

State Goose Creek State Rule Changes and Associated Changes Proposed for Mint Hill Post-Construction Ordinance

Session Law/Rules & Additional Provisions	Summary	Suggested Amendments to Mint Hill's Post-Construction Ordinance
<u>SL 2013-413 (52)</u>	Exempts agricultural ponds.	Amend Section(s); 305(C)(3)(d), 305(C)(4), 305(C)(9).
<u>SL 2015-246 Section 13.4(a)</u>	Requires case by case approvals.	Already a provision under Section 305(C)10 "Variances and Appeals for Activities Within Stream Buffers."
<u>15A NCAC 02B .0295</u>	Requires the use of Consolidated Buffer Mitigation Rules.	Amend Section 305(C)(11) "Mitigation Requirements for Stream Buffer Impacts."
Additional Provision	Local Governments shall not treat the land within a riparian buffer area as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain.	Current ordinance language does not imply or construe this message. No change needed.
Additional Provision	Land within a riparian buffer area in which neither the State nor its subdivisions holds 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: <ul style="list-style-type: none"> • Residential density and nonresidential intensity calculations and yields • Tree conservation purposes • Open space or conservation area requirements • Setbacks • Perimeter buffers • Lot area requirements 	Amend Section 305(C)(2)(c) "Applicability."
Additional Provision	When riparian buffer requirements are included within a lot, cities and counties shall require that the riparian buffer area be shown on the recorded plat.	Already a provision under Section 309(5).
Additional Provision	Nothing in this subsection shall be construed to require that the riparian buffer area be surveyed.	Current ordinance does not specifically require a survey. No change needed.
Additional Provision	When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the Local Government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to: <ul style="list-style-type: none"> • Residential density and nonresidential intensity calculations and yields • Tree conservation purposes • Open space or conservation area requirements • Setbacks • Perimeter buffers • Lot area requirements 	Currently addressed as part of the plan review process. No change needed.

Town of Mint Hill

Post-Construction Storm Water Ordinance

Original Ordinance Adopted Effective June 30, 2007

**Revisions to Ordinance for Delegation of the Goose Creek
Site Specific Management Plan Effective March 11, 2010**

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SECTION 1: GENERAL PROVISIONS

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; [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 stable 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.

SECTION 2: ADMINISTRATION AND PROCEDURES

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 land owner or the land owner’s duly authorized agent or anyone having interest in the property by reason of a written contract with the owner.

(D) Establishment of Application Requirements, Schedule, and Fees

(1) Application Contents and Form

The Storm Water Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the Storm Water Management Permit Application shall describe in detail how post-construction storm water runoff will be controlled and managed, the design of all storm water facilities and practices, and how the proposed project will meet the requirements of this 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 land owner or the land owner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner may request consultation(s) on 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.

SECTION 3: STANDARDS

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.

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each side of Stream
< 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.

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each Side of Stream
< 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.

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each Side of Stream
< 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.

Minimum Stream Buffer Widths by Basin Size and Buffer Zone.

Area Designation	Stream Side Zone	Managed Use Zone	Upland Zone	Total Buffer Width each Side of Stream
< 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 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 (NH₃-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

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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:

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- (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

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- (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 holds 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 constervation purposes.
 - (iii) Open space or conservation area requirements.
 - (iv) Setbacks.
 - (v) Perimeter buffers.
 - (vi) Lot area requirements.

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(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

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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.

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(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.

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(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 and N.C. Pesticide Board regulates pesticide application (see rules at 02 NCAC 09L .2201 through .2203).

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Description of Uses	Exempt	Potentially allowable requiring approval (X) / or Potentially allowable requiring both approval and mitigation (X*)	Prohibited
Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of stream buffer		X	
Airport facilities that impact greater than 150 linear feet or one-third of an acre of stream buffer		X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and storm water outfalls through stream buffers: <ul style="list-style-type: none"> • Existing drainage ditches, roadside ditches, and storm water outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that 	X		

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convey to waterbodies • New drainage ditches, roadside ditches and storm water outfalls provided that a storm water management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the stream buffer • New drainage ditches, roadside ditches and storm water outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the stream buffer • Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch		X		
Drainage of a pond in a natural drainage way provided that a new stream buffer that meets the diffuse flow requirements of Section 306 is established adjacent to the new channel	X			
Driveway crossings of streams and other surface waters subject to this ordinance: • Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular ³ • Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular ³ • In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular • In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular	X			
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X			
Forest harvesting – Not regulated by this ordinance.				
Fertilizer application: • One-time fertilizer application at agronomic rates to establish replanted vegetation • Ongoing fertilizer application	X			X
Greenway/hiking trails		X		
Historic preservation	X			

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Landfills as defined by G.S. 130A-290			X
<p>Mining activities:</p> <ul style="list-style-type: none"> • Mining activities that are covered by the Mining Act provided that new stream buffers that meet the diffuse flow requirements of Section 306 are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new stream buffers that meet the diffuse flow requirements of Section 306 are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit 		X	X
<p>Non-electric utility lines with impacts other than perpendicular crossings³</p> <ul style="list-style-type: none"> • If activity is within 50 feet of the stream • If activity is outside of the inner 50 feet nearest the stream • Wastewater collection system utility lines and lift station lines may impact the stream zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually • Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request (note: this requirement also applies to collection system perpendicular crossings, detailed below.) 		X* X X* X*	
<p>Non-electric utility line perpendicular crossing of streams and other surface waters subject to this ordinance that are not collection systems³:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb equal to or less than 40 linear feet of stream buffer with a maintenance corridor equal to or less than 10 feet in width • Perpendicular crossings that disturb equal to or less than 40 linear feet of stream buffer with a maintenance corridor greater than 10 feet in width • Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 	X	X X	

<p>linear feet of stream buffer with a maintenance corridor equal to or less than 10 feet in width</p> <ul style="list-style-type: none"> Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of stream buffer with a maintenance corridor greater than 10 feet in width Perpendicular crossings that disturb greater than 150 linear feet of stream buffer <p>Non-electric perpendicular utility line crossings that are collection systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):</p> <ul style="list-style-type: none"> That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the stream buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunneling method That does not minimize the sediment, nutrient and other pollution through the stream buffer by the most appropriate exempt method 		<p>X*</p> <p>X*</p> <p>X</p>	<p>X</p>
<p>On-site sanitary sewage systems - new ones that use ground absorption</p>			<p>X</p>
<p>Overhead electric utility lines^{1,2,3}:</p> <ul style="list-style-type: none"> Stream crossings that disturb equal to or less than 150 linear feet of stream buffer Stream crossings that disturb greater than 150 linear feet of stream buffer 	<p>X</p>	<p>X*</p>	
<p>Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical</p>		<p>X</p>	
<p>Playground equipment:</p> <ul style="list-style-type: none"> Playground equipment on single family lots provided that installation and use does not result in removal of vegetation Playground equipment installed on lands other than single-family lots or that requires removal of vegetation 	<p>X</p>	<p>X</p>	
<p>Ponds in natural drainage ways, excluding dry ponds:</p> <ul style="list-style-type: none"> New ponds provided that a stream buffer that meets the diffuse flow requirements of Section 306 is established adjacent to the pond New ponds where a stream buffer that meets 		<p>X</p>	<p>X</p>

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the diffuse flow requirements of Section 306 is NOT established adjacent to the pond • <u>New ponds for agricultural uses</u>	X		
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the stream buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this ordinance			X
Railroad crossings of streams and other surface waters subject to this ordinance: • Railroad crossings that impact equal to or less than 40 linear feet of stream buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of stream buffer • Railroad crossings that impact greater than 150 linear feet of stream buffer	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this ordinance		X*	
Road crossings of streams and other surface waters subject to this ordinance: • Road crossings that impact equal to or less than 40 linear feet of stream buffer and is perpendicular • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular • Road crossings that impact greater than 150 linear feet of stream buffer	X	X X*	
Scientific studies and stream gauging	X		
Storm water management ponds excluding dry ponds: • New storm water management ponds provided that a stream buffer that meets the diffuse flow requirements of Section 306 is established adjacent to the pond • New storm water management ponds where a stream buffer that meets the diffuse flow requirements of Section 306 is NOT established adjacent to the pond		X	X
Stream restoration	X		
Stream bank stabilization		X	

