

**ARTICLE 19**

**POST-CONSTRUCTION STORMWATER MANAGEMENT**

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## ARTICLE 19

### POST-CONSTRUCTION STORMWATER MANAGEMENT ORDINANCE

#### SECTION 1: GENERAL PROVISIONS

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##### 19.1 Title

This ordinance shall be officially known as the “Post-Construction Storm Water Ordinance.” It is referred to herein as “this ordinance.” The provisions of this ordinance shall apply within the corporation limits of the Town of Stallings, North Carolina.

##### 19.2 Authority

The Town of Stallings 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; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission there under; Session Law 2004-163; G.S. § 160D-925.

##### 19.3 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 the natural environment; and

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

Further, the Federal Pollution Control Act of 1972 (“Clean Water Act”) and Federal Phase II Storm Water Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to Federal Phase II requirements, compel certain urbanized areas,

including the Town of Stallings, to adopt storm water controls such as those included in this ordinance

Therefore, the Town of Stallings establishes this set of water quality and quantity regulations to meet the requirements of State and Federal law regarding control of storm water runoff and discharge.

#### **19.4 Purpose**

19.4-1 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. It has been determined that proper management of construction-related and post-construction storm water runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

19.4-2 Specific. This ordinance seeks to meet its general purpose through the following specific objectives and means:

- (A.) Establishing decision-making processes for development to protect the integrity of watersheds and preserve the health of water resources;
- (B.) 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, stream bank erosion, and non-point and point source pollution, as well as to maintain the integrity of stream channels, aquatic habitats, and healthy stream temperatures;
- (C.) Establishing minimum post-construction storm water management standards and design criteria for the regulation and control of storm water runoff quantity and quality;
- (D.) 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;
- (E.) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for storm water and preservation of greenspace, buffers, and other conservation areas to the maximum extent practicable;

- (F.) 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
- (G.) 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.

## **19.5 Applicability and Jurisdiction**

19.5-1 General. The requirements of this ordinance shall apply to all developments and redevelopments within the corporate limits or in the extraterritorial jurisdiction, unless one of the following exceptions applies to the development or redevelopment as of the effective date of October 1, 2007:

- (A.) Preliminary subdivision plan application or, in the case of minor subdivisions, construction plan for required improvements, submitted and accepted for review;
- (B.) Zoning use application submitted and accepted for review for uses that do not require a building permit;
- (C.) Certificate of Building Code Compliance issued by the proper governmental authority;
- (D.) Valid building permit issued pursuant to G.S. § 153A-344, so long as the permit remains valid, unexpired, and not revoked; and/or
- (E.) 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).

19.5-2 Exemptions.

- (A.) Development or redevelopment 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;
- (B.) Stream and wetland restoration activities and projects that do not include the installation of any impervious surfaces;
- (C.) Linear construction projects such as pipeline or utility installations;
- (D.) 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;

- (E.) 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); and
- (F.) Development and redevelopment that disturb less than one (1) 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.

19.5-3 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.

19.5-4 Map. The provisions of this ordinance shall apply within the areas designated on the map titled "Post-Construction Watershed District Map" for the Town of Stallings, North Carolina (hereafter referred to as "the Storm Water Map"), which is adopted simultaneously herewith. The Storm Water Map and all explanatory matter contained thereon accompany and are hereby made a part of this ordinance. Please see the Post Construction Administrative Manual for the Storm Water Map.

The Storm Water 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 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.

## **19.6 Interpretation**

19.6-1 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 19.3, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances for the Town of Stallings, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

- 19.6-2 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.
- 19.6-3 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 thirty (30) days. The Storm Water Administrator shall keep on file a record of all written interpretations of this ordinance.
- 19.6-4 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.
- 19.6-5 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 Stallings, 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 Stallings. References to days are calendar days unless otherwise stated
- 19.6-6 Delegation of Authority. Any act authorized by this ordinance to be carried out by the Storm Water Administrator of the Town of Stallings may be carried out by his or her designee.
- 19.6-7 Usage.
- (A.) 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.
  - (B.) 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.
  - (C.) 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.

