

Town of Montreat
Board of Commissioners Meeting – Public Forum
June 12, 2025 – 5:30 p.m.
Town Hall

I. Call to Order

- Welcome
- Moment of Silence

II. Agenda Adoption

III. Public Comments

IV. Adjournment

**Town of Montreat
Board of Commissioners
Town Council Meeting
June 12, 2025 – 6:00 p.m.
Town Hall**

I. Call to Order

- Pledge of Allegiance
- Moment of Silence

II. Agenda Adoption

III. Mayor’s Communications

IV. Consent Agenda

A. Meeting Minutes Adoption

- May 2nd Budget Workshop Meeting Minutes
- May 8th Public Forum Meeting Minutes
- May 8th Town Council Meeting Minutes
- May 28th Budget Workshop Meeting Minutes

All items on the Consent Agenda are considered routine, to be enacted by one motion with the adoption of the agenda and without discussion. If a member of the governing body requests discussion of an item, it will be removed from the Consent Agenda and considered separately.

V. Town Manager’s Communications

- Consent Agenda Review
- Other Items

VI. Administrative Reports

- Administration
- Planning and Zoning
- Public Works and Water
- Sanitation
- Streets
- Finance
- May Building Permits
- Police

VII. Public Comment

Public comments will be heard during this period for any and all items.

VIII. Old Business

IX. New Business

A. TA-2025-01 – Text Amendment Public Hearing

- **Presenter: Kayla DiCristina**
- **See Agenda Materials on pages 31-133**
- **Suggested Motion: Adopt/adopt with revisions/deny**

B. TA-2025-01 – Adoption Ordinance

- **Presenter: Kayla DiCristina (if needed)**
- **See Agenda Materials on pages 134-137**
- **Suggested Motion: Adopt/adopt with revisions Ordinance #25-06-0001 for TA-2025-01**

C. Discussion on Geographic Name Proposal Recommendation: “Bear Brook”

- **Presenter: Savannah Parrish**
- **See Agenda Materials on pages 138-146**
- **Suggested Motion: Move to recommend on behalf of the Town of Montreat the name “Bear Brook” for an unnamed 0.3 mile long tributary of Kitchen Branch**

D. Budget Amendment #9

- **Presenter: Savannah Parrish and/or Rachel Eddings**
- **See Agenda Materials on pages 147-148**
- **Suggested Motion: Move to approve/deny Budget Amendment #9 to include and appropriate DST Cashflow loan and Helene Donations to the FY24/25 budget**

E. Fiscal Year 25/26 Budget Ordinance

- **Presenter: Savannah Parrish**
- **See Agenda Materials on pages 149-162**
- **Suggested Motion: Move to approve/deny the FY 25/26 Budget Ordinance**

F. Golf Carts for the 2025 Worship & Music Conference

- **Presenter: Savannah Parrish**
- **See Agenda Materials on pages 163**
- **Suggested Motion: Move for the Town Manager, with the advice and assistance of Town counsel, be authorized to investigate, negotiate, and, in her discretion, enter into a license agreement (or other appropriate**

agreement) with MRA for the use of golf carts on Town infrastructure to provide accessible transportation during the 2025 Worship & Music Conference

X. Public Comment

Public comments will be heard during this period for any and all items.

XI. Commissioner Communications

XII. Dates to Remember

- Board of Adjustment – Thursday, June 26th, 2025, at 5:00 p.m. in Town Hall with Zoom options
- Landcare – No July meeting!
- Town Offices Closed – Independence Day – Friday, July 4th.
- Tree Board - Tuesday, July 8th, 2025, at 9:00 a.m. in Town Hall with Zoom options
- July Town Council Meeting – Thursday, July 10th at 6:00 p.m. in Town Hall with Zoom options. The Public Forum will begin at 5:30 p.m.
- Planning & Zoning Commission Meeting – Thursday, July 17th at 10:30 a.m. in Town Hall with Zoom options
- Board of Adjustment – Thursday, July 24th, 2025, at 5:00 p.m. in Town Hall with Zoom options

XIII. Adjournment

Board of Commissioners - Budget Workshop

May 2, 2025, 10:00 a.m.

Meeting Minutes

Board of Commissioners in Attendance:

Commissioner Mason Blake
Commissioner Jane Alexander
Mayor Tim Helms
Commissioner Tom Widmer
Commissioner Grant Dasher

Board of Commissioners Absent

Mayor Pro Tem Kitty Fouche

Members of the Public in Attendance

Approximately 2 people

Call to Order

Mayor Tim Helms called the meeting to order at 10:00 AM. He asked for a moment of silence before proceeding.

Agenda Adoption

Mayor Helms requested a motion to proceed with the budget workshop.

Motion to proceed with the budget workshop made by Commissioner Jane Alexander. Seconded by Commissioner Grant Dasher. Motion carried unanimously.

Budget Discussion - Police Department

Chief Jeff Eaton provided an in-depth presentation on the police department's budget proposal, outlining several key issues and recommendations. He started by explaining the challenges he faced in dissecting the previous budget, which involved identifying and justifying past expenditures. Chief Eaton stressed that each budget line item should be evaluated based on actual needs rather than adhering to previous amounts without scrutiny.

Challenges with Previous Budget

Chief Eaton illuminated the difficulty of tracing budget line items back to actual purchases or expenses. He discovered discrepancies where funds had been used without corresponding records, emphasizing that the previous budget lacked transparency and proper planning.

Proposed Solutions

Chief Eaton proposed several solutions to current budgetary issues, beginning with the allocation for salary and wages. He described the importance of distinguishing part-time wages from full-time officers to effectively manage compensation time and foreseeable vacancies.

Medical Certification and Examination

He outlined new state requirements for psychological exams for officers, proposing to increase this budget line item from \$1,000 to \$3,000, as these exams, coupled with physicals, approximate \$1,000 per officer for certification purposes.

Technology Needs

A significant point of discussion was the department's technological deficiencies, particularly the absence of a record management system (RMS) and the resultant challenges in accessing the county's dispatch system. As an interim solution, Chief Eaton recommended moving towards individually issued cell phones equipped with the Freedom app to bridge some of these technological gaps and enhance officer safety, at a proposed cost of about \$15,000.

Community Engagement

Chief Eaton communicated his plan to strengthen public engagement by implementing programs such as "Coffee with a Cop" and organizing additional community-focused meetings. One of the objectives for these initiatives is to address a common issue in Montreat where residents often refrain from notifying the police of matters that require attention. Chief Eaton emphasized the need to educate the public on the importance of timely communication with the police department instead of the town clerk or leaving messages which might delay response to incidents. By enhancing direct communication, the department aims to increase trust and cooperation within the community.

The chief also elaborated on methods to improve community relations, stating the intention to divide the town into sectors and establish contact with block captains who can facilitate local gatherings. These events are aimed at fostering dialogue about community expectations of the police, allowing for a reciprocal understanding of law enforcement roles. Chief Eaton also touched on the importance of officer presence in building trust, where having a visually professional police force can deter crime and assure community safety. However, he acknowledged that such engagement initiatives would require additional funding to effectively support these public safety education efforts.

Chief Eaton's presentation was comprehensive in that it addressed current operational challenges ranging from equipment maintenance issues to the need for improved community outreach. He conveyed actionable strategies that focus on smart resource management and foresight to achieve these goals. Instead of merely increasing spending, Chief Eaton advocated for a balanced approach that ensures effective utilization of existing resources while planning for future needs, all aimed at enhancing both community trust and departmental efficiency.

Travel and Training

Chief Eaton proposed increasing the travel and training budget from \$600 to \$2,000. This would allow for one officer per year to attend a course outside the area, such as the Police Law Institute at the Justice Academy.

Maintenance and Repair of Equipment

Chief Eaton detailed various issues with the department's fleet, highlighting maintenance challenges arising from the vehicles' extensive idle times and low-speed operations. He indicated that the vehicles rarely exceeded 30-35 miles per hour, leading to significant wear from prolonged idle times. This operating condition has contributed to mechanical issues, such as malfunctioning taillights where moisture problems had been previously addressed improperly, and faulty siren boxes. The repair costs for these items are substantial, with LED taillights requiring up to \$1,000 for replacement and siren boxes around the same amount.

Chief Eaton explained that these maintenance problems were exacerbated by a lack of preemptive action due to budget constraints enforced after recent storms. Purchasing was put on hold in anticipation of unforeseen expenses, causing necessary repairs and maintenance to become backlogged. The fleet's condition was described as requiring immediate attention to maintain a professional image and ensure operational reliability.

Additionally, Chief Eaton discussed the inherited vehicles' idle rates, pointing out that the donate vehicle from Sunset Beach had significantly less idle time compared to the older patrol vehicles, which exhibited an idle rate as high as 75%. This discrepancy underscored the ongoing wear on their current fleet, leading to an increased necessity for repairs. Chief Eaton emphasized the importance of addressing these issues head-on to prevent further deterioration and to ensure the safety and effectiveness of law enforcement personnel on duty.

Chief Eaton invited further questions from the commissioners, engaging in a detailed explanation about idling practices and maintenance implications, which helped clarify how the unique conditions in Montreat contribute to these maintenance challenges. While acknowledging the budgetary challenges the town faced, he advocated for a proactive maintenance approach, suggesting a need for future-focused planning to reduce deferred maintenance and support effective law enforcement operations.

Chief Eaton detailed various issues with the department's fleet, including problems with taillights, siren boxes, and other vehicle components. He explained that some maintenance had been deferred due to budget constraints following recent storms.

Auto Supplies

Chief Eaton discussed the need for an increase in the auto supplies budget based on increased patrol activity and fuel consumption, highlighting that visibility and patrol presence come with higher operational costs. He argued that as the officers become more visible and patrol more frequently, the fuel expenditure naturally increases, as does the wear and tear on vehicles. The chief pointed out that past budgets did not accurately reflect the current and future demands due to previous department staffing issues and budget constraints where outside agencies had covered some patrols, leading to reduced auto supply usage during that period.

Chief Eaton also proposed implementing a take-home vehicle policy, which would not only improve officer morale and accountability for the vehicles but would also allow for better maintenance of the fleet. He emphasized that officers would be able to identify and report issues more promptly if they are assigned specific vehicles, thereby potentially reducing repair costs over time. The take-home policy is estimated to cost about \$1,700 per officer annually, based on calculations of fuel, service, and general vehicle maintenance. Chief Eaton conveyed this as an investment in both officer well-being and department efficiency, as it would align Montreat with industry standards and potentially aid in officer retention efforts.

Uniforms

Chief Jeff Eaton requested an increase in the uniform budget to standardize officer appearance and replace expired body armor. He noted that all agency-issued body armor would expire on July 1st. Chief Eaton emphasized the importance of officers having a consistent and professional appearance, which contributes to officer presence and community perception.

The department currently issues only two uniforms per officer, requiring officers to wash their uniforms frequently. Chief Eaton proposed issuing a third uniform to ease this burden. Additionally, he highlighted the issue with non-standardized equipment among officers, leading to variations in appearance that hinder the professional image.

Chief Eaton also explained that the body armor, integral for officer safety, is a significant budget item with new vests costing approximately \$1,100 each. The external carriers for these vests, which he proposed, would allow officers to adjust for comfort, particularly in hot weather, improving personnel morale and overall wellness. The existing body armor is not only expired but also not warrantied past its expiration date, creating potential liability issues for the department.

By implementing these uniform changes, Chief Eaton aims to foster pride among officers in their attire, address safety compliance with up-to-date armor, and ensure a unified look that enhances the authority and presence of the department.

Dues and Subscriptions

Chief Eaton elaborated on the unnecessary nature of the previously proposed PowerDMS system for a department of their size. He pointed out that while PowerDMS is excellent for managing policies and ensuring officers sign and read them, it is more suited for larger departments, like the Buncombe County Sheriff's Office, which manage a significantly higher number of officers. For Montreat's smaller team, Chief Eaton argued that a simple notebook and pen might suffice for tracking policy adherence, akin to buying sprinkles without a cupcake when other critical needs remain unmet.

Instead, Chief Eaton requested \$12,500 to address various technology needs that would enhance the department's efficiency and reduce risk. This budget would include potential purchases such as the Freedom app, which offers crucial features like officer GPS tracking, increased communication oversight, and improved service to the community, albeit as a less comprehensive solution than a complete Record Management System (RMS). Other alternatives considered include technology solutions like Police to Police.com and Southern Software, each offering varying degrees of record management capabilities that could integrate with county resources to some extent.

Chief Eaton underscored the importance of addressing these technological deficiencies to mitigate the risks associated with current practices, such as the lack of documentation management which poses discovery challenges and could result in increased liability. He emphasized the flexibility needed in this budget line item to adapt to evolving technology needs, ensuring the department remains proactive in tackling these operational challenges without stretching the budget unduly.

Machinery and Equipment

Chief Eaton has detailed an expanded request for machinery and equipment, highlighting the pressing need for improved communication tools and safety gear for officers. He revealed that he is currently borrowing a radio

from his previous position at Biltmore Forest, which underscores the department's urgent requirement for new radios. The donation vehicle presently lacks a radio unit, and Chief Eaton suggested that portable handheld radios could adequately substitute in-vehicle units, provided they are of good quality. A new handheld Motorola radio typically costs approximately \$5,000 each, with alternatives like Kenwood available at \$3,500 to \$4,000.

Crucially, Chief Eaton emphasized the necessity of replacing radio batteries, which have become swollen—a safety hazard due to their lithium-ion composition. These batteries should be replaced every 18 to 24 months, with costs reaching around \$1,000 for six batteries.

Moreover, the department's Automated External Defibrillators (AEDs) are in critical need of maintenance. Chief Eaton mentioned having six to seven AEDs, with some sitting idle on shelves due to dead batteries. For these life-saving devices to remain functional, periodic replacement of batteries and pads is crucial, incurring a cost of approximately \$1,500. He recommended equipping each patrol car with an AED and installing a wall-mounted unit within the town hall for ready access during emergencies.

Chief Eaton requested an increase in this line item from \$1,300 to \$7,000 to address these needs effectively, ensuring officers are equipped with reliable communication tools and ready-to-use life-saving equipment.

Part-time Officers

Chief Eaton proposed increasing the budget for part-time officers to \$52,000, explaining that this allocation would provide nearly a full-time equivalent position. He highlighted the advantage of distinguishing part-time hours from full-time officers to effectively manage compensation time and address foreseeable absences. This separation would assist in actively managing comp-time balances to prevent large payouts when officers exit the department, which in the past has strained the budget's ability to maintain operational expenses.

Chief Eaton noted the unique challenges faced by the Montreat Police Department, clarifying that the available comp time for officers equates to a full-time equivalent position. The comprehensive strategy involves planning time off for officers, which promotes overall morale by ensuring officers don't neglect their need for rest. Additionally, he proposed using part-time staffing, which includes Captain Tim Bradley working up to the maximum allowed hours without affecting his retirement status, to manage coverage more efficiently.

The chief articulated the critical importance of utilizing part-time officers not only to fill shifts but also to create additional opportunities for training. He envisioned bi-monthly sessions where officers could engage in training exercises, policy updates, and community interaction, fostering professional growth and public relations.

Overall, Chief Eaton emphasized that the allocation for part-time officers would enhance departmental flexibility and resilience, effectively balancing workload demands while nurturing officers' professional development and well-being.

Capital Outlay

Chief Jeff Eaton discussed the department's need for acquiring an additional vehicle to facilitate a take-home vehicle policy aimed at enhancing officer morale and accountability. He presented options, including a 5-year lease for a hybrid Ford Explorer. Chief Eaton detailed the benefits of choosing a hybrid vehicle, particularly its fuel efficiency and ability to address maintenance challenges related to idle time. He explained that hybrid vehicles can significantly reduce idle hours by using battery power to maintain lights, radios, and other equipment without needing the engine to be constantly running, which is particularly beneficial given the department's current issues with prolonged idling.

Furthermore, Chief Eaton provided an alternative option of purchasing a used Dodge Durango, which is a more cost-effective solution, though it comes with the uncertainty inherent in acquiring a pre-owned vehicle. This used vehicle would be a 2023 model, and, while it represents a more budget-friendly choice than a new hybrid, it still necessitates considering the potential for unknown mechanical issues due to its prior use.

The proposed budget allows for acquiring one new vehicle, which is crucial to support the transition to a take-home policy. With current fleet limitations, the addition of a new vehicle would ensure that the department maintains sufficient operational capability even when a vehicle is out of service for repairs. The department currently relies on vehicles such as the one donated from Sunset Beach, which underscores the urgency for fleet expansion.

In closing, Chief Eaton emphasized that these vehicles are pivotal not only for operational effectiveness but also for attracting and retaining qualified officers, who often consider the availability of a take-home vehicle as a significant employment benefit.

Discussion and Questions

Commissioners and the Mayor engaged in a detailed discussion with Chief Eaton throughout the presentation, raising several pertinent points and considerations:

- **County Coordination:** Commissioner Tim Helms expressed concerns about the relationship with the county, questioning whether the county provides any shared services without charge. Chief Eaton clarified that while dispatch services are currently provided at no cost, the county does charge for certain collaborative technology efforts, such as record management systems. This sparked a conversation about the fairness of the taxation system and the possibility of advocating to county commissioners for a more equitable sharing of resources given Montreat's contribution to county taxes and the limited return the town receives.
- **Budget Balance with Town Needs:** Commissioner Tom Widmer noted the significance of balancing the police department's needs with other competing priorities of the town. He acknowledged Chief Eaton's proposals aimed to address historical deficiencies, yet also emphasized the finite nature of town resources, predominantly sourced from resident taxation. Chief Eaton voiced understanding, pointing out that his requests were based on essential requirements rather than wishful enhancements.
- **Future Budget Sustainability:** The group discussed the importance of ensuring that current budget increases are not a long-term burden, but rather a step toward sustainable departmental operation. Chief Eaton assured that while certain line items would recur, many proposals reflected one-time catch-up costs to rectify past underinvestment. The conversation underscored the challenges associated with future-proofing department needs while attending to town infrastructure and community projects.

Town Manager Savannah Parrish concluded the discussion by noting the need for continued dialogue and scheduled further budget workshops to cover other departments and issues, including the zoning administrator position, sanitation questions, and staff cost of living or merit increases. She expressed her intention to speak with each commissioner individually to ensure alignment on budget refinement and to address any additional concerns they might have.

Mayor Tim Helms praised Chief Eaton and Captain Tim Bradley for their diligent budget planning and the depth of knowledge they demonstrated regarding budget specifics, including the detailed assessment of needs versus wants. He commended them for their comprehensive approach to budget preparation, lauding it as the most thorough he's witnessed in his 13 years of service. The Mayor emphasized the importance of their insightful presentation, which provided a robust framework for addressing current challenges and preparing for future needs.

Adjournment

Commissioner Tom Widmer moved to adjourn the budget workshop. Commissioner Grant Dasher seconded. Motion carried unanimously. The budget workshop adjourned at 11:16 a.m.

Tim Helms, Mayor

Angie Murphy, Town Clerk

Board of Commissioners - Public Forum

May 8, 2025, 5:30 p.m.

Meeting Minutes

Board of Commissioners in Attendance

Mayor Tim Helms
Mayor Pro Tem Kitty Fouche
Commissioner Jane Alexander
Commissioner Tom Widmer
Commissioner Mason Blake
Commissioner Grant Dasher

Town Staff in Attendance

Savannah Parrish, Town Manager
Angie Murphy, Town Clerk
Jeff Eaton, Chief of Police
Brandon Freeman, Town Attorney

Members of the Public in Attendance

Approximately 5 people

Call to Order

Welcome

Moment of Silence

Agenda Adoption

Mayor Tim Helms called for a motion to adopt the agenda for the town forum.

Motion to adopt the agenda made by Commissioner Jane Alexander, seconded by Commissioner Grant Dasher.

The motion was put to a vote and passed unanimously.

Public Comments

Tom Frist addressed the commissioners, expressing gratitude for the work done on Frist Road. He mentioned observing a large crane at a neighbor's house and inquired if it was funded by FEMA. Mayor Helms clarified that it was not FEMA-funded and that he had signed three checks related to Frist Road that day.

Mr. Frist then raised the topic of bulk pickups, comparing Montreat's twice-yearly service to Black Mountain's weekly pickups. He requested increasing the frequency to four times a year. Mayor Helms responded by pointing out the difference in roadside trash between the two towns and suggested that Black Mountain might be charging for their bulk pickups, which Mr. Frist disputed based on his experience.

Mr. Frist concluded by expressing gratitude to Town Clerk Angie Murphy and all the commissioners for their service.

The mayor then opened the floor for updates from the commissioners. Commissioner Tom Widmer took a point of personal privilege to mention that it was his wife Katie's birthday, and he thanked her for understanding that he was at the meeting while she was eating alone. Mayor Helms jokingly remarked that they had considered scheduling the meeting on another day, but Commissioner Widmer had insisted on having it that day.

Adjournment

Mayor Tim Helms called for a motion to adjourn the meeting.

Motion to adjourn made by Commissioner Tom Widmer, seconded by Mayor Pro Tem Kitty Fouche.

Before adjourning, the mayor reminded attendees that they were moving to their regular meeting at 6:00 PM and offered a final opportunity for public comment. With no further comments, the motion to adjourn was put to a vote and passed unanimously. The meeting was adjourned until 6:00 PM.

Tim Helms, Mayor

Angie Murphy, Town Clerk

Board of Commissioners - Town Council Meeting

May 8, 2025, 6:00 p.m.

Meeting Minutes

Board of Commissioners in Attendance

Mayor Tim Helms
Mayor Pro Tem Kitty Fouche
Commissioner Jane Alexander
Commissioner Tom Wider
Commissioner Mason Blake
Commissioner Grant Dasher

Town Staff in Attendance

Savannah Parrish, Town Manager
Angie Murphy, Town Clerk
Brandon Freeman, Town Attorney
Jeff Eaton, Chief of Police
Rachel Eddings, Finance Officer
Barry Creasman, Public Works Director

Members of the Public in Attendance

Approximately 10 people

Call to Order

Pledge of Allegiance

Moment of Silence

Mayor Tim Helms called the meeting to order at 6:00 PM. He led the Pledge of Allegiance and asked for a moment of silence before starting the meeting.

Agenda Adoption

Mayor Helms presented the agenda to the commissioners and asked for a motion to adopt it as presented.

Commissioner Mason Blake moved to adopt the agenda as presented. Commissioner Jane Alexander seconded the motion. The motion passed unanimously.

Mayor's Communications

Mayor Helms mentioned that everyone had a good Easter and was enjoying the weather. He noted that more storms like the one they had that day could be expected, potentially causing weakened trees to fall and limbs to

come down. He assured that the town crew would try to remove fallen trees as quickly as possible, and that the power company (Duke Power or Progress Energy) would work to restore power when outages occur.

Consent Agenda

Town Manager Savannah Parrish explained that the consent agenda for the night included the April 10th public forum meeting minutes and the April 10th town council meeting minutes.

Town Manager's Communications

Town Manager Savannah Parrish thanked Julie Shell for volunteering every Monday in April to help organize the town hall after moving back in. Julie assisted with filing and administrative work that Ms. Parrish and Town Clerk Angie Murphy had not had the chance to complete.

Ms. Parrish reminded everyone that the town offices would be closed on May 26th for Memorial Day. She also emphasized that brush and leaf pickup should only include brush and leaves, as other materials can damage the chipper and injure staff. She noted that they were still having issues with nails and metal in brush piles and asked residents to be careful and conscious of this.

Administrative Reports

Mayor Helms mentioned that the commissioners had received reports on administration, planning and zoning, public works and water, sanitation, streets, finance (which was pending), April building permits, and the police report. He asked if anyone had any questions or comments on these reports. No questions or comments were raised.

Public Comment

Mayor Helms opened the floor for public comment. No one came forward to speak.

Old Business

There was no old business to discuss.