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<p>Temporary roads:</p> <ul style="list-style-type: none"> • Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance • Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction 	X			
<p>Temporary sediment and erosion control devices:</p> <ul style="list-style-type: none"> • To control impacts associated with uses approved by the N.C. Division of Water Quality or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer • In-stream temporary erosion and sediment control measures for work within a stream channel 	X	X		
<p>Underground electric utility lines:</p> <ul style="list-style-type: none"> • Impacts other than perpendicular crossings^{3,4} 	X			
<p>Underground electric utility line perpendicular crossings of streams and other surface waters subject to this ordinance:</p> <ul style="list-style-type: none"> • Perpendicular crossings that disturb less than or equal to 40 linear feet of stream buffer^{3,4} • Perpendicular crossings that disturb greater than 40 linear feet of stream buffer^{3,4} 	X	X		
<p>Vegetation management:</p> <ul style="list-style-type: none"> • Emergency fire control measures provided that topography is restored • Planting vegetation to enhance the stream buffer • Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised • Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life • Removal of poison ivy • Removal of understory nuisance vegetation as 	X X X X X X			

defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30			
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

1. Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Storm Water Administrator pursuant to Section 305(C)(1) above.
 - A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
 - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
 - Rip rap shall not be used unless it is necessary to stabilize a tower.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of storm water through the stream buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.
2. Provided that poles or towers shall not be installed within 10 feet of a waterbody unless the Storm Water Administrator completes a no practical alternatives evaluation pursuant to Section 305(C)(1) above.
3. Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.
4. Provided that all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Storm Water Administrator pursuant to Section 305(C)(1) above.
 - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
 - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
 - Underground cables shall be installed by vibratory plow or trenching.
 - The trench shall be backfilled with the excavated soil material immediately following cable installation.
 - No fertilizer shall be used other than a one-time application to re-establish vegetation.
 - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
 - Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of storm water through the stream buffer.
 - In wetlands, mats shall be utilized to minimize soil disturbance.

(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

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(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.

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(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

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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.

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(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.

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Deleted: Pursuant to Section 305(C)(1) above, the Storm Water Administrator shall review the fee outlined in Subsection

Deleted: (g)(i) above every two years and compare it to the actual cost of restoration activities conducted by local and State agencies, including site identification, planning, implementation, monitoring and maintenance costs. Based upon this biennial review, the Storm Water Administrator shall recommend revisions to Subsection (g)(i) above when adjustments to this Schedule of Fees are deemed necessary.

(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

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- 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.
 - (i) 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.

Deleted: or an interest in real property shall meet the following requirements:¶

(i) . The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Stream Buffer Restoration Fund pursuant to Subsection (g) above. The value of the property interest shall be determined by an appraisal performed in accordance with Subsection (h)(iv)(IV) below. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Subsection (g)(i) above, the applicant shall pay the remaining balance due.¶

(ii) . The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.¶

(iii) . Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:¶

(I) . The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Stream Restoration Plan developed by the N.C. Division of Water Quality pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Stream Restoration Plan;¶

(II) . The property shall contain stream areas for restoration, defined in 15A NCAC 02B .0243, not currently protected by the State’s stream buffer protection program that merit restoration;¶

(III) . The size of the restorable stream buffer on the property to be donated shall equal or exceed the acreage of stream buffer required to be mitigated under the mitigation responsibility determined pursuant to Subsection (c) above;¶

(IV) . The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;¶

... [1]

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.

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Deleted: (i) . The applicant may restore or enhance stream buffer defined in 15A NCAC 02B .0243 if either of the following applies:¶

(I) . The area of stream buffer restoration is equal to the required area of mitigation determined pursuant to Subsection (c) above; or¶

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- (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.

SECTION 4: UNDISTURBED OPEN SPACE

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 can not 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.

SECTION 5: MAINTENANCE

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.

SECTION 6: VIOLATIONS AND ENFORCEMENT

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.

SECTION 7: DEFINITIONS

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.

or an interest in real property shall meet the following requirements:

(i) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Stream Buffer Restoration Fund pursuant to Subsection (g) above. The value of the property interest shall be determined by an appraisal performed in accordance with Subsection (h)(iv)(IV) below. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to Subsection (g)(i) above, the applicant shall pay the remaining balance due.

(ii) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.

(iii) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

(I) The property shall be located within an area that is identified as a priority for restoration in the Basinwide Wetlands and Stream Restoration Plan developed by the N.C. Division of Water Quality pursuant to G.S. 143-214.10 or shall be located at a site that is otherwise consistent with the goals outlined in the Basinwide Wetlands and Stream Restoration Plan;

(II) The property shall contain stream areas for restoration, defined in 15A NCAC 02B .0243, not currently protected by the State's stream buffer protection program that merit restoration;

(III) The size of the restorable stream buffer on the property to be donated shall equal or exceed the acreage of stream buffer required to be mitigated under the mitigation responsibility determined pursuant to Subsection (c) above;

(IV) The property shall not require excessive measures for successful restoration, such as removal of structures or infrastructure. Restoration of the property shall be capable of fully offsetting the adverse impacts of the requested use;

(V) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;

(VI) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and land acquisition costs;

(VII) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;

(VIII) The property shall not contain any hazardous substance or solid waste;

(IX) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;

(X) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort;

(XI) The property shall not have any encumbrances or conditions on the transfer of the property interests.

(iv) Pursuant to Section 305(C)(1) above, at the expense of the applicant or donor, the following information shall be submitted to the Storm Water Administrator with any proposal for donations or dedications of interest in real property:

(I) Documentation that the property meets the requirements laid out in Subsection (h)(iii) above.

(II) U.S. Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements.

(III) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609.

(IV) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734.

(V) A title certificate.

(VI) A Phase I Environmental Site Assessment report prepared in accordance with American Society for Testing and Methods (ASTM) Standard 1527-05.

- (i) The applicant may restore or enhance stream buffer defined in 15A NCAC 02B .0243 if either of the following applies:
 - (I) The area of stream buffer restoration is equal to the required area of mitigation determined pursuant to Subsection (c) above; or
 - (II) The area of stream buffer enhancement is three times larger than the required area of mitigation determined pursuant to Subsection (c) above.
- (ii) The location of the stream buffer restoration or enhancement shall comply with the requirements in Subsection (d) above.
- (iii) The stream buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water and may include the following:
 - (I) Restoration/enhancement of existing stream areas.
 - (II) Restoration/enhancement and respective preservation of streamside areas when the stream is not depicted on USGS map or Soil Survey.
 - (III) Preservation of streamside areas when the stream is not depicted on USGS map or Soil Survey.
 - (IV) Restoration/enhancement and respective preservation of streamside areas along first order ephemeral streams that discharge/outlet into intermittent or perennial streams.
 - (V) Preservation of the streamside area along first order ephemeral streams that discharge/outlet intermittent or perennial stream.
- (iv) Pursuant to Section 305(C)(1) above, other individual/innovative mitigation projects may be approved by the Storm Water Administrator that meet the purpose of ordinance.
- (v) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of Section 305 (C) of this ordinance. Pursuant to Section 305(C)(1) above, after receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the Storm Water Administrator. The Storm Water Administrator shall approve plans that meet the requirements of Section 305(C). The restoration or enhancement plan shall contain the following:
 - (I) A map of the proposed restoration or enhancement site.
 - (II) A vegetation plan. The vegetation plan shall include a minimum of two native hardwood tree species

planted at a density sufficient to provide 320 trees per acre at maturity.

(III) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the stream buffer.

(IV) A fertilization plan.

(V) A schedule for implementation.

(vi) Pursuant to Section 305(C)(1) above, within one year after the Storm Water Administrator has approved the restoration or enhancement plan, the applicant shall present proof to the Storm Water Administrator that the stream buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of this ordinance and subject to remedies and penalties specified in Section 603 of this ordinance.

(vii) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions.

(viii) Pursuant to Section 305(C)(1) above, the applicant shall submit annual reports to the Storm Water Administrator for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the stream buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-246
HOUSE BILL 44**

AN ACT TO REFORM VARIOUS PROVISIONS OF THE LAW RELATED TO LOCAL GOVERNMENT.