19.6-8 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.

## **19.7 Design Manual**

19.7-1 Reference to Design Manual. The Storm Water Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the latest edition of the Charlotte Mecklenburg Best Management Practices (BMP) Design Manual as the basis for decisions about Land Development Permits and about the design, implementation and performance of structural and non-structural storm water BMPs.

The BMP Design Manual includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Stormwater 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 19.34 of this ordinance.

19.7-2 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.

19.7-3 Changes to Standards and Specifications. Standards, specifications, guidelines, policies, criteria, or other information in the Design Manual in effect 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.

19.7-4 Amendments to Design Manual. Local amendments to the Design Manual may be published from time to time, based on advancements



in technology and engineering, improved knowledge of local conditions, local monitoring, or maintenance experience.

Prior to publishing amendments, proposed changes shall be generally publicized and made available for review and an opportunity for comment by interested persons shall be provided.

## **19.8 Relationship to Other Laws, Regulations and Private Agreements**

19.8-1 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.

19.8-2 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 Stallings be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

## **19.9 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.

## **19.10 Effective Date and Transitional Provisions**

19.10-1 Effective Date. This ordinance shall take effect on October 1, 2007.

19.10-2 Final Approvals, Complete Applications. All development and redevelopment projects for which complete and full applications were submitted by the Town of Stallings prior to the effective date of this

ordinance shall be exempt from complying with the provisions of this ordinance.

19.10-3 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**

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### **19.11 Review and Decision-Making Entities**

#### 19.11-1 Storm Water Administrator.

- (A). Designation. A Storm Water Administrator shall be designated by the Town of Stallings for the purpose of administering and enforcing this ordinance.
- (B.) Powers and Duties. In addition to the powers and duties that may be conferred by other provisions of the Town of Stallings Development Ordinance and other laws, the Storm Water Administrator shall have the following powers and duties under this ordinance:
- (1.) To review and approve or disapprove applications submitted pursuant to this ordinance;
  - (2.) To make determinations and render interpretations of this ordinance;
  - (3.) To establish application requirements and schedules for submittal and review of applications and appeals;
  - (4.) To enforce this ordinance in accordance with its enforcement provisions;
  - (5.) To maintain records, maps, and official materials as related to the adoption, amendment, enforcement, or administration of this ordinance;
  - (6.) To provide expertise and technical assistance upon request to the Town of Stallings and its Stormwater Advisory Committee;
  - (7.) To designate appropriate other person(s) who shall carry out the powers and duties of the Storm Water Administrator;
  - (8.) To provide information and recommendations relative to variances and information as requested by the Stormwater Advisory Committee in response to appeals; and

(9.) To take any other action necessary to administer the provisions of this ordinance.

## **19.12 Review Procedures**

19.12-1 Permit Required; Must Apply for Permit. A Land Development 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.

19.12-2 Effect of Permit. A Land Development 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 of a site consistent with the requirements of this ordinance. Compliance after project construction is assured by the maintenance provision of this ordinance. *(Amended September 27, 2021)*

19.12-3 Authority to File Applications. All applications required pursuant to this ordinance shall be submitted to the Storm Water Administrator by the landowner or the landowner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner.

19.12-4 Establishment of Application Requirements, Schedule, and Fees.