New Business

Buncombe County Recovery Update – Representative from Buncombe County

Rachel Sawyer from Buncombe County presented an update on the county's recovery efforts following Hurricane Helene. She introduced herself as the staff leader of the Strategic Partnerships department and the Helene recovery lead for Buncombe County. Sawyer highlighted the collaboration between local governments during the disaster response, emphasizing daily communication between town managers such as Savannah, Jason, Jonathan, and Shannon. This collaboration extended to numerous emergency measures including the coordination of sheltering for displaced persons, distribution of water and food, and the clearing of debris from roads.

Sawyer provided significant statistics on the impact of Hurricane Helene, noting that at its peak, over 100,000 households were without electricity. This was almost the entirety of the county's approximately 104,000 households. She reported that of the estimated number of households in Buncombe County, 368 homes were completely destroyed, 734 endured major damage, and over 11,000 had some damage, affecting 9 percent of the housing stock. Sawyer shared that FEMA individual assistance reached more than 60,000 households, covering about 58 percent of the region's households, with assistance totaling around \$275 million.

She stated that 1,000-plus landslides had been reported, with over 400 posing imminent threats or causing damage to structures, homes, or roads. Sawyer also explained the extensive damage to infrastructure such as private roads and bridges, with approximately 300 affected.

Addressing the county's transition from response to recovery, Sawyer mentioned the closure of previous support services such as transitional sheltering and the Community Care Station in Black Mountain. The focus now shifts to long-term recovery planning, which involves extensive community input. Sawyer introduced the "Envision Buncombe" survey to capture community priorities and ensure representation within Montreat.

Sawyer outlined the process for creating a unified recovery plan that would include input from each town, including Montreat. The plan will take a project-specific approach and will be reflective of the community's priorities. To support this initiative, Buncombe County is collaborating with FEMA's community assistance teams to access state and federal resources and replicate successful recovery strategies utilized by other communities.

Commissioner Widmer inquired about how the recovery plan could integrate with projects already presented to FEMA. Sawyer clarified that the recovery plan aims to encompass both the FEMA-eligible damage repairs and further-reaching aspirational projects beyond FEMA's scope. Mayor Pro Tem Fouché raised a concern regarding the shortage of housing and service industry workers since Hurricane Helene exacerbated these preexisting issues. Sawyer responded by highlighting pending state and federal funding applications to address these challenges, including collaboration with local nonprofits to leverage resources effectively.

Sawyer assured that Buncombe County intended to utilize its portion of North Carolina's recent \$1.4 billion disaster recovery grant, with meetings held to ensure alignment of project priorities with identified local needs. The collaborative process aims to make the best use of available resources, integrating local government capabilities with community-driven priorities.

Proclamation #25-05-001 for 56th Annual Professional Municipal Clerks Week

Mayor Helms read the proclamation recognizing the week of May 4-10, 2025, as Professional Municipal Clerks Week. The proclamation acknowledged the vital role of municipal clerks in local government and extended appreciation to Montreat's municipal clerk, Angie Murphy.

Proclamation #25-05-002 Honoring Law Enforcement Officers

Mayor Helms read a proclamation declaring May 11-17, 2025, as Police Week in Montreat. The proclamation recognized the duties, responsibilities, and sacrifices of local law enforcement agencies and saluted their service to the community.

Proclamation #25-05-003 Honoring National Public Works Week

Mayor Helms read a proclamation designating May 18-24, 2025, as National Public Works Week in Montreat. The proclamation recognized the importance of public works professionals and their contributions to sustainable communities and public health.

Commissioner Widmer moved to approve all three proclamations. Mayor Pro Tem Fouché seconded the motion. The motion passed unanimously.

Resolution to Approve NC Cashflow Loan Agreement and Promissory Note

Town Manager Savannah Parrish presented information on a cash flow loan from the State of North Carolina. The loan amount was \$120,716, with a repayment schedule extending to 2030. Parrish explained that the loan was interest-free and would be used to fund Hurricane Helene recovery projects.

Mayor Helms asked if reimbursed funds could be used to make the loan payments. Parrish confirmed that FEMA reimbursements for funded projects could essentially be used to repay the loan.

Commissioner Alexander moved to approve the North Carolina cash flow loan agreement and promissory note. Commissioner Blake seconded the motion. The motion passed unanimously.

Appointment of a Regular Member to Planning & Zoning Commission

Mayor Pro Tem Fouché moved to appoint Sally Jenkins as a regular member of the Planning and Zoning Commission. Commissioner Widmer seconded the motion. The motion passed unanimously.

Appointment of an Alternate Member to Planning & Zoning Commission

Commissioner Alexander moved to appoint Gail Sawyer as an alternate member of the Planning and Zoning Commission. Commissioner Blake seconded the motion. The motion passed unanimously.

Bear Resistant Trash Containers

Town Manager Savannah Parrish introduced a proposal to explore making bear-resistant trash containers mandatory in Montreat. She suggested requiring at least one container for every three residents or renters to address issues of overfilled cans and bear access.

Parrish emphasized the importance of clear definitions and guidelines for what constitutes a bear-resistant container. She also noted that current “bear-resistant” cans in use may not genuinely be effective. Recommendations for suitable brands or designs of bear-resistant containers will be developed, ensuring that residents clearly understand the requirements.

The proposal would involve altering the existing sanitation ordinance, and Parrish mentioned that the town attorney, Brandon Freeman, along with Public Works Director Barry Creasman, would work on drafting the necessary changes. The ordinance update aims to be comprehensive and precise, setting standards for container sizes based on the number of residents or renters per household. Additionally, she proposed considering alternatives such as straps for existing cans, although their effectiveness may vary.

Commissioners discussed various aspects of the proposal, including the requirement to weigh the bear resistance of existing containers against new standard criteria. Commissioner Widmer highlighted that some residents already have effective homemade solutions. The commissioners agreed that rather than endorsing specific brands universally, a provision should be made for the public works director or a designee to assess and approve homemade or alternative solutions for compliance.

Commissioner Widmer also raised the issue of portable cans being wheeled away by bears, as personally experienced by neighbors. Mayor Pro Tem Fouche considered the potential for bulk purchasing arrangements to reduce costs for residents.

Commissioners emphasized the need for comprehensive public input on the proposed policy before implementation. It was proposed that public consultations or forums be held to gather opinions and suggestions from residents to ensure the ordinance is practical and widely accepted. They agreed on a deadline of September 1, 2025, for implementation, which would allow sufficient time for consultation and any necessary modifications.

Commissioner Widmer moved to direct the town manager to work with staff and bring back a recommendation for bear-resistant trash container requirements, including provisions for commission and public input. Commissioner Alexander seconded the motion. The motion passed unanimously.

Public Comment

Tom Frist, a resident, commented on the bear-resistant trash container proposal. He raised concerns about grandfathering existing containers, the cost of new containers, and suggested exploring bulk purchasing options for the community.

Commissioner Communications

Commissioner Alexander reported on a recent Landcare meeting, mentioning a proposed Flat Creek monitoring project. She highlighted the project's potential to compare pre- and post-Hurricane Helene data and its value for future stream management efforts.

George Sawyer, chairman of Landcare, informed the council about a recent citizen-led effort to treat hemlock trees for woolly adelgid beetles. He noted that 126 trees were treated, with additional trees to be treated through an injection process funded by private donations.

Dates to Remember

- Tree Board: Meeting scheduled for Tuesday, May 13th, 2025, at 9:00 a.m. in Town Hall. Zoom options will be available for those unable to attend in person.
- Board of Adjustment: This meeting will take place on Thursday, May 22nd, 2025, at 5:00 p.m. in Town Hall. Similar to other meetings, Zoom options are provided for accessibility.

- Town Offices Closure: Offices will be closed on Memorial Day, Monday, May 26th, 2025. Note that sanitation services will resume on Tuesday, May 27th, and the Town Convenience Center will remain open from 7 a.m. to 7 p.m. throughout the day.
- Landcare: Gathering set for Wednesday, June 4th, 2025, at 9:00 a.m. This will also be held in Town Hall with options to join via Zoom.
- Tree Board: Another meeting is planned for Tuesday, June 10th, 2025, at 9:00 a.m., again in Town Hall and with remote access through Zoom.
- June Town Council Meeting: Scheduled for Thursday, June 12th, 2025, starting at 6:00 p.m., preceded by the Public Forum at 5:30 p.m. Both will take place in Town Hall with Zoom options for attendees.
- Board of Adjustment: A subsequent meeting is on Thursday, June 26th, 2025, at 5:00 p.m., continuing to offer Zoom as a means to participate if needed.

Closed Session

Mayor Pro Tem Fouche moved to enter into Closed Session in accordance with NCGS 143-318.11(6) for discussion of a personnel matter. Commissioner Dasher seconded the motion. The motion passed unanimously.

Adjournment

The public portion of the meeting was adjourned, with the council entering into closed session.

Upon returning to Open Session, no business was transacted. The meeting was adjourned at 7:51 p.m.

Tim Helms, Mayor

Angie Murphy, Town Clerk

Board of Commissioners - Budget Workshop/Public Hearing – May 28, 2025

Meeting Minutes

Board of Commissioners in Attendance

Mayor Tim Helms
Mayor Pro Tem Kitty Fouche
Commissioner Mason Blake
Commissioner Jane Alexander
Commissioner Tom Widmer

Board of Commissioners Absent

Commissioner Grant Dasher

Town Staff in Attendance

Town Manager Savannah Parrish
Town Clerk Angie Murphy
Finance Officer Rachel Eddings

Members of the Public in Attendance

2 people

Call to Order

Mayor Tim Helms called the meeting to order at 5:00 p.m.

Approval of Agenda

The agenda was approved without discussion.

Budget Presentation

Town Manager Savannah Parrish presented the proposed FY 25-26 budget for the Town of Montreat. She highlighted that there would be no tax rate increase, with the major investment being in staff. The town would also be navigating ongoing recovery from Hurricane Helene.

Ms. Parrish outlined the total proposed budget of \$2,502,815, representing a 5.79% decrease from the current fiscal year. General fund revenue was projected at \$2,077,915, a 6.94% decrease. She emphasized maintaining a balanced financial plan without compromising service quality or long-term priorities.

Challenges mentioned included aging infrastructure, evolving community expectations related to Hurricane Helene, and inflationary pressures. Key budget drivers included up to 4% merit-based salary increases, a 13.36% increase in the police budget, and increases in sanitation costs.

Ms. Parrish noted that the town's fund balance was slightly below their internal policy of 40% due to hurricane recovery expenses, but still above state requirements. The tax rate would remain at 43 cents per \$100 valuation, with an estimated collection rate of 99.69%.

Water fund revenue was projected at \$424,900, a 0.27% change. Ms. Parrish also detailed increases in various water rates and fees.

Commissioner Tom Widmer inquired about water fund revenues and the projected decrease in tap fees and other charges. Finance Officer Rachel Eddings explained that some fee projections were lowered based on the current year performance, partially due to Hurricane Helene's impact.

Commissioner Mason Blake asked about a rate study for other town services. Parrish confirmed that several building inspection and permitting fees would be increasing.

Public Hearing

Mayor Tim Helms moved to open the public hearing. Commissioner Alexander moved, and Commissioner Widmer seconded. The motion passed unanimously.

During the public hearing, a member of the public, Letta Jean Taylor of 376 Oklahoma Road, raised several questions and comments:

- She suggested considering small, regular tax increases rather than large, infrequent ones.
- She asked about the value of a penny on the tax rate and how Montreat's rate compares to neighboring municipalities.
- She inquired if staff below the living wage threshold were brought up to \$23.15/hour before the 4% increase.
- She emphasized the need to provide staff with necessary equipment and materials.
- She questioned the decrease in public works funding given ongoing hurricane damage and deferred maintenance.
- She asked about funding for continuing education and certifications for staff.
- She inquired about the availability of a 5-year capital improvement plan.
- She asked about the purpose of a \$22,000 special assessment.

Savannah Parrish addressed some of these questions, confirming that staff below the living wage would be brought up to \$23.15/hour before the merit increase, and that the special assessment was for roadwork completed on Peace and Providence years ago. She also explained that public works projects were being funded through the hurricane recovery account (Fund 29) rather than the general fund.

Mayor Tim Helms moved to close the public hearing. Mayor Pro Tem Kitty Fouche moved, and it was seconded by Commissioner Mason Blake. The motion passed unanimously.

Commissioner's Discussion

The Commissioners discussed the option of postponing the final budget vote until the June council meeting to allow more time for review. They agreed to this approach.

Mayor Pro Tem Kitty Fouche asked for an update on hurricane recovery efforts. Ms. Parrish reported that several projects had been obligated by FEMA, and they were awaiting funds. She mentioned that Joe Stanton, director of North Carolina Emergency Management, had visited to assess blocked waterways. Despite weather challenges, work was progressing on various projects, including landscaping and guardrail installation.

Commissioner Mason Blake acknowledged the volunteer efforts in cleanup work along Assembly Drive, noting that volunteers, along with staff, had been actively involved in the efforts. He expressed gratitude for the hard work they contributed, as they tirelessly worked on collecting debris and improving the appearance of the area.

Mayor Tim Helms mentioned upcoming volunteer opportunities for mulch spreading, emphasizing community involvement and the importance of volunteer hours in helping restore and maintain the beauty of Montreat. He explained that once the yard was prepared, a date would be set for volunteers to gather and assist in spreading mulch, encouraging others to join in the efforts.

Mayor Helms reported on his meeting with Joe Stanton regarding debris pickup and expressed optimism about receiving state assistance.

Ms. Parrish informed the commissioners that one penny of the current 43-cent tax rate generates \$29,069.77 in revenue.

Mayor Helms advised the commissioners to prepare for a potential tax increase in the next year, mentioning that other communities in the area were also considering increases.

Approval of FY25-26 Budget

The commissioners agreed to postpone the final vote on the budget until the June council meeting.

Adjournment

Commissioner Tom Widmer moved to adjourn the meeting. Mayor Pro Tem Fouche seconded. The motion passed unanimously.

The meeting was adjourned at 5:28 p.m.

Mayor Tim Helms

Town Clerk Angie Murphy



TOWN OF MONTREAT

P. O. Box 423, Montreat, NC 28757
 Tel: (828) 669-8002 | Fax: (828) 669-3810
 www.townofmontreat.org

**ADMINISTRATIVE REPORTS:
 ADMINISTRATION**

Town Administration report for the month of May 2025

Monthly Statistics	2024	2025
Public Meetings	11	6
Public Records Requests Processed	4	3
Water Bills Processed & Mailed	686	648
Water Bills Processed & Emailed	11	58
Leak Adjustments	0	2
Sunshine List Messages	20	17
Website Posts	20	17
Social Media Posts	20	17

Upcoming Events and Schedule Changes
 0

Comments
 N/A

Staff Communications
 0



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**ADMINISTRATIVE REPORTS:
 BUILDINGS AND INSPECTIONS**

Buildings and Inspections report for the month of May 2025

Monthly Statistics	2024	2025
Building Permits Issued	11	15
Pending Building Permits	0	0
Building Inspections Performed	30	51
Stop Work Order Issued	0	0
Defective Building Posted	0	0
Denied Building Permits	0	0
Fire Inspections Performed	0	0
Fire Re-Inspections Performed	0	0
Fire Permits Issued	0	0

Comments

0

Staff Communications

0



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**ADMINISTRATIVE REPORTS:
 STREETS**

Streets Department report for the month of May 2025

Monthly Statistics	2024	2025
Public Trees Removed	0	2
Sand Applied to Roads (tons)	0	0
Ice Melt Applied to Roads (pounds)	0	0
Road Closures	2	4

Comments

We would like to take a moment and welcome everyone back for the summer here at Montreat. Things may look a little bit different than it did last summer but we are working to put Montreat back better and more resilient than ever. We would like to ask folks as they move around town for them to do so in a slow

Staff Communitactions:

0



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**ADMINISTRATIVE REPORTS:
 WATER AND PUBLIC WORKS**

Water and Public Works report for the month of May 2025

Monthly Statistics	2024	2025
Calls for Service	44	37
Water Leaks Repaired	1	1
New Water Lines Installed	0	0
Water Meter Replacements	94	0
Gallons of Water Produced	3,275,219	2,393,472
Hours Pumped (11 wells combined)	1,721	1,771
Water Samples Taken	1	1

Comments

0



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**ADMINISTRATIVE REPORTS:
 SANITATION**

Sanitation Department report for the month of May 2025

Monthly Statistics	2024	2025
Tons of Curbside Trash Collected	26.31	9.81
Tons of Curbside Recycling Collected	5.01	2.88
Unique Curbside Sanitation Stops	1760	1820
Special Pickup Stops	0	14
Bagged Leaf Pickup	171	338
Brush Pickup (cubic yards)	5Loads	4 Loads
Hauling Fees	4869.9	3219.25
Tipping Fees	\$	1250.51
Dumpster Rental Fees	217.63	131.9
Convenience Center Usage-Trash	0	15.05
Convenience Center Usage-Recycle	0	2,52

Comments:

0



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**ADMINISTRATIVE REPORTS:
ZONING ADMINISTRATION**

Zoning Administration report for the month of May 2025

Monthly Statistics	2024	2025
Approved Zoning Permits	0	2
Denied Zoning Permits	0	0
Pending Zoning Permits	2	3
Variance/Interpretation Granted	0	1
Special Use Permits Granted	0	0
Permit Extensions Granted	0	0
Notice of Violations	0	0

Comments

0



**TOWN OF
MONTREAT**
NORTH CAROLINA
FINANCIAL REPORT

May 2025 - MONTH 11 OF FISCAL YEAR 2024-2025

REVENUES

Fund	Fund #	Original		YTD Projected		YTD	YTD Actual	Difference
		Budget	Current Budget	Budget Amount	Budget Percentage			
GENERAL FUND	10	2,232,905.00	3,051,358.03	2,797,078.19	91.67%	2,919,639.27	95.68%	122,561.08
WATER FUND	30	423,744.00	423,744.00	388,432.00	91.67%	368,326.05	86.92%	(20,105.95)
TOTAL REVENUES GENERAL & WATER FUNDS		2,656,649.00	3,475,102.03	3,185,510.19	91.67%	3,287,965.32	94.61%	102,455.13

EXPENSES

Dept Name	Fund #	Original		YTD Projected		YTD Exp	YTD Actual	Difference
		Budget	Current Budget	Budget Amount	Budget Percentage			
GOVERNING BODY	10	54,791.00	54,791.00	50,225.08	91.67%	51,675.83	94.31%	(1,450.75)
ADMINISTRATION	10	513,430.00	528,430.00	484,394.17	91.67%	494,756.55	93.63%	(10,362.38)
PUBLIC BUILDINGS	10	128,353.00	128,353.00	117,656.92	91.67%	128,090.16	99.80%	(10,433.24)
POLICE	10	475,950.00	475,950.00	436,287.50	91.67%	404,992.22	85.09%	31,295.28
BUILDING AND ZONING	10	101,900.00	101,900.00	93,408.33	91.67%	92,070.71	90.35%	1,337.62
PUBLIC WORKS	10	159,083.00	918,061.03	841,555.94	91.67%	888,686.36	96.80%	(47,130.42)
STREET	10	555,202.00	561,727.00	514,916.42	91.67%	512,205.57	91.18%	2,710.85
SANITATION	10	220,146.00	258,096.00	236,588.00	91.67%	231,634.46	89.75%	4,953.54
ENVIRON,CONS,REC	10	24,050.00	24,050.00	22,045.83	91.67%	20,775.47	86.38%	1,270.36
TOTAL EXPENSES GENERAL FUND		2,232,905.00	3,051,358.03	2,797,078.19	91.67%	2,824,887.33	92.58%	(27,809.14)

Dept Name	Fund #	Original		YTD Projected		YTD Exp	YTD Actual	Difference
		Budget	Budget	Budget Amount	Budget Percentage			
WATER	30	423744	423,744.00	388,432.00	91.67%	345,300.82	81.49%	43,131.18
TOTAL EXPENSES WATER FUND		423744	423,744.00	388,432.00	91.67%	345,300.82	81.49%	43,131.18

TOTAL EXPENSES GENERAL & WATER FUNDS		\$3,475,102.03	\$3,185,510.19	91.67%	\$3,170,188.15	91.23%	\$15,322.04
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GENERAL FUND INCOME/LOSS - YTD	\$94,751.94
WATER FUND INCOME/LOSS - YTD	\$23,025.23
NET INCOME - YTD 2025	\$117,777.17

SPECIAL PROJECTS								
Project	Fund #	Budget	This Month Actual	Amount Spent To Date	Balance Remaining			% Spent
LANDCARE	26	122,560.24	0.00	1,073.16	121,487.08			0.88%
Hurricane Helene - Prof. Services	29	842,241.45	13,199.49	807,643.99	21,397.97			
Helene Consultants	29	65,000.00	0.00	0.00	65,000.00			
Helene Materials	29	192,336.58	0.00	93,915.86	98,420.72			
TOTAL SPECIAL PROJECTS		\$ 1,222,138.27	\$ 13,199.49	\$ 902,633.01	\$ 306,305.77			73.86%



Tax Receipts

Date of Deposit	Mar-24	Mar-25	% +/-	Apr-24	Apr-25	% +/-	May-24	May-25	% +/-	Jun-24	Jun-25	% +/-
AdVal/RMV	35,133.24	33,162.73	-5.94%	5,918.07	14,594.97	59.45%	4,391.81	5,021.05	12.53%	2,885.56	0.00	#DIV/0!
Sales	58,003.45	57,136.33	-1.52%	44,235.91	43,604.69	-1.45%	41,291.08	43,433.16	4.93%	52,655.76	0.00	#DIV/0!
Solid Waste (Quarterly)							192.28	204.41	5.93%			
Utility Fran (Quarterly)	26,038.43	25,954.36	-0.32%							32,702.13	0.00	#DIV/0!
Wine/Beer (Annual-May)							4,912.00	4,154.49	-18.23%			

AdVal Tax is received the month after the tax is collected

RMV Tax is received two months after the tax is collected

Sales Tax is received three months after the tax is collected

May Building Permits

6137	5/6/2025	Montreat College	405 Assembly Cir	demo	partial demo	n			Barringer Construction	100
6138	5/6/2025	Ron Smalenberger	220 Tennessee	plumbing	tankless hot water heat	n			Owner	\$ 200
6139	5/8/2025	Town of Montreat	215/229 NC Terrace	bldg	retaining wall	n			Wheeler Construction/TOM PW	NA
6140	5/12/2025	Charles & Kay Clegg	344 Lookout Rd	electrical	repair elec serv	n			Clegg Electric	\$ 100
6141	5/12/252	Alec Fraser	435 Greybeard Trl	elec/mech	mini-splits	n			Aireserv WNC	\$ 100
6142	5/13/2025	Marina Bradford	443 Arbor Lane	elec/mech	change out hp	n			Call Dad LLC	\$ 100
6143	5/15/2025	Rebekah Ayscue	140 Woodland Rd	elec/mech	hvac mini-splits	n			All About Plumbing, Heat & Air	\$ 100
6144	5/16/2025	Jeff Butler	233 Assembly Dr	plumbing	hw heater relo	n			All About Plumbing, Heat & Air	\$ 100
6145	5/23/2025	Hugh Lee	158 Overbrook Rd	bldg	residential repairs	n	\$	968	Handyman Property Solutions	\$ 968
6146	5/21/2025	Ann Wilde	417 WV Terrace	bldg	residential repairs	n	\$	43,527	Semper Fi	\$ 731
6147	5/22/2025	James/Robert Phillips	312 NC Terrace	bldg	residential repairs	n	\$	9,814	Black Mountain Handyman	\$ 100
6148	5/28/2025	McCarley Properties	313 NC Terrace	electrical	electrical repair	n			Carolina Electrical Technologies	\$ 100
6149	5/28/2025	Joel Barker	603 Upward Way	bldg	residential remodel	n	\$	93,000	owner	\$ 1,018
6150	5/30/2025	McAllister Dowd	325 NC Terrace	gas	gas line	n			Blossman Gas	\$ 100
6151	5/30/2025	William Hazelwood	188 Mississippi Rd	bldg	residential addition	y	\$	80,000	Ragan Construction Corp	\$ 950

MONTREAT POLICE DEPARTMENT

MONTHLY STATISTICS



# OF CALLS	CALL NATURE
7	ALARM
6	ASSIST EOC
5	ASSIST MOTORIST
7	ASSIST OTHER AGENCY
1	COMMUNITY OUTREACH
9	CONTACT PUBLIC
5	DEBRIS BLOCKING ROAD
2	DIRECT TRAFFIC
1	FOLLOW UP INVESTIGATION
2	FOOT PATROL
1	FOUND PROPERTY
2	IMPROPER PARKING
1	INCOMPLETE 911
5	LOUD NOISE
1	MENTAL SUBJECT
93	PROPERTY CHECK
0	SUSPICIOUS PERSON
5	SUSPICIOUS VEHICLE
46	TRAFFIC ENFORCEMENT
21	TRAFFIC STOP
0	VANDALISM
2	WELFARE CHECK
8	WILDLIFE

230

TOTAL # OF CALLS

SIGNATURES AND ACKNOWLEDGEMENT

I, Julie Schell, hereby certify that all of the information set forth above is true and accurate to the best of my knowledge.

