total the area of any wetlands that are subject to and compliant with riparian wetland mitigation requirements under 15A NCAC 02H .0506 and are located within the proposed riparian buffer impact area.

- (ii) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Subsection (c)(i) above to each zone of the stream buffer:
  - (I) Impacts to the stream buffer shall be multiplied by three.
  - (II) Impacts to wetlands within the stream buffer that are subject to mitigation under 15A NCAC 02H .0506 shall comply with the mitigation ratios in 15A NCAC 02H .0506.

(d) The Location of Mitigation

The mitigation effort should be within the Goose Creek District, as close to the location of the impact as feasible. Mitigation may be done within other watersheds with the same federally listed threatened or endangered aquatic species as long as the impacts are in the same river basin as the mitigation site.

(e) Issuance of Mitigation Determination

Pursuant to Section 305(C)(1) above, the Storm Water Administrator shall issue a mitigation determination that specifies the required area and location of mitigation pursuant to Subsections (c) and (d) above.

(f) Options for Meeting the Mitigation Determination

The mitigation determination made pursuant to Subsection (e) above may be met through one of the following options:

- (i) Payment of a compensatory mitigation fee pursuant to Subsection (g) below.
- (ii) Donation of real property or of an interest in real property pursuant to Subsection (h) below.
- (iii) Restoration or enhancement of a non-forested stream buffer. This shall be accomplished by the applicant after submittal and approval of a restoration plan pursuant to Subsection (i) below.
- (iv) Alternative buffer mitigation pursuant to Subsection (j) of this rule; or other buffer mitigation as approved by the

Storm Water Administrator as a condition of a variance approval pursuant to Section 305(C)(10).

- (g) Payment to the Stream Buffer Restoration Fund  
Persons who choose to satisfy their mitigation determination by paying a compensatory mitigation fee shall meet the following requirements:
  - (i) The amount of payment into the Fund shall be determined by multiplying the acres or square feet of mitigation determination made pursuant Subsection (e) above by the rate established pursuant to 15A NCAC 02R. 0601.
  - (ii) Pursuant to Section 305(C)(1) above, the required fee shall be submitted to the Storm Water Administrator prior to any activity that results in the removal or degradation of the protected stream buffer for which a “no practical alternatives” determination has been made.
  - (iii) The payment of a compensatory mitigation fee may be fully or partially satisfied by donation of real property interests pursuant to Subsection (h) below.
- (h) Donation of Property  
Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property to fully or partially offset an approved payment into the Stream Buffer Restoration Fund pursuant to Subsection (g) above shall do so in accordance with 15A NCAC 02B .0295 and 15A NCAC 02R .0403.
- (i) Stream Buffer Restoration or Enhancement  
Persons who choose to meet their mitigation requirement through stream buffer restoration or enhancement shall do so in accordance with 15A NCAC 02B .0295. requirements pursuant in accordance with 15A NCAC02R .0403Section (n) Riparian Buffer Mitigation Restoration Site or Enhancement Site.
- (j) Alternative Buffer Mitigation Options  
Persons who wish to meet mitigation requirements by way of alternative buffer mitigation options shall do so pursuant to 15A NCAC 02B .0295.

**(306) DIFFUSE FLOW REQUIREMENT**

Direct discharges of runoff to streams are not allowed. Techniques for providing diffuse flow are specified in the Charlotte-Mecklenburg Land Development Standards Manual or currently adopted Town’s standards’ manual. Diffuse flow of runoff shall be maintained in the stream buffer by dispersing concentrated flow and reestablishing vegetation, as follows:

- (1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the stream buffer; and

- (2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

**(307) PONDS, LAKES AND RESERVOIRS**

Ponds, lakes and reservoirs with a hydrologic connection to a perennial or intermittent stream shall comply with the buffer requirements applicable to the stream.

**(308) WETLANDS**

Sewer lines and associated structures must be a minimum of 50 feet from jurisdictional wetlands associated with the floodplain.

**(309) STREAM BUFFER DELINEATION**

The following stream buffer delineations are required:

- (1) Streams and stream 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.
- (2) Outside buffer boundaries must be clearly marked on-site prior to any land disturbing activities.
- (3) The outside boundary of the stream buffer must be permanently marked at highway stream crossings.
- (4) Streams and stream buffer boundaries including the delineation of each buffer zone must be specified on all surveys and record plats.
- (5) Stream buffer boundaries including the delineation of each buffer zone as well as all buffer requirements must be specified on all surveys and record plats, on individual deeds and in property association documents for lands held in common.

**(310) 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 ordinance 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 ordinance.