The General Assembly of North Carolina enacts:

NOTICE TO CHRONIC VIOLATORS

SECTION 1.(a) G.S. 160A-200 is repealed.

SECTION 1.(b) G.S. 160A-200.1 reads as rewritten:

"§ 160A-200.1. Annual notice to chronic violators of public nuisance or overgrown vegetation ordinance.

(a) A city may notify a chronic violator of the city's public nuisance ordinance that, if the violator's property is found to be in violation of the ordinance, the city shall, without further notice in the calendar year in which notice is given, take action to remedy the violation, and the expense of the action shall become a lien upon the property and shall be collected as unpaid taxes.

(b) The notice shall be sent by registered or certified mail. When service is attempted by registered or certified mail, a copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, but the regular mail is not returned by the post office within 10 days after the mailing. If service by regular mail is used, a copy of the notice shall be posted in a conspicuous place on the premises affected. ~~A chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance.~~

(c) A city may also give notice to a chronic violator of the city's overgrown vegetation ordinance in accordance with this section.

(d) For purposes of this section, a chronic violator is a person who owns property whereupon, in the previous calendar year, the city gave notice of violation at least three times under any provision of the public nuisance ordinance."

AUTHORIZE CITIES TO REGULATE CERTAIN STRUCTURES THAT UNREASONABLY RESTRICT THE PUBLIC'S RIGHT TO USE THE STATE'S OCEAN BEACHES

SECTION 1.5. G.S. 160A-205 reads as rewritten:

"§ 160A-205. Cities enforce ordinances within public trust areas.

(a) Notwithstanding the provisions of G.S. 113-131 or any other provision of law, a city may, by ordinance, define, prohibit, regulate, or abate acts, omissions, or conditions upon the State's ocean beaches and prevent or abate any unreasonable restriction of the public's rights to use the State's ocean beaches. In addition, a city may, in the interest of promoting the health, safety, and welfare of the public, regulate, restrict, or prohibit the placement, maintenance, location, or use of structures that are uninhabitable and without water and sewer services for more than 120 days, as determined by the city with notice provided to the owner of record of the determination by certified mail at the time of the determination, equipment, personal property, or debris upon the State's ocean beaches. A city may enforce any ordinance adopted pursuant to this section or any other provision of law upon the State's ocean beaches located within or adjacent to the city's jurisdictional boundaries to the same extent that a city may enforce ordinances within the city's jurisdictional boundaries. A city may enforce an ordinance adopted pursuant to this section by any remedy provided for in G.S. 160A-175. For purposes of this section, the term "ocean beaches" has the same meaning as in G.S. 77-20(e).



(b) Nothing in this section shall be construed to (i) limit the authority of the State or any State agency to regulate the State's ocean beaches as authorized by G.S. 113-131, or common law as interpreted and applied by the courts of this State; (ii) limit any other authority granted to cities by the State to regulate the State's ocean beaches; (iii) deny the existence of the authority recognized in this section prior to the date this section becomes effective; (iv) impair the right of the people of this State to the customary free use and enjoyment of the State's ocean beaches, which rights remain reserved to the people of this State as provided in G.S. 77-20(d); (v) change or modify the riparian, littoral, or other ownership rights of owners of property bounded by the Atlantic Ocean; or (vi) apply to the removal of permanent residential or commercial structures and appurtenances thereto from the State's ocean ~~beaches~~beaches, except as provided in subsection (a) of this section."

PROHIBIT CITIES AND COUNTIES FROM REQUIRING COMPLIANCE WITH VOLUNTARY REGULATIONS AND RULES ADOPTED BY STATE DEPARTMENTS OR AGENCIES

SECTION 2.(a) Article 6 of Chapter 153A of the General Statutes is amended by adding a new section to read as follows:

"§ 153A-145.6. Requiring compliance with voluntary State regulations and rules prohibited.

(a) If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a county shall not require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the county in any zoning, land use, subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan.

(b) This section shall apply to the following regulations and rules:

- (1) Those currently in effect.
- (2) Those repealed or otherwise expired.
- (3) Those temporarily or permanently held in abeyance.
- (4) Those adopted but not yet effective.

(c) This section shall not apply to any water usage restrictions during either extreme or exceptional drought conditions as determined by the Drought Management Advisory Council pursuant to G.S. 143-355.1."

SECTION 2.(b) Article 8 of Chapter 160A of the General Statutes is amended by adding a new section to read as follows:

"§ 160A-205.1. Requiring compliance with voluntary State regulations and rules prohibited.

(a) If a State department or agency declares a regulation or rule to be voluntary or the General Assembly delays the effective date of a regulation or rule proposed or adopted by the Environmental Management Commission, or any other board or commission, a city shall not require or enforce compliance with the applicable regulation or rule, including any regulation or rule previously or hereafter incorporated as a condition or contractual obligation imposed by, agreed upon, or accepted by the city in any zoning, land use, subdivision, or other developmental approval, including, without limitation, a development permit issuance, development agreement, site-specific development plan, or phased development plan.

(b) This section shall apply to the following regulations and rules:

- (1) Those currently in effect.
- (2) Those repealed or otherwise expired.
- (3) Those temporarily or permanently held in abeyance.
- (4) Those adopted but not yet effective.

(c) This section shall not apply to any water usage restrictions during either extreme or exceptional drought conditions as determined by the Drought Management Advisory Council pursuant to G.S. 143-355.1."

LOCAL PUBLIC HEALTH MAINTENANCE OF EFFORT MONIES

SECTION 2.5.(a) G.S. 130A-34.4(a)(2) is repealed.

SECTION 2.5.(b) This section becomes effective July 1, 2016.

DEVELOPMENTS LOCATED IN THE CITY AND THE COUNTY

SECTION 3. G.S. 160A-365 reads as rewritten:

"§ 160A-365. Enforcement of ordinances.

(a) Subject to the provisions of the ordinance, any ordinance adopted pursuant to authority conferred by this Article may be enforced by any remedy provided by G.S. 160A-175.

(b) When any ordinance adopted pursuant to authority conferred by this Article is to be applied or enforced in any area outside the territorial jurisdiction of the city as described in G.S. 160A-360(a), the city and the property owner shall certify that the application or enforcement of the city ordinance is not under coercion or otherwise based upon any representation by the city that the city's approval of any land use planning would be withheld from the property owner without the application or enforcement of the city ordinance outside the territorial jurisdiction of the city. The certification may be evidenced by a signed statement of the parties on any approved plat recorded in accordance with this Article."

WELL DRILLING CHANGES

SECTION 3.5.(a) G.S. 87-97 reads as rewritten:

"§ 87-97. Permitting, inspection, and testing of private drinking water wells.

(a) Mandatory Local Well Programs. – Each county, through the local health department that serves the county, shall implement a private drinking water well permitting, inspection, and testing program. Local health departments shall administer the program and enforce the minimum well construction, permitting, inspection, repair, and testing requirements set out in this Article and rules adopted pursuant to this Article. No person shall unduly delay or refuse to permit a well that can be constructed or repaired and operated in compliance with the requirements set out in this Article and rules adopted pursuant to this Article.

(a1) Use of Standard Forms. – Local well programs shall use the standard forms created by the Department for all required submittals and shall not create their own forms ~~unless the local program submits a petition for rule-making to the Environmental Management Commission, and the Commission by rule finds that conditions or circumstances unique to the area served by the local well program constitute a threat to public health that will be mitigated by use of a local form different from the form used by the Department.~~ forms.

(b) Permit Required. – Except for those wells required to be permitted by the Environmental Management Commission pursuant to G.S. 87-88, no person shall:

- (1) Construct or assist in the construction of a private drinking water well unless a construction permit has been obtained from the local health department.
- (2) Repair or assist in the repair of a private drinking water well unless a repair permit has been obtained from the local health department, except that a permit shall not be required for the repair or replacement of a pump or tank.

(b1) Permit to Include Authorization for Electrical. – When a permit is issued under this section, that permit shall also be deemed to include authorization for the installation, construction, maintenance, or repair of electrical wiring, devices, appliances, or equipment by a person certified as a well contractor under Article 7A of this Chapter when running electrical wires from the well pump to the pressure switch. The local health department shall be responsible for notifying the appropriate building inspector of the issuance of the well permit.