Julie Schell

Signature of Applicant

Date

Julie Schell

Printed Name of Applicant

OFFICE USE ONLY

Complete

Incomplete

Kayla DiCristina

Zoning Administrator Signature

Date

Printed Name of Zoning Administrator

Fee: _____

Paid: Yes No

Payment Method: _____

Scheduled Planning and Zoning Commission Meeting Date: _____

Scheduled Board of Commissioner Meeting Date: _____

Proposed Language

Section 319 Variances (NEW SECTION)

- A. Any person may petition the Town of Montreat for a variance granting permission to use the person's land in a manner otherwise prohibited by the stormwater management regulations of this article.
 - a. To qualify for a variance, the petitioner must show all of the following:
 - i. Unnecessary hardships would result from strict application of the stormwater management regulations of this article.
 - ii. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - iii. The hardships did not result from actions taken by the petitioner.
 - iv. The requested variance is consistent with the spirit, purpose, and intent of the stormwater management regulations of this article; will secure public safety and welfare; and will preserve substantial justice.
 - b. The Town of Montreat may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
 - c. Variances to this article shall be heard by the Zoning Board of Adjustment and shall follow the variance procedures contained in Section 310.5 of the Montreat Zoning Ordinance.



MEMORANDUM

TO: The Town of Montreat Board of Commissioners

CC: Savannah Parrish (Town Manager), Angela Murphy (Town Clerk)

FROM: Kayla DiCristina (Zoning Administrator)

SUBJECT: TA-2025-01 – Ordinance Amendment to Chapter K Article III Montreat General Ordinance

DATE: June 12, 2025

ATTACHMENTS: Montreat General Ordinance Chapter K Article III, Stormwater Ordinance Excerpts, Phase II Stormwater Model Ordinance for North Carolina

At the request of the Board of Commissioners at the Board’s March 13, 2025, meeting, the Planning and Zoning Commission prepared an Ordinance Amendment (TA-2025-01) to the Montreat General Ordinance Chapter K Article III at the Commission’s April 17, 2025, meeting. This amendment proposes adding variances to Chapter K Article III of the Montreat General Ordinance. The Planning and Zoning Commission voted unanimously to recommend approval of this Ordinance Amendment as presented to the Board of Commissions and found that this amendment was consistent with the Town of Montreat’s Comprehensive Plan.

The Town of Montreat participates in the National Pollutant Discharge Elimination System’s (NPDES) Municipal Separate Storm Sewer System (MS4) Program. As a participant in this program, the Town is required to manage post-construction site stormwater runoff by enforcement of regulations. The Town satisfies the requirement to manage post-construction site stormwater runoff by means of enforcing local level regulations in the Montreat General Ordinance (“the Ordinance”) Chapter K Article III (i.e. the Stormwater Ordinance). A copy of the Town’s current Stormwater Ordinance is attached to this memo.

The University of Chapel Hill School of Government provides the Phase II Stormwater Model Ordinance for North Carolina (“the model ordinance”) for use by communities in the MS4 Program. Montreat’s Ordinance is built off of this model ordinance. A copy of the model ordinance is attached to this memo.

MONTREAT REGULATIONS

The Town’s General Ordinance (“the Ordinance”) houses stormwater regulations in Chapter K Article III. These regulations were enacted on 06/11/2009 and revised on 02/11/2010. The purpose of the Ordinance (per MGO Chapter K Article III Section 300(1)) is as follows:

The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the town's natural resources.

The Ordinance applies to all development within Montreat and the Town's extraterritorial jurisdiction. The following activities are exempt from the provisions of the Ordinance per MGO Chapter K Article III Section 300(3):

1. Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans.
2. Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality.
3. Activities for which a permit is required under the mining act, G.S. 74-46 et. seq.
4. Any development in which the owner has accrued a vested right.
5. Redevelopment or expansion to the uses listed in Section 300(3) are not subject to the stormwater requirements unless it qualifies by having disturbed area of 5,000 square feet or greater; at least 24% total lot area developed to include impervious cover; or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

The Ordinance does not currently permit variances to any of the provisions of Chapter K Article III. However, the Ordinance does permit exceptions to the built-upon area requirement in Section 305(1) in accordance with Chapter K Article III Section 305(1) and (1)(a) - (e).

STORMWATER REGULATION IN BUNCOMBE COUNTY

All municipalities in Buncombe County, including the county, regulate stormwater. Buncombe County and all municipalities except for Biltmore Forest permit variances to their stormwater regulations. Verbatim excerpts of the Unified Development Ordinances of Buncombe County, Asheville, Black Mountain, Woodfin, Weaverville, and Biltmore Forest are attached to this memo.

Buncombe County Unified Development Ordinance (Chapter 26)

Post-construction stormwater management regulations apply to all development in Buncombe County except specific agricultural and forestry activities, activities where a permit under the Mining Act of 1971 is required, commercial development on lots less than one acre disturbing less than one acre of land, residential development disturbing less than one acre of land, land disturbing activities for surveying not exceeding one acre, and single family home construction on lots of

record established prior to September 27, 2006 proposing impervious surface totaling less than 15% of the total lot area. A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one acre in size or more, unless exempt pursuant to this article. Development exempt from the ordinance is not required to comply with the 30-foot built upon area buffer stated in Section 26-362. The UDO permits variances to all of the provisions listed in Section 26.

City of Asheville Unified Development Ordinance (Chapter 7)

The City of Asheville's requirement of no land disturbance within 30 feet of a perennial and/or intermittent stream is housed in both the erosion and sediment control measures and post-construction stormwater control sections of the ordinance under Section 7-12-2. Erosion and sediment control regulations apply to all development except specific agricultural and forestry activities, activities where a permit under the Mining Act of 1971 is required, activities under the state's jurisdiction, protection of human life, stockpiling of material, single gravesites, maintenance of lawns and gardens less than one acre, and land disturbing activities totaling 500 square feet or less located 50 feet or more from a perennial or intermittent stream. Post-construction stormwater control measures apply to all activities except those exempt under Section 404 of the Clean Water Act and redevelopment that results in no net increase in built-upon area and that provides equal or greater stormwater control than the previous development on the site. Development or redevelopment disturbing less than one acre of land with a proposed impervious surface area of less than 50% of the total site area and development or redevelopment of single- or two-family dwellings that disturb less than one acre of land is only exempt from the stormwater control standards listed in Section 7-12-2(f)(1) and (2), which do not include stream buffers. A permit is required for all development and redevelopment unless exempt from the ordinance. The UDO provides a provision for reduction of the undisturbed buffer by the Stormwater Administrator if specific requirements are met as listed in Section 7-12-2(f)(3)(b). The UDO also permits variances to the provisions listed in Section 7-12-2. Exceptions to the 30-foot stream buffer may be granted when there is a lack of practical alternative for a road crossing, railroad crossing, bridge, airport facility, utility crossing, or a stormwater management facility.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

Post-construction stormwater management regulations apply to all development in the Town of Black Mountain except for activities exempt per Section 404 of the Clean Water Act, development that adds less than 5,000 square feet of impervious surface, and development activities within the Town's designated historic district. Stormwater permits are required for specific development under a common plan and any development and redevelopment which results in an increase of impervious surface area by a net amount of 5,000 square feet or more. Only projects requiring a stormwater permit are required to adhere to the required 30-foot built upon area buffer required in Section 8.2.14(c). The UDO also permits variances to the provisions listed in Section 8.2. Exceptions to the 30-foot stream buffer may be granted when there is a lack of practical alternative for a road crossing, railroad crossing, bridge, airport facility, utility crossing, or a stormwater management facility.

Town of Weaverville Unified Development Ordinance (Chapter 20)

Section 20-1112 of the Town of Weaverville's UDO states that the Town utilizes Buncombe County's stormwater regulations. These regulations are enforced by Buncombe County for the Town of Weaverville.

Town of Woodfin Unified Development Ordinance (Chapter 41)

Post-construction stormwater management regulations apply to all development in the Town of Woodfin except for activities exempt per Section 404 of the Clean Water Act, redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development regardless of the percent of impervious surface, and pre-existing development or development activities that do not remove, alter or decrease existing stormwater controls. A stormwater permit is required for projects that disturb one acre or more, projects that expand upon the built-upon area resulting in 50 percent or more of the total lot area covered in impervious surfaces, and redevelopment of an existing site, either in whole or in part, that increases the pre-development impervious surface area. All projects not exempt by the ordinance, regardless of whether a stormwater permit is required, are required to adhere to the required 30-foot built upon area buffer as stated in Section 41-12. The ordinance also permits variances to the provisions listed in Chapter 41. Exceptions to the 30-foot stream buffer may be granted when there is a lack of practical alternative for a road crossing, railroad crossing, bridge, airport facility, utility crossing, or a stormwater management facility.

Town of Biltmore Forest Unified Development Ordinance (Chapter 52)

The Town of Biltmore Forest's post-construction stormwater management regulations are enforced by Buncombe County. Post-construction stormwater management regulations apply to all development in the Town of Biltmore Forest except specific agricultural and forestry activities, activities where a permit under the Mining Act of 1971 is required, commercial development on lots less than half an acre, and residential development disturbing less than one acre of land if the development is not part of a larger plan of development that is greater than one acre. Redevelopment or expansions to uses previously listed are not subject to the stormwater requirements unless the redevelopment or expansion would result in an expansion of impervious surface on commercial lots in size equal to or greater than one-half acre, would result in commercial redevelopment where more than 50 percent of the square footage of a structure is replaced on a lot in size equal to or greater than one-half acre, or would result in a total developed acreage of one acre for residential development. A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one-half acre in size or more, unless exempt. Per Town of Biltmore Forest staff, if a stormwater permit is not required, compliance with the required stream buffer per Section 52.11(B)(4) is still required as this section is governed by the Flood Damage Prevention Ordinance (which is also administered by Buncombe County). The ordinance does not permit variances to the provisions listed in Chapter 52.

PLANNING AND ZONING COMMISSION ACTION

The Board of Commissioners directed the Planning and Zoning Commission to prepare an Ordinance Amendment to the Montreat General Ordinance Chapter K Article III. The Planning and

Zoning Commission prepared the requested Ordinance Amendment at the Commission's April 17, 2025, meeting. An Ordinance Amendment application is attached to this memo along with recommended language. The Planning and Zoning Commission voted unanimously to recommend approval of this Ordinance Amendment as presented to the Board of Commissions and found that this amendment was consistent with the Town of Montreat's Comprehensive Plan.

BOARD OF COMMISSIONERS ACTION

Per Section 160D-601(a) of the North Carolina General Statute, before adopting, amending, or repealing any ordinance or development regulation, the governing body shall hold a properly noticed legislative hearing. This public hearing was noticed in the Black Mountain Newspaper on May 28, 2025, and June 4, 2025. Section 160D-604 of the North Carolina General Statute states that the governing body may refer any development regulation that is proposed to be adopted to the Planning and Zoning Commission for review and comment before making their final decision. The Planning and Zoning Commission's recommendation on this Ordinance Amendment is provided within this memo. The Board of Commissioners must approve, approve with revisions, or deny the proposed amendments.

MONTREAT CODE OF GENERAL ORDINANCES

CHAPTER K - ENVIRONMENT

ARTICLE III: STORMWATER MANAGEMENT

(Revised 6/11/2009); (Revised 2/11/2010)

300. General Provisions

1. Purpose. The stormwater management regulations of this article shall protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of stormwater runoff associated with new development. Proper management of stormwater runoff will protect property, control stream channel erosion, prevent increased flooding associated with new development, protect floodplains, wetlands, water resources, riparian and aquatic ecosystems, and otherwise provide for environmentally sound use of the town's natural resources.
2. Scope. Except as otherwise expressly stated, the stormwater management regulations of this article apply to all development within Montreat and the unincorporated Buncombe County inside the extraterritorial jurisdiction of Montreat. Additional requirements regulating development on steeply-sloping sites ($\geq 40\%$) are detailed in Montreat Code of General Ordinances, Chapter K—Environment, Article IV: Hillside Development.
3. Applicability and Exemptions. The stormwater management regulations of this article do not apply to any of the following development activities:
 - a) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including but not limited to:
 - Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
 - Dairy animals and apiary products.
 - Poultry and poultry products.
 - Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - Bees and dairy products.
 - Fur producing animals.

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- b) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality referenced as follows:

http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm
- c) Activities for which a permit is required under the mining act, G.S. 74-46 et. seq.

<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>
- d) Any development in which the owner has accrued a vested right. For the purposes of this Chapter K only, a vested right is recognized if either (1) a preliminary plan has been approved by the Planning and Zoning Commission that meets the required specifications and standards of the Town of Montreat ordinances, Buncombe County ordinances, or (ii) a Land Disturbing Permit has been issued pursuant to the Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this ordinance, and that such plan or permit remains unexpired.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this ordinance may appeal to the Town of Montreat Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop their site under plans submitted prior to the effective date of this ordinance.

Redevelopment or expansion to uses included in the above categories are not subject to the stormwater requirements unless it *qualifies* by having disturbed area of 5,000 square feet or greater; at least 24% total lot area developed to include impervious cover; or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

Nothing in this Ordinance shall require private property owners to install new or increased stormwater controls for (i) preexisting development or (ii) redevelopment activities that do not remove or decrease existing stormwater controls. When a preexisting development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before the redevelopment, irrespective of whether the impervious surface that existed before the redevelopment is to be demolished or relocated during the development activity. A property owner may elect to treat the stormwater resulting from the net increase in built upon area above the preexisting development for the purpose of exceeding allowable density under the applicable water supply watershed rules as provided in G.S. 143 214.5(d3).

301. Interpretations and Definitions

1. Meaning and Intent. If a different or more specific meaning is given for a term defined elsewhere in the Town of Montreat Code, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
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.
3. Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.
4. References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual 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.
5. Word Usage.
 - a) The term “Town” shall herein refer to the Town of Montreat.
 - b) The term “Administrator” shall herein refer to the Stormwater Administrator of the Town of Montreat.
 - c) The term “Department” shall herein refer to the NC Department of Environment and Natural Resources (NCDENR).
 - d) The term “Division” shall herein refer to the NC Division of Water Quality (NCDWQ).
 - e) “Design Manual” shall herein refer to the most current edition of the *Stormwater Best Management Practice Manual* approved by NCDWQ. Development projects, or *qualified* redevelopment projects, less than 10,000 square feet may use the *Community Conservation Assistance Program (CCAP) Stormwater Best Management Practice Design Manual* prepared by the Biological and Agricultural Engineering Department of NCSU approved by NCDENR.
 - f) Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

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6. 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.

Applicant: An owner or developer of a site who executes the Stormwater Permit Application pursuant to Town of Montreat Stormwater Ordinance.

Best Management Practices (BMP's): Best Management Practices (BMP's) are effective, practical, structural or nonstructural methods which prevent or reduce the movement of sediment, nutrients, pesticides and other pollutants from the land to surface or ground water, or which otherwise protect water quality from potential adverse effects of silvicultural activities.

Built-upon Area(BUA): The 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, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Connection: Any ditch, pipe, or other device for the diversion or transmission of storm drainage, which will in any way affect the operation or maintenance of the drainage ways.

Conveyance: Any feature of the landscape or earth, manmade or natural that carries water in a concentrated flow.

Detain: To store and slowly release stormwater runoff following precipitation by means of a surface depression or tank and an outlet structure.

Develop: Conversion of land to new service or purpose so as to make use of its resources, or to use the land for residential or commercial purposes.

Development: Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than a rebuilding activity that does not qualify as redevelopment.

Disturbed area: The portions of a development project that include graded areas disturbed so as to remove the natural cover in conjunction with development activities; both pervious and impervious surfaces installed and/or constructed including, but not limited to, buildings; concrete/asphalt pavement and gravel areas such as parking lots, patios, roads, and paths; lawns and artificially surfaced (e.g. recycled rubber mulch, crushed brick, etc.) areas; retention structures including, but not limited to, timber, stone and masonry walls;

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installation of septic/sewage systems, buried tanks or cisterns, etc.

Drainage structures: Shall include swales, channels, storm sewers, curb inlets, yard inlets, culverts, and other structures designed or used to convey stormwater.

Impervious surface: Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures. For the purpose of this subdivision, the entire impervious area of a development shall not include any portion of a project that is within a North Carolina Department of Transportation or municipal right of way.

Land disturbing activity: Any use of, or operations on, the land by any person in residential, industrial, educational, institutional, or commercial development, including road construction and maintenance, that results in a change in the natural cover or topography.

Low Impact Development (LID): A term used in the United States to describe a land planning and engineering design approach to managing stormwater runoff. LID emphasizes conservation and use of on-site natural features to protect water quality.

Municipal Separate Storm Sewer Systems (MS4s): An MS4 is a conveyance or system of conveyances that is:

- Owned by a state, city, town, village, or other public entity that discharges to waters of the U.S.;
- Designed or used to collect or convey stormwater (including storm drains, pipes, ditches, etc.);
- Not a combined sewer; and
- Not part of a Publicly Owned Treatment Works (sewage treatment plant).

National Pollutant Discharge Elimination System (NPDES): The U.S. Environmental Protection Agency (EPA) administers this stormwater permitting program that regulates stormwater discharges from three potential sources: municipal separate storm sewer systems (MS4s), construction activities, and industrial activities.

Non-structural methods: Non-structural BMPs are designed to limit the amount of pollutants available in the environment that would potentially end up in stormwater runoff. Non-structural BMPs can be achieved through such things as education, management and development practices. Examples include ordinances and practices associated with land use and comprehensive site planning.

One-year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24-hours.

Redevelopment: Any new construction on a site with pre-existing uses involving either partial or full demolition of existing structures, establishing new use(s) with a corresponding increase in impervious or partially pervious surface, or which otherwise decreases the infiltration of precipitation into the soil.

Retain: To capture and hold stormwater runoff following precipitation by means of surface depression allowing the water to infiltrate into the soil, thus reducing the hydrologic and pollution impacts downstream.

Structural methods: Physical systems installed to control pollutants and subsequent transport in stormwater. Many structural BMPs are designs based on natural systems and rely upon vegetation and soil mechanisms in order to perform as intended, such as wet ponds, green roofs, and stormwater wetlands; other, more conventional engineered solutions include bioretention areas, dry detention, permeable pavement, sand filters, and underground detention.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from rainfall events.

Stream: A watercourse that collects surface runoff.

Total Suspended Solids (TSS): A water quality indicator illustrating the particulates present in a water sample, typically expressed as weight per volume (milligrams per litre or mg/l). The value is calculated from dry-weight of particles trapped by a filter, typically of a specified pore size, in the volume of water filtered. It is listed as a conventional pollutant in the U.S. Clean Water Act.

Velocity: The average rate of flow through the cross section of the main channel at the peak flow of the storm of interest.

302. Effective Date and Transitional Provisions

This Ordinance shall take effect on February 11, 2010. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Montreat, or for which conditional use permits have been issued, prior to the effective date of this ordinance shall be exempt from complying with provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

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

303. Administration and Procedures.

1. Administration of this Ordinance. All questions arising in connection with this Ordinance shall be presented first to the Stormwater Administrator who shall be responsible for the day-to-day administration of this Ordinance. The Board of Adjustment shall have the authority to rule on matters of interpretation of this Ordinance and consider appeals from the decisions of the Stormwater Administrator. Any appeal from a decision of the Board of Adjustment shall be to the courts as provided by law. Where the regulations of this ordinance are more restrictive or impose higher standards or requirements than other environmental or land use codes for the Town of Montreat, then the requirements of this ordinance shall govern.

2. Stormwater Administrator. The Codes Administrator shall serve as the Stormwater Administrator by designation of the Board of Commissioners. The Stormwater Administrator shall have the following powers and duties under this ordinance:
 - a) To review and approve, approve with conditions, or disapprove applications for approval of plans 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, to review and make recommendations to the Planning and Zoning Commission and/or Zoning Board of Adjustment on applications for development or redevelopment approvals;
 - d) To enforce the provisions of this ordinance in accordance with its enforcement provisions;
 - e) To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance;
 - f) To provide expertise and technical assistance upon request;
 - g) To take any other action necessary to administer the provisions of this ordinance.

3. Review and Appeals Procedure.

- a) A Stormwater Control Permit is required for all development and *qualified* redevelopment on lots with:
- Disturbed area of 5,000 square feet or greater; or
 - At least 24% total lot area developed to include impervious cover;
 - Or addition of 2,500 square feet or more impervious surface, unless exempt pursuant to this ordinance.

A building permit shall not be issued for *any* development project until the required Stormwater Control Permit has been issued.

- b) Two (2) copies of the completed stormwater plan submittal shall be submitted to the Stormwater Administrator for review.
- c) A site plan which includes orientation referencing north meridian; scale of drawing; boundaries and acreage of the parcel; adjacent streets and any easements; existing and/or proposed structures including setbacks; structure dimensions and separation distance(s); contour interval; existing and proposed contours; and clear graphic indication of any proposed alterations, additions, or details showing location of any systems of stormwater control, retention and treatment.
4. Application and permit review fees shall be established by the Montreat Board of Commissioners, and may amend and update fees and policies when needed. Current application fees are posted in the fee schedule for town services. Development projects less than 10,000 SF disturbed area, which are not part of a larger plan and meet the criteria detailed in 3(a) above, are eligible for reduced stormwater fees contingent upon extent of BMP's utilized. The Administrator shall grant a fifty-percent (50%) reduction in permit fees if it is determined project stormwater measures achieve greatest practicable treatment of post-construction runoff. LEED, Green Globe, NC Healthy Built Home, Clear Water Contractor, and other programs/certifications recognized at the national or state level to be consistent with LID project goals shall receive consideration as positively impacting overall stormwater treatment. Reduced building permit fees may also be granted by the Building Inspector for "Green" building practices/materials used, and will supplement any fee reductions granted under this ordinance.
5. Plan review fees shall be double posted amount when land disturbing activity begins before a required Stormwater Control Permit is issued by the Town.