(A.) Application Contents and Form. The Storm Water Administrator shall establish requirements for the content and form of the storm water component of all applications and shall amend and update those requirements from time to time. At a minimum, the Storm Water Management Report and detailed construction drawings prepared by a registered North Carolina professional engineer 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. *(Amended September 27, 2021)*

- (B.) 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. This schedule will be provided in the Administrative Manual.
- (C.) Permit Review Fees. The Town of Stallings shall establish plan review and permit application 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. The permit review fee schedule will be established by the Town of Stallings.
- (D.) Storm Water Documents. For applications required under this ordinance, the Storm Water Administrator shall incorporate into the Town of Stallings Land Development Permit Application the storm water related application requirements, and submittal checklist. In addition, maintenance requirements, 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 shall be made available to the public at the Town Administration Building and through the Town's website. *(Amended September 27, 2021)*

19.12-5 Submittal of Complete Application. Land Development Applications shall be submitted to the Development Administrator pursuant to the application submittal schedule in the form established by the Storm Water Administrator, along with the appropriate fee established by the Town of Stallings. *(Amended September 27, 2021)*

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.

19.12-6 Review. Within thirty (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.

- (A.) Approval. If the Storm Water Administrator finds that the application complies with the standards of this ordinance, the Storm Water Administrator shall approve the storm water components of the application and recommend approval to the Development Administrator. 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. *(Amended September 27, 2021)*
- (B.) 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.
- (C.) Revision and Subsequent Review. A complete revised application shall be reviewed by the Storm Water Administrator within thirty (30) working days after its re-submittal and shall be approved, approved with conditions, or disapproved. If a revised application is not re-submitted within ninety (90) 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.

### **19.13 Applications for Approval**

19.13-1 Concept Plan and Consultation Meeting. Before a storm water management plan is submitted, the landowner or the landowner's duly authorized agent or anyone having interest in the property by reason of a written contract with the owner may request consultation(s) on the plan for the development. This meeting shall include review of the conceptual layout of the post-construction storm water management system to be utilized in the proposed development project as well as any proposed improvements adjacent to or within the FEMA Special Flood Hazard Areas (SFHA). This consultation meeting(s) shall take place at the time of the conceptual plan of the subdivision or other early step in the development process. The purpose of this meeting(s) is to discuss the development plan including but not limited to 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, FEMA Flood Insurance Rate Maps (FIRM), and other relevant resource protection plans may be consulted in the discussion of the plan.  
(Amended September 27, 2021)

At the time of concept plan submittal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

- (A.) Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout plans, which illustrate at a minimum:
- (1.) existing and proposed topography;
  - (2.) perennial and intermittent streams;
  - (3.) mapping of predominant soils from soil surveys;
  - (4.) boundaries of existing predominant vegetation and proposed limits of clearing and grading; and
  - (5.) location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
- (B.) Natural Resources Inventory. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic system setbacks, etc.). Particular attention should

be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

(C.) Storm Water Management System Concept Plan. A written or graphic concept plan of the proposed post-construction storm water management system including:

- (1.) preliminary selection and location of proposed structural storm water controls;
- (2.) low impact design elements;
- (3.) location of existing and proposed conveyance systems such as grass channels, swales, and storm drains;
- (4.) flow paths;
- (5.) location of all floodplain/floodway limits;
- (6.) relationship of site to upstream and downstream properties and drainages; and
- (7.) preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

19.13-2 Storm Water Management Conceptual Plan Review. The Storm Water Management Conceptual Plan Review submittal 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 shall be prepared by a registered North Carolina professional engineer. The professional engineer 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 this ordinance, and that the designs and plans ensure compliance with this ordinance. *(Amended September 27, 2021)*

The submittal shall include all of the information required in the plan review submittal checklist established by the Storm Water Administrator and referenced in the Land Development Application. Incomplete submittals shall be treated pursuant to Section 19.12-1. *(Amended September 27, 2021)*

19.13-3 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 two weeks prior to request for certificate of occupancy. 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 5, Violations and Enforcement. As-built plans shall indicate that:

- (A.) The surveyor has surveyed the as-built detention facilities and sealed the plans (i.e., pond grades, structure dimensions, pipe sizes/material, and invert elevations); (*Amended September 27, 2021*)
- (B.) Any required revised calculations have been submitted and approved by the Town. Such revised calculations must be sealed by a professional engineer; and
- (C.) The facility has been stabilized consistent with the North Carolina Department of Environmental and Natural Resource standards and specifications.