(c) Permit Not Required for Maintenance or Pump Repair or Replacement. – A repair permit shall not be required for any private drinking water well maintenance work that does not involve breaking or opening the well seal. A repair permit shall not be required for any private drinking water well repair work that involves only the repair or replacement of a pump or tank.

(d) Well Site Evaluation. – The local health department shall conduct a field investigation to evaluate the site on which a private drinking water well is proposed to be located before issuing a permit pursuant to this section. The field investigation shall determine whether there is any abandoned well located on the site, and if so, the construction permit shall be conditioned upon the proper closure of all abandoned wells located on the site in accordance with the requirements of this Article and rules adopted pursuant to this Article. If a private drinking water well is proposed to be located on a site on which a wastewater system subject to the requirements of Article 11 of Chapter 130A of the General Statutes is located or proposed to be located, the application for a construction permit shall be accompanied by a plat or site plan, as defined in G.S. 130A-334.

If the well location marked on the map submitted with an application to a local well program is also marked with a stake or similar marker on the property, then the local well program may not require the contractor to be on site during the on-site predrill inspection, as long as the contractor is available by telephone to answer questions.

(e) Issuance of Permit. – ~~Within~~ In accordance with G.S. 87-97.1 and G.S. 87-97.2, within 30 days of receipt of an application to construct or repair a well, a local health department shall make a determination whether the proposed private drinking water well can be constructed or repaired and operated in compliance with this Article and rules adopted pursuant to this Article and shall issue a permit or denial accordingly. If a local health department fails to act within 30 days, the permit shall automatically be issued, and the local health department may challenge issuance of the permit as provided in Chapter 150B of the General Statutes. The local health department may impose any conditions on the issuance of a construction permit or repair permit that it determines to be necessary to ensure compliance with this Article and rules adopted pursuant to this Article. Notwithstanding any other provision of law, no permit for a well that is in compliance with this Article and the rules adopted pursuant to this Article shall be denied on the basis of a local government policy that discourages or prohibits the drilling of new wells.

(e1) Notice for Wells at Contamination Sites. – The Commission shall adopt rules governing permits issued for private drinking water wells for circumstances in which the local health department has determined that the proposed site for a private drinking water well is located within 1,000 feet of a known source of release of contamination. Rules adopted pursuant to this subsection shall provide for notice and information of the known source of release of contamination and any known risk of issuing a permit for the construction and use of a private drinking water well on such a site.

(f) Expiration and Revocation. – A construction permit or repair permit shall be valid for a period of five years except that the local health department may revoke a permit at any time if it determines that there has been a material change in any fact or circumstance upon which the permit is issued. The foregoing shall be prominently stated on the face of the permit. The validity of a construction permit or a repair permit shall not be affected by a change in ownership of the site on which a private drinking water well is proposed to be located or is located if the location of the well is unchanged and the well and the facility served by the well remain under common ownership.

(f1) Chlorination of the Well. – Upon completion of construction of a private drinking water well, the well shall be sterilized in accordance with the standards of drinking water wells established by the United States Public Health Service.

(g) Certificate of Completion. – Upon completion of construction of a private drinking water well or repair of a private drinking water well for which a permit is required under this section, the local health department shall inspect the well to determine whether it was constructed or repaired in compliance with the construction permit or repair permit. If the local health department determines that the private drinking water well has been constructed or repaired in accordance with the requirements of the construction permit or repair permit, the construction and repair requirements of this Article, and rules adopted pursuant to this Article, the local health department shall issue a certificate of completion. No person shall place a private drinking water well into service without first having obtained a certificate of completion. No person shall return a private drinking water well that has undergone repair to service without first having obtained a certificate of completion.

(h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion for a newly constructed private drinking water well, the local health department shall test the water obtained from the well or ensure that the water obtained from the well has been sampled and tested by a certified laboratory in accordance with rules adopted by the Commission for Public Health. The water shall be tested for the following parameters: arsenic, barium, cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates, nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

(i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The Commission for Public Health shall adopt rules governing the sampling and testing of well water and the reporting of test results. The rules shall allow local health departments to designate third parties to collect and test samples and report test results. The rules shall also provide for corrective action and retesting where appropriate. The Commission for Public Health may by rule require testing for additional parameters, including volatile organic

compounds, if the Commission makes a specific finding that testing for the additional parameters is necessary to protect public health. If the Commission finds that testing for certain volatile organic compounds is necessary to protect public health and initiates rule making to require testing for certain volatile organic compounds, the Commission shall consider all of the following factors in the development of the rule: (i) known current and historic land uses around well sites and associated contaminants; (ii) known contaminated sites within a given radius of a well and any known data regarding dates of contamination, geology, and other relevant factors; (iii) any GIS-based information on known contamination sources from databases available to the Department of Environment and Natural Resources; and (iv) visual on-site inspections of well sites. In addition, the rules shall require local health departments to educate citizens for whom new private drinking water wells are constructed and for citizens who contact local health departments regarding testing an existing well on all of the following:

- (1) The scope of the testing required pursuant to this Article.
- (2) Optional testing available pursuant to this Article.
- (3) The limitations of both the required and optional testing.
- (4) Minimum drinking water standards.

(j) **Test Results.** – The local health department shall provide test results to the owner of the newly constructed private drinking water well and, to the extent practicable, to any leaseholder of a dwelling unit or other facility served by the well at the time the water is sampled. The local health department shall include with any test results provided to an owner of a private drinking water well, information regarding the scope of the required and optional testing as established by rules adopted pursuant to subsection (i) of this section.

(k) **Registry of Permits and Test Results.** – Each local health department shall maintain a registry of all private drinking water wells for which a construction permit or repair permit is issued that is searchable by address or addresses served by the well. The registry shall specify the physical location of each private drinking water well and shall include the results of all tests of water from each well. The local health department shall retain a record of the results of all tests of water from a private drinking water well until the well is properly closed in accordance with the requirements of this Article and rules adopted pursuant to this Article.

(l) **Authority Not Limited.** – This section shall not be construed to limit any authority of local boards of health, local health departments, the Department of Health and Human Services, or the Commission for Public Health to protect public health."

SECTION 3.5.(b) Article 7A of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-98.14. Reciprocity.

To the extent that other states provide for the licensing or certification of well contractors, the Commission shall permit those individuals who present valid proof of licensure or certification in good standing in one or more of those states to sit for examination for a license of the same or equivalent classification in North Carolina without delay, upon satisfactory proof furnished to the Commission that the qualifications of the applicant are equal to the qualifications of holders of similar licenses in North Carolina and upon payment of the required fee."

SECTION 3.5.(c) Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-97.1. Issuance of permit for irrigation water well.

(a) A property owner may apply for, and be issued, a permit for an irrigation water well, whether the property is connected to, or served by, a public water system. The application shall be in accordance with G.S. 87-97 and shall specifically state that the irrigation water well will not be interconnected to plumbing required that is connected to any public water system and will be used for irrigation or other nonpotable purposes only.

(b) This section shall not apply if the property is connected to, or may be served by, a public water system that the public authority or unit of government operating the public water system is being assisted by the Local Government Commission.

(c) For purposes of this section, "irrigation water well" shall mean any water well that is not interconnected to any plumbing required to be connected to any public water system and that produces water that is used for irrigation or other nonpotable purposes only."

SECTION 3.5.(d) Article 7 of Chapter 87 of the General Statutes is amended by adding a new section to read:

"§ 87-97.2. Issuance of permit for property within service area of a public water system.

(a) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner may apply for, and be issued, a permit for a private drinking water well to serve any undeveloped or unimproved property located so as to be served by a public water system.

(b) Notwithstanding G.S. 130A-55(16), 153A-284, 160A-317, 162A-6(a)(14d), and 162A-14(2), a property owner of developed or improved property located so as to be served by a public water system may apply for, and be issued, a permit for a private drinking water well if the public water system has not yet installed water lines directly available to the property or otherwise cannot provide water service to the property at the time the property owner desires water service.

(c) Upon compliance with this Article, the property owner receiving a permit pursuant to subsection (a) or (b) of this section shall not be required to connect to the public water system for so long as the permitted private drinking water well remains compliant and in use. A property owner may opt to connect to the public water system if the property owner so desires. If the property owner opts to connect, the property owner may continue to operate the private drinking water well if that well is not interconnected to any plumbing connected to the public water system and that produces water that is used for irrigation or other nonpotable purposes only.