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6. The Administrator shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant within two business days with an explanation of issues requiring resolution before plan review can be initiated.
7. Within thirty (30) days of receipt of complete application for development approval, the Administrator shall take action on the plan.
8. Approval, approval with modifications, or denial of the proposed stormwater control measures shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Administrator to the Board of Adjustment. In the event a Stop Work Order has been issued for any violation of this ordinance, the party seeking to challenge the Order may request a special meeting of the Board of Adjustment to ensure a timely resolution of the matter.
9. Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
10. Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
11. The Administrator shall take action on revisions to a stormwater control application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
12. 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 and pursuant to the then current standards.
13. Application for an amendment to an approved Stormwater Control Plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Administrator, it shall be unlawful to deviate from the approved plan.
14. Stormwater Control Permit shall become null and void if the applicant has failed to make substantial progress within the prescribed timeframe as defined in this ordinance. The Administrator may grant a single, one-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

304. Permit Application and Plans.

The stormwater permit application shall describe in detail how post-development stormwater run-off will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance. The following information should also be included in the submittal:

1. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
2. 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 setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
3. Stormwater Management System Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.
4. Area-Based Requirements.
 - a) *Larger Development Projects:* All stormwater management plans relating to subdivisions or development or redevelopment plans on lots equal to or greater than one acre, or on lots less than an acre with at least 10,000 square feet disturbed area, or which are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, or other Special Use shall be prepared by a qualified registered North

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Carolina professional engineer, environmental scientist or landscape architect, and the consulting professional shall perform services only in their area of competence. The Administrator shall determine if the consulting professional may verify that the design of all stormwater management facilities and practices meets submittal requirements for complete applications, and that the designs and plans are sufficient to comply with this ordinance.

b) *Smaller Projects:* Stormwater management plans relating to development or qualifying redevelopment on lots less than 10,000 square feet disturbed area in size shall meet the minimum permit application requirements of Section 304. 1-3, and applicants shall provide designs demonstrating adequate stormwater management measures selected from a list of approved BMP's as follows:

- Diffuse or Directed Flow Designs
- Rain Gardens
- Backyard Wetland
- Stormwater Collection (Cistern) and Reuse Systems
- Vegetated Swales
- Impervious Removal
- Permeable Pavement*

*Due to the higher clay content and low permeability of many soils in our region, permeable pavement's usefulness is limited to detention as a stormwater management tool in Western North Carolina.

Detailed information regarding the design, installation and maintenance of the stormwater management BMP's listed above are contained in the *CCAP Stormwater Best Management Practice Design Manual* prepared by Biological and Agricultural Engineering Department of NCSU, and published in cooperation with NCDENR. A copy of the manual is retained at the Town Zoning and Inspections Department, or available at the following website:

<http://www.bae.ncsu.edu/stormwater/PublicationFiles/DSWC.Manual.2007.pdf>

5. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual "as built" plans for all stormwater

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management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

For larger development projects referenced in Section 304. 4 (Area-Based Requirements), the designer of the stormwater management measures and plans shall certify, *under seal*, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities or a Certificate of Occupancy is issued.

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.

305. General Standards.

Until such time as a comprehensive watershed management plan for the Swannanoa Basin is developed, the following guidelines apply.

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately 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 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.

EXCEPTION

- a) At the request of the Applicant (as set out in the Stormwater Control Permit application and shown on the site plan submitted in accordance with Sections 303 and 304 or an application for an amendment to an existing Stormwater Control Permit), the Stormwater Administrator with the written approval of the Town Manager may grant a reduction in the surface water buffer or an exception from the built-upon area requirement in Section 305(1) for an impervious driveway or bridge to provide access

to Applicant’s site and/or for utilities to serve Applicant’s site, provided and only in the event the site is permitted to be used for residential purposes only, when: (i) the Applicant provides evidence that constructing such a driveway or bridge, and/or installing such utilities, without the requested relief (i.e., either a reduction in the surface water buffer or an exception from the built-upon area requirement) is impossible or not practicable; and (ii) the proposed driveway, bridge and/or utility improvements will be located and designed to minimize impervious surface, protect against erosion and sedimentation runoff, have the least adverse effects on aquatic life and habitat, protect water quality to the maximum extent practicable, and utilize all appropriate Best Management Practices (BMPs). Nothing in this subsection 305(1)(a) shall be construed to authorize a reduction in the surface water buffer or an exception from the built-upon area requirement for any improvement other than driveway, bridge and/or utility improvements as provided herein.

- b) Before requesting relief as provided for in this subsection 305(1)(a), the Applicant shall meet with the Stormwater Administrator to discuss the nature of the proposed relief, alternatives to the proposed relief that may have a reduced impact on stormwater management, the required submittals that must accompany any request for relief and other potential concerns related to the relief being proposed.
- c) In addition to submittals required in Section 304 and elsewhere in this ordinance, the request for a reduction in the surface water buffer or an exception from the built-upon area requirement submitted by the Applicant shall also include the following:
 - i. A copy of construction plans for the proposed driveway, bridge and/or utility improvements prepared by an engineer licensed in North Carolina, which plan shall include a detailed depiction of all proposed impervious surfaces and structures;
 - ii. A certification by the engineer preparing the plans that the proposed driveway, bridge or utility structure will be located and designed to minimize impervious surface, protect against erosion and sedimentation runoff, will have the least adverse effects on aquatic life and habitat, will protect water quality to the maximum extent practicable, and will utilize all appropriate BMPs;

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- iii. A copy of all permits required by the North Carolina Department of Environmental Quality or any other state agency or authority;
 - iv. A copy of all permits required by the United States Army Corps of Engineers, and any other federal agency or authority; and
 - v. An operation and maintenance agreement in conformance with Section 309.
- d) The Stormwater Administrator and Town Manager may request additional information as they deem necessary. This information may include:
- i. A tree survey locating all trees in the proposed construction area and immediate vicinity exceeding 12” in Diameter Breast Height;
 - ii. A plan for restoration of topography and vegetation of all areas disturbed by construction; and
 - iii. Plans to protect natural features (such as a rock formation).
- e) This authority to grant a reduction in the surface water buffer and an exception from the built-upon area requirement shall be construed to be permissive and not mandatory. Without limiting the generality of the preceding sentence, the Stormwater Administrator and Town Manager may attach reasonable and appropriate conditions to approval of the requested relief. Any such conditions should relate to the relationship of the proposed improvements and stormwater, the surface water and surrounding lands being impacted (including natural features thereof), open space and vegetation being impacted, surrounding properties, or other matters that the Stormwater Administrator and Town Manager may find appropriate or the Applicant may propose. In approving a request for relief as provided herein, the Stormwater Administrator and Town Manager may impose more restrictive requirements than would otherwise be required by this ordinance and those in the application, as deemed necessary to ensure that the purposes and intent of this stormwater management ordinance are met.

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2. All other projects which are not exempt from this ordinance must submit a stormwater management plan in order to receive a permit.
3. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, or designated space on approved preliminary plat or master plan to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
4. When a Stormwater BMP or management system is established under the control of a neighborhood association or other private entity, the developer shall develop and provide an operations and maintenance manual on the BMP to the entity as well as to the Town of Montreat Zoning and Inspections Department for future reference.
5. All development and qualifying redevelopment projects which cumulatively disturb at least 10,000 square feet or which are a part of a larger plan shall implement stormwater control measures that comply with the following standards:
 - a) Project sites must employ Low Impact Development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall.

LID practices may include any combination of site design techniques, strategies, and BMPs to store, infiltrate, evaporate, retain, and detain runoff on the site to more closely replicate pre-development runoff thereby limiting the increase in pollutant loads caused by development.

- b) Wherever LID practices are not achievable, or have not been demonstrated the management measures controlling the final run-off from the site shall control and treat the difference in stormwater runoff volume leaving the project site between the pre-and post-development conditions for, at a minimum, the 1-year, 24-hour storm as determined by NOAA data for Black Mountain.

(See http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc_pfds.html)

Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

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- c) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.
- d) Peak storm water runoff rates shall be controlled for all development at or exceeding 24% built upon area for both LID and conventional approaches. The peak storm water runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak storm water runoff release rates for the 1-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
- e) No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.

306. Standards for Stormwater Control Measures.

1. Evaluation According to Contents of Design Manual. All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.
2. Determination of Adequacy; Presumptions and Alternatives. Stormwater treatment practices that are designed, and 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. The Stormwater Administrator may require the applicant to provide such documentation,

calculations, and examples as necessary to determine whether such an affirmative showing is made.

307. Additional Standards.

1. Trout Waters. In addition to standards for stormwater handling set out in the design manual, larger development and redevelopment projects that drain in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance. Smaller qualified projects that are determined to create a potential negative impact to class TR waters due to design, type of improvement, or other relevant factors, shall also be required to comply with this standard.

2. Onsite Wastewater.
 - a) *Operation and Maintenance Requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a Town Building Permit may be issued.

 - b) *Standards for Operation and Maintenance:* Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

308. General Standards for Maintenance

1. Function of BMPs as Intended. The owner of each structural BMP installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural BMP was designed.

2. Annual Maintenance Inspection and Report. The person responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report using standard forms supplied by the Administrator or, if deemed acceptable, provided

by the designer of each engineered system. The inspection report shall contain all of the following:

- The name and address of the land owner;
- The recorded book and page number of the lot of each structural BMP;
- A statement that an inspection was made of all structural BMPs;
- The date the inspection was made;
- 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 or, if not functioning as designed, a detailed description of each deficiency and how the condition was corrected, and
- For engineered structural systems requiring detailed monitoring of specific water quality parameters and indicators, the original signature and seal of the engineer, surveyor, or landscape architect performing services only in their area of competence. Systems requiring more frequent monitoring or inspections shall be maintained according to design requirements.

All inspection reports shall be on forms supplied by the Stormwater Administrator unless otherwise approved. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

309. Operation and Maintenance Agreement

1. In General. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. 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.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become

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necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and shall be referenced on the final plat recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

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 all of the following provisions:
 - a) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;
 - b) Establishment of an escrow account, which can be spent solely for maintenance, repair, replacement, and reconstruction costs of the structural BMPs;

If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for maintenance, repair, replacement, and reconstruction costs of the structural BMPs, provided that the Town Administrator or his/her designated Stormwater Administrator shall first consent to the expenditure.

- c) Both developer contribution and annual deposits for future use of “sinking funds” shall fund the escrow account. The owner of the stormwater control and management facility shall be responsible for collecting and retaining the funds. For structural BMPs constructed prior to August 16, 2023, the owner of the stormwater control and management facility shall pay into the account an amount equal to fifteen percent (15%) of the initial construction cost of the structural BMP with two-thirds (2/3) of the total amount deposited within the first five (5) years following initial construction completion and the full amount being deposited within ten (10) years of initial construction completion. For structural BMPs considered constructed after August 16, 2023, the owner of the stormwater control and management facility shall pay into the escrow account an amount equal to ten percent (10%) of the initial construction

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cost of the structural BMPs within five years of the date the Stormwater Administrator or their designee considered the BMP to be constructed and the full amount being deposited within ten (10) years of initial construction completion;

Funds shall be deposited each year into the escrow account to cover the cost of maintenance. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

- d) Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs;
- e) Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement;

The Town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

- f) A statement that this agreement shall not obligate the Town to maintain or repair any structural BMPs, and that the Town shall not be liable to any person for the condition or operation of structural BMPs;
- g) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town to enforce any of its ordinances as authorized by law; and
- h) A provision indemnifying and holding harmless the Town for any costs and injuries arising from or related to the structural BMP, unless the Town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

310. Inspection Program

Inspections and inspection programs by the Town may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections

with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the owner or occupant of any property refuses to permit such inspection, the Stormwater 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 Stormwater Administrator while carrying out his or her official duties.

311. Performance Security for Installation and Maintenance

1. The Town may, at its discretion, 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 order to ensure that the structural BMPs are (1) installed by the permit holder as required by the approved stormwater management plan, and/or (2) maintained by the owner as required by the operation and maintenance agreement. This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the Town may require in conjunction with a subdivision or development plan.
2. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus twenty-five percent (25%).
3. The amount of a maintenance performance security shall determined based on the type of BMP and a projected annual maintenance cost as recorded in the maintenance agreement.
4. Uses of Performance Security.
 - a) *Forfeiture Provisions:* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
 - b) *Default:* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the

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Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate.

Such expenditure of funds shall be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security which shall be retained for maintenance.

- c) *Costs in Excess of Performance Security:* If the Town takes action upon such failure by the applicant or owner, it may collect from the applicant or owner for the difference, should the amount of the reasonable cost of such action exceed the amount of the security held.
- d) *Refund:* Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

312. Notice to Owners

- 1. Deed Recordation and Indications On Plat. The applicable operations and maintenance agreement, including but not limited to conservation easement, or dedication and acceptance into public maintenance, pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval.

If no subdivision plat is recorded for the site, then the operations and maintenance agreement, or conservation easement, or dedication and acceptance into public maintenance, {whichever is applicable] shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

- 2. Signage. For homeowners and other associations, and where else deemed appropriate for the compliance of this ordinance, the Stormwater Administrator may require a structural BMPs to be posted with a conspicuous sign stating who

is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

3. Records of Installation and Maintenance Activities. The owner of each structural BMP shall keep records of inspections, maintenance, 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 Stormwater Administrator.

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair in accordance with the maintenance agreement, including, but not limited to a maintenance easement. If a maintenance easement is provided then it shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

313. Illicit Municipal Discharges and Connections

The Federal Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm **unless it:**

1. Consists of a discharge pursuant to an NPDES permit; or
2. Consists of a discharge from fire fighting activities; or
3. Consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:
 - Water line flushing;
 - Landscape irrigation;
 - Diverted stream flows;
 - Rising ground waters;
 - Uncontaminated ground water infiltration;
 - Uncontaminated pumped ground water;
 - Discharges from potable water sources;
 - Foundation drains;
 - Air conditioning condensation (commercial/residential);
 - Irrigation waters;
 - Springs;

- Water from crawl space pumps;
- Footing drains;
- Lawn watering;
- Individual residential car washing and charity car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges; and
- Street wash water.

314. Other Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, pet feces or animal waste, paints, garbage, and litter, or any liquid, solid, gas, or other substance, other than stormwater, provided that non-stormwater discharges associated with the following activities are allowed, **provided** that they do not significantly impact water quality:

- Water line flushing;
- Landscape irrigation;
- Diverted stream flows;
- Rising ground waters;
- Uncontaminated ground water infiltration;
- Uncontaminated pumped ground water;
- Discharges from potable water sources;
- Foundation drains;
- Air conditioning condensation (commercial/residential);
- Irrigation waters;
- Springs;
- Water from crawl space pumps;
- Footing drains;

- Lawn watering;
- Individual residential car washing and charity car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges;
- Street wash water;
- Flow from fire fighting activities; and
- Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

315. Illicit Connections

1. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
2. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
3. Where it is determined that said connection: i) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or ii) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take the following into consideration:

- The consequences of delay,
- The potential harm to the environment, to the public health, and to public and private property, and
- The cost of remedying the damage.

316. Spills

1. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
2. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of the release or discharge, as well as making any required notifications under State and Federal law.
3. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

317. Nuisances

1. The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a condition that creates a potential hazard or nuisance to the health, safety and welfare of the general public.
2. Illicit discharges and illicit connections which exist within the Town of Montreat jurisdictions, are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and shall be abated.

318. Enforcement and Violations.

1. Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee and any authorized agent of the Town.

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2. Violation Unlawful. Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to the same civil or criminal penalties as other zoning violations, with each day that a violation continues constituting a separate offense.

3. 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 shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other 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.

4. Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other 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.

5. 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 stormwater 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.

6. 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 and can include:
 - a) *Withholding of Certificate of Occupancy:* The Stormwater 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 stormwater 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 Stormwater Administrator or other authorized agent may withhold, and the Town Planning and Zoning Commission or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this ordinance for the land on which the violation occurs.
- c) *Injunction, Abatements, etc.:* The Stormwater Administrator, with the written authorization of the Town Administrator, 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 and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
- e) *Stop Work Order:* The Stormwater Administrator may issue a stop work order to the person 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 cured 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 cure such violation or violations.
- f) *Civil Penalties:* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within thirty (30) days after notice of the violation is issued by the Stormwater Administrator or his/her designee. Civil penalties may be assessed up to the full amount of penalty to which the Town is subject for violations of its Phase II Stormwater permit up to \$500.

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

7. Procedures.

- a) *Violations:* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in the Town of Montreat Code.
- b) *Extension of Time:* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater 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 person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation.

The Stormwater Administrator may grant 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 person violating this ordinance.

The Stormwater 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.

- c) *Enforcement After Time to Correct:* After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.
- d) *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 Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without

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prior written notice, through any remedy or penalty authorized by this article.

STORMWATER ORDINANCE EXCERPTS

Buncombe County Unified Development Ordinance (Chapter 26)

Section 26-303

The stormwater management regulations of this article do not apply to any of the following development activities:

- (1) Activities including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including but not limited to:
 - a. Forages and sod crops, grains and feed crops, tobacco, cotton and peanuts.
 - b. Dairy animals and apiary products.
 - c. Poultry and poultry products.
 - d. Livestock, including beef cattle, sheep, swine, horses, ponies, mules and goats.
 - e. Bees and dairy products.
 - f. Fur producing animals.
- (2) Activities undertaken on forestland for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality.
- (3) Activities for which a permit is required under the mining act, G.S. 74-46 et seq.
- (4) Commercial development on lots less than one acre and with total land disturbance less than one acre.
- (5) Residential development that disturbs less than one acre, including total buildout of the site.
- (6) Any development in which the owner has accrued a vested right. A vested right is recognized if either a preliminary plan has been approved by the planning board that meets the required specifications and standards of Buncombe County ordinances, or a land disturbing permit has been issued pursuant to Buncombe County Soil Erosion and Sedimentation Control ordinance in effect on or before the effective date of this article, and that such plan or permit remains unexpired. A vested right is recognized if created by virtue of statutory or common law, including but not limited to G.S. ch. 160D; 160D-108; 160D-108.1.
- (7) Land disturbing activities for the purpose of surveying, geotechnical exploration and access for percolation tests and wells not to exceed a maximum of one acre. This exemption does not include clearing for building pads or leach fields.

- (8) Single family home site construction and associated land disturbing activities on a lot of record prior to September 27, 2006, that results in total impervious area of 15 percent or less on the lot.

A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this article may appeal to the Buncombe County Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop his site under plans submitted prior to the effective date of this article.

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.

Section 26-322

- a) A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one acre in size or more, unless exempt pursuant to this article.

Section 26-362

- (9) Variances.

- a. Any person may petition to the board of adjustment or such other local governing body having jurisdiction in the area where the project is located for a variance granting permission to use the person's land in a manner otherwise prohibited by this article. To qualify for a variance, the petitioner must show all of the following:
 1. Unnecessary hardships would result from strict application of this article
 2. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 3. The hardships did not result from actions taken by the petitioner.
 4. The requested variance is consistent with the spirit, purpose, and intent of this article; will secure public safety and welfare; and will preserve substantial justice.
- b. The board of adjustment or other local governing body having jurisdiction may impose reasonable and appropriate conditions and safeguards upon any variance it grants, and any such hearing before the board of adjustment shall be conducted in the manner provided in the provisions of the county zoning ordinance for appeals and applications. Such hearings before any other local governing body having jurisdiction shall be conducted pursuant to its rules for hearing appeals of administrative decisions, or in accordance with the county zoning ordinance section 78-623.

City of Asheville Unified Development Ordinance (Chapter 7)

Section 7-12-2

(a) Authority, purpose, objective, findings, jurisdiction, applicability, exemptions.

(6) Applicability: Unless exempted pursuant to subsection 7-12-2(a)(7) below, beginning with and subsequent to its effective date, this section shall be applicable as follows:

- a. All development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and land disturbing applications.
- b. The provisions of subsection 7-12-2(k), pertaining to prohibition, detection and elimination of illicit connections, illicit discharges and improper disposal to the stormwater system shall apply to all properties, lands, city's MS4 and waters of the state within the territorial jurisdiction of the city as well as to all properties owned by the city within Buncombe County.

(7) Exemptions:

- a. The following activities for land disturbance shall be exempt from the provisions of the erosion prevention and sediment control regulations of subsection 7-12-2(e):
 1. An activity, including breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to: forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats, bees and apiary products, and fur producing animals.
 2. An activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in Forest Practice Guidelines Related to Water Quality and the Forestry Best Management Practices Manual, as adopted by the North Carolina Division of Forest Resources. If land disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with Forest Practice Guidelines Related to Water Quality and the Forestry Best Management Practices Manual, the provisions of this section shall apply to such activity and any related land disturbing activity on the site.
 3. An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the North Carolina General Statutes.
 4. Land disturbing activities over which the State of North Carolina has exclusive regulatory jurisdiction as set forth in NCGS 113A-56(a).

5. An activity which is essential to protect human life during an emergency and those done for the purpose of fighting fires;
6. The stock-piling of fill dirt, raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage;
7. Individual gravesites;
8. Maintenance of existing lawns where there is no change in contours;
9. Gardens, similar horticultural activities that disturb less than one acre; and
10. Land disturbing activities totaling 500 square feet or less and located 50 feet or greater from a perennial or intermittent stream.

b. The following activities for land disturbance shall be exempt from provisions of the post- construction stormwater control regulations of subsection 7-12-2(f)(1) and (2):

1. Development that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of 50 percent or less of the total acreage of the development site; provided however, such is not exempt if 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.
2. Redevelopment that cumulatively disturbs less than one acre and will have a proposed impervious surface area on completion of development of 50 percent or less of the total acreage of the development site; provided however, such is not exempt if part of a larger common plan of redevelopment or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
3. Development and/or redevelopment of a single one- or two-family dwelling that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale.

c. The following activities for land disturbance shall be exempt from all provisions of the post- construction stormwater control regulations of subsection 7-12-2(f):

1. Redevelopment that results in no net increase in built-upon area and that provides equal or greater stormwater control than the previous development on the site.

2. Activities that are exempt from the permit requirements of Section 404 of the Federal Clean Water Act (CWA), as specified in 40 CFR 302 (primarily, ongoing farming and forestry activities).

(c) Requirements and process for compliance.

(2) Permit application requirements:

b. Permit application: A permit application, intended to provide a mechanism for the review, approval, and inspection of the practices and measures for erosion, sediment and stormwater management and control, is required for all development and redevelopment unless exempt pursuant to this section.

(j) Variances, exceptions and appeals.

(1) Variances: Any aggrieved person may petition for a variance to the board of adjustment to use one's land in a manner otherwise prohibited by this section. Variances may also be requested from the aquatic buffer requirements, deed restrictions and protective covenants required herein. Reasonable and appropriate conditions and safeguards may be imposed on any variance granted. Merely providing that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. All of the procedural requirements of the entity charged with granting a variance shall be met by the applicant. Provided however, only the NCDENR—Division of Land Resources may grant a variance or exception as herein below set forth, to aquatic buffers along designated trout streams. The stormwater administrator may support an applicant's appeal for a variance if the applicant's application satisfies all of the following criteria:

- a. Unnecessary hardships would result from strict application of this section.
- 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 applicant.
- d. The requested variance is consistent with the spirit, purpose, and intent of this section; will protect water quality; will secure public safety and welfare; and will preserve substantial justice.

(2) *Exceptions:* The stormwater administrator may approve plans that do not comply with the mandatory standards of subsection 7-12-2(e)(2) of this section if the land disturbing activity is for the construction of facilities to be located on, over, or under a lake or natural water course or work done for the purposes of creating trails, walkways, river access areas, and similar facilities along the rivers, creeks or streams. Where one or more measures required under subsection 7-12-2(e)(2) are not practicable, the stormwater administrator may approve plans provided that additional measures are installed that provide the same level of treatment, discharge and velocity control.

a. *Required exceptions:* Notwithstanding the variance allowance herein, the stormwater administrator shall grant an exception from the aquatic buffer requirements, deed restrictions and protective covenants in any of the following instances:

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 pollutant 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 the BMPs.

2. When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 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 pollutant 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.

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.

b. *Limitation of aquatic buffer with a granted exception:* Where a temporary and minimal disturbance has been permitted as an exception to the aquatic buffer, to the extent practicable, land disturbing activities in the aquatic buffer shall be limited to a maximum of ten percent of the total length of the aquatic buffer within the site to be disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of aquatic buffer.

Town of Black Mountain Unified Development Ordinance (Chapter 8)

Section 8.2.2

A. *General.* Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment occurring within the corporate limits of the Town of Black Mountain, unless exempt pursuant to section 8.2.2(C) of this section, exemptions.

B. *Activity threshold requiring a stormwater permit.* A stormwater permit is required for any development and redevelopment which results in an increase of impervious surface area by a net amount of 5,000 square feet or more. Projects developed under a common plan adding 5,000 square

feet or more of impervious surface, regardless of the number of parcels included in the plan, requires a stormwater permit.