As-built plans will indicate final as-built information for all storm water management facilities and practices, including the field location, size, depth, inverts, sizes and material of all measures, controls, and devices, as installed. This includes planted vegetation. (*Amended September 27, 2021*)

When a detention facility serves more than one (1) property, the as-built plans must include:

- (A.) A permanent detention easement, which encompasses the detention facility, must be shown on a recorded plat. This easement shall be described by metes and bounds.
- (B.) A note placed on the recorded plat that clearly describes who is responsible for maintenance of the detention facilities, pipes, structures, and/or channels located within the permanent detention facility. (*Amended September 27, 2021*)

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.**

## 19.14 Approvals

19.14-1 Effect of Permit Approval. Approval authorizes the applicant to go forward with only the specific plans and construction 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.

19.14-2 Time Limit/Expiration. A Land Development Permit approved under the provisions of this ordinance shall remain valid for a period of three (3) years from the date of approval. If no work on the site in furtherance of the final design plan has commenced within the three (3) year period, the permit 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 final 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.

### **19.15 Appeals**

19.15-1 Right of Appeal. Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Storm Water Administrator may file an appeal to the Stormwater Advisory Committee for the Town of Stallings within thirty (30) days.

19.15-2 Filing of Appeal and Procedures. Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on the general forms provided by the Town of Stallings. The Storm Water Administrator shall forthwith transmit to the Stormwater Advisory Committee all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Stormwater Advisory Committee shall be conducted in the nature of a quasi-judicial proceeding in accordance with the Town of Stallings Development Ordinance.

19.15-3 Review by Superior Court. Every decision of the Stormwater Advisory Committee 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 latter of the following:

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

19.15-4 Statutory Exceptions.

- (A.) The Storm Water Administrator may grant exceptions from the buffer requirements of this ordinance as well as the deed restrictions and protective covenant requirements as follows:
- (1.) Unnecessary hardships would result from strict application of the ordinance;
  - (2.) The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property;
  - (3.) The hardships did not result from actions taken by the petitioner; and/or
  - (4.) The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for the exception.
- (B) Notwithstanding subdivision (1) of this Section, exceptions from the buffer requirements of this ordinance may be granted in any of the following instances: *(Amended September 27, 2021)*
- (1.) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs;
  - (2.) When there is a lack of practical alternatives for a storm water management facility; a storm water management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located fifteen (15') feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs; and/or
  - (3.) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size,

configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

## **SECTION 3: STANDARDS**

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### **19.16 General Standards**

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

### **19.17 Watershed Districts**

Standards for development and redevelopment vary depending on the watershed district in which a project is located as described in the Storm Water Map of the Town of Stallings, North Carolina, which is adopted simultaneously herewith as described in Section 19.5-4. The Town of Stallings is divided into the following watershed districts for purposes of this ordinance.

19.17-1 Twelve Mile and Crooked Creek District. That area of land that drains to Twelve Mile Creek and Crooked Creek in the Town of Stallings, including all creeks and tributaries.

19.17-2 Goose Creek District. The Goose Creek District is the area of land that drains to Goose Creek in the Town of Stallings, including all creeks and tributaries. Development within this watershed must follow the requirements of the Site Specific Water Quality Management Plan for the Goose Creek Watershed, latest edition. (*Amended September 27, 2021*)

The Goose Creek Watershed is also subject to development requirements as specified in the Final Report on the Total Maximum Daily Loads for Fecal Coliform for Goose Creek, North Carolina.

19.17-3 Six Mile Creek District. The Six Mile Creek District is the area of land that drains to Six Mile Creek in the Town of Stallings, including all creeks and tributaries.