**(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 ordinance. 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 ordinance 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 as well as Undisturbed Open Space must be delivered to the Storm Water Administrator in the digital format specified in the Administrative Manual.

**(311) 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. The location of all designated Undisturbed Open Space for a site shall be recorded at the Register of Deeds Office as “Undisturbed Open Space.” Streams and stream 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 fourteen (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.

**6.8.4           UNDISTURBED OPEN SPACE**

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**(401)   PURPOSE**

Undisturbed Open Space provides for a reduction in the negative impacts from storm water runoff through non-structural means. The combination of the structural BMPs described in Section 3 with the non-structural Undisturbed Open Space provisions described in this Section allow the objectives of this ordinance to be fulfilled.

**(402)   GENERAL DESCRIPTION**

Undisturbed Open Space is required for new development as described below unless mitigated (undisturbed open space is not required for redevelopment). The percentage of Undisturbed Open Space required depends on a project’s built-upon area as described below. Undisturbed Open Space requirements can be met in stream or lake buffers, designated common areas or on individual lots for residential development (e.g., backyards, borders, etc.). Undisturbed Open Space cannot be designated within rights of way, utility easements, etc. where re-disturbance could occur. Grass fields can also be used to meet Undisturbed Open Space requirements; however, the fields must be replanted in accordance with the tree planting provisions described in Section 405 (C) below. Undisturbed Open Space is preferred where it will provide maximum water quality benefit (i.e., around gullies and existing drainage areas, adjacent to streams and wetlands, around structural BMPs, etc.).

**(403)   UNDISTURBED OPEN SPACE CRITERIA**

Undisturbed Open Space requirements apply to projects as described below.

**(A)    Less Than 20% Built-Upon Area**

Undisturbed Open Space is not required for development that has less than 20% built-upon area.

**(B)    Greater Than or Equal to 20% and Less Than 50% Built-Upon Area**

A project with greater than or equal to 20% and less than 50% built-upon area shall include as Undisturbed Open Space within the boundaries of the project a minimum of 15% of the project area.

**(C)    Greater Than or Equal to 50% Built-Upon Area**

A project with greater than or equal to 50% built-upon area shall include as Open Space within the boundaries of the project a minimum of 10% of the project area.

**(404) UNDISTURBED OPEN SPACE DESIGNATION**

The Undisturbed Open Space location shall be recorded at the Register of Deeds Office as “Undisturbed Open Space” and future disturbance is prohibited except for greenway trails with unlimited public access, new Charlotte-Mecklenburg Utility lines and channel work/maintenance activities by Charlotte-Mecklenburg Storm Water Services. Other utility work may be allowed in the Undisturbed Open Space area provided it will not result in loss of Undisturbed Open Space as approved by the Town of Mint Hill.

**(405) UNDISTURBED OPEN SPACE MITIGATION**

**(A) Purpose**

The purpose of this mitigation is to reduce the cost of complying with the Undisturbed Open Space requirement while ensuring the reduction of pollution loads and achievement of ordinance objectives.

**(B) General Description**

Approved disturbance to the Undisturbed Open Space area described in Section 403 above must be off-set by an allowable form of mitigation, including on-site and off-site mitigation as well as through payment-in-lieu.

**(C) Undisturbed Open Space Mitigation Criteria**

**(1) On-Site Mitigation**

On-site mitigation shall allow the disturbance of designated Undisturbed Open Space area on a project with the fulfillment of the following criteria on the project site:

- (a) 50% increase in total Undisturbed Open Space area designation above the requirements specified in Section 403 above, except when the Undisturbed Open Space area qualifies as a “grass field” in which case the size of the required Undisturbed Open Space area remains unchanged. The portion of the Undisturbed Open Space area that is a grass field, whether or not disturbed, must be replanted with trees as specified in Subsection (c) below.
- (b) Establishment of a minimum of six (6) inches of top soil to the disturbed Open Space area following the completion of construction activities. This material may be obtained from on-site when available.
- (c) Planting of a minimum of 36 trees per acre of Undisturbed Open Space area as follows:
  - (i) Trees shall have a minimum caliper of 1.5 inches.
  - (ii) Trees shall be of a quality set forth by the American Standard for Nursery Stock and will be selected from a list

- of acceptable native species for planting in Undisturbed Open Spaces established in the Administrative Manual.
      - (iii) Planted trees shall contain a mix of at least three (3) different species in roughly equal proportions and be “large mature shade tree species” as defined in the Administrative Manual.
      - (iv) Trees shall be planted in accordance with specifications provided in the Administrative Manual.
      - (v) Trees shall be warranted for a minimum of two (2) years following planting and any dead or diseased trees must be replaced.
    - (d) The area around and between trees must be stabilized using an approved vegetative ground cover and mulch.
    - (e) The slope of any graded or disturbed area that is dedicated for Undisturbed Open Space cannot exceed 3 to 1.
    - (f) The flow of water across the Undisturbed Open Space area must be controlled to prevent soil erosion or mulch disturbance.