All phased developments must achieve post-construction requirements at the completion of each phase unless otherwise approved by the stormwater administrator.

C. Exemptions.

(1) Activities that are 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) are exempt from the provisions of this ordinance.

(2) Development which adds less than 5,000 square feet of impervious surface and is not part of a larger common plan of development does not require a stormwater permit.

(3) Pre-existing development or development activities that do not remove or decrease existing stormwater controls shall not be required to install new or increased stormwater controls.

(4) When a pre-existing development is redeveloped, either in whole or in part, increased stormwater controls shall only be required for the amount of impervious surface being created that exceeds the amount of impervious surface that existed before redevelopment.

(5) Development activities within the town's designated historic district.

Section 8.2.9

A. Permit required; must apply for permit. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this ordinance.

Section 8.2.16

A. Any person may petition the Town of Black Mountain for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. The Town of Black Mountain may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show all of the following:

(1) Unnecessary hardships would result from strict application of this ordinance.

(2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(3) The hardships did not result from actions taken by the petitioner.

(4) 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.

B. Statutory exceptions. Notwithstanding subsection (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

(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 SCMs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 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 SCMs.

1. 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.

2. The stormwater runoff from the entire impervious area of the development is collected, treated and discharged so that it pass through a segment of the vegetative buffer and is managed so that it otherwise complies with all applicable state and federal stormwater management requirements.

Town of Weaverville Unified Development Ordinance (Chapter 20)

Section 20-1112.

The town has consented to the application of the Buncombe County construction and post-construction stormwater control regulations within the town's jurisdiction and all permitting, inspections and enforcement of those regulations shall be conducted by Buncombe County.

Town of Woodfin Unified Development Ordinance (Chapter 41)

Section 41-4

(a) Commencement date. Beginning with and subsequent to its effective date, the requirements of this section are applicable to all development and redevelopment located within the town limits of Woodfin including, but not limited to, grading and zoning permit applications and applications for subdivision, unless exempt pursuant to this section.

(b) Activity threshold requiring a stormwater permit. The standards in this section shall apply to all of the following new development and redevelopment projects.

(1) Projects that disturb one acre or more.

(2) Projects that disturb less than one acre when:

a. The project is 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.

b. All phases of the development must achieve post-construction requirements at the completion of each phase unless otherwise approved by the stormwater administrator.

(3) The project expands the built-upon area resulting in 50 percent or more of the total lot area covered in impervious surfaces.

(4) Redevelopment of an existing site, either in whole or in part, that increases the pre-development impervious surface area. Increased stormwater controls shall only be required for the amount of impervious surface being added.

(c) Exemptions.

(1) Redevelopment that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development, regardless of the percent of impervious surface.

(2) Pre-existing development or development activities that do not remove, alter or decrease existing stormwater controls.

(3) Activities that are 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).

Section 41-11

(a) Permit required. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this chapter. A permit may only be issued subsequent to a properly submitted and reviewed complete permit application, pursuant to this section.

Section 41-12

(b) Access encroachments. Pre-existing lots and those areas identified in adopted master plans are allowed a minimum encroachment into the 30-foot buffer for the purpose of transportation and access if all of the following criteria are met:

1) It is for the purpose of vehicles or non-motorized transportation and access only, such as trails, greenways, walkways, driveways, alley ways or access roads. Residential, accessory or commercial structures are not included in this encroachment allowance;

- 2) Utility structures that follow the right-of-way for the access are only allowed within the disturbance area of the roadway, an existing utility easement or bridge structural footprint;
- 3) It is the minimum encroachment necessary for access of the property, or is part of a trail, sidewalk or street alignment included on the Town of Woodfin's pedestrian master plan, greenway plan or transportation plan or other approved master plan;
- 4) The encroachment area does not exceed more than ten percent of the total land area within the required buffer area, and shall never exceed more than 100 feet of linear disturbance for 1,000 feet of linear stream;
- 5) Provides the minimum area of disturbance needed for access and includes mitigation of stream and stream bank disturbance as part of the design;
- 6) Encroachments which include stream crossing should be designed so that crossing is perpendicular to the stream centerline to the maximum extent practicable; and
- 7) Encroachments which are parallel to the watercourse should be designed to incorporate the maximum buffer practicable and still allow the necessary encroachment. Additional stormwater management techniques to slow and filtrate run-off should be included between the disturbed area and the waterway. Such parallel encroachments may be subject to additional review by the division.
- 8) Any encroachment into the required surface water buffer which exceeds this allowance shall require a variance from the board of adjustment.

Section 41-16

- (a) Variance standards. Any person may petition the Town of Woodfin for a variance granting permission to use the person's land in a manner not permitted by this chapter. The Town of Woodfin may impose reasonable and appropriate conditions and safeguards upon any variance it grants. To qualify for a variance, the petitioner must show each of the following:
 - 1) Unnecessary hardships would result from strict application of this chapter. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - 2) The hardship results from conditions that are peculiar to the property, such as the location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Housing Act for a person with a disability.
 - 3) The hardships did not result from actions taken by the applicant or property owner. The act of purchasing property with knowledge that circumstances exist may justify the granting of a variance is not a self-created hardship.
 - 4) The requested variance is consistent with the spirit, purpose, and intent of this chapter; will secure public safety and welfare; and will preserve substantial justice.

The Town of Woodfin may impose reasonable and appropriate conditions upon any variance it grants.

Town of Biltmore Forest Unified Development Ordinance (Chapter 52)

Section 52.03

- A. The stormwater management regulations of this chapter do not apply to any of the following development activities:
- (1) Activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to humans, including, but not limited to:
 - (a) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;
 - (b) Dairy animals and apiary products;
 - (c) Poultry and poultry products;
 - (d) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;
 - (e) Bees and dairy products; or
 - (f) Fur-producing animals.
 - (2) Activities undertaken on forest land for the production or harvesting of timber and timber products and conducted in accordance with best management practices as set out in Forest Practice Guidelines Related to Water Quality;
 - (3) Activities for which a permit is required under the mining act, G.S. §§ 74-46 et seq.;
 - (4) Commercial development on lots less than one half acre;
 - (5) Residential development that disturbs less than one acre, including, total build out of the site, if it is not part of a larger plan of development that is greater than one acre; or
 - (6) Any development in which the owner has accrued a vested right. A vested right is recognized if either a preliminary plan has been approved by the County Planning Board that meets the required specifications and standards of county ordinances, or a land-disturbing permit has been issued pursuant to county soil erosion and sedimentation control ordinance in effect on or before the effective date of this chapter, and that such plan or permit remains unexpired.
- B. A party in interest to a particular plan found to have no vested right to construct or develop on or before the effective date of this chapter may appeal to the County Board of Adjustment for a hearing de novo. Such hearing shall be expedited and shall be limited to the issue of whether the landowner has a vested right to construct or develop his or her site under plans submitted prior to the effective date of this chapter.
- C. Redevelopment or expansions to uses included in the above categories are not subject to the stormwater requirements unless it would result in an expansion of impervious surface on commercial lots in size equal to or greater than one-half acre, would result in commercial redevelopment where more than 50% of the square footage of a structure is replaced on a lot in

size equal to or greater than one-half acre, or would result in a total developed acreage of one acre for residential development.

Section 52.06

- A. A stormwater permit is required for all development and redevelopment which equals or exceeds one acre of residential development, or on commercial lots that are one-half acre in size or more, unless exempt pursuant to this chapter.

Phase II Stormwater Model Ordinance for North Carolina

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UNC
ENVIRONMENTAL FINANCE CENTER

Revision history

--changes from 9/7/05 version:

Numerous changes to conform to 2006 Stormwater bill, SL 2006-246. Notably:

- revised standards for design storm and drawdown rate
- special provisions for Shellfish Resource Waters and CAMA projects
- separation from seasonal high water table for certain BMPs
- explicit authorization for clustered development
- conformed vested rights provisions for phased development plans
- statutory exceptions to buffers, deed restrictions and protective covenant requirements
- conformed definitions: *Development, redevelopment, low-density project, owner*

Editorial and typographical changes suggested by Sarah Bruce, Triangle J COG and others

Additional types of persons authorized to do inspections

--Changes from 7/1/05 draft:

Corrected reference to the Code of Federal Regulations (CFR) in XX-105(B), Exemptions (p. 12 of the 7/1/05 pdf file)—reference should read “40 CFR 232” rather than “40 CFR 302.”

--changes from 5/19/05 draft.

-§ 105(D) added reference to local zoning and jurisdictional boundary ordinances as potentially important authority for determinations about site-specific applicability.

§ 108(A) Comment--added reference to nuisance code provisions as potentially conflicting with Phase II stormwater

§ 203 – removed stray right bracket.

§ 306 Comment--added cautionary note about accepting BMPs for maintenance.

§ 402(B)--in light of concerns about failure of BMPs owned by homeowners' associations, added hold harmless clause for local governments that must take over BMP maintenance due to failure of the homeowners' association to keep a BMP functioning correctly.

§ 503(C)--added comment noting potential need for enhanced notice and opportunity to correct violations if the stormwater ordinance is enacted and administered as an exercise of the unit's planning and zoning authority.

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SECTION 1: GENERAL PROVISIONS

Commentary: Throughout this model ordinance, the bold underlines serve as prompts where text that is appropriately customized for the locality should be inserted. For example, where “name of governing board” is indicated in the blank, the name of the local governing body – for example, “Tarheelville City Council” or “Dogwood County Commission” – should be inserted.

Commentary from the drafters of the model ordinance are placed in boxes such as this. These comments should be removed from the ordinance text actually adopted; they are not part of the ordinance itself.

Optional provisions are provided throughout this document and are intended to address the diverse needs of local government depending on characteristics such as population, financial resources, and staffing resources. Optional provisions are shown in [brackets] and generally are accompanied by some explanation in the commentary.

If adopted in its entirety, either with or without the optional provisions, this ordinance is designed to ensure that communities comply with Phase II post-construction requirements. Local governments may make changes to or omit any of the model’s provisions, but the resulting non-standard ordinance will have to be reviewed and approved by the Division of Water Quality of the North Carolina Department of Environment and Natural Resources before Phase II compliance is assured.

Defined terms are shown in italics. The definitions section of the ordinance is at the end.

Footnotes give information on the original source of the text language. Note that changes may have been made in the source language to better match North Carolina’s needs.

xx-101 TITLE

This ordinance shall be officially known as “The Phase II Stormwater Ordinance.” It is referred to herein as “this ordinance.”

xx-102 AUTHORITY

The (name of governing board) 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; (name of municipal charter, if relevant); North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185 and (cite any special legislation applicable to the specific local government). [; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)]; Article 21, Part 6 (Floodway Regulation) [; Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18].

Regarding this section which recites authority for this ordinance: Some jurisdictions may wish to integrate this ordinance with a local erosion and sediment control ordinance, in which case adding the reference to Chapter 113A is appropriate. Some jurisdictions may wish to integrate this ordinance with existing floodway regulations, in which case adding the reference to Chapter 143, Article 21, Part 6 is appropriate. Note that both the erosion and sediment control and floodway regulations are appropriate for integration with Phase II stormwater controls, but each of these programs has particular requirements that are not covered in this model ordinance.

Local governments that anticipate including a program of open space acquisition as part of their stormwater program should include a reference to statutory authority for that function here as well (Article 19, Part 4, Chapter 160A, as well as G.S. 160A-372).

Jurisdictions that are adopting this ordinance as part of a land use ordinance or unified development ordinance should include a reference to statutory authority for planning and regulation of development (Chapter 153A, Article 18 (Parts 1, 2, and 3), including particularly but not limited to G.S. 153A-324 (enforcement), G.S. 153A-330 and 331 (subdivision), and G.S. 153A-340 (zoning). In addition, when adopting this ordinance as part of land use regulations local governments should follow the standards for adoption/amendment of such ordinances set out in G.S. 153A-323 and 160A-.

xx-103 FINDINGS

It is hereby determined that:

Development and *redevelopment* alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology that are harmful to public health and safety as well as to the natural environment; and

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

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater 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 this jurisdiction, to adopt minimum stormwater controls such as those included in this ordinance.

The preceding paragraph should not be included by a jurisdiction that is adopting this ordinance without having been designated as subject to the Phase II state and federal stormwater requirements.

Therefore, the (name of governing board) establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge. ¹

xx-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-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-*development* stormwater 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.

¹ Adapted from Stormwater Center/EPA Model Ordinance.

Commentary: The optional reference to illicit discharges should be included only if the jurisdiction is using this ordinance to add to or integrate its powers to regulate illicit discharges into the municipal stormwater system. Illicit discharge control is one of the six required minimum measures of Phase II stormwater programs; Phase II communities must implement an illicit discharge program. But the timing and approach to illicit discharge controls may vary from the timing and approach to post-construction stormwater control, which is the required Phase II minimum measure at which this model ordinance is most directly aimed. A separate set of model provisions for illicit discharge control is provided in optional section 8 of this ordinance.

The other minimum measures mandated in Phase II stormwater programs – public education and outreach; public participation and involvement; construction site runoff control; and pollution prevention/good housekeeping – should also be pursued by the jurisdiction as part of its Phase II program.

(B) Specific

Commentary: The locality adopting the ordinance may wish to supplement the objectives included below, depending on the nature of its stormwater program and specific local needs. This list is a general set of objectives to reduce the impacts of post-development stormwater runoff quantity and quality from land development activities. More specific objectives might be included by the locality adopting the ordinance based upon a watershed management plan, impervious surface targets, the findings of a watershed assessment or study, a local water quality problem or Total Maximum Daily Load (TMDL) requirement.

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. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.

[8. Coordinating site design plans that include open space and natural areas with the (name of the open space and natural areas protection plan of the local government, or the section of its comprehensive plan dealing with open space/natural areas, if applicable).]²

[9. Controlling illicit discharges into the municipal separate stormwater system.]

[10. Controlling erosion and sedimentation from construction activities.]

[11. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.]

Commentary: Optional provisions 8, 9, 10 and 11 are appropriate only if the jurisdiction is integrating this model ordinance with existing programs for open space protection, illicit discharge control, erosion and sediment control for construction, and/or floodway and related drainage regulation. Any such existing programs may be good candidates for inclusion in an integrated stormwater ordinance, which would have the advantage of collecting most or all the relevant stormwater-related development requirements in a single place. However, this model ordinance does not attempt to provide comprehensive substantive provisions for these programs.

xx-105 APPLICABILITY AND JURISDICTION

Commentary: The applicability mandate in the temporary rule (15A NCAC 2H.0126) is that the post-construction program cover “all new development [and redevelopment] projects that cumulatively disturb one acre or more, and to projects less than an acre that are part of a larger common plan of development or sale.”

Session Law 2004-163 provides that, to the extent that post-construction measures are implemented by a zoning ordinance, vested rights shall be determined as provided in G.S. 160A-385.1, G.S. 153A-344.1, and other applicable provisions of statutory and common law. To the extent that post-construction measures are implemented by means other than a zoning ordinance, vested rights shall be determined as provided by applicable statutory and common law.

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions.

(B) Exemptions

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 Adapted from Metropolitan North Georgia Water Planning District Model Ordinance.

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.

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.³

Activities that are 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) are exempt from the provisions of this ordinance.

(C) 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.

(D) Map

Commentary: The geographic coverage area is determined by reference to the standards in Session Law (SL) 2006-246., The *Division* has created a geographic information system (GIS) that can be used in conjunction with local GIS data to show jurisdictional limits. Local governments that adopt this ordinance in whole or part should consider designing their maps so as to integrate easily with this *Division* GIS.

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of (name of local government), North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.⁴

The Stormwater Map shall be kept on file by the Stormwater 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 reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

xx-106 INTERPRETATION

Commentary: Each local government should consider whether to use existing rules of interpretation, if any are in current use for other ordinances, or whether to adopt the ones provided here. If the local government uses existing rules, they should be fully reviewed for their potential effect on the application of this ordinance.

³ Adapted from the North Georgia Model Ordinance.

⁴ Adapted from North Carolina Model Watershed Protection Ordinance.

(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 (name of municipality's or county's code of ordinances), the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.⁵

(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 Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator, who shall respond in writing within 30 days. The Stormwater 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 Manual*), 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 (name of local government), the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the (name of local government). 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 Stormwater Administrator of (name of local government) may be carried out by his or her designee.

⁵ Provisions A through H were adapted from Town of Cary Land Development Ordinance.

(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 and events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

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

xx-107 DESIGN MANUAL

(A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design, implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.⁶

(B) Relationship of Design Manual to Other Laws and Regulations

Commentary: This provision is intended to prevent a situation where another, less stringent standard has the force of law, and might be interpreted as overriding the design manual if the manual does not have the force of law – for example, where a community has an enacted standard for storm sewers that are to be accepted into the public maintenance system, and this enacted standard is less stringent than the guidelines in the design manual.

⁶ From Stormwater Center/EPA Model Ordinance.

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

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information 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]

Commentary: This optional section would be relevant if a special local design manual is in use.

[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.⁷

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

xx-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

Commentary: This is a standard legal provision that generally provides that the stricter law or regulation will control in the event of conflict.

From a policy rather than a legal perspective, it should be noted that ordinances and standards in many communities may interfere with effective site design and planning for stormwater management. Some examples may include:

- Excessive curb & gutter requirements that increase directly connected impervious areas discharging directly into the stormwater conveyance system
- Street design standards that provide for overly generous pavement widths in low-traffic areas
- Minimum residential lot sizes and other ordinance provisions that hinder sensitive site layout designed around riparian buffers, conservation of open space and clustered development.
- Oversized minimum parking requirements that result in large paved parking lots
- Building codes that add to the cost of rehabilitating older buildings, prevent adaptive re-use in existing urbanized areas or promote greenfield development
- Nuisance code provisions that limit vegetation height and restrict wildlife habitat

Thus, many common development standards tend to promote the creation of impervious surface and encourage sprawling, low-density land use patterns that actually worsen stormwater problems, especially when viewed at the watershed scale.

⁷ Adapted from Metro North Georgia Water Management District and Stormwater Center/EPA Model Ordinances.

Each jurisdiction will need to consider its standards and ordinances in light of their effects on stormwater runoff. For example, curb & gutter policies may need to be reformulated to allow alternatives that let stormwater flow across vegetative strips before it is sent to the stormwater conveyance system; planting islands may be required to limit the impervious surface in cul-de-sacs; and smaller lot sizes with cluster provisions can permit open space in yards to be reconfigured as preserved common open space. A number of North Carolina cities and counties have adopted the new “Rehab Code” which provides adjusted building code standards to promote the re-use of older buildings (information available at www.ncrehabcode.com).

If possible, communities should undertake a comprehensive review of their policies and standards with the involvement of planning and zoning staff, public works or engineering personnel, and the Stormwater Administrator, with the goal of reducing regulatory barriers and enabling designers to develop plans that deal with stormwater in the most environmentally sound and cost-effective ways.

Some communities may find that it makes sense to approach this comprehensive review along with an evaluation of whether a watershed-wide plan should be implemented (see Section xx-304)

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. 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.⁸

(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 an easement, covenant, or other private agreement, 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 (name of local government) be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.⁹

xx-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.

xx-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on _____, 200____.

⁸ From Metro North Georgia Water Management District Model Ordinance.

⁹ Adapted from Town of Cary Land Development Ordinance.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the (name of local government) prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions[, including but not limited to illicit discharge provisions].

Commentary: As noted, illicit discharge provisions are optional for this ordinance, although a Phase II community must address illicit discharges through a legal mechanism as one of the six minimum measures required by Phase II. If included in this ordinance, then the last phrase should be added. If the ordinance is adapted by the local jurisdiction to incorporate additional components in addition to post-construction runoff control and illicit discharge, the paragraph above should be revised to reflect the applicable provisions (as in the case of illicit discharge) regardless of when a complete application was submitted and accepted.

A phased development plan shall be deemed approved prior to the effective data of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

1. For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
- 2 For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.¹⁰

(C) Violations Continue

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.¹¹

¹⁰ SL 2006-246.

¹¹ Adapted from Town of Cary Land Development Ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

Commentary: Jurisdictions should consider how to coordinate the stormwater review process with local land development approval procedures. Activities that trigger stormwater review can occur earlier than activities that trigger a zoning permit or preliminary subdivision plat, and so the stormwater permit review should occur earlier than a building permit or a zoning permit (sometimes called a “change-in-use approval,” “certificate of zoning compliance” or similar name). Communities that administer their own grading permit, or that rely on a state-issued erosion and sedimentation control plan approval, should ensure that stormwater permit review occurs prior to or in conjunction with that grading or sediment and erosion control plan approval.

In some cases, a stormwater plan for a subdivision may require revision when the preliminary subdivision plan is finalized. One approach to managing the process would be to require an initial stormwater approval as a prerequisite for preliminary plat approval; then after the preliminary plat has been approved, the final stormwater permit can be approved, provided that nothing has happened in the preliminary plat stage to compromise the stormwater design. Alternatively, the final stormwater permit could be obtained in advance, and the subdivision review process could require a signoff from the Stormwater Administrator affirming that the plat is consistent with approved stormwater plans.

xx-201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the (name of governing board) to administer and enforce this ordinance.

Commentary: The person designated as the Stormwater Administrator will need to have the technical background and expertise to carry out the duties outlined in the ordinance. It may be necessary for some communities to contract out the position either to another local government or possibly to a private entity.

(2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the (name of local municipal or county code) and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans 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, to review and make recommendations to the (name of governing board) on applications for *development or redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.

- e. To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.
- f. To provide expertise and technical assistance to the (name of governing board and, if a stormwater board is established, the name of that board as well), upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

xx-202 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

A stormwater 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 and reviewed permit application, pursuant to this section.

(B) Effect of Permit

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater 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 stormwater 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. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

Commentary: This provision mandates a permit for stormwater management on all non-exempt sites. Both structural BMPs and site design are covered by the permit review and approval. For example, if a site uses primarily low-impact development rather than specific BMPs to manage and control stormwater runoff, the design and layout are subject to review and approval under a stormwater permit, just as are the design and layout of BMPs.

However, as the provision makes clear, the permit is for the construction period only and does not normally endure past post-inspection approval. Ongoing maintenance of BMPs is ensured by Section 4, Maintenance, which gives specific requirements for ongoing operation and maintenance, including a recorded O&M agreement that is binding on subsequent owners, annual inspections, reporting, and record-keeping requirements.

(C) Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

Commentary: The local government may choose to treat stormwater applications by persons other than the owner/sole owner in the same way that other such applications (such as zoning requests and variances) are treated.

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

(1) Application Contents and Form

The Stormwater Administrator [Stormwater Advisory Board] 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 stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(2) Submission Schedule

The Stormwater Administrator [Stormwater Advisory Board] 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.

[*Optional provision:* Replace first sentence with “The Stormwater Administrator shall establish a submission schedule for applications, which shall be reviewed and approved by the (name of governing board) [Stormwater Advisory Board].]

(3) Permit Review Fees

The (name of governing board) 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.

Commentary: Fees for **State** stormwater permits are limited under G.S. 143-215.3D to \$420. The jurisdiction should consider whether to use this same limit in order to be consistent with state-issued permits. Alternatively, under the reasoning of Homebuilder’s Association v. Charlotte, 336 N.C. 37 (1994), which upheld the inherent power of North Carolina local governments to charge fees to cover the costs of regulatory programs, the jurisdiction could analyze the full costs of its Stormwater Phase II program and set its fees at some reasonable level that is expected to cover those costs.

Commentary: Fees for application review should be distinguished from fees or user charges that a jurisdiction may want to impose as a means of paying for its ongoing stormwater program as a “public enterprise” (also known as a “stormwater utility”). North Carolina law allows the imposition of such fees and charges, but only with the process and limits set out at G.S. § 160A-314. The best practice for all jurisdictions adopting this ordinance or similar Phase II ordinances would be to schedule and hold a public hearing in accordance with § 160A-314, whether or not user fees will be assessed to pay for the stormwater program. This ordinance does not attempt to set out the additional provisions that would be needed to create a stormwater utility.