## 19.18 Development Standards for Twelve Mile and Crooked Creek District

19.18-1 Development Standards for Low Density Projects. Any drainage area within a project is considered low density when said drainage area has less than ten (10%) percent built upon area or one (1) dwelling unit per one (1) acre. Such low-density projects shall comply with each of the following standards. *(Amended September 27, 2021)*

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

(B.) Stream Buffers for Twelve Mile Creek Watershed. All built-upon area shall be at a minimum of thirty (30) feet landward of all perennial and intermittent surface waters in the Twelve Mile Creek Watershed. 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. Allowable stream buffer uses include the following:

- (1) Road crossings;
- (2) Greenway/hiking trails;
- (3) Bike trails;
- (4) Perpendicular utility line crossings;
- (5) Flood control structures;
- (6) Stream and bank stabilization/restoration projects;
- (7) Grading and revegetation;
- (8) Storm sewer outfalls;
- (9) Animal trails; and/or
- (10) Activities permitted under Section 404 of the Clean Water Act.

(C.) Stream Buffers for Crooked Creek Watershed. All built-upon area shall be at a minimum of thirty (30) feet landward of all perennial and intermittent surface waters in the Crooked Creek Watershed. 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. Buffers shall remain undisturbed with the exception of the following buffer uses:

- (1) Road crossings;
- (2) Greenway/hiking trails;
- (3) Bike trails;
- (4) Perpendicular utility line crossings;
- (5) Flood control structures;
- (6) Stream and bank stabilization/restoration projects;
- (7) Animal trails; and/or
- (8) Activities permitted under Section 404 of the Clean Water Act.

19.18-2 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 ten (10%) percent built upon area or one (1) dwelling unit per one (1) acre. Such high-density projects shall implement storm water treatment systems that comply with each of the following standards. *(Amended September 27, 2021)*

- (A) Storm Water Quality Treatment Volume. Storm water quality treatment systems shall treat runoff from a 1-inch rainfall event.
- (B) Storm Water Quality Treatment. Storm water quality treatment systems shall be designed to have a minimum of 85% average annual removal of Total Suspended Solids from the Storm Water Quality Treatment Volume.
- (C) 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.
- (D) Storm Water Volume Control. Storm water treatment systems shall be installed to control the difference in the storm water runoff from pre-development and post development conditions for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.
- (E) Stream Buffers for Twelve Mile Creek Watershed. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters in the Twelve Mile Creek Watershed. 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. Allowable stream buffer uses include the following:
  - (1) Road crossings;
  - (2) Greenway/hiking trails;
  - (3) Bike trails;
  - (4) Perpendicular utility line crossings;
  - (5) Flood control structures;
  - (6) Stream and bank stabilization/restoration projects;
  - (7) Grading and revegetation;
  - (8) Storm sewer outfalls;
  - (9) Animal trails; and/or
  - (10) Activities permitted under Section 404 of the Clean Water Act.
- (F) Stream Buffers for Crooked Creek Watershed. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters in the Crooked Creek Watershed. 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. Buffers shall remain undisturbed with the exception of the following buffer uses:

- (1) Road crossings;
- (2) Greenway/hiking trails;
- (3) Bike trails;
- (4) Perpendicular utility line crossings;
- (5) Flood control structures;
- (6) Stream and bank stabilization/restoration projects;
- (7) Animal trails; and/or
- (8) Activities permitted under Section 404 of the Clean Water Act.

(G) Storm Water Peak Control. For developments greater than or equal to ten (10%) percent built upon area, peak control shall be installed for the 2-yr, 10-yr and 25-yr, 6-hr storms. The emergency overflow and outlets work for any pond or wetland discharge with a minimum recurrence frequency as specified in the Design Manual. For detention basins, the temporary storage capacity shall be restored within seventy-two (72) hours. Requirements of the Dam Safety Act shall be met when applicable. *(Amended September 27, 2021)*

## **19.19 Development Standards for Goose Creek & Six Mile Creek Districts**

19.19-1 Development Standards for Low Density Projects. Any drainage area within a project is considered low density when said drainage area has less than ten (10%) percent built upon area or one (1) dwelling unit per one (1) acre. Such low-density projects shall comply with each of the following standards. *(Amended September 27, 2021)*