**(2) Off-Site Mitigation**

On a case-by-case basis and at the sole discretion of the Storm Water Administrator, the Town of Mint Hill may allow Undisturbed Open Space disturbance and off-site mitigation through the acceptance for ownership or conservation easement properties for the protection of Undisturbed Open Space, provided the result will be an increased protection of water quality over what would be attained through preservation of Undisturbed Open Space or on site mitigation (see Administrative Manual).

**(3) Payment-In-Lieu of Undisturbed Open Space Dedication**

Payment-in-lieu of Undisturbed Open Space dedication is only allowed for industrial and commercial developments and multi-family projects that are in excess of 50% built upon area. Payment-in-lieu shall only be allowed to the extent an approved disturbance cannot be offset by on-site mitigation as determined by the Storm Water Administrator. The following criteria shall be fulfilled for the payment-in-lieu option:

- (a) A fee shall be paid to the Town of Mint Hill based on the following formula:  $1.25 \times$  (appraised value of subject property including intended use without improvements). The appraised value of the subject property shall be determined by a licensed, independent real estate appraiser retained by the developer or owner. The Town of Mint Hill may accept the appraised value or at its discretion obtain its own appraisal. In the event the parties cannot agree on the appraised value, the two appraised values shall be averaged together to determine the final appraised value to be used in the formula above.

- (b) Payment shall be accepted by the Town of Mint Hill prior to land disturbing activities.
- (c) The Town of Mint Hill shall use the payment-in-lieu to purchase Undisturbed Open Space in the same delineated watershed as the property to be disturbed within a maximum of two (2) years of the end of the calendar year from the receipt of the payment. The three (3) delineated watershed districts used for mitigation purposes are described in Section 302 above. As an option, the Town of Mint Hill may elect to use up to 10 percent of the fee to purchase and plant trees within the Town of Mint Hill.

**(D) Approval Criteria for Undisturbed Open Space Mitigation**

**(1) Application for Undisturbed Open Space Mitigation**

The Storm Water Administrator shall receive, review, approve, disapprove or approve with conditions an “Application for Undisturbed Open Space Mitigation.” The Storm Water Administrator shall design this application to include all pertinent information, including at a minimum a “mitigation plan” describing the desired mitigation option as discussed in previous sections and an effective demonstration that all reasonable efforts have been undertaken to fulfill the Undisturbed Open Space requirement on the particular site. An application for on-site mitigation shall show the location of the restored Undisturbed Open Space on the property and the location, type and size of all trees and ground cover to be planted as well as contain a warranty statement for the trees. An off-site mitigation application shall show the location and description including acreage, etc. of the property to be used for mitigation and contain a legally valid instrument demonstrating that the applicant has legal title to the property for transfer to the Town of Mint Hill. A payment-in-lieu application shall at a minimum contain the location and description of the site to be mitigated and an approved appraisal by a licensed, independent real estate appraiser

**(2) Pre-Approved Undisturbed Open Space Mitigation**

The following is pre-approved for on-site mitigation and does not require the submittal of an application to the Storm Water Administrator; however, these mitigation areas shall be described on the Storm Water Management Permit Application.

- (a) Residential, Commercial and Multifamily Uses  
25% of the required Undisturbed Open Space area as described in Section 403 above is pre-approved for on-site mitigation provided the size of mitigation area is 150% of the disturbed area. Other forms of mitigation as described above must receive approval from the Storm Water Administrator.



(b) Industrial Uses

100% of the required Undisturbed Open Space area as described in Section 403 above is pre-approved for on-site mitigation with no increase in total required Undisturbed Open Space area. Other forms of mitigation as described above must receive approval from the Storm Water Administrator.

**(E) Undisturbed Open Space Designation**

All designated Undisturbed Open Space areas included as part of an approved mitigation must be recorded at the Register of Deeds Office as “Undisturbed Open Space” and any future disturbance of this area is strictly prohibited except for greenway trails with unlimited public access, Charlotte-Mecklenburg Utility lines and channel work/maintenance activities by Charlotte-Mecklenburg Storm Water Services. Other utility work may be allowed in the Undisturbed Open Space area provided it will not result in loss of Undisturbed Open Space as approved by the Town of Mint Hill.