(d) Nothing in this section shall require a property owner to install a private drinking water well if the property is located so as to be served by a public water system and the public water system is willing to provide service to the property.

(e) This section shall not apply, and a public water system may mandate connection to that public water system, in any of the following situations:

- (1) The private drinking water well serving the property has failed and cannot be repaired.
- (2) The property is located in an area where the drinking water removed by the private drinking water well is contaminated or likely to become contaminated due to nearby contamination.
- (3) The public authority or unit of government operating the public water system is being assisted by the Local Government Commission.
- (4) The public authority or unit of government operating the public water system is in the process of expanding or repairing the public water system and is actively making progress to having water lines installed directly available to provide water service to that property within the 24 months of the time the property owner applies for the private drinking water well permit."

SECTION 3.5.(e) G.S. 153A-284 reads as rewritten:

"§ 153A-284. Power to require connections.

(a) A county may require the owner of developed property on which there are situated one or more residential dwelling units or commercial establishments located so as to be served by a water line or sewer collection line owned, leased as lessee, or operated by the county or on behalf of the county to connect the owner's premises with the water or sewer line and may fix charges for these connections.

(b) In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the county has installed water or sewer lines or a combination thereof directly available to the property, the county may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected.

(c) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a county water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the county water line and the county shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(f) G.S. 160A-317 is amended by adding a new subsection to read:

"(d) In accordance with G.S. 87-97.1, when developed property is located so as to be served by a city water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the city water line and the city shall

not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(g) G.S. 130A-55(16)a. reads as rewritten:

"a. To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the district and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the district to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by a district only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the district is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the district has installed water or sewer lines or a combination thereof directly available to the property, the district may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. In accordance with G.S. 87-97.1, when developed property is located so as to be served by a sanitary district water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the sanitary district water line and the sanitary district shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(h) G.S. 162A-6(a)(14d) reads as rewritten:

"(14d) To require the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the jurisdiction of the authority and within a reasonable distance of any waterline or sewer collection line owned, leased as lessee, or operated by the authority to connect the property with the waterline, sewer connection line, or both and fix charges for the connections. The power granted by this subdivision may be exercised by an authority only to the extent that the service, whether water, sewer, or a combination thereof, to be provided by the authority is not then being provided to the improved property by any other political subdivision or by a public utility regulated by the North Carolina Utilities Commission pursuant to Chapter 62 of the General Statutes. In the case of improved property that would qualify for the issuance of a building permit for the construction of one or more residential dwelling units or commercial establishments and where the authority has installed water or sewer lines or a combination thereof directly available to the property, the authority may require payment of a periodic availability charge, not to exceed the minimum periodic service charge for properties that are connected. In accordance with G.S. 87-97.1, when developed property is located so as to be served by an authority water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the sanitary district water line and the sanitary district shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well. This subdivision applies only to a water and sewer authority whose membership includes part or all of a county that has a population of at least 40,000 according to the most recent annual population estimates certified by the State Budget Officer."

SECTION 3.5.(i) G.S. 162A-14(2)d. reads as rewritten:

"d. For requiring the owners of developed property on which there are situated one or more residential dwelling units or commercial establishments located within the corporate limits of the political subdivision and located within a reasonable distance of any waterline or sewer connection line owned, leased as lessee, or operated by the authority to connect to the line and collecting, on behalf of the authority, charges for the connections and requiring, as a condition to the issuance of any development permit or building permit by the political subdivision, evidence that any impact fee by the authority has been paid by or on behalf of the applicant for the permit. In accordance with G.S. 87-97.1, when developed property is located so as to be served by the authority's water line and the property owner has connected to that water line, the property owner may continue to use any private water well located on the property for nonpotable purposes as long as the water well is not interconnected to the authority's water line and the authority shall not require the owner of any such water well to abandon, cap, or otherwise compromise the integrity of the water well."

SECTION 3.5.(j) Subsections (c) through (i) of this section become effective August 1, 2016. The remainder of this section becomes effective December 1, 2015, and applies to permits and licenses issued on or after that date. G.S. 87-97.2(e)(4), as enacted by subsection (d) of this section, expires on July 1, 2017.

REGULATION OF SIGNAGE

SECTION 4.(a) G.S. 153A-340 is amended by adding a new subsection to read:

"(n) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the county may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required."

SECTION 4.(b) G.S. 160A-381 is amended by adding a new subsection to read:

"(j) Fence wraps displaying signage when affixed to perimeter fencing at a construction site are exempt from zoning regulation pertaining to signage under this Article until the certificate of occupancy is issued for the final portion of any construction at that site or 24 months from the time the fence wrap was installed, whichever is shorter. If construction is not completed at the end of 24 months from the time the fence wrap was installed, the city may regulate the signage but shall continue to allow fence wrapping materials to be affixed to the perimeter fencing. No fence wrap affixed pursuant to this subsection may display any advertising other than advertising sponsored by a person directly involved in the construction project and for which monetary compensation for the advertisement is not paid or required."

PERMIT CHOICE

SECTION 5.(a) G.S. 143-755 reads as rewritten:

"§ 143-755. **Permit choice.**

(a) If a permit applicant submits a permit application for any type of development and a rule or ordinance changes between the time the permit application was submitted and a permit decision is made, the permit applicant may choose which version of the rule or ordinance will apply to the permit.

(b) This section applies to all development permits issued by the State and by local governments.

(c) ~~This section shall not apply to any zoning permit.~~"

SECTION 5.(b) This section is effective when this act becomes law and applies to permits for which a permit decision has not been made by that date.

PREAUDIT CERTIFICATIONS

SECTION 6.(a) G.S. 159-28 reads as rewritten:

"§ 159-28. Budgetary accounting for appropriations.

(a) Incurring Obligations. – No obligation may be incurred in a program, function, or activity accounted for in a fund included in the budget ordinance unless the budget ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. No obligation may be incurred for a capital project or a grant project authorized by a project ordinance unless that project ordinance includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay the sums obligated by the transaction. Nothing in this section shall require a contract to be reduced to writing.

(a1) ~~Preaudit Requirement. – If an obligation is evidenced by reduced to a written contract or written agreement requiring the payment of money-money, or is evidenced by a written purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with this subsection unless the obligation or a document related to the obligation has been approved by the Local Government Commission, in which case no certificate shall be required.~~ (a) of this section. The certificate, which shall be signed by the finance officer-officer, or any deputy finance officer approved for this purpose by the governing board, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)."

~~Certificates in the form prescribed by G.S. 153-130 or 160-411 as those sections read on June 30, 1973, or by G.S. 159-28(b) as that section read on June 30, 1975, are sufficient until supplies of forms in existence on June 30, 1975, are exhausted.~~

(a2) ~~Failure to Preaudit. – An obligation incurred in violation of this subsection~~ subsection (a) or (a1) of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this ~~subsection~~ section, in accordance with any rules adopted by the Local Government Commission.

(b) Disbursements. – When a bill, invoice, or other claim against a local government or public authority is presented, the finance officer shall either approve or disapprove the necessary disbursement. If the claim involves a program, function, or activity accounted for in a fund included in the budget ordinance or a capital project or a grant project authorized by a project ordinance, the finance officer may approve the claim only if both of the following apply:

- (1) ~~He~~ The finance officer determines the amount to be payable and payable.
- (2) The budget ordinance or a project ordinance includes an appropriation authorizing the expenditure and either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

The finance officer may approve a bill, invoice, or other claim requiring disbursement from an intragovernmental service fund or trust or agency fund not included in the budget ordinance, only if the amount claimed is determined to be payable. A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the governing board. The finance officer shall establish procedures to assure compliance with this ~~subsection~~ subsection, in accordance with any rules adopted by the Local Government Commission.