- (A) Storm Water Quality Treatment Volume. Storm water quality treatment systems shall treat the difference in the storm water runoff from pre-development and post-development conditions for the 1-year, 24-hour storm.
- (B) Storm Water Quality Treatment. Storm water quality treatment systems shall be designed to have a minimum of eighty-five (85%) percent average annual removal of Total Suspended Solids from the Storm Water Quality Treatment Volume.
- (C) 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.
- (D) Stream Buffers. Undisturbed buffers are required for perennial and intermittent streams as well as the ponds, lakes, and reservoirs (excluding wetlands) with hydrologic connections to such streams. The buffer width is 200-feet wide if located within the 100-Year

Floodplain or 100-feet wide if located outside the 100-Year Floodplain. 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. Development within this watershed must follow the requirements of the Site Specific Water Quality Management Plan for the Goose Creek Watershed, latest edition. *(Amended September 27, 2021)*

- (E) Storm Water Volume Control. Storm water treatment systems shall be installed to control the difference in the storm water runoff from pre-development and post-development conditions for the 1-year, 24-hour storm at a rate equal or less than the pre-development discharge rate. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

19.19-2 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 ten (10%) percent built upon area or one (1) dwelling unit per one (1) acre. Such high-density projects shall implement storm water treatment systems that comply with the Low Density Standards and the following additional standards. *(Amended September 27, 2021)*

- (A) Storm Water Peak Control. Peak control shall be installed for the 2-yr, 10-yr and 25-yr, 6-hr storms. The emergency overflow and outlets work for any pond or wetland 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. *(Amended September 27, 2021)*

## **19.20 Stream Buffer Delineation**

19.20-1 Determination of Streams to be Buffered. The stream buffer requirements of this ordinance shall apply as stated in Sub-sections 19.18 and 19.19, if a stream is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA), the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS), or as determined by an environmental scientist to be an intermittent or perennial stream. Streams that do not appear on either of the aforementioned maps and not classified as intermittent or perennial shall not be subject to the aforementioned buffer

requirements of this ordinance. Streams shall be subject to this ordinance unless one of the following applies.

(A) Exemption when an on-site determination shows that streams are not present. When a landowner or other affected party believes that the USDA or USGS stream buffer delineation maps described in this Section inaccurately depict streams, he or she shall consult with the Storm Water Administrator. Upon request, the Storm Water Administrator shall make on-site determinations. Such determinations can also be made at the discretion of the Storm Water Administrator in the absence of a request from a landowner or other concerned party. The buffer requirements of this ordinance shall apply based on these determinations. Surface waters that appear on the maps shall not be subject to this ordinance if an on-site determination by the Storm Water Administrator shows that they fall into one of the following categories:

- (1) Ditches and manmade conveyances other than modified natural streams;
- (2) Manmade ponds and lakes that are not intersected by a buffered stream segment and that are located outside natural drainage ways; or
- (3) Ephemeral (storm water) streams.

(B) Exemption when existing uses are present and ongoing. This ordinance shall not apply to portions of buffers where a use is existing and ongoing according to the following:

- (1) A use shall be considered existing if it was present within the buffer as of the effective date of this ordinance. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the buffer that contains the footprint of the existing use is exempt from this ordinance. Activities necessary to maintain uses are allowed provided that no additional vegetation except that grazed or trampled by livestock and existing diffuse flow is maintained.
- (2) At the time the existing use is proposed to be converted to another use, this ordinance shall apply. An existing use shall be considered converted to another use if any of the following applies:



- (a) Impervious surface is added to the buffer in locations where it did not exist previously;
- (b) An agricultural operation within the buffer is converted to a non-agricultural use; or
- (c) A lawn within the buffer ceases to be maintained.