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

Commentary: The Administrative Manual may be as simple as a three-ring binder containing in one place the updated master versions of the ordinance, fee schedule, application requirements, submission schedule, and so on. Copies of the information can be made available to the public as photocopied handouts or simple brochures at the permit counter, clerk's office, or other convenient location.

(E) Submittal of Complete Application

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater 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 Stormwater 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 _____ working days after a complete application is submitted,] the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

Commentary: The time limitation here and in subsection (3) below is optional. The adopting local government may wish to consider allowing increased flexibility in review times for a period of time immediately following adoption of the ordinance, as both staff and applicants adjust to the new requirements.

(1) Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater 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 Stormwater Administrator [within _____ working days] after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) 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 for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

Commentary: Some local governments may prefer not to allow the first re-submittal without requiring the additional fee. The policy choice is up to the local government and may be adjusted to be consistent with re-submittal policies for other types of permit applications.

xx-203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

Commentary: This section allows a pre-application conference and conceptual discussion between the developer and the Stormwater Administrator, at the discretion of the Stormwater Administrator. It creates some additional steps in the review process, thus imposing costs, and so may not be appropriate for all applications and for all time. However, for large development projects, those with substantial impact, or for developers, engineers or stormwater administrators who are new to the jurisdiction's processes and rules for handling stormwater, the conference may be a useful way to focus and improve the application and the project itself.

Smaller communities or those with fewer staff resources may feel that providing the option of concept plans and consultation meetings would be unduly burdensome, given their present limitations. However, the option may become useful as the community grows or adds staff – even if it is rarely utilized in the beginning. Also, concept plan review may be kept very informal if this would help to limit costs. For this reason the provision should be included in the adopted ordinance. Note that the suggested submittal of materials outlined in (1), (2), and (3) below is permissive, not mandatory.

Finally, because stormwater management is best addressed as early as possible in the site design and approval process, communities with more staff resources should consider whether an informal consultation meeting should be mandatory or at least strongly encouraged. This would allow dialogue and information sharing before “hardlining” of site design begins. It could result in cost savings to applicants in terms of more efficient site design (working with a site's existing vegetation or topography, for example, as stormwater management components).

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater

management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the (name of locality's open space or natural area protection plan or section of its comprehensive plan dealing with open space/natural resources, if applicable), and other relevant resource protection plans should 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:

(1) Existing Conditions / Proposed Site Plans

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

(2) Natural Resources Inventory

A written or graphic inventory of 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 setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

(3) Stormwater Management System Concept Plan

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

(B) Stormwater Management Permit Application

The stormwater management permit application shall detail how post-*development* stormwater 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 shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater 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 Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section xx-202(D).

(C) As-Built Plans and Final Approval

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the (insert name of local official, department, or agency responsible for issuing building permits and certificates of occupancy) without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the (name of local official, department, or agency that issues building permits) may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

xx-204 APPROVALS

(A) Effect of Approval

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

(B) Time Limit/Expiration

Commentary: An expiration date or validity period for permits/approvals to require that construction begin and be completed within certain time periods should be included for a number of reasons, such as preventing obsolete approvals from persisting indefinitely. This ordinance allows for a single, one-year extension upon written request. Where possible, the time limit should run concurrently with the erosion and sedimentation control plan approval to avoid staggered expirations.

An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

xx-205 APPEALS

(A) Right of Appeal

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance made by the Stormwater Administrator, may file an appeal to the (Board of Adjustment or governing board) within 30 days.

Commentary: We recommend that appeals be routed to Board of Adjustment if the community has one, and the procedures for stormwater appeals dovetailed as far as possible with procedures for handling other kinds of appeals to that board (such as appeals of zoning determinations). This recommendation is for both policy and legal reasons: (1) it avoids the problem of creating and managing another specialized board; and (2) Boards of Adjustment are accustomed to conducting quasi-judicial procedures, which must also be applied to stormwater appeals.

If the community does not have a Board of Adjustment, appeals should be routed to the same board to which other appeals from decisions of administrative staff are sent (which may be the governing board, as long as it is acting in a quasi-judicial capacity). For those communities which do not have an existing quasi-judicial procedure that is already being followed by a Board of Adjustment or other body, optional subsections (B) and (C) below should be added to provide basic procedural rules.

(B) [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 forms provided by (name of local government). The Stormwater Administrator shall transmit to the (name of board that will hear appeals) all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the (name of board that will hear appeals) shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.]

(C) [Review by Superior Court]

[Every decision of the (name of board that will hear appeals) 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:

- (1) The decision of the (name of board that will hear appeals) is filed; or

(2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the (Chair or Secretary of the board that will hear appeals) at the time of its hearing of the case.]

SECTION 3: STANDARDS

xx-301 GENERAL STANDARDS

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

Commentary: Standards for the high-density/low-density option for complying with Phase II implementation are given in the following provisions. However, note also that pursuant to SL 2004-163, Section 12, subsection (14)i., it is permissible for a local government to implement Phase II requirements by other means. That provision specifies that the regulated entity may comply by developing its own comprehensive watershed plan, designing its own post-construction practices based on the Department's guidance and engineering standards, or incorporate the post-construction model practices set out in the Stormwater Management Rule. A placeholder for application of a comprehensive watershed plan approach is provided in Section xx-304 below. Presumably, the other two approaches specified in the statute would be implemented through formulation of a special Design Manual applicable in the local jurisdiction (see Section xx-107, Design Manual).

xx-302 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

Low-density projects shall comply with each of the following standards:

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.

Commentary: The term "maximum extent practicable" is not defined in the federal Phase II rule or the temporary state rule. However, the commentary accompanying the federal rule clarifies that the "maximum extent practicable" standard should be applied in a site-specific manner taking into account cost considerations as well as protection of water quality. It appears, therefore, that a site-specific review should be performed to ensure that vegetated conveyances in low-density projects meet this standard.

- (B) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately 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) 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

Commentary: The cited portion of the riparian buffer rule provides, "When a landowner or other affected party believes that the maps have inaccurately depicted surface waters, he or she shall consult the *Division* or the appropriate delegated local authority. Upon request, the *Division* or delegated local authority shall make on-site determinations" regarding whether the stream depicted is subject to the rule. If the Phase II community has a riparian buffer program in place, it may be able to obtain delegation from the State to make "stream calls." If a buffer program is not already in place, the Phase II community may be able to get training for its Stormwater Administrator to make stream determinations through the *Division* or the Cooperative Extension Service.

- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

xx-303 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

High-density projects shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat runoff from the first inch of rain [and, for projects in areas subject to the Coastal Area Management Act of 1974, the measures shall control and treat runoff from the first one and one-half inches of rain. In addition, projects that are located within one-half mile and draining to *Shellfish Resource Waters* must control and treat the difference in stormwater runoff from the pre- and post-*development* conditions for, at a minimum, the *1-year, 24-hour storm*.] Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.

The optional provisions should be included for jurisdictions in the coastal zone. They were added by SL 2006-246.

- (B) All structural stormwater treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*;
- (D) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately 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) 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). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.
- (E) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

xx-304 COMPREHENSIVE WATERSHED PLAN

Commentary: SL 2006-246, § 9(b) provides that public bodies may develop and implement comprehensive watershed protection plans that can be used to meet part, or all, of the post-construction requirements of the rule. Thus, if a suitable comprehensive watershed plan has been approved by the local government adopting this ordinance and approved by the *Department*, this section can be used in place of the low-density/high-density standards set out in Sections xx-302 and xx-303 above. In that case, all the standards of the watershed plan that would be appropriate for implementation by an ordinance should be set out in this

section. (Some aspects of a watershed plan would be implemented by other, non-regulatory means, such as capital improvements programming, staffed local government activities, and other methods not suitable for inclusion in an ordinance).

In addition to eliminating some of the administrative burdens created with a site-by-site permitting and maintenance program, a comprehensive watershed plan can address factors that are not dealt with in applying a site-by-site low-density or high-density approach. As one example of the shortcomings of site-by-site regulation, lot coverage limitations under a low-density district may actually worsen stormwater effects when viewed at the watershed or sub-watershed scale. That is because low densities frequently require more off-site impervious infrastructure (such as roads) than the same amount of development configured in a more urban pattern. In addition, surfaces such as turfgrass lawns can act like impervious surface in the amount of runoff generated due to compaction and other factors. Nutrient loading from lawn fertilizers is often a problem. These drawbacks and others have brought many localities concerned about water quality to apply a watershed-wide approach, rather than attempting to control impacts at the level of individual parcels or development sites or applying a one-size-fits-all impervious surface limitation.

A watershed approach will use a variety of tools to limit stormwater impacts, tailored to the specific needs that are identified in the watershed. With this approach, a comprehensive program for resource protection is developed based on the specific issues that are unique to the watershed. For example, one watershed may have steep slopes or highly erodible soils that warrant special treatment, while surface waters in another watershed may sustain special uses such as swimming or fishing that merit other protective measures. Some watersheds will be particularly affected by the presence of specific pollutants, while others may involve the consideration of aquifer recharge areas. A comprehensive watershed plan will involve data collection and a rational analysis of the issues that are present.

Based on the analysis, the most appropriate means of implementation should be chosen. The menu of implementation options could include:

- Riparian buffers scaled to achieve reduction of specific pollutants
- Programmatic acquisition and preservation of open space, especially hydrologically important open space.
- Conservation of important water-related features or critical/sensitive areas (e.g., wetlands, floodplains, steep slopes, intermittent or seasonal streams, vernal pools, forested cover)
- Allowing higher-density or compact development options on less sensitive sites
- Providing for flexibility in the application of an impervious surface district
- Adjusting infrastructure policies to reduce pavement requirements
- Establishing graduated (rather than averaged) utility fees based on impacts generated
- Developing a list of preferred BMPs that are tailored to identified water quality protection goals
- Allowing low-impact development (LID) options to allow decentralized management of rainfall in a way that mimics pre-development hydrology
- Public education and cleanup campaigns
- Restoration of impaired streams and ecosystems

Some of the questions that should be resolved through the watershed planning process include:

- Which hydrologic variables do we want to manage in the subwatershed?
- What are the primary stormwater pollutants of concern?
- Which management practices should be avoided because of their environmental impacts?
- What is the most effective mix of structural and non-structural management practices that can meet the subwatershed goals?
- What is the most economical way to provide stormwater management?
- Which stormwater management practices are the least burdensome to maintain with local budgets?¹²

¹² Center for Watershed Protection.

A number of information sources are available to communities that wish to undertake a comprehensive watershed plan. The Center for Watershed Protection, for example, provides a variety of online resources at their website, <http://www.cwp.org>.

In summary, a comprehensive watershed approach is widely viewed as the most effective way to achieve water quality goals. It can also eliminate many of the burdens to local government and to property owners that arise from a site-by-site permitting and maintenance approach.

xx-305 STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of Design Manual

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, ~~and~~ 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. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

(C) Separation from Seasonal High Water Table

For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.¹³

xx-306 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

Commentary: If the local government accepts any BMPs into public maintenance pursuant to this section, at the time of acceptance a binding agreement or process should be established by which the locality will recover costs from the owner for carrying out maintenance activities on the BMPs. Before accepting BMPS for maintenance, the jurisdiction should weigh the costs and benefits of so doing and identify a way to pay for maintenance.

¹³ From SL 2006-246, § 9(k).

The (name of local government) may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.¹⁴

xx-307 VARIANCES

Commentary: This provision is adapted from the Coastal Area Management Act, N.C. Gen. Stat. § 113A-120.1

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

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) 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.

(B) The (name of local government) may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions

Notwithstanding subdivision (A) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

- (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 stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 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.

¹⁴ From Virginia Stormwater Management Model Ordinance.

(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.

These statutory exceptions were included in SL 2006-246, § 11.

xx-308 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS

Commentary: State law requires special, additional stormwater protection in areas that drain to certain classes of water: shellfish waters (SA), trout waters (TR), and nutrient sensitive waters (NSW). Each jurisdiction adopting this model ordinance should determine whether it is responsible for *development* or *redevelopment* in one of these areas. If so, it should adopt the following provisions, as appropriate.

(A) [SA Waters]

[In addition to the standards for stormwater handling set out in the *design manual*, *development* and *redevelopment* that drains in whole or part to class SA waters shall design and implement the best stormwater practices that ensure reduction of fecal coliform loading. The best practices are ones that result in the highest degree of fecal die-off and control sources of fecal coliform to the maximum extent practicable while still meeting the other requirements of this ordinance. Wet detention ponds designed in accordance with the requirements of this ordinance may be used for projects draining to Class SA waters.

(1) [Pet waste]

Commentary: Some jurisdictions have existing pet waste ordinances, or cover pet waste in their littering ordinance. If the jurisdiction does not have a pet waste program or an ordinance regarding pet waste, and has development or redevelopment draining to class SA waters, the following language should be considered for adoption..

(a) Dogs At Large Prohibited¹⁵

It shall be unlawful for the owner of any dog to allow the animal to be off the premises of his owner and not on a leash in (name of local government).

(b) Restrictions on Pet Waste

(i) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.

(ii) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's

¹⁵ Adapted from the Town of Wrightsville Beach.

own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

(iii) “Means to properly remove and dispose of feces” shall consist of having on or near one’s person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.

(iv) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

(v) “Public nuisance” is defined to include “a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.

(2) No Direct Discharge or Expansion of Discharges to SA Waters

No new direct points of stormwater discharge to SA waters or increases in the volume of stormwater flow through conveyances or increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters are permitted. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.^{16]}

(B) [Trout Waters]

[In addition to the standards for handling stormwater set out in the *design manual*, *development* and *redevelopment* that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in receiving water temperature, while still meeting the other requirements of this ordinance.]

(C) [Nutrient Sensitive Waters]

In addition to the standards for stormwater handling set out in the *design manual*, *development* and *redevelopment* that drains in whole or part to class NSW waters shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.]

¹⁶ SL 2006-246, §9(h).

Commentary: This requirement, for choosing BMPs that reduce nutrient loading, is met already by jurisdictions with Department-approved NSW Urban Stormwater Management Programs in place. In addition to this ordinance requirement, Phase II jurisdictions with development or redevelopment draining to NSW waters are required to develop a nutrient application management program (for both inorganic fertilizer and organic nutrients) under state law.

xx-309 [ONSITE WASTEWATER]

Commentary: State law requires Phase II jurisdictions to implement an oversight program to ensure proper operation and maintenance of onsite wastewater treatment systems for domestic wastewater. This program should be coordinated with the county health department. The Department has determined that this requirement can be met simply by the Phase II jurisdiction coordinating with the county to ensure that onsite wastewater systems within the jurisdiction are properly permitted.

However, Phase II jurisdictions should be aware that health department standards for onsite systems generally cover only the approval of the technology and its installation, not the ongoing management of the systems. Therefore, some jurisdictions, particularly those that choose to set up stormwater enterprises, may wish to extend the maintenance obligations for stormwater BMPs to newly installed onsite wastewater systems. This optional language seeks to accomplish that. As a start, the jurisdiction should consider how to integrate the existing health department permit data for onsite systems into an inventory of onsite systems in the Phase II jurisdiction.

(A) Operation and Maintenance Requirements

New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the same requirements for operation and maintenance as *structural BMPs* for stormwater, including, at a minimum, annual inspection reports and a recorded operation and maintenance agreement, pursuant to Section 4 of this ordinance.

(B) Standards for Operation and Maintenance

Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.]

SECTION 4: MAINTENANCE

xx-401 GENERAL STANDARDS FOR MAINTENANCE

Commentary: The long-term effectiveness of any structural BMP relies, above all, on appropriate maintenance. This section is intended to provide a full array of provisions to ensure that such maintenance occurs, including identifying who will be responsible for maintenance over the long term as well as during development, and ensuring that funds for maintenance and repair are available when appropriate.

(A) Function of BMPs As Intended

The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

(B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

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

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.¹⁷

¹⁷ Drawn from Wake County stormwater ordinance (based on Neuse Urban Stormwater program).

xx-402 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. 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.

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 (name of local government) a right of entry in the event that the Stormwater 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 (name of local government) to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.¹⁸ A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.¹⁹

(B) 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 all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the (name of local government), in its sole discretion, may remedy the situation, and in such instances the (name of local government) shall be fully

¹⁸ Adapted from Metro North Georgia Water Management District and Stormwater Center/EPA Model Ordinances. The requirement that owner maintain the BMP is adapted from the Town of Cary Watershed Protection Ordinance.

¹⁹ Most of the following homeowners' association requirements are adapted from Neuse model program provisions as adopted in Wake County.

reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the (name of local government) shall first consent to the expenditure.

- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the (name of local government) depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the (name of local government) a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the (name of local government) to recover from the association and its members any and all costs the (name of local government) expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies. Failure to pay the (name of local government) all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the (name of local government) shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both.. Interest, collection costs, and attorney fees shall be added to the recovery.
- (7) A statement that this agreement shall not obligate the (name of local government) to maintain or repair any *structural BMPs*, and the (name of local government) shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the (name of local government) to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the (name of local government) for any costs and injuries arising from or related to the structural BMP, unless the (name of local government) has agreed in writing to assume the maintenance responsibility for the BMP and has

accepted dedication of any and all rights necessary to carry out that maintenance.

xx-403 INSPECTION PROGRAM

Inspections and inspection programs by (name of local government) 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.²⁰

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater 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 Stormwater Administrator while carrying out his or her official duties.

xx-404 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) May Be Required²¹

The (name of local government) may, at its discretion, 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 order to ensure that the *structural BMPs* are

- (1) installed by the permit holder as required by the approved stormwater management plan, and/or
- (2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual

²⁰ Adapted from Stormwater Center/EPA and Metro North Georgia Water Management District Model Ordinances.

²¹ From Virginia Model Ordinance for Stormwater Management.

cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

Commentary: Use of this approach to maintenance security creates an incentive to choose the structural BMPs that are expected to have the least costly maintenance. An example for calculating the amount of maintenance performance security is as follows: suppose the expected annual cost of inspection, operation and maintenance of the BMPs covered by the permit is \$500 in current dollars. The security amount is the present value of a perpetuity in the amount of \$500, which is simply \$500 divided by the real (inflation adjusted) discount rate. The real discount rate, for these purposes, is calculated by taking a reasonable estimate of the jurisdiction's expected return on moderately risky investments, such as the return on corporate bonds rated Aa by Moody's, and subtracting the expected rate of inflation. So if the jurisdiction's expected return on moderately risk investments is 7% and a reasonable estimate of long term inflation is 2%, then the maintenance security amount would be: $\$500/ (.07-.02) = \$500/.05 = \$10,000$.

Some annual maintenance cost estimates for BMPs in North Carolina are available in Wassick and Hunt, "An Evaluation of Costs and Benefits of Structural Stormwater Best Management Practices in North Carolina," N.C. Extension Service, available online as of 3/16/05 at <http://www.bae.ncsu.edu/people/faculty/hunt/bmpcosts&benefits.pdf>. The authors find a range from \$4,411 annually for wet ponds to \$583 for bioretention in clay or sandy soils for BMPs controlling a 10-acre watershed, presumably in 2003 dollars. The jurisdiction should evaluate whether it will have additional costs for inspection time and possible operation of the BMP should the owner fail to maintain the BMP.

(C) Uses of Performance Security

(1) Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the (name of local government) shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.²²

(3) Costs in Excess of Performance Security

If (name of local government) takes action upon such failure by the applicant or *owner*, the (name of local government) may collect from the applicant or *owner*

²² From Town of Cary Watershed Protection Ordinance.

the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

xx-405 NOTICE TO OWNERS

(A) Deed Recordation and Indications On Plat

The applicable operations and maintenance agreement [, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable)] pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement[, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable] shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

Commentary: The intent of discretionary provision (B) is to create actual notice whenever reasonable and useful, rather than relying solely on constructive or record notice.

xx-406 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 Stormwater Administrator.²³

xx-407 NUISANCE

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

²³ Adapted from Metro North Georgia Water Management District Model Ordinance.

xx-408 [MAINTENANCE EASEMENT

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.]

Commentary: With regard to this optional provision for a maintenance easement, it is anticipated that few local governments will opt to maintain BMPs that serve private property. In the case of any communities that should wish to do so, those jurisdictions should carefully consider, in consultation with their attorney and engineer, public works director or other person familiar with drainage maintenance, whether they wish to have easements dedicated for the purpose of maintaining BMPs. While dedication in this manner facilitates maintenance by the jurisdiction, it also raises the risk of governmental liability for problems caused by flooding or other drainage issues, under North Carolina case law.

SECTION 5: ENFORCEMENT AND VIOLATIONS

xx-501 GENERAL

Commentary: Communities should consider whether a violation of the stormwater ordinance should also constitute a violation of the zoning or building regulations, and may wish to make amendments to those regulations accordingly. For example, the zoning code could specify that compliance with stormwater regulations is required for issuance of any approvals issued under the zoning code, so that any development not complying with the stormwater regulations is also prohibited under zoning.

(A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of (name of local government). Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of (name of local government).

(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.²⁴

(C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.²⁵

(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 shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other 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.²⁶

²⁴ From Town of Apex Unified Development Ordinance.

²⁵ Adapted from Town of Cary Land Development Ordinance.

²⁶ Adapted from Hall County, Georgia, Unified Development Ordinance.

For the purposes of this article, responsible person(s) shall include but not be limited to:²⁷

(1) Person Maintaining Condition Resulting In or Constituting Violation

An architect, engineer, builder, contractor, developer, agency, or any other 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 stormwater 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.

xx-502 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 Stormwater 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 stormwater 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 Stormwater Administrator or other authorized agent may withhold, and the (name of planning board, governing board, and/or other board(s) that review land development requests) 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 Stormwater Administrator, with the written authorization of the (insert title of municipal or county manager, or, if there is no municipal manager, of the

²⁷ An inclusive approach to “responsible persons” drawn from the Town of Apex UDO.

town clerk or the governing board), 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 and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the (title of municipal or county manager, or, if there is no manager, of the town clerk or the governing board), may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) [Stop Work Order

The Stormwater 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 cured 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 cure such violation or violations.]²⁸

Commentary: A stop work order is an important tool where, as in the case of stormwater violations, the consequences of delay in halting illegal activity can result in significant harm to the environment and public health, safety or welfare. However, the enabling authority for use of a stop work order by local governments is unclear. As a practical matter, if a legal challenge is brought to a local government's use of a stop work order, it is unlikely to result in negative consequences for the local government, since the legal remedy would likely consist of the court's invalidation of the stop work order.

If a local government chooses to include this stop work provision, it should do so in consultation with legal counsel, and an accelerated appeal process pursuant to Section xx-205, Appeals, should be provided for situations where a stop work order is applied. One way to accelerate the appeal process is to shorten the timeframe for review of appeals. A special or emergency Board of Adjustment meeting could be called, so that a party seeking to challenge a stop work order would achieve a speedy resolution of the matter.

(B) Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which (name of jurisdiction) is subject for violations of its Phase II Stormwater permit, or if no Phase II Stormwater permit exists for the jurisdiction, civil penalties may be assessed up to the full amount allowed by law.

Commentary: Based on experience with enforcement of locally delegated erosion and sediment control programs and other code enforcement experience, it would be a good practice for a jurisdiction to agree on

²⁸ Adapted from Metro North Georgia Water Management District Model Ordinance.

a set of normal civil penalties to be assessed for any commonly experienced violations. This assists the Stormwater Administrator and other officials in making reasonable and equitable penalty assessments.

(C) Criminal Penalties

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

xx-503 PROCEDURES

(A) Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) Inspection

The Stormwater 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.²⁹

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, 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.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the (name of law enforcement or code enforcement personnel), 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.³⁰

Note that if the administering unit is adopting this stormwater ordinance under its planning and zoning authority or is administering it as part of its building code enforcement program, it should consider whether it needs to follow the notice and opportunity to respond procedure set out in G.S. 160A-441 *et seq.* See *Newton v. Winston-Salem*, 92 N.C. App. 446 (1988).

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this

²⁹ From Town of Cary Land Development Ordinance.