**6.8.5 MAINTENANCE**

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**(501) DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS**

**(A) Single Family Residential BMPS Accepted for Maintenance**

The Town of Mint Hill shall accept maintenance responsibility (as specified in the Administrative Manual) of structural BMPS that are installed pursuant to this ordinance following a warranty period of two (2) years from the date of as-built certification described in Section 203(C), provided the BMP:

- (1) Only serves a single family detached residential development or townhomes all of which have public street frontage,
- (2) Is satisfactorily maintained during the two-year warranty period by the owner or designee,
- (3) Meets all the requirements of this ordinance and the Design Manual; and
- (4) Includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection, maintenance, repair or reconstruction.

The Storm Water Administrator must receive an application for transfer of maintenance responsibilities for the structural BMP along with the Storm Water Management Permit Application. The Storm Water Administrator will develop and distribute this application as a component of the Administrative Manual (see Section 202(D)(4)).

**(B) Maintenance and Operation of BMPS**

The owner of a structural BMP installed pursuant to this ordinance and not covered under Section 501(A) above 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.

**(C) Damage or Removal of Trees**

The following provisions apply to trees contained in permitted Undisturbed Open Space areas or in BMPS that are damaged or removed:

- (1) For trees damaged or removed due to natural disasters, the owner shall be required to replace the trees in accordance with the undisturbed open space mitigation criteria described in Section 405(C)(1)(c) of this ordinance within a timeframe specified by the Storm Water Administrator.
- (2) For trees damaged or removed due to reasons other than (1) above, the owner shall be required to replace the trees in accordance with the open space mitigation criteria described in Section 405(C)(1)(c) of this ordinance within a timeframe specified by the Storm Water Administrator

with the following exception, the trees shall be replaced at twice the specified density. In addition, the owner may be subject to fines as described in Section 6, Violations and Enforcement.

**(D) Annual Maintenance Inspection and Report**

The person responsible for maintenance of any BMP installed pursuant to this ordinance and not covered under Section 501(A) above 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. 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.

**(502) OPERATION AND MAINTENANCE AGREEMENT**

**(A) General**

At the time that as-built plans are provided to the Storm Water Administrator as described in Section 203(C) and prior to final approval of a project for compliance with this ordinance, 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 Section 6, Violations and Enforcement. 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. 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 of Mint Hill 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 of Mint Hill to assume responsibility for the structural BMP.

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 as described in Section 311.

**(B) Special Requirement for Homeowners' and Other Associations**

For all structural BMPs required pursuant to this ordinance not covered under Section 501(A) above, 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.

**(503) INSPECTION PROGRAM**

Inspections and inspection programs by the Town of Mint Hill 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.

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 North Carolina General Statute 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.

**(504) PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE**

The Town of Mint Hill 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.

**(505) 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.

**(506) MAINTENANCE EASEMENT**

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement. The easement shall be recorded as described in Section 311 and its terms shall specify who may make use of the easement and for what purposes.

**6.8.6 VIOLATIONS AND ENFORCEMENT**

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**(601) GENERAL**

**(A) Authority to Enforce**

The provisions of this ordinance shall be enforced by the Storm Water Administrator, his or her designee, or any authorized agent of the Town of Mint Hill. Whenever this Section refers to the Storm Water Administrator, it includes his or her designee as well as any authorized agent of the Town of Mint Hill.

**(B) Violation Unlawful**

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

**(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 ordinance, 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 ordinance, or fails to take appropriate action, so that a violation of this ordinance 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 Section. For the purposes of this article, 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 ordinance, or fails to take appropriate action, so that a violation of this ordinance 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.

**(602) 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 ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the activity is being conducted in accordance with this ordinance 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 ordinance.

**(B) Notice of Violation and Order to Correct**

When the Storm Water Administrator finds that any building, structure, or land is in violation of this ordinance, 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 ordinance, 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 Section 603 of this ordinance. 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.

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 Section 603, Remedies and Penalties, to correct and abate the violation and to ensure compliance with this ordinance.

**(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 ordinance. 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 ordinance.
- (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 ordinance, 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 Section 603.

**(G) Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance 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 Section 603.

**(603) REMEDIES AND PENALTIES**

The remedies and penalties provided for violations of this ordinance, 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 ordinance continues and remains uncorrected, the Storm Water Administrator or other authorized agent may withhold, and the Town of Mint Hill may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

**(3) Injunction, Abatements, etc.**

The Storm Water Administrator, with the written authorization of the Town Manager 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 ordinance. Any person violating this ordinance 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, etc.**

If the violation is deemed dangerous or prejudicial to the public health or public safety as provided in North Carolina General Statute 153A-140, 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 ordinance 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 ordinance.