(c) Governing Board Approval of Bills, Invoices, or Claims. – The governing board may, as permitted by this subsection, approve a bill, invoice, or other claim against the local government or public authority that has been disapproved by the finance officer. ~~It~~ The governing board may not approve a claim for which no appropriation appears in the budget ordinance or in a project ordinance, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The governing board shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the ~~board~~ board, or some other member designated

for this ~~purpose~~ purpose, shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(d) Payment. – A local government or public authority may not pay a bill, invoice, salary, or other claim except by any of the following methods:

- (1) ~~a check~~ Check or draft on an official ~~depository,~~ depository.
- (2) ~~a bank~~ Bank wire transfer from an official ~~depository,~~ depository.
- (3) ~~or an electronic~~ Electronic payment or an electronic funds transfer originated by the local government or public authority through an official depository.
- (4) Cash, if the local government has adopted an ordinance authorizing the use of cash, and specifying the limits of the use of cash.

(d1) Except as provided in this ~~subsection~~ section, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or a deputy finance officer approved for this purpose by the governing board (or signed by the chairman or some other member of the board pursuant to subsection (c) of this section). The certificate shall take substantially the following form:

"This disbursement has been approved as required by the Local Government Budget and Fiscal Control Act.

(Signature of finance officer)."

(d2) An electronic payment or electronic funds transfer ~~must~~ shall be subject ~~subject~~ to the ~~pre-audit process.~~ Execution ~~preaudit~~ process in accordance with this section and any rules adopted by the Local Government Commission. The rules so adopted shall address execution of ~~the~~ the electronic payment or electronic funds transfer ~~shall~~ and how to indicate that the finance officer or duly appointed deputy finance officer has performed the ~~pre-audit~~ preaudit process as ~~required by G.S. 159-28(a).~~ in accordance with this section. A finance officer or duly appointed deputy finance officer shall be presumed in compliance with this section if the finance officer or duly appointed deputy finance officer complies with the rules adopted by the Local Government Commission.

~~Certificates in the form prescribed by G.S. 153-131 or 160-411.1 as those sections read on June 30, 1973, or by G.S. 159-28(a) as that section read on June 30, 1975, are sufficient until supplies in existence on June 30, 1975, are exhausted.~~

~~No certificate is required on payroll checks or drafts on an imprest account in an official depository, if the check or draft depositing the funds in the imprest account carried a signed certificate.~~

~~As used in this subsection, the term "electronic payment" means payment by charge card, credit card, debit card, or by electronic funds transfer, and the term "electronic funds transfer" means a transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.~~

(e) Penalties. – If an officer or employee of a local government or public authority incurs an obligation or pays out or causes to be paid out any funds in violation of this section, ~~he~~ that officer or employee, and the sureties on ~~his~~ any official bond ~~for that officer or employee,~~ are liable for any sums so committed or disbursed. If the finance officer or any ~~properly designated~~ duly appointed deputy finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, ~~he~~ the finance officer or duly appointed deputy finance officer, and the sureties on ~~his~~ any official ~~bond~~ bond, are liable for any sums illegally committed or disbursed thereby. The governing board shall determine, by resolution, if payment from the official bond shall be sought and if the governing body will seek a judgment from the finance officer or duly appointed deputy finance officer for any deficiencies in the amount.

(f) The certifications required by subsections (a1) and (d1) of this section shall not apply to any of the following:

- (1) An obligation or a document related to the obligation has been approved by the Local Government Commission.
- (2) Payroll expenditures, including all benefits for employees of the local government.

- (3) Electronic payments, as specified in rules adopted by the Local Government Commission.
- (g) As used in this section, the following terms shall have the following meanings:
 - (1) Electronic funds transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
 - (2) Electronic payment. – Payment by charge card, credit card, debit card, gas card, procurement card, or electronic funds transfer."

SECTION 6.(b) G.S. 115C-441 reads as rewritten:

"§ 115C-441. Budgetary accounting for appropriations.

(a) Incurring Obligations. – Except as set forth below, no obligation may be incurred by a local school administrative unit unless the budget resolution includes an appropriation authorizing the obligation and an unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year. Nothing in this section shall require a contract to be reduced to writing.

(a1) Preaudit Requirement. – If an obligation is evidenced by reduced to a written contract or written agreement requiring the payment of money or by money, or is evidenced by a purchase order for supplies and materials, the written contract, agreement, or purchase order shall include on its face a certificate stating that the instrument has been preaudited to assure compliance with subsection (a) of this section. The certificate, which shall be signed by the finance officer, shall take substantially the following form:

"This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

(Date)

(Signature of finance officer)"

(a2) Failure to Preaudit. – An obligation incurred in violation of subsection (a) or (a1) of this section is invalid and may not be enforced. The finance officer shall establish procedures to assure compliance with this section-section, in accordance with any rules adopted by the Local Government Commission.

(b) Disbursements. – When a bill, invoice, or other claim against a local school administrative unit is presented, the finance officer shall either approve or disapprove the necessary disbursement. The finance officer may approve the claim only if he determines the amount if all of the following apply:

- (1) The amount claimed is determined to be payable, payable.
- (2) the—The budget resolution includes an appropriation authorizing the expenditure and either expenditure.
- (3) Either (i) an encumbrance has been previously created for the transaction or (ii) an unencumbered balance remains in the appropriation sufficient to pay the amount to be disbursed.

A bill, invoice, or other claim may not be paid unless it has been approved by the finance officer or, under subsection (c) of this section, by the board of education. The finance officer shall establish procedures to assure compliance with this subsection, in accordance with any rules adopted by the Local Government Commission.

(c) Board of Education Approval of Bills, Invoices, or Claims. – The board of education may, as permitted by this subsection, approve a bill, invoice, or other claim against the local school administrative unit that has been disapproved by the finance officer. ~~It—The board of education~~ may not approve a claim for which no appropriation appears in the budget resolution, or for which the appropriation contains no encumbrance and the unencumbered balance is less than the amount to be paid. The board of education shall approve payment by formal resolution stating the board's reasons for allowing the bill, invoice, or other claim. The resolution shall be entered in the minutes together with the names of those voting in the affirmative. The chairman of the ~~board—board,~~ or some other member designated for this ~~purpose—purpose,~~ shall sign the certificate on the check or draft given in payment of the bill, invoice, or other claim. If payment results in a violation of law, each member of the board voting to allow payment is jointly and severally liable for the full amount of the check or draft given in payment.

(c1) Continuing Contracts for Capital Outlay. – ~~An~~ A local school administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed ~~and/or~~ paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, ~~provided:~~ provided all of the following apply:

- a. The budget resolution includes an appropriation authorizing the current fiscal year's portion of the ~~obligation;~~ obligation.
- b. An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current ~~fiscal year;~~ and year.
- c. Contracts for capital outlay expenditures are approved by a resolution adopted by the board of county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

(d) Payment. – A local school administrative unit may not pay a bill, invoice, salary, or other claim except by any of the following methods:

- (1) ~~a check~~ Check or draft on an official ~~depository;~~ depository.
- (2) ~~by a bank~~ Bank wire transfer from an official ~~depository;~~ or by a warrant depository.
- (3) Electronic payment or an electronic funds transfer originated by the local school administrative unit through an official depository.
- (4) Cash, if the local school administrative unit has adopted a policy authorizing the use of cash, and specifying the limits of the use of cash.
- (5) Warrant on the State Treasurer.

(d1) Except as provided in ~~this subsection~~ subsection (d) of this section, each check or draft on an official depository shall bear on its face a certificate signed by the finance officer or signed by the chairman or some other member of the board pursuant to subsection (c) of this section. The certificate shall take substantially the following form:

"This disbursement has been approved as required by the School Budget and Fiscal Control Act.

(Signature of finance officer)"

No certificate is required on payroll checks or drafts or on State warrants.

(d2) An electronic payment or electronic funds transfer shall be subject to the preaudit process in accordance with this section and any rules adopted by the Local Government Commission. The rules so adopted shall address execution of electronic payment or electronic funds transfer and how to indicate that the finance officer has performed the preaudit process in accordance with this section. A finance officer shall be presumed in compliance with this section if the finance officer complies with the rules adopted by the Local Government Commission.

(e) Penalties. – If an officer or employee of a local school administrative unit incurs an obligation or pays out or causes to be paid out any funds in violation of this section, ~~he that officer or employee,~~ and the sureties on ~~his any~~ his any official bond for that officer or employee, are liable for any sums so committed or disbursed. If the finance officer gives a false certificate to any contract, agreement, purchase order, check, draft, or other document, ~~he the~~ the finance officer and the sureties on ~~his any~~ his any official bond are liable for any sums illegally committed or disbursed thereby.