³⁰ From Town of Apex Unified Development Ordinance.

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

(D) Extension of Time

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater 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 person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding _____ days. The Stormwater Administrator may grant _____-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 person violating this ordinance. The Stormwater 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.³¹

(E) Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.³²

(F) 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 Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

³¹ From Town of Apex Unified Development Ordinance.

³² From Town of Apex Unified Development Ordinance.

SECTION 6: DEFINITIONS

Commentary: Session Law 2004-163 states in “SECTION 12. Definitions” that “The following definitions apply to this act and its implementation: (1) The definitions set out in 40 Code of Federal Regulations § 122.2 (Definitions) and § 122.26(b) (Storm Water Discharges) (1 July 2003 Edition). (2) The definitions set out in G.S. 143-212 and G.S. 143-213. (3) The definitions set out in 15A NCAC 2H .0103 (Definitions of Terms).”

xx-601 TERMS DEFINED

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.

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, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.³³

Department

The North Carolina Department of Environment and Natural Resources.³⁴

Design Manual

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* [developed by (name of jurisdiction) and certified by this jurisdiction [approved by the *Division*] as at least as stringent as the stormwater design manual approved for use in Phase II jurisdictions by the *Department*] for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.³⁵

Commentary: Phase II jurisdictions may develop their own Design Manual to more carefully tailor stormwater management practices to local condition, or to explain to developers and engineers in a practical way how to comply with a comprehensive local watershed plan. Jurisdictions wishing to pursue this route should consult with the *Division* on necessary elements of the manual and the state approval process. Jurisdictions should also consider and explain the process they will use to give notice and provide an opportunity to comment on the original manual and any changes in it.

Development

Any land-disturbing activity that increases the amount of *built-upon area* or that otherwise decreases the infiltration of precipitation into the soil.³⁶

³³ From S.B. 1210.

³⁴ From temporary rule.

³⁵ Adapted from North Georgia M.O.

³⁶ From North Carolina Model Ordinance for Water Supply Watershed Protection and 15A NCAC 2B.0202(23).

Compare the definition of “development” in the Coastal Area Management Act, Gen. Stat. § 113A-103(5a), which only covers specified types of activities done in particular areas of environmental concern. Coastal communities who are used to the CAMA definition of “development” need to note the broader definition used here and in the Environmental Management Commission’s surface water rules.

Division

The Division of Water Quality in the *Department*.³⁷

High-density project

Any project that exceeds the *low-density* threshold for dwelling units per acre or *built-upon area*.

Larger common plan of development or sale

Any 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 a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer 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.³⁸

Low-density project

For a project that is not located within one-half mile of and draining to *Shellfish Resource Waters*: the project is a low -density project if it has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

For a project that is located within one-half mile of and draining to *Shellfish Resource Waters*: the project is a low-density project only if it contains no more than twelve percent *built-upon area* (BUA).

A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.³⁹

Owner

The legal or beneficial owner of land, including but not limited to a 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.

³⁷ From S.B. 1210.

³⁸ Definition adapted from EPA Storm Water Phase II Compliance Assistance Guide.

³⁹ From S.B. 1210.

Redevelopment

Any *development* on previously-developed land , other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

Shellfish Resource Waters

Class SA waters that contain an average concentration of 500 parts per million of natural chloride ion. Average concentration is determined by averaging the chloride concentrations of five water samples taken one-half mile downstream from the project site that are taken on separate days, within one hour of high tide, and not within 48 hours following a rain event. The chloride ion concentrations are to be determined by a State-certified laboratory.⁴⁰

Structural BMP

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the *pre-development* hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural BMP” is synonymous with “structural practice,” “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law. ⁴¹

⁴⁰ From SL 2006-246.

⁴¹ Adapted from Town of Cary Land Development Ordinance.

[SECTION 7: ILLICIT DISCHARGES

xx-701

ILLICIT DISCHARGES AND CONNECTIONS⁴²

Commentary: The federal Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm sewer unless it:

-consists of a discharge pursuant to an NPDES permit; or

-consists of a discharge from fire fighting activities; or

-consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:

Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)); uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensation; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; and street wash water.

(A) Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;

⁴² Drawn from Raleigh and Greenville ordinances.

- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water; and
- (19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by (name of Phase II jurisdiction).

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) Illicit Connections

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in subsection (A) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property *owner* or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- b. Was made in violation of any applicable regulation or ordinance, other than this section;

the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

- 1. The quantity and complexity of the work,

2. The consequences of delay,
3. The potential harm to the environment, to the public health, and to public and private property, and
4. The cost of remedying the damage.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the (title of the individual in charge of managing accidental hazardous material releases in the local jurisdiction, such as a city Fire Chief) of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Nuisance

Illicit discharges and illicit connections which exist within the (city limits or planning jurisdiction of the city) (county) (insert whichever text is applicable) are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in section ____ (insert cross-reference to nuisance abatement section of code, if applicable).]

Appendix: Sources consulted or from which provisions were drawn for this Model Ordinance

Model Ordinance for Post-Development Stormwater Management for New Development and Redevelopment (Metropolitan North Georgia Water Management District)

Model Ordinance for Water Supply Watershed (NC Division of Water Quality)

Neuse River Basin Model Stormwater Program for Nitrogen Control

Tar-Pamlico Basin Nutrient-Sensitive Waters Management Strategy

Model Stormwater Ordinance (Center for Watershed Protection, Inc. ["Stormwater Center"])

Model Stormwater Ordinance (US EPA)

Unified Development Ordinance (Hall County, Georgia)

Unified Development Ordinance (Town of Apex, NC)

Land Development Ordinance (Town of Cary, NC)

Watershed Protection Ordinance (Town of Cary, NC)

Stormwater Management Model Ordinance (State of Virginia)

Town Code of Wrightsville Beach, NC

Illicit discharge provisions: Raleigh, NC; Greenville, NC; Franklin, TN

Stormwater Management Ordinance (Wake County, NC)

**AN ORDINANCE AMENDING THE TOWN OF MONTREAT GENERAL ORDINANCE
TA-2025-01**

WHEREAS, the Town of Montreat Board of Commissioners is responsible for adopting and rejecting development ordinance amendments, under Chapter 160D Article 6 of the North Carolina General Statutes; and

WHEREAS, the Town's existing General Ordinance was adopted on March 24, 1999; and

WHEREAS, pursuant to Section 160D-601(a) of the North Carolina General Statutes, the Town of Montreat used the adoption process mandated for zoning text amendments to adopt revisions to the Montreat General Ordinance, which is a development ordinance. A public hearing was noticed on May 28, 2025, and June 4, 2025, in the *Black Mountain News* newspaper and held on June 12, 2025; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF MONTREAT, NORTH CAROLINA THAT:

The following revisions (shown in **bold**) be made to Chapter K Article III Section 300(3):

Section 319 Variances (new section)

- A. Any person may petition the Town of Montreat for a variance granting permission to use the person's land in a manner otherwise prohibited by the stormwater management regulations of this article.**
 - a. To qualify for a variance, the petitioner must show all of the following:**
 - i. Unnecessary hardships would result from strict application of the stormwater management regulations of this article.**
 - ii. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.**
 - iii. The hardships did not result from actions taken by the petitioner.**
 - iv. The requested variance is consistent with the spirit, purpose, and intent of the stormwater management regulations of this article; will secure public safety and welfare; and will preserve substantial justice.**
 - b. The Town of Montreat may impose reasonable and appropriate conditions and safeguards upon any variance it grants.**
 - c. Variances to this article shall be heard by the Zoning Board of Adjustment and shall follow the variance procedures contained in Section 310.5 of the Montreat Zoning Ordinance.**

This ordinance shall be in full force and effect from and after the date of its adoption.

READ, APPROVED, AND ADOPTED this the ____ day of ____, 2025.

Tim Helms, Mayor

Savannah Parrish, Town Manager

DRAFT

**AN ORDINANCE AMENDING THE TOWN OF MONTREAT GENERAL ORDINANCE
TA-2025-01**

WHEREAS, the Town of Montreat Board of Commissioners is responsible for adopting and rejecting development ordinance amendments, under Chapter 160D Article 6 of the North Carolina General Statutes; and

WHEREAS, the Town's existing General Ordinance was adopted on March 24, 1999; and

WHEREAS, pursuant to Section 160D-601(a) of the North Carolina General Statutes, the Town of Montreat used the adoption process mandated for zoning text amendments to adopt revisions to the Montreat General Ordinance, which is a development ordinance. A public hearing was noticed on May 28, 2025, and June 4, 2025, in the *Black Mountain News* newspaper and held on June 12, 2025; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF MONTREAT, NORTH CAROLINA THAT:

The following revisions (shown in **bold**) be made to Chapter K Article III Section 300(3):

Section 319 Variances (new section)

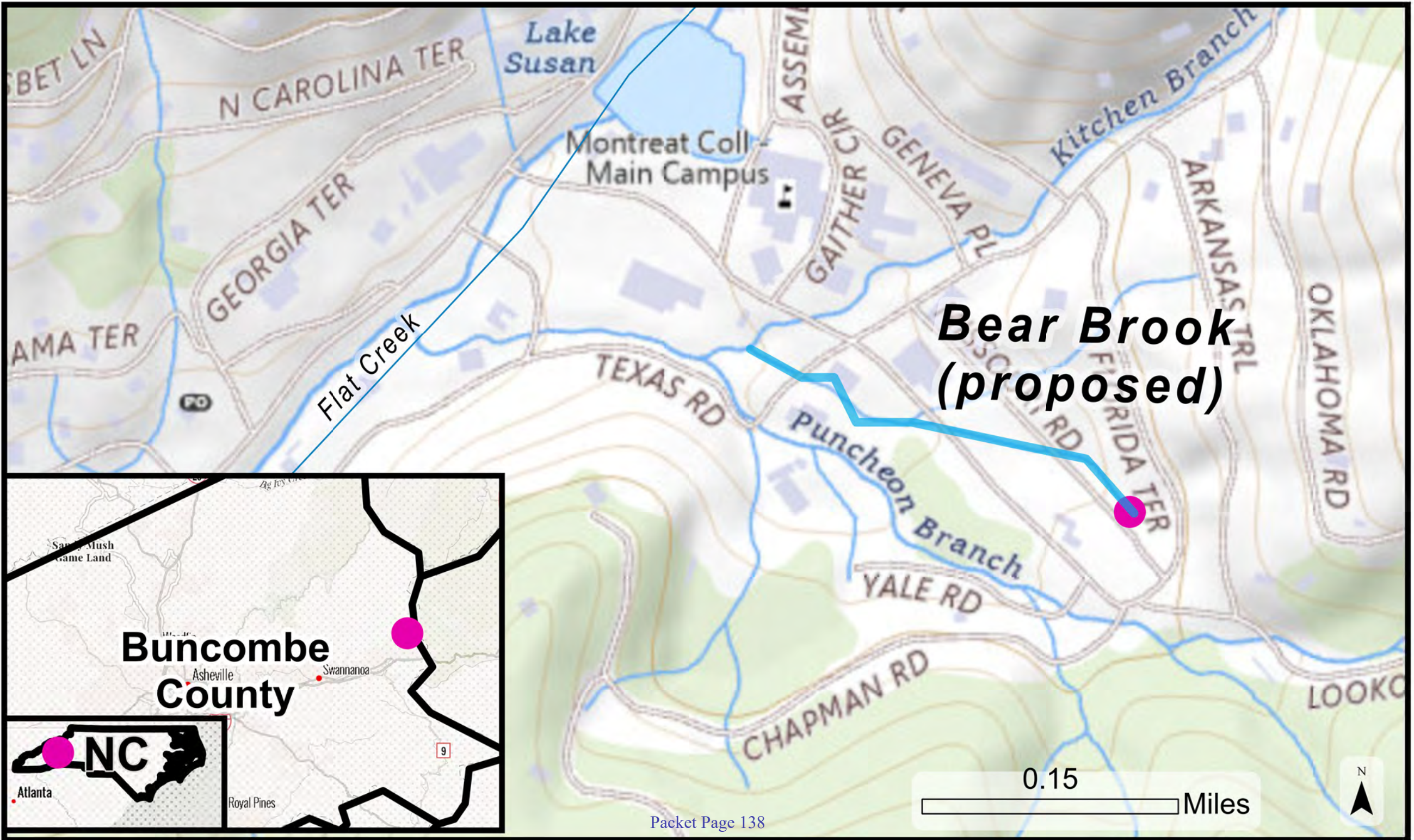
- A. Any person may petition the Town of Montreat for a variance granting permission to use the person's land in a manner otherwise prohibited by the stormwater management regulations of this article.**
 - a. To qualify for a variance, the petitioner must show all of the following:**
 - i. Unnecessary hardships would result from strict application of the stormwater management regulations of this article.**
 - ii. The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.**
 - iii. The hardships did not result from actions taken by the petitioner.**
 - iv. The requested variance is consistent with the spirit, purpose, and intent of the stormwater management regulations of this article; will secure public safety and welfare; and will preserve substantial justice.**
 - b. The Town of Montreat may impose reasonable and appropriate conditions and safeguards upon any variance it grants.**
 - c. Variances to this article shall be heard by the Zoning Board of Adjustment and shall follow the variance procedures contained in Section 310.5 of the Montreat Zoning Ordinance.**

This ordinance shall be in full force and effect from and after the date of its adoption.

READ, APPROVED, AND ADOPTED this the ____ day of ____, 2025.

Tim Helms, Mayor

Savannah Parrish, Town Manager



New name Bear Brook

Proposal Information

Proposed name	Bear Brook
Proposal type	new name for unnamed feature
Current official name	N/A
GNIS ID	N/A
Proponent	Michael G. Sebesta; Eatonton, GA/Montreat, NC
Date proposed	2/22/25
BGN case number	6517
Quarterly Review List	459

Feature Details

Primary coordinates	35.645461, -82.29784
Secondary coordinates	35.644362, -82.294622
Feature class	stream
Feature size	0.2 mi. long
Feature description	heads 0.3 mi. N of Rainbow Gap, flows NW into Kitchen Branch
Name history	named for black bears often seen around and in the stream
USGS primary topo map	Montreat 1:24,000
State(s)	North Carolina
County(s)	Buncombe County
Local jurisdiction(s)	Town of Montreat
PLSS	n/a
Land ownership	private / College of Montreat

BGN decisions

None

Other Names

Unpublished names: None found

Published names: None found

Case Summary

The new name Bear Brook is proposed for an officially unnamed 0.3-mile-long tributary of Kitchen Branch in the Town of Montreat, Buncombe County.

The stream was not shown on USGS maps until 2022 after the stream was included in the National Hydrography Dataset.

The proponent initially submitted the name as “BearBrooke Branch,” writing:

The subject property and brook have been in our family for over 60 years. We often see local Black Bears casually walking through our property down to the brook, where they will drink the cool water and sometimes lay down to cool themselves in the warm summer months. My wife and I will be building a small cabin on this lot later this year, and we have named our cabin - BearBrooke Cabin. We would like to name this brook-BearBrooke Branch.

BGN staff asked the proponent to address the following issues:

“Bear Brooke” rather than “BearBrooke”; the BGN has not yet approved a name in which two words are combined into one without spaces

if “Brooke” referred to or could be construed to refer to a person

if the cabin was commercial in nature

The proponent replied that

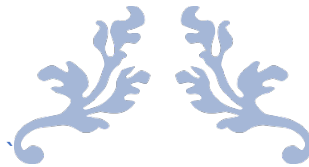
“We only used ‘Brooke’ as it was ‘different’, and felt like it created a unique aspect to the stream and our cabin. There is no significance or reference to a person, living or deceased. We just thought it was unusual. We are willing to drop the ‘e’ if it would be easier to approve, again, as there is no significance to its use.”

“Our cabin will be for personal use only and is being built as our personal retirement home. (Construction will begin in April of this year). We will not rent the cabin for any purpose.”

The proponent owns two parcels near the source of the stream. The stream flows through or under some other private parcels in the area, including a College of Montreat parking lot.

Stakeholder Input

Local government	Town of Montreat	
	Buncombe County	
State Names Authority	North Carolina Board on Geographic Names	
Federal Agency	n/a	
Federally Recognized Tribes	All federally recognized Tribes contacted under Policy X	
Other		



THE BOARD ON GEOGRAPHIC NAMES DOMESTIC NAMES COMMITTEE PROPOSAL FORM

This document is for those interested in proposing:

1. **A new name for a currently unnamed geographic feature, or**
2. **A change to an existing name, spelling, or where a name is applied.**

By submitting this form, the proponent acknowledges the [BGN Policies](#) and agrees to work with BGN staff regarding their proposal.



VERSION 2.0.2
BOARD ON GEOGRAPHIC NAMES DOMESTIC NAMES COMMITTEE

Domestic Geographic Name Proposal Form

The U.S. Board on Geographic Names (BGN) is responsible for standardizing the names of geographic features within the 50 States and in other areas under the sovereignty of the United States. The BGN retains the legal authority to promulgate all official names and locations of natural features (e.g. mountains, rivers, valleys), as well as canals, channels, reservoirs, and other select feature types.

This form is to propose a new name or name, spelling, or application change for a geographic feature for Federal use. A proponent should carefully review the proposal prior to submission to ensure that it is consistent with the [BGN policies](#). Please note all fields with a red outline are required prior to submitting this form.

The proponent should also be aware that the entire proposal—including personal identifying information and any associated correspondence—is in the public domain and may be made publicly available at any time.

- Submit Proposal:**
1. Download and email this form and supporting documentation to: BGNESEC@usgs.gov
- OR 2. Send by mail to:
U.S. BGN Executive Secretary, Domestic Names
12201 Sunrise Valley Drive, MS-523
Reston, VA 20192
- Contact Us:**
BGNESEC@usgs.gov
- i. Save PDF using this format:
'State_GeographicNameProposed'
- ii. Email Subject: *ST_GeographicName*
- Please note that anything submitted by mail will be delayed.*

Naming Basics

Proposed Name:

Is this to change an existing name? Y N

If yes, please provide the official name and Feature ID as it appears in [the Geographic Names Information System \(GNIS\)](#).

Is this name in current local use? Y N

What is the Feature Type?

GNIS Name:

GNIS ID:

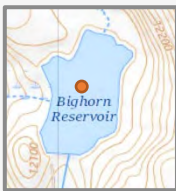
Location Basics



Where is the feature?

Latitude: (38.94741)

Longitude: (-77.36839)



General Location:

State:

County:

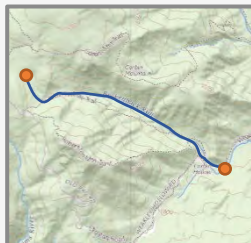
City/Town/
Township/
Borough:

For Linear Features (e.g. stream or valley):

Mouth/Confluence

Latitude: (38.94741)

Longitude: (-77.36839)



Public Land Survey System:

Section(s), Township, Range, Meridian

Source/Headwater

Latitude: (38.94741)

Longitude: (-77.36839)

Feature Description

Physical shape, length, width, etc. (Maps can be submitted separately by email)

Name Details

Name information:

Please provide relevant information about the proposed name, such as origin, meaning, how long it has been in current use, as well as current or historical significance. Also include why you believe the feature requires a name or name change and why the proposed name is appropriate. Describe any documents that you will be submitting (separately by email) to support your proposal.

Please provide a list of supporting documentation, including any web links:

Examples: Published sources showing the proposed name or letters of support (local government, historical society, etc.).

Is the name [commemorative](#)? Does the name honor or refer to a person or persons? Y N

Please note that the BGN will only accept proposals for names that are intended to honor a person or persons deceased at least five years. The BGN will disapprove names that could be construed to honor living persons. The person being honored should have had either (1) some direct or long-term association with the feature, or (2) have made a significant contribution to the area, community, or State in which it is located; or (3) have outstanding national or international recognition. The BGN discourages the use of an individual's full name except to avoid ambiguity.

If yes, please provide the following:

Honoree's Date of Birth:

Honoree's Date of Death:

Short biography and significance or association with the geographic feature: *(list any additional honorees here)*

Is the feature in a Wilderness Area or Wilderness Study Area? Y N Unknown

If yes, please provide your justification for making an exception to [the Wilderness Policy](#):

Please note that the BGN will not approve new names for unnamed features within wilderness areas or wilderness study areas, unless an overriding need can be demonstrated by the proponent.

Is the name you are proposing intended to honor Native Americans, their language, or culture? Y N

If yes, to ensure that the proposed name is appropriate, the BGN strongly advises proponents to work with Tribal Leaders, Tribal Historic Preservation Officers, and/or Native American linguists or other expert(s) associated with the Tribe to determine the acceptability of the proposed name and application. Please review [the BGN's Cultural Sensitivity for Native American Names guidance](#).

Proponents should also seek letters of endorsement from the governments (e.g., Tribal Councils) of any affected Tribes. Please indicate below, or in documentation submitted separately (with this proposal or any time after the proposal is submitted), any efforts to solicit Tribal input.

Additional Information +

Is there any local opposition or conflict with the proposed name? Y N

If yes, please explain and describe any opposition:

Additional notes, including any Tribal input details

Proponent Information


Please provide one form of contact (email preferred):


 Proponent's Name:

Agency or Organization, if applicable:

 Email:

 Mailing Address:

 Phone:

 Are you completing this form for someone else? Y N

If yes, please fill out the following:

Completed by:
Full Name:
Email:
Mailing Address:
Phone:



U.S. BOARD ON GEOGRAPHIC NAMES (BGN) GEOGRAPHIC NAME PROPOSAL RECOMMENDATION

Proposed name:

Current official name: (as listed in the Geographic Names Information System, if applicable)

Name, title, and contact info of individual or organization submitting this form:

Nature of submission:

- I am submitting this recommendation as an individual
- I am submitting this recommendation on behalf of an organization/municipality
 - with formal approval (e.g., a vote, signed resolution, etc.)
 - informally (e.g., general consensus, staff review, etc.)

Recommends that the U.S. Board on Geographic Names (please select one):

- Approve the proposed name
- Reject the proposed name
- No opinion
- No objection
- Other (please elaborate below)

Comments (Use this section to explain your reasoning and include any relevant historical, cultural, or community input. You may also attach or link supporting documentation such as meeting minutes, vote records, or recordings.) Comments are encouraged regardless of recommendation type:

Return to: U.S. Board on Geographic Names (either email or physical mail is acceptable)
BGNEXEC@usgs.gov and/or the staff who forwarded the request

12201 Sunrise Valley Drive Mail Stop 523
Reston, VA 20192-0523 Packet Page 146

**TOWN OF MONTREAT
FISCAL YEAR 2024-2025
BUDGET AMENDMENT #9**

Be it ordained by the Town of Montreat Board of Commissioners that the following amendment be made to the Budget Ordinance for the fiscal year ending June 30, 2025.

Department(s): General Fund – Fund 29

Purpose:

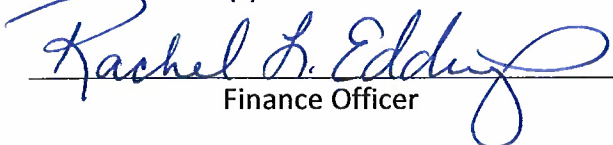
- To include and appropriate: DST Cashflow loan (\$120,716) and Helene Donations (\$2024) to date

Section 1. To amend the General Fund as follows:

Line Item	Account Number	Amount Decrease	Amount Increase	Amended Budget
Add to Budget: DST Cashflow loan	10-3310-200		\$120,716.00	\$120,716.00
IT Support	10-4200-321		\$7,000	\$74,000
Professional Services	10-4200-040		\$7,000	\$60,000
Contract Services	10-4200-450		\$6,000	\$36,862.16
Contract – Dumpster Service	10-5800-451		\$5,000	\$59,000
Utilities	10-5800-130		\$3,000	\$4850
Tipping Fees	10-5800-550		\$3,000	\$18,000
Materials	10-5550-752		\$89,716	\$826,294.03
Contributions – Helene	10-3300-400		\$2,024	\$266,923
Materials	10-5550-752		\$2,024	\$828,318.03
Line Item	Account Number	Amount Debit	Amount Credit	Amended Budget
Materials	10-5550-752	\$91,740		
Materials	29-5550-752		\$91,740	

Notes: Money was moved out of Administration to assist with Helene Recovery, transferring back to cover shortages created from initial funds transfers on previous Budget Amendment (#3) and to cover shortages in Sanitation.