**(B) Civil Penalties**

**(1) Violations of Ordinance**

A violation of any of the provisions of this ordinance or rules or other orders adopted or issued pursuant to this ordinance 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 Section 602(D) of this ordinance 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 this ordinance or to pay such a penalty.

**(2) Amount of Penalty**

The maximum civil penalty for each violation of this ordinance is \$5,000.00. 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 ordinance; 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 ordinance 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 ordinance shall be credited to the Town of Mint Hill's 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 North Carolina General Statute 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 Section 603(B)(5) 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 an appeal as provided in Section 603(B)(5), 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 (3) 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 Storm Water Advisory Committee (SWAC) if such Person submits written demand for an appeal hearing to the Clerk of SWAC within 30 days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The demand for an appeal shall be accompanied by a filing fee as established by SWAC. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in Section 205 of this ordinance.

**(C) Criminal Penalties**

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

**6.8.7 DEFINITIONS**

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When used in this ordinance, the following words and terms shall have the meaning set forth in this Section, unless other provisions of this ordinance specifically indicate otherwise.

1. **Administrative Manual**  
A manual developed by the Storm Water Administrator and distributed to the public to provide information for the effective administration of this ordinance, 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 ordinance, and where to obtain the Design Manual.
2. **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.
3. **Buffer**  
See “Stream Buffer” definition below.
4. **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.
5. **Carolina heelsplitter**  
A rare species of freshwater mussel found in the Goose Creek Watershed that is listed as federally endangered by the U.S. Fish and Wildlife Service under the provisions of the Endangered Species Act, 16 U.S.C. 1531-1544.
6. **Commercial Development**  
Any development that is not residential development as defined herein.
7. **Design Manual**  
The storm water design manual shall be approved for use in the Town of Mint Hill 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.
8. **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 ordinance.

9. 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.
10. Drainage Area  
That area of land that drains to a common point on a project site.
11. 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.
12. Goose Creek District  
The watershed area located within the corporate limits of or within the extraterritorial jurisdiction of Mint Hill that drains to Goose Creek, Stevens Creek, Duck Creek and all tributaries to such creeks.
13. Grass Field  
Land on which grasses and other herbaceous plants dominate and trees over six feet in height are sparse or so widely scattered that less than five percent (5%) of the land area is covered by a tree canopy.
14. Industrial Uses  
Land used for industrial purposes only. Commercial (or other non-industrial) businesses operating on industrially zoned property shall not be considered an industrial use.
15. 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.
16. 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.
17. Mitigation  
Actions taken either on-site or off-site as allowed by this ordinance to offset the impacts of a certain action.
18. Multifamily  
A group of two or more attached, duplex, triplex, quadruplex, or multi-family buildings, or a single building of more than 12 units constructed on the same lot or parcel of land under single ownership and planned and developed with a unified design of buildings and

coordinated common open space and service areas in accordance with the requirements of Chapter 9 (of the Zoning Ordinance) for the zoning district in which it is located.

19. 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.

20. 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.

21. 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.

22. Redevelopment

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

23. Residential Development

A development containing dwelling units with open yards on at least two sides where land is sold with each dwelling unit.

24. Stream Buffer

A natural or vegetated area adjacent to a stream, lake or other surface water body 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.

25. Stream 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.

26. Stream Buffer Zones

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

27. Storm Water Administrator

The Mecklenburg County Water Quality Program Manager as designated by the Town of Mint Hill to administer and enforce this ordinance.

28. Storm Water Advisory Committee (SWAC)  
The Charlotte-Mecklenburg Storm Water Advisory Committee as established by joint resolutions of the Charlotte City Council, Mecklenburg County Board of Commissioners and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville, together with any amendments thereto.
29. Storm Water Management Permit  
A permit required for all development and redevelopment unless exempt pursuant to this ordinance, which demonstrates compliance with this ordinance.
30. 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.
31. 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.
32. Topsoil  
Natural, fertile soil capable of sustaining vigorous plant growth that is of uniform composition throughout with an admixture of subsoil, has an acidity range of pH 5.5 - 7.0.
33. Total Suspended Solids (TSS)  
Total suspended matter in water which includes particles collected on a filter with a pore size of 2 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).
34. Townhomes  
Attached dwellings developed side by side where land is sold with each unit.
35. Undisturbed Open Space  
Land that consists of natural areas containing trees and other natural shrubs consisting of either undisturbed areas or disturbed areas that have been replanted in accordance with the criteria established in this ordinance.