19.20-2 Stream Buffer Identification. The following buffer identifications are required:

- (A) Streams and buffer boundaries must be clearly identified on all construction plans, including grading and clearing plans, erosion, drainage and sediment control plans and site plans;
- (B) Outside buffer boundaries must be clearly marked on-site prior to any land disturbing activities;
- (C) The outside boundary of the buffer must be permanently marked at highway stream crossings;
- (D) Streams and buffer boundaries must be specified on all surveys and record plats; and
- (E) Buffer boundaries 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.

### **19.21 Diffuse Flow Requirement**

Direct discharges of runoff to streams are not allowed. Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation. Techniques for providing diffuse flow are specified in the Design Manual.

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

### **19.22 Ponds, lakes & Reservoirs**

Ponds, lakes, or reservoirs which intersect the stream channel or straddle the buffer shall have the same buffers as the original stream measured from the top of the bank of the pond, lake, or reservoir.

## **19.23 Standards for Storm Water Control Measures**

- 19.23-1 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.
- 19.23-2 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.

## **19.24 Deed Recordation and Indications on Plat**

The approval of the Land Development Permit shall require an enforceable restriction on property usage that runs with the land, such as plat, recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans. Streams and buffer boundaries 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 Union 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 Union 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: MAINTENANCE**

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### **19.25 GENERAL STANDARDS FOR MAINTENANCE**

19.25-1 Function of BMPs as Intended. The owner of a structural BMP installed pursuant to this ordinance 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.

19.25-2 Annual Maintenance Inspection and Report. The person responsible for maintenance of any BMP installed pursuant to this ordinance shall submit to the Storm Water Administrator an inspection report using the forms provided from a qualified registered North Carolina professional engineer performing services only in their area of competence. The inspection report shall contain all of the following:

- (A) The name and address of the landowner;
- (B) The recorded book and page number of the lot of each structural BMP;
- (C) A statement that an inspection was made of all structural BMPs;
- (D) The date the inspection was made;
- (E) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (F) The original signature and seal of the professional engineer and surveyor.

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. Noted deficiencies shall be corrected within 30 days of the date of inspection or within an alternative timeframe approved by the Storm Water Administrator. The Storm Water Administrator shall be provided written proof of the corrected deficiencies when the remedial items are completed.

## **19.26 OPERATION AND MAINTENANCE AGREEMENT**

19.26-1 General. At the time that as-built plans are provided to the Storm Water Administrator as described in Sub-section 19.13-3 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 Sub-section 19.34, 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 according to the approved plans. In addition, it shall grant to the Town of Stallings 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 Stallings 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 and shall

be recorded by the applicant or owner with the Union County Register of Deeds upon final plat approval as described in Sub-section 19.24. A copy of the recorded maintenance agreement shall be given to the Storm Water Administrator within fourteen (14) days following its recordation.

19.26-2 Special Requirement for Homeowners' and Other Associations.

For all structural BMPs required pursuant to this ordinance 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. In the case where maintenance is required, and the Homeowners Association has disbanded, responsibility for the maintenance shall be transferred to the owners of the properties which were included in the Homeowners Association.

### **19.27 Inspection Program**

Inspections and inspection programs by the Town of Stallings 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 G.S. 15-27.2 or its successor. No person shall obstruct, hamper, or interfere with the Storm Water Administrator while carrying out his or her official duties.

### **19.28 Performance Security for Installation and Maintenance**

The Town of Stallings 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.

### **19.29 Records of Installation and Maintenance Activities**

The owner of each structural BMP shall keep records of inspections and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Storm Water Administrator.

### **19.30 Nuisance**

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

### **19.31 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 Sub-section 19.24 and its terms shall specify who may make use of the easement and for what purposes.



## SECTION 5: VIOLATIONS AND ENFORCEMENT

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### 19.32 General

- 19.32-1 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 Stallings. 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 Stallings.
- 19.32-2 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.
- 19.32-3 Each Day a Separate Offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.
- 19.32-4 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:
- (A) 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.
  - (B) 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.