(f) The certifications required by subsections (a1) and (d1) of this section shall not apply to any of the following:

- (1) An obligation or a document related to the obligation has been approved by the Local Government Commission.
- (2) Payroll expenditures, including all benefits for employees of the local government.
- (3) Electronic payments, as specified in rules adopted by the Local Government Commission.

(g) As used in this section, the following terms shall have the following meanings:

- (1) Electronic funds transfer. – A transfer of funds initiated by using an electronic terminal, a telephone, a computer, or magnetic tape to instruct or authorize a financial institution or its agent to credit or debit an account.
- (2) Electronic payment. – Payment by charge card, credit card, debit card, gas card, procurement card, or electronic funds transfer."

SECTION 6.(c) This section becomes effective October 1, 2015, and applies to expenditures incurred on or after that date.

VERIFICATION OF ESCHEATS REPORTS

SECTION 7.(a) G.S. 116B-72 is amended by adding a new subsection to read:

"(g) Any examination under this section may include the Treasurer utilizing any and all reliable external data, including electronic databases deemed relevant by the Treasurer."

SECTION 7.(b) This section is effective when this act becomes law and applies to any examination pending on or after that date.

LOCAL REGULATION OF BEEHIVES

SECTION 8. Article 55 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"§ 106-645. Limitations on local government regulation of hives.

(a) Notwithstanding Article 6 of Chapter 153A of the General Statutes, no county shall adopt or continue in effect any ordinance or resolution that prohibits any person or entity from owning or possessing five or fewer hives.

(b) Notwithstanding Article 8 of Chapter 160A of the General Statutes, a city may adopt an ordinance to regulate hives in accordance with this subsection. The city shall comply with all of the following:

- (1) Any ordinance shall permit up to five hives on a single parcel within the land use planning jurisdiction of the city.
- (2) Any ordinance shall require that the hive be placed at ground level or securely attached to an anchor or stand. If the hive is securely attached to an anchor or stand, the city may permit the anchor or stand to be permanently attached to a roof surface.
- (3) Any ordinance may include regulation of the placement of the hive on the parcel, including setbacks from the property line and from other hives.
- (4) Any ordinance may require removal of the hive if the owner no longer maintains the hive or if removal is necessary to protect the health, safety, and welfare of the public.

(c) For purposes of this section, the term "hive" has the same definition as in G.S. 106-635(15)."

LEASES OF PROPERTY BY LOCAL GOVERNMENTS FOR COMMUNICATION TOWERS

SECTION 9. G.S. 160A-272 reads as rewritten:

"§ 160A-272. Lease or rental of property.

(a) Any property owned by a city may be leased or rented for such terms and upon such conditions as the council may determine, but not for longer than 10 years (except as otherwise provided ~~herein~~ in subsection (b1) of this section) and only if the council determines that the property will not be needed by the city for the term of the lease. In determining the term of a proposed lease, periods that may be added to the original term by options to renew or extend shall be included.

(a1) Property may be rented or leased only pursuant to a resolution of the council authorizing the execution of the lease or rental agreement adopted at a regular council meeting upon ~~40-30~~ days' public notice. Notice shall be given by publication describing the property to be leased or rented, stating the annual rental or lease payments, and announcing the council's intent to authorize the lease or rental at its next regular meeting.

(b) No public notice as required by subsection (a1) of this section need be given for resolutions authorizing leases or rentals for terms of one year or less, and the council may delegate to the city manager or some other city administrative officer authority to lease or rent city property for terms of one year or less.

(b1) Leases for terms of more than 10 years shall be treated as a sale of property and may be executed by following any of the procedures authorized for sale of real property.

(c) ~~The~~Notwithstanding subsection (b1) of this section, the council may approve a lease without treating that lease as a sale of property for any of the following reasons:

- (1) ~~for~~For the siting and operation of a renewable energy facility, as that term is defined in G.S. 62-133.8(a)(7), for a term up to 25 years ~~without treating the lease as a sale of property and without giving notice by publication of the intended lease years.~~
- (2) For the siting and operation of a tower, as that term is defined in G.S. 146-29.2(a)(7), for communication purposes for a term up to 25 years."

LOCAL REVIEW OF PROTOTYPE FRANCHISE FOOD ESTABLISHMENTS

SECTION 10. G.S. 130A-248 is amended by adding a new subsection to read:

"(e1) Plans for a franchised or chain food establishment that have been reviewed and approved by the Department shall not require further review and approval under this section by any local health department. The local health department may suggest revisions to a reviewed and approved plan to the Department. The local health department shall not impose any of the suggestion revisions on the owner or operator without written approval from the Department."

NOTICE TO PROPERTY OWNERS PRIOR TO CONSTRUCTION

SECTION 12.(a) Article 23 of Chapter 153A of the General Statutes is amended by adding a new section to read:

"§ 153A-457. Notice prior to construction.

(a) A county shall notify the property owners and adjacent property owners prior to commencement of any construction project by the county.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is a repair of an emergency nature, the notice may be given by any means, including verbally, that the county has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair.
- (2) The property owner requests action of the county that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.
- (4) Notice of the construction project is given in any open meeting of the county prior to the commencement of the construction project."

SECTION 12.(b) Article 21 of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-499.4. Notice prior to construction.

(a) A city shall notify the property owners and adjacent property owners prior to commencement of any construction project by the city.

(b) Notice under this section shall be in writing at least 15 days prior to the commencement of construction, except in any of the following instances:

- (1) If the construction is a repair of an emergency nature, the notice may be given by any means, including verbally, that the city has for contacting the property owner within a reasonable time prior to, or after, commencement of the repair.
- (2) The property owner requests action of the city that requires construction activity.
- (3) The property owner consents to less than 15 days' notice.
- (4) Notice of the construction project is given in any open meeting of the city prior to the commencement of the construction project."

SECTION 12.(c) This section becomes effective October 1, 2015, and applies to construction commenced on or after that date.

RIPARIAN BUFFER REFORM

SECTION 13.1.(a) Subsection (e1) of G.S. 143-214.23 is repealed.

SECTION 13.1.(b) Part 1 of Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"§ 143-214.23A. Limitations on local government riparian buffer requirements.

(a) As used in this section:

- (1) "Local government ordinance" means any action by a local government carrying the effect of law approved before or after October 1, 2015, whether by ordinance, comprehensive plan, policy, resolution, or other measure.
- (2) "Protection of water quality" means nutrient removal, pollutant removal, stream bank protection, or protection of an endangered species as required by federal law.
- (3) "Riparian buffer area" means an area subject to a riparian buffer requirement.
- (4) "Riparian buffer requirement" means a landward setback from surface waters.

(b) Except as provided in this section, a local government may not enact, implement, or enforce a local government ordinance that establishes a riparian buffer requirement that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency.

(c) Subsection (b) of this section shall not apply to any local government ordinance that establishes a riparian buffer requirement enacted prior to August 1, 1997, if (i) the ordinance included findings that the requirement was imposed for purposes that include the protection of aesthetics, fish and wildlife habitat, and recreational use by maintaining water temperature, healthy tree canopy and understory, and the protection of the natural shoreline through minimization of erosion and potential chemical pollution in addition to the protection of water quality and the prevention of excess nutrient runoff, and (ii) the ordinance would permit small or temporary structures within 50 feet of the water body and docks and piers within and along the edge of the water body under certain circumstances.

(d) A local government may request from the Commission the authority to enact, implement, and enforce a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements for the protection of water quality necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency. To do so, a local government shall submit to the Commission an application requesting this authority that includes the local government ordinance, including the riparian buffer requirement for the protection of water quality, scientific studies of the local environmental and physical conditions that support the necessity of the riparian buffer requirement for the protection of water quality, and any other information requested by the Commission. Within 90 days after the Commission receives a complete application, the Commission shall review the application and notify the local government whether the application has been approved, approved with modifications, or disapproved. The Commission shall not approve a local government ordinance that establishes a riparian buffer requirement for the protection of water quality unless the Commission finds that the scientific evidence presented by the local government supports the necessity of the riparian buffer requirement for the protection of water quality.