Section 2. I certify that the accounting records provide for this budget amendment, and that the revenue source(s) are available:


Finance Officer

6/10/25
Date

Section 3. Copies of this amendment shall be delivered to the Budget/Finance Officer and Town Auditor for their direction.

**TOWN OF MONTREAT
FISCAL YEAR 2024-2025
BUDGET AMENDMENT #9**

Adopted this _____ day of _____, _____.

Recorded and filed:

_____	_____
Budget Officer/Town Manager	Date
_____	_____
Town Clerk	Date

Town of Montreat Fiscal Year 2025-2026 Budget



Introduction

BUDGET MESSAGE

May 28, 2025

TO: Mayor Tim Helms
Mayor Pro Tem Kitty Fouche
Commissioner Jane Alexander
Commissioner Tom Widmer
Commissioner Mason Blake
Commissioner Grant Dasher

FROM: Savannah Parrish, Town Manager

Mayor, Board of Commissioners, and Residents of Montreat:

I am pleased to present the Fiscal Year 2025–2026 Proposed Budget for the Town of Montreat. This budget reflects a deliberate and responsible approach to sustaining essential public services, investing in our staff, and maintaining the Town’s infrastructure, while responding to challenges related to recovery from Hurricane Helene.

The proposed FY 25-26 General Fund budget totals \$2,077,915 which is a 6.94% decrease from the current year. The proposed budget does not include any fund balance appropriation.

The ad valorem tax rate in the proposed budget remains at 43 cents per \$100 valuation. The current tax valuation issued by Buncombe County for the fiscal year 2025, for the Town of Montreat is \$301,681,361.

Budget Overview

The total proposed budget for FY 25–26 is \$2,502,815, representing a 5.79% decrease from the previous fiscal year. The General Fund revenue is projected at \$2,077,915, a 6.94% decrease, while the Water Fund shows a slight increase to \$424,900.

This budget was developed with careful attention to maintaining a balanced financial plan without compromising the quality of services or long-term priorities.

Key Budget Drivers

- **Personnel Investment:** Salaries for all departments reflect a 4% merit-based increase, demonstrating our commitment to attracting and retaining qualified staff.
- **Public Safety:** The Police Department’s budget has increased 13.36%, supporting enhanced staffing and operational readiness.
- **Sanitation:** An 8.69% increase allows for enhanced solid waste services and support for our growing needs.
- **Street Maintenance:** Street expenditure shows a substantial reduction of 43.56% this year. This decrease reflects the aftermath of Hurricane Helene. In fiscal year 25-26 the majority of our street maintenance projects will come from Fund 29, the recovery fund.

- **Recreation & Public Works:** Modest reductions in these areas reflect strategic alignment with usage and current capital needs without reducing core service delivery.

Challenges and Opportunities

Like many small municipalities, Montreat is navigating a complex fiscal landscape that includes inflationary pressures, aging infrastructure, and evolving community expectations. The decrease in overall revenues requires us to be prudent and creative in how we allocate resources. However, we remain committed to:

- Delivering high-quality services without increasing the tax rate
- Investing in staff through merit pay and retention efforts
- Addressing deferred maintenance and capital planning
- Maintaining strong fund balance reserves to preserve our financial flexibility

Looking Ahead

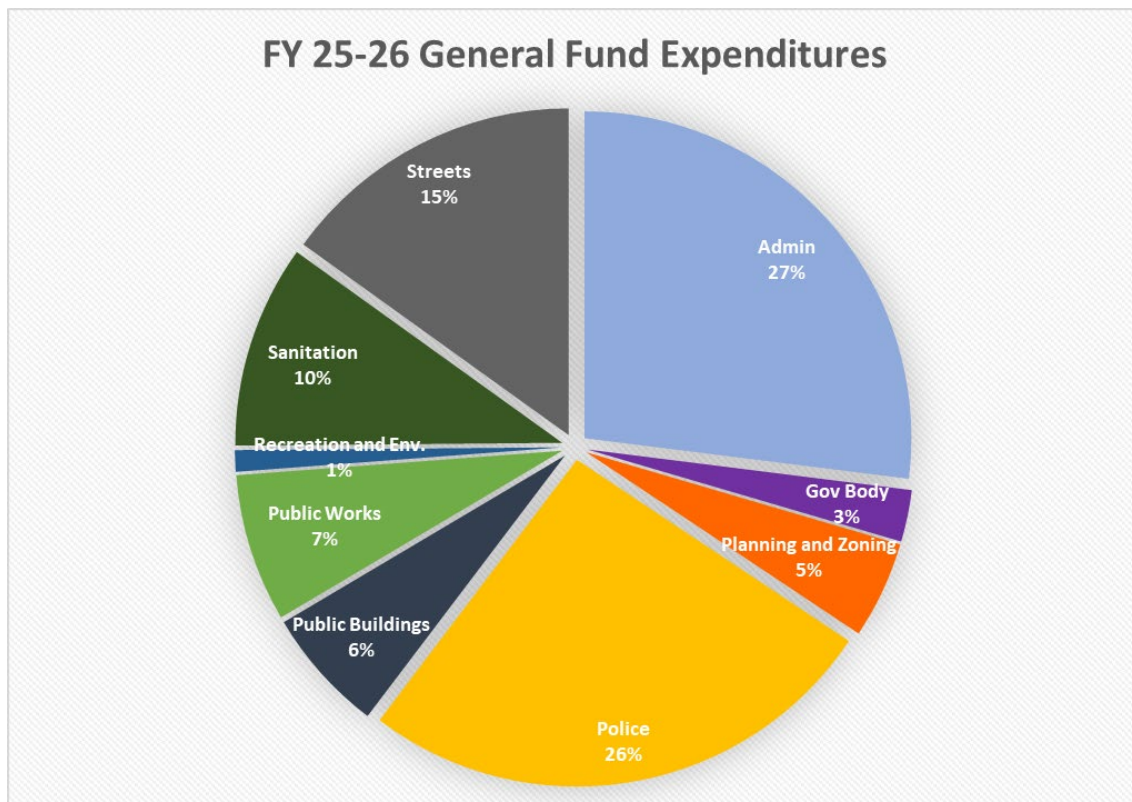
While FY 25–26 reflects a leaner financial posture, it positions the Town to reassess priorities and recalibrate spending where necessary. We will continue evaluating grant opportunities, intergovernmental partnerships, and cost-sharing models that can extend the Town’s capacity without overburdening local taxpayers.

Conclusion

The proposed General Fund budget for FY 25-26 includes the revenues and expenditures as outlined in the following tables:

Revenue	FY 24-25	FY 25-26	Percent Change
Water Fund Revenue	\$423,744	\$424,900	.27%
General Fund Revenue	\$2,232,905	\$2,077,915	-6.94%
Combined	\$2,656,649	\$2,502,815	-5.79%

Expense - GF	FY 24-25	FY 25-26	Percent Change
Admin	\$ 513,430	\$ 560,714	9.21%
Gov Body	\$ 54,791	\$ 53,222	-2.86%
Planning and Zoning	\$ 101,900	\$ 99,900	-1.96%
Police	\$ 475,950	\$ 539,521	13.36%
Public Buildings	\$ 128,353	\$ 128,097	-0.20%
Public Works	\$ 159,083	\$ 152,142	-4.36%
Recreation and Env.	\$ 24,050	\$ 22,050	-8.32%
Sanitation	\$ 220,146	\$ 208,900	-5.11%
Streets	\$ 555,202	\$ 313,369	-43.56%
Subtotal	\$ 2,232,905	\$ 2,077,915	-6.94%
Expense - Water	\$ 423,744	\$ 424,900	0.27%
Subtotal	\$ 423,744	\$ 424,900	0.27%
	\$ 2,656,649	\$ 2,502,815	-5.79%



The FY 2025–2026 budget is fiscally responsible and service-oriented. It reflects Montreat’s enduring values of stewardship, transparency, and community commitment. I thank the Board of Commissioners for their leadership, and Town staff for their dedication to public service.

Respectfully submitted,

Savannah Parrish
Town Manager

TOWN OF MONTREAT
2025-2026 BUDGET ORDINANCE

BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF MONTREAT, NORTH CAROLINA:

Section 1. The following amounts are hereby appropriated in the General Fund for the operation of the Town Government and its activities for the fiscal year beginning July 1, 2025 and ending June 30, 2026 in accordance with the chart of accounts heretofore established for this Town:

Governing Board	\$53,222
Administration	\$560,714
Public Buildings	\$128,097
Police	\$539,521
Planning and Zoning	\$99,900
Public Works	\$152,142
Streets and Powell Bill	\$313,369
Sanitation	\$208,900
Recreation	\$22,050
Total Expenditures	\$2,077,915

Section 2. It is estimated that the following revenues will be available to the General Fund for the fiscal year beginning July 1, 2024 and ending June 30, 2025:

Taxes, Ad Valorem – Current	\$1,250,000
NC Sales & Use Tax	\$440,000
Taxes, Personal	\$25,900
NC Franchise Tax	\$89,600
Beer & Wine Tax	\$3,650
Solid Waste Disposal Tax	\$650
Contributions	\$3,500
Community Service Fee	\$45,700
Interest on Investments	\$500
Interest on Powell Bill	\$15
Fund Balance Appropriated	\$0
Court Costs – Arrest Fees & Fines	\$60
Misc Revenue	\$200
Building Permits	\$30,000
Zoning Permits	\$4,000
Sanitation Fees	\$126,140
Special Pick Up	\$2,000
Back Door Pickup	\$2,000
Powell Bill Grant	\$54,000

Total Revenues **\$2,077,915**

Section 3. The following amounts are hereby appropriated in the Water Fund for the fiscal year beginning July 1, 2025, and ending June 30, 2026, in accordance with the chart of accounts heretofore approved for the Town:

Water Fund	\$424,900
Total Expenditures	\$424,900

Section 4. It is estimated that the following Revenues will be available in the Water Fund for the fiscal year beginning July 1, 2025, and ending June 30, 2026:

MSD Billing Fees Revenue	\$24,000
Water Sales	\$190,000
Water Access Fees	\$175,000
Billing Fee Revenue	\$10,000
Water Taps	\$500
Water Transfer Fees	\$1,000
Special Assessment	\$22,000
Interest on Investments	\$300
Reconnect Fees	\$300
Late Fees	\$1,500
Misc Revenues	\$300
Total Revenue	\$424,900

Section 5. The Budget Officer/Finance Officer is hereby authorized to distribute department funds upon the line-item budget and make expenditures therefrom, in accordance with the Local Government Budget and Fiscal Control Act.

Section 6. The Budget Officer/Finance Officer is hereby authorized to transfer appropriations as contained herein under the following conditions:

- A. He/she may transfer amounts between line items, expenditures and revenues, within a department without limitation and without a report being required.
- B. He/she may transfer amounts up to \$2,500 between departments within any one division, including contingency appropriations, within the same fund during any month. For the purpose of this ordinance, the Town of Montreat has the following divisions: Public Works (Streets and Sanitation), Police, Governing Body, Administration, Public Buildings, Planning and Zoning, and Recreation. The Budget Officer/Finance Officer must make an official report on such transfers at the next regular meeting of the Governing Board. Transfers between divisions would require action of the Governing Board.
- C. He/she may not transfer any amounts between funds, except as approved by the Governing Board in the Budget Ordinance as amended.

Section 7. There is hereby levied a tax at the rate of forty-three cents (0.43) per one hundred dollars (\$100) valuation of property as listed for taxes as of January 1, 2025 for the purpose of raising the revenue listed as "Taxes Ad Valorem - Current Year" in the General Fund in Section 2 of this Ordinance. The estimated rate of collection is 99.69%.

Section 8. The Town of Montreat Fee Schedule, FY 2025-2026, as attached, is hereby incorporated into this annual budget ordinance, and such fees shall become effective on July 1, 2025.

Section 9. Copies of the Budget Ordinance shall be furnished to the mayor, to the Board of Commissioners and to the Clerk of the Town to be kept on file for their direction in the disbursement of funds.

ADOPTED AND APPROVED THIS, THE _____ DAY OF JUNE, 2025

TIM HELMS
MAYOR

ATTEST:

ANGIE MURPHY
TOWN CLERK



Fiscal Year 2025-2026 Fee Schedule

Administration

Taxes

Property Tax Rate: \$0.43/\$100 of Assessed Valuation

Miscellaneous

Copies (B&W) \$0.25 per page
 Copies (Color) \$0.75 per page
 Documents Actual Cost
 Returned Check Fee \$35.00 (per event)
 Notary Fees \$10.00 (per signature)

Privilege Licenses

Repealed March 8, 2007

Water Rates

Residential

Water Access Fee **\$15.66**
 Water Access Fee – Out of Town **\$25.53**
 Water Rate in Town Limits (per 1,000 gallons) **\$6.57**
 Water Rate outside of Town Limits **\$10.71**
 Meter Set \$415.00
 Meter Tap \$2185.00

Institutional

Water Access Fee – 3/4” Line **\$15.66**
 Water Access Fee – 1” Line **\$97.91**
 Water Access Fee – 2” Line **\$237.82**
 Water Access Fee – 6” Line \$554.50
 Fire Suppression Line – 2” Line **\$80.33**
 Fire Suppression Line – 6” Line \$126.75
 Water Rate in Town Limits (per 1,000 gals):
 • Consumption – Level 1- up to 3,999,999 based on previous year’s usage, all accounts combined per institution **\$8.43**
 • Consumption – Level 2- 4,000,000 or more based on previous year’s usage, all accounts combined per institution **\$10.32**
 Water Rate outside of Town Limits 1.63 times in-Town rate
 Meter Set \$415.00



Fiscal Year 2025-2026 Fee Schedule

Meter Tap \$2185.00

Other Fees

Reconnection Fee \$150.00
 Meter Tampering Fee \$500.00
 Meter Removal – Requested by property owner \$415.00
 Water Service Transfer Fee \$25.00
 Water Billing Fee \$1.50
 Late Fee 5% per month on past due balances

Sewer Rates

Determined by the Metropolitan Sewerage District Fee Schedule

Building Permits and Inspection Fees

Non-Residential Permits

New Construction or Renovation (up to \$1,000,000 in Valuation) \$300.00; or \$10.00 per \$1,000.00 gross construction value, whichever is greater
 New Construction or Renovation (over \$1,000,000 in Valuation) 0.30% of each additional \$1,000,000 or value or portion thereof
 Engineering Services Review Fee \$75.00 per hour

Non-Residential Electrical, Mechanical & Plumbing Inspection Fees

Per Inspection, Per Trade Discipline \$100.00

Other (Non-Residential)

Modular Offices \$250.00
 Day Care Centers \$80.00 per trade discipline
 ABC License \$80.00 per trade discipline
 Certificate of Occupancy \$150.00

Residential Construction Permits (New)

Site-Built Homes Fees based on Estimated Construction Cost x 0.010
 Covered Heated Areas \$132.00 per sq. ft.
 Covered Unheated Areas \$60.00 per sq. ft.
 Porches, Decks, Patios, etc. \$44.00 per sq. ft.
 Concrete Slabs, Walks, Drives, etc. \$4.00 per sq. ft.



Fiscal Year 2025-2026 Fee Schedule

Manufactured Homes \$88.00 per sq. ft.

Residential Construction Permits (Remodel or Renovation)

\$0 - \$999.99	\$100.00
\$1,000 - \$1,999.99	\$150.00
\$2,000 - \$4,999.99	\$200.00
\$5,000 or more	Actual Cost of Construction x 0.006 Or \$200 whichever is greater

Residential Electrical, Mechanical & Plumbing Inspection Fees

Per Inspection, Per Trade Discipline	\$100.00
Mechanical Appliance Change Out	\$100.00
LP Gas Piping/System (per inspection required)	\$100.00

Residential Certificate of Occupancy Fee

\$60.00

Miscellaneous Inspection & Administration Fees

Demolition Permit	\$100.00
Driveway Permit	\$100.00
Fire Inspection	\$100.00
Grading Permit	\$150.00
Homeowners Recovery Fee	\$10.00
Re-Inspection Fee	\$100.00
Residential Retaining Walls (<48" unbalanced backfill)	\$100.00

Engineered Retaining Walls (>48" unbalanced backfill or commercial projects)	\$300.00 Minimum Fee or 0.006 x Project Cost (including design work), whichever is greater
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Work Performed Without Building and Zoning Permits

Double Permit Fee

Right-of-Way Cut Permit Fees

Minimum	\$50.00 < 25 square feet.
Normal Fee	\$2.00 per square foot
Maximum	\$2,500.00
Full Width Overlay (Master Permit – must be requested at time of cut application)	\$50.00
Street/Sidewalk/Dirt Cut Permit Length	10 working days (excluding weather delays)



Fiscal Year 2025-2026 Fee Schedule

Additional Re-Inspections	\$50.00 each
Additional Re-Inspections for Warranty Work	\$50.00 each

Penalties/Fines

Failure to obtain permit	\$50.00 per day
Exceeding time (past 10 working days)	\$50.00 per day

Miscellaneous

30-Day Extensions (must be requested prior to permit expiration)	No Charge
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Planning/Zoning

Board of Adjustment Fees

Appeals or Interpretations	\$50.00
Rezoning Requests	\$200.00
Variance Applications	\$350.00
Zoning Ordinance Amendment Applications	\$100.00

Permit Fees

Zoning Permit	\$50.00
Conditional Use Permit	\$300.00

Subdivision Plat Review Fees

Minor Subdivision	\$50.00
Major Subdivision	\$100.00

Sign Permit Fees

Free-Standing Signs	\$25.00
Wall Signs	\$20.00
Projection Signs	\$20.00
Suspended Signs	\$10.00
Home Occupation Signs	\$10.00

Other Permits

Wireless Communications Facility - Plan Review Fee	\$500.00
Wireless Communications Facility - Intermodulation Study	\$500.00

Stormwater Permit	\$400 per acre, or portion thereof, for total disturbed acreage equal to or exceeding 12,000 square feet. Below 12,000 square feet disturbed area, a \$100 flat rate shall be applied to all development and qualified
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Fiscal Year 2025-2026 Fee Schedule

	redevelopment requiring a permit as described in the Stormwater Management Ordinance	
Base Application Fee for Development in a Special Flood Hazard Area (SFHA)		\$100.00
Fire Permits (Operational or Construction)		\$25.00

Sanitation

Back Door Collection – Three Months		\$105.00
Back Door Collection - Annual		\$135.00
Solid Waste Fee – Monthly (on water billing)		\$15.00
Special Pick Up		\$30.00 minimum
ETJ Collection Rate		\$300.00 annually
Mattress Disposal Fee		\$15 per item
TV/Computer Monitor		\$15 per item
Leaf Collection Fee (outside normal collection period)		\$25.00
Brush/ Yard Waste Collection Fee (over 3 cubic yards)	\$25.00 per each additional 3 cubic yards	

Police Department

Parking Fines

Illegal Parking		\$100.00
Handicap Parking (Unauthorized)		\$250.00
Late Fee for Parking Fines	Additional \$10.00 if not paid within 15 days	
Immobilization Fees		\$50.00

Town Ordinance Violation Fees

Variable Depending Upon Specific Violation		\$100-\$500
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Life Safety Code Violations

\$100.00

Non-Conforming Sign Violations

\$50.00 if not removed within 15 days




All fees are subject to change at any time with approval by the Board of Commissioners.

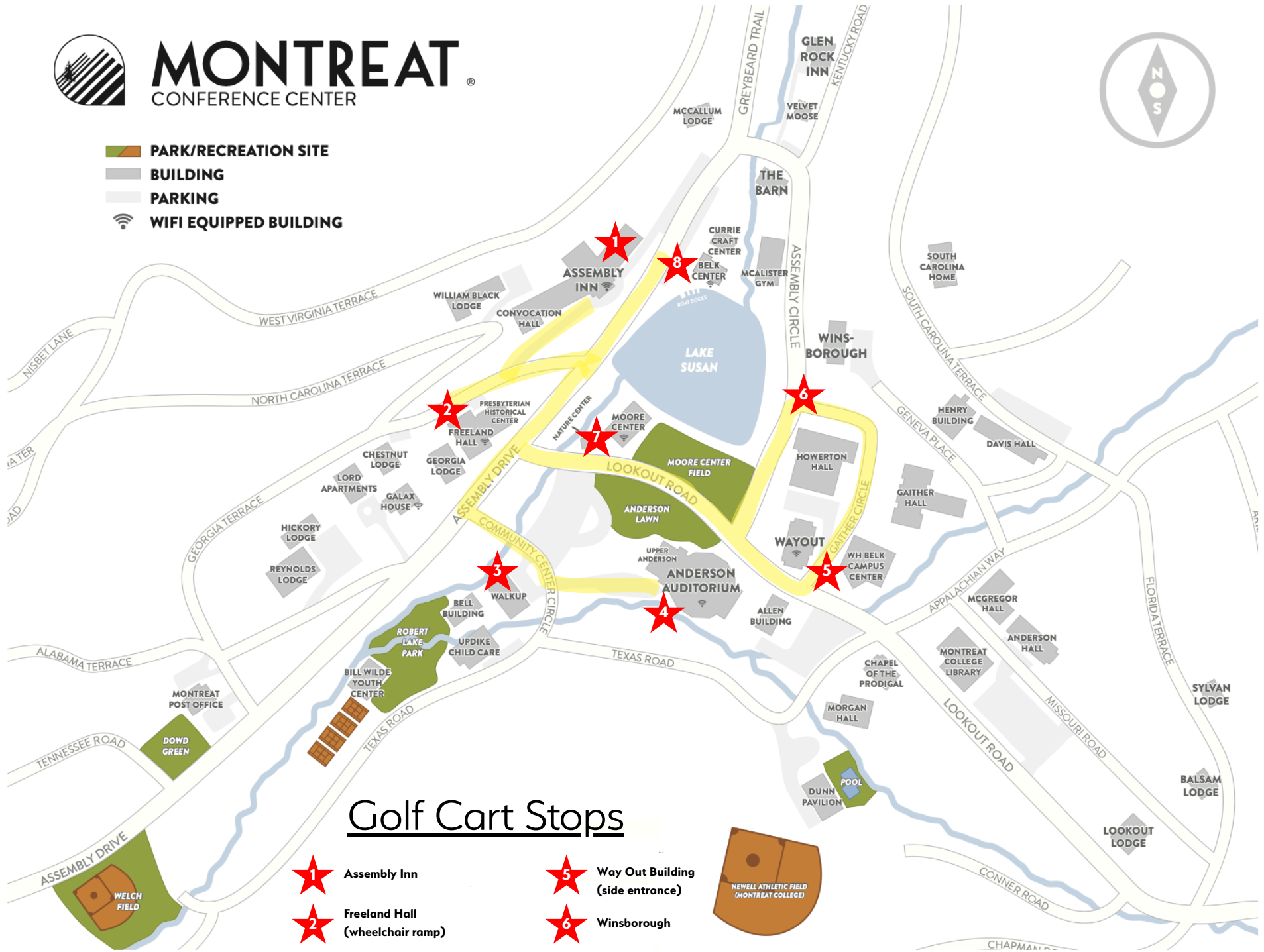


MONTREAT®






CONFERENCE CENTER



-  PARK/RECREATION SITE
-  BUILDING
-  PARKING
-  WIFI EQUIPPED BUILDING



Golf Cart Stops

- | | |
|--|--|
|  1 Assembly Inn |  5 Way Out Building
(side entrance) |
|  2 Freeland Hall
(wheelchair ramp) |  6 Winsborough |
|  3 Walkup |  7 Moore Center
(lower level) |
|  4 Anderson Auditorium
(creekside by the elevator entrance) |  8 Belk Center Left Bank |