### **19.33 Inspections and Investigations**

19.33-1 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.

19.33-2 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 Sub-section 19.34 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 Sub-section 19.34, Remedies and

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

19.33-3 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.

19.33-4 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:

- (A) Failure to submit a storm water management plan;
- (B) Performing activities without an approved storm water management plan;
- (C) Obstructing, hampering, or interfering with an authorized representative who is in the process of carrying out official duties;
- (D) 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;
- (E) Willful violation of this ordinance; and/or
- (F) Failure to install or maintain best management practices per the approved plan.

19.33-5 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.

19.33-6 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 Sub-section 19.34.

19.33-7 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 Sub-section 19.34.

## **19.34 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.

### 19.34-1 Remedies.

(A) 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.

- (B) 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 Stallings 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.
- (C) 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.
- (D) 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.
- (E) Stop Work Order. The Storm Water Administrator may issue a stop work order to the Person(s) violating this ordinance. The stop work order shall remain in effect until the Person has taken the remedial measures set forth in the notice of violation or has otherwise corrected the violation or violations described therein. The stop work order may be withdrawn or modified to enable the Person to take the necessary remedial measures to correct such violation or violations.
- (F) Restoration of Areas Affected by Failure to Comply. By issuance of an order of restoration, the Storm Water Administrator may require a Person(s) 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.

#### 19.34-2 Civil Penalties

- (A) 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 Sub-section 19.33-4 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.

- (B) 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 Stallings's general fund as non-tax revenue.
- (C) 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 Sub-section 19.15.
- (D) Failure to Pay Civil Penalty Assessment. If a violator does not pay a civil penalty assessed by the Storm Water Administrator within thirty (30) days after it is due or does not request a hearing as provided in Sub-section 19.15, 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 Union 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.

- (E) **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 for the Town of Stallings if such Person submits written demand for an appeal hearing within 30 days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in Sub-section 19.15 of this ordinance.

19.34-3 **Criminal Penalties.** Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

## **SECTION 6: DEFINITIONS**

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

1. **Administrative Manual.** A manual developed by the Storm Water Administrator and distributed to the public to provide information for the effective administration of this ordinance, including but not limited to application requirements, submission schedule, fee schedule, maintenance agreements, criteria for mitigation approval, criteria for recordation of documents, inspection report forms, requirements for submittal of bonds, a copy of this ordinance, and where to obtain the Design Manual.
2. **Best Management Practices (BMPs).** A structural management facility used singularly or in combination for storm water quality and quantity treatment to achieve water quality protection goals.
3. **Buffer.** A natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.
4. **Buffer Widths.** Viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

5. 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.
6. Design Manual. The storm water design manual shall be the latest edition of the Charlotte Mecklenburg BMP Design Manual. All references herein to the Design Manual are to the latest published edition or revision.
7. 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.
8. 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.
9. Drainage Area. That area of land that drains to a common point on a project site.
10. Impervious Surface. Any constructed surface; including but not limited to, rooftops, sidewalks, roads, and parking lots; covered by impenetrable materials such as asphalt, concrete, brick, and stone. These materials seal surfaces, repel water and prevent precipitation and runoff from infiltrating soils. Soils compacted by urban development are also highly impervious.
11. 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.
12. 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.
13. 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.

14. 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.
15. Pervious Surface. Any surface which is permeable or capable of being easily penetrated by water.
16. Redevelopment. Rebuilding activities on land containing built-upon area as of the effective date of this ordinance.
17. Storm Water Administrator. The Planning Director as designated by the Town of Stallings to administer and enforce this ordinance.
18. Land Development Permit. A permit is required for all development and redevelopment unless exempt pursuant to this ordinance, which demonstrates compliance with this ordinance.
19. Top of Bank. The landward edge of the stream channel during high water or bank-full conditions at the point where the water begins to overflow onto the floodplain.
20. 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).