(e) Cities and counties shall not treat the land within a riparian buffer area as if the land is the property of the State or any of its subdivisions unless the land or an interest therein has been acquired by the State or its subdivisions by a conveyance or by eminent domain. Land within a riparian buffer area in which neither the State nor its subdivisions holds 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, residential density and nonresidential intensity calculations and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.

(f) When riparian buffer requirements are included within a lot, cities and counties shall require that the riparian buffer area be shown on the recorded plat. Nothing in this subsection shall be construed to require that the riparian buffer area be surveyed. When riparian buffer requirements are placed outside of lots in portions of a subdivision that are designated as common areas or open space and neither the State nor its subdivisions holds any property interest in that riparian buffer area, the local government shall attribute to each lot abutting the riparian buffer area a proportionate share based on the area of all lots abutting the riparian buffer area for purposes of development-related regulatory requirements based on property size, including, but not limited to, residential density and nonresidential intensity calculations

and yields, tree conservation purposes, open space or conservation area requirements, setbacks, perimeter buffers, and lot area requirements.

(g) The Commission may adopt rules to implement this section."

SECTION 13.1.(c) The definitions set out in G.S. 143-214.23A(a), as enacted by Section 13.1(b) of this act, shall apply to this section. Notwithstanding G.S. 143-214.23A(b), as enacted by Section 13.1(b) of this act, a local government ordinance that establishes a riparian buffer requirement for the protection of water quality that exceeds riparian buffer requirements necessary to comply with or implement federal or State law or a condition of a permit, certificate, or other approval issued by a federal or State agency that is in effect on October 1, 2015, may remain in effect and enforceable until January 1, 2017. If the local government ordinance is authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance may continue to be in effect and enforceable. If the local government ordinance is not authorized by the Environmental Management Commission pursuant to G.S. 143-214.23A(d), as enacted by Section 13.1(b) of this act, on or before January 1, 2017, the ordinance shall no longer be in effect or enforceable.

SECTION 13.1.(d) This section becomes effective October 1, 2015.

SECTION 13.2.(a) The Environmental Management Commission, with the assistance of the Department of Environment and Natural Resources, shall examine ways to provide regulatory relief from the impacts of riparian buffer rules adopted to implement the State's Riparian Buffer Protection Program for parcels of land that were platted on or before the effective date of the applicable riparian buffer rule. The Commission shall specifically examine ways to fairly provide properties with relief where a change in use has occurred that would otherwise trigger the requirements of the riparian buffer rules. Such relief would be determined on a case-by-case basis and provide relief to successor owners. For purposes of this study, a change in use that would otherwise trigger the requirements of the riparian buffer rules shall not include either of the following circumstances:

- (1) Developing from a vacant condition to a use allowed by the current local regulations, unless the local regulations have been changed at the request of the property owner since the date the buffer rule was applied; the parcel was recorded prior to the effective date of the applicable buffer rule; and the allowable use is for any nonfarming or nonagricultural purpose.
- (2) The property configuration has not been altered except as a result of either an eminent domain action or a recombination involving not more than three parcels, all of which were recorded before the effective date of the applicable buffer rule.

The Commission may also consider and recommend other circumstances that should not constitute a change in use that would otherwise trigger the requirements of the riparian buffer rules. No later than April 1, 2016, the Commission shall report the results of its study, including any recommendations, to the Environmental Review Commission.

SECTION 13.2.(b) This section becomes effective October 1, 2015.

SECTION 13.3.(a) As used in this section, "coastal wetlands" means any salt marsh or other marsh subject to regular or occasional flooding by tides, including wind tides, whether or not the tidewaters reach the marshland areas through natural or artificial watercourses, provided this shall not include hurricane or tropical storm tides.

SECTION 13.3.(b) For purposes of implementing 15A NCAC 02B .0233 (Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers) and 15A NCAC 02B .0259 (Tar-Pamlico River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers), Zone 1 of a protective riparian buffer for coastal wetlands shall begin at the most landward limit of the normal high water level or the normal water level, as appropriate.

SECTION 13.3.(c) The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

SECTION 13.3.(d) This section becomes effective October 1, 2015.

SECTION 13.4.(a) The Environmental Management Commission shall amend its rules for the protection of existing riparian buffers to provide for the case-by-case modification of the requirement for maintaining woody vegetation in the riparian buffer area upon a showing by a landowner that alternative measures will provide equal or greater water quality protection.

SECTION 13.4.(b) The Environmental Management Commission shall adopt temporary rules to amend its rules consistent with this section.

SECTION 13.4.(c) This section becomes effective October 1, 2015.

ZONING DENSITY CREDITS

SECTION 16. G.S. 160A-381(a) reads as rewritten:

"(a) For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, the location and use of buildings, structures and land. The ordinance ~~may~~ shall provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11."

CLARIFY AUTHORITY OF COUNTIES AND CITIES TO EXPAND ON DEFINITION OF BEDROOM

SECTION 18.(a) G.S. 153A-346 reads as rewritten:

"§ 153A-346. Conflict with other laws.

(a) When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this Part govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by regulations made under authority of this Part, the provisions of the other statute or local ordinance or regulation govern.

(b) When adopting regulations under this Part, a county may not use a definition of dwelling unit, bedroom, or sleeping unit that is more expansive than any definition of the same in another statute or in a rule adopted by a State agency."

SECTION 18.(b) G.S. 160A-390 reads as rewritten:

"§ 160A-390. Conflict with other laws.

(a) When regulations made under authority of this Part require a greater width or size of yards or courts, or require a lower height of a building or fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, regulations made under authority of this Part shall govern. When the provisions of any other statute or local ordinance or regulation require a greater width or size of yards or courts, or require a lower height of a building or a fewer number of stories, or require a greater percentage of a lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Part, the provisions of that statute or local ordinance or regulation shall govern.

(b) When adopting regulations under this Part, a city may not use a definition of dwelling unit, bedroom, or sleeping unit that is more expansive than any definition of the same in another statute or in a rule adopted by a State agency."

DEVELOPMENT AGREEMENTS

SECTION 19.(a) G.S. 153A-349.4 reads as rewritten:

"§ 153A-349.4. Developed property ~~must contain certain number of acres; criteria; permissible durations of agreements.~~

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, ~~provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application).~~ Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a reasonable term specified in the agreement, provided they may not be for a term exceeding 20 years.

~~(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."~~

SECTION 19.(b) G.S. 160A-400.23 reads as rewritten:

"§ 160A-400.23. Developed property must contain certain number of acres; criteria; permissible durations of agreements.

(a) A local government may enter into a development agreement with a developer for the development of property as provided in this Part, ~~provided the property contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application).~~ Part for developable property of any size, including property that is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a reasonable term specified in the agreement, provided they may not be for a term exceeding 20 years.

~~(b) Notwithstanding the acreage requirements of subsection (a) of this section, a local government may enter into a development agreement with a developer for the development of property as provided in this Part for developable property of any size (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of application), if the developable property that would be subject to the development agreement is subject to an executed brownfields agreement pursuant to Part 5 of Article 9 of Chapter 130A of the General Statutes. Development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."~~

SECTION 19.(c) G.S. 153A-349.3 reads as rewritten:

"§ 153A-349.3. Local governments authorized to enter into development agreements; approval of governing body required.

(a) A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

(b) The development agreement may, by ordinance, be incorporated, in whole or in part, into any planning, zoning, or subdivision ordinance adopted by the local government."

SECTION 19.(d) G.S. 160A-400.22 reads as rewritten:

"§ 160A-400.22. Local governments authorized to enter into development agreements; approval of governing body required.

(a) A local government may establish procedures and requirements, as provided in this Part, to consider and enter into development agreements with developers. A development agreement must be approved by the governing body of a local government by ordinance.

(b) The development agreement may, by ordinance, be incorporated, in whole or in part, into any planning, zoning, or subdivision ordinance adopted by the local government."

SECTION 19.(e) This section becomes effective October 1, 2015, and applies to development agreements entered into on or after that date.

SECTION 20. If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

law. **SECTION 21.** Except as otherwise provided, this act is effective when it becomes
2015. In the General Assembly read three times and ratified this the 21st day of September,

s/ Tom Apodaca
Presiding Officer of the Senate

s/ Paul Stam
Presiding Officer of the House of Representatives

s/ Pat McCrory
Governor

Approved 4:30 p.m. this 23rd day of September, 2015