

**Post-Construction  
Storm Water Ordinance**



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## **SECTION 1 GENERAL PROVISIONS**

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### **1.1 TITLE**

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

### **1.2 AUTHORITY**

The Town of Indian Trail is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; and N.C.G.S 160A, §§ 174, 185.

### **1.3 FINDINGS**

It is hereby determined that:

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

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

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

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

Therefore, the Town of Indian Trail adopts this set of water quality and quantity regulations as required by State and federal law regarding control of storm water runoff and discharge.

### **1.4 PURPOSE**

#### **A. General**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-construction storm water runoff and non-point source pollution associated with new development and redevelopment.

#### **B. Specific**

This ordinance seeks to meet its general purpose through the following specific objectives and means:

- 1.** Establishing decision-making processes for development to protect the integrity of watersheds and preserve the health of water resources;

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

## **1.5 APPLICABILITY AND JURISDICTION**

### **A. General**

The requirements of this ordinance shall apply to all developments and redevelopments within the corporate limits or in the extraterritorial jurisdiction, unless one of the following exceptions applies to the development or redevelopment as of the effective date set by this ordinance:

1. Preliminary subdivision plan application or in the case of minor subdivisions, construction plan for required improvements, submitted and accepted for review;
2. Zoning use application submitted and accepted for review for uses that do not require a building permit;
3. Certificate of Building Code Compliance issued by the proper governmental authority;
4. Valid building permit issued pursuant to North Carolina General Statute 153A-344, so long as the permit remains valid, unexpired, and not revoked; and/or
5. Common law vested right established [e.g., the substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid governmental approval to proceed with a project.

### **B. Exemptions**

1. Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.

2. Redevelopment or expansion that cumulatively disturbs less than one acre and is not part of a larger common plan of development or sale is exempt from the provisions of this ordinance.
3. Redevelopment or expansion that results in no net increase in built-upon area and provides equal or greater storm water control that the previous development is exempt from the requirements of this ordinance.
4. Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
5. Activities exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities).

#### **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**

The provisions of this ordinance shall apply within the areas designated on the map titled “Phase II Storm Water Map of the Town of Indian Trail, North Carolina” (hereafter referred to as “the Storm Water Map”), which is adopted simultaneously herewith. The Storm Water Map and all explanatory matter contained thereon is attached hereto and incorporated herein as Exhibit A and is hereby made a part of this ordinance.

The Storm Water Map shall be kept on file by the Storm Water Administrator or designee (hereinafter referred to as the “Storm Water Administrator”) and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural BMPs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by appeal through the Storm Water Administrator

### **1.6 INTERPRETATION**

#### **A. Meaning and Intent**

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 1. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances for the Town of Indian Trail, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

#### **B. Text Controls in Event of Conflict**

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

#### **C. Authority for Interpretation**

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

#### **D. References to Statutes, Regulations, and Documents**

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

#### **E. Computation of Time**

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

#### **F. Delegation of Authority**

Any act authorized by this ordinance to be carried out by the Storm Water Administrator of the Town of Indian Trail may be carried out by his or her designee.

#### **G. Usage**

##### **1. Mandatory and Discretionary Terms**

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

##### **2. Conjunctions**

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

##### **3. Tense, Plurals, and Gender**

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

##### **4. Measurement and Computation of “Disturbed Area” & “Lot Area”**

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

### **1.7 DESIGN MANUAL**

#### **A. Reference to Design Manual**

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



The Design Manual includes a list of acceptable storm water treatment practices, including the specific design criteria for each storm water practice. Storm water treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of this ordinance and the federal Phase II Storm Water Rules. Failure to construct storm water treatment practices in accordance with these criteria may subject the violator to a civil penalty as described in Section 5 of this ordinance.

#### **B. Relationship of Design Manual to Other Laws and Regulations**

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

#### **C. Changes to Standards and Specifications**

Standards, specifications, guidelines, policies, criteria, or other information in the Design Manual in effect at the time of acceptance of a complete application shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

#### **D. Amendments to Design Manual**

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

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.

### **1.8 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS**

#### **A. Conflict of Laws**

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

#### **B. Private Agreements**

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

### **1.9 SEVERABILITY**

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

## **1.10 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS**

### **A. Effective Date**

This ordinance shall take effect on June 8, 2010.

### **B. Final Approvals, Complete Applications**

All development and redevelopment projects for which complete and full applications were submitted by the Town of Indian Trail prior to the effective date of this ordinance shall be exempt from complying with the provisions of this ordinance.

### **C. Violations Continue**

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

## **SECTION 2 ADMINISTRATION AND PROCEDURES**

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### **2.1 REVIEW AND DECISION MAKING ENTITIES**

#### **A. Storm Water Administrator**

##### **1. Designation**

A Storm Water Administrator shall be designated by the Town of Indian Trail for the purpose of administering and enforcing this ordinance.

##### **2. Powers and Duties**

In addition to the powers and duties that may be conferred by other provisions of any other ordinance of the Town of Indian Trail Zoning and any other applicable other law or regulation, the Storm Water Administrator shall have the following powers and duties under this ordinance:

- a.** To review and approve or disapprove applications submitted pursuant to this ordinance.
- b.** To make determinations and render interpretations of this ordinance.
- c.** To establish application requirements and schedules for submittal and review of applications and appeals.
- d.** To enforce this ordinance in accordance with its enforcement provisions.
- e.** To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
- f.** To provide expertise and technical assistance upon request to the Town of Indian Trail and its Boards, Commissions, or Committees.

- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Storm Water Administrator.
- h. To provide information and recommendations relative to variances and information as requested by the Town Council, or the Boards, Commissions, or Committees of the Town of Indian Trail in response to appeals or as requested by said bodies.
- i. To take any other action necessary to administer the provisions of this ordinance.

## **2.2 REVIEW PROCEDURES**

### **A. Permit Required; Must Apply for Permit**

A Storm Water Management Permit is required for all development and redevelopment unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted, reviewed and approved permit application, pursuant to this Section. The content and form of the permit shall be established by the Storm Water Administrator.

### **B. Effect of Permit**

A Storm Water Management Permit shall govern the design, installation, and construction of storm water management and control practices on the site, including structural BMPs and elements of site design for storm water management other than structural BMPs.

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

### **C. Authority to File Applications**

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

### **D. Establishment of Application Requirements, Schedule, and Fees**

#### **1. Application Contents and Form**

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

#### **2. Submission Schedule**

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

### **3. Permit Review Fees**

The Town of Indian Trail shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

### **4. Administrative Manual**

For applications required under this ordinance, the Storm Water Administrator shall compile into an Administrative Manual the application requirements,

submittal checklist, submission schedule, fee schedule, maintenance agreements, a copy of this ordinance, and where to obtain the Design Manual, as well as other information and materials necessary for the effective administration of this ordinance. This Administrative Manual shall be made available to the public.

### **E. Submittal of Complete Application**

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

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

### **F. Review**

Within 30 working days after a complete application is submitted, the Storm Water Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

#### **1. Approval**

If the Storm Water Administrator finds that the application complies with the standards of this ordinance, the Storm Water Administrator shall approve the application and issue a Storm Water Management Permit to the applicant. The Storm Water Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included in the permit as part of the approval.

#### **2. Fails to Comply**

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

#### **3. Revision and Subsequent Review**

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

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

## **2.3 APPLICATIONS FOR APPROVAL**

### **A. Concept Plan and Consultation Meeting**

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

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

#### **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; 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 system setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

#### **3. Storm Water Management System Concept Plan**

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

### **B. Storm Water Management Permit Application**

The Storm Water Management Permit Application shall detail how post-construction storm water runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans submitted with the application shall be prepared by a registered North Carolina Registered Professional Engineer. The engineer shall perform

services only in their area of competence, and shall verify that the design of all storm water management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

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

### **C. As-Built Plans and Final Approval**

The applicant shall certify that the completed project is in accordance with the approved storm water management plans and designs, and shall submit actual “as- built” plans for all storm water management facilities or practices after final construction is completed. Failure to provide approved as-built plans within the time frame specified by the Storm Water Administrator may result in assessment of penalties as specified in Section 5, Violations and Enforcement. At the discretion of the Storm Water Administrator, performance securities or bonds may be required for storm water management facilities or practices until as-built plans are approved and for one year thereafter.

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

Final as-built plans and a final inspection and approval by the Storm Water Administrator are required before a project is determined to be in compliance with this ordinance. At the discretion of the Storm Water Administrator, certificates of occupancy and any other permits or certifications issued by the Town may be withheld pending receipt of as-built plans and the completion of a final inspection and approval of a project.

## **2.4 APPROVALS**

### **A. Effect of Approval**

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

### **B. Time Limit/Expiration**

A Storm Water Management Permit and accompanying plan approved under the provisions of this ordinance shall remain valid for a period of three years from the date of approval. If no work on the site in furtherance of the plan has commenced within the three-year period, the permit and plan approval will become null and void and a new application will be required to develop the site. If work on the site in furtherance of the plan has commenced that involves any utility installations or street improvements except grading, the permit and plan shall remain valid and in force and the project may be completed in accordance with the approved plan.

## **2.5 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 and made by the Storm Water Administrator may file an appeal to the Board of Adjustment for the Town of Indian Trail within 30 days.

## **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 the Town of Indian Trail. The Storm Water Administrator shall forthwith transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken. If the Stormwater Management Plan was submitted in conjunction with a request for Conditional Zoning or as a part of a Unified Development Ordinance, the appeal shall follow the same procedure, including any provisions for judicial review, as set forth in the applicable ordinances or laws relating to the procedures for Conditional Zoning or a Unified Development Ordinance.

The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding in accordance with the Town of Indian Trail Zoning Ordinance or by the body and in the manner, including any provision for judicial review, designated by the applicable law and ordinance for Conditional Zoning or the Unified Development Ordinance.

## **C. Review by Superior Court**

If the Stormwater Management Plan was submitted in conjunction with a request for Conditional Zoning or as a part of a Unified Development Ordinance, judicial review shall follow the same procedures as set forth in the applicable ordinances or laws relating to the procedures for Conditional Zoning or a Unified Development Ordinance.

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

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

## **D. Statutory Exceptions**

1. The Storm Water Administrator may grant exceptions from the buffer requirements of this ordinance as well as the deed restrictions and protective covenant requirements as follows:
  - a. Unnecessary hardships would result from strict application of the ordinance.
  - b. The hardships result from conditions that are peculiar to the property, such as location, size, or topography of the property.
  - c. The hardships did not result from actions taken by the petitioner.
  - d. The requested exception is consistent with the spirit, purpose, and intent of this act; will protect water quality; will secure public safety and welfare; and will preserve substantial justice. Merely proving that the exception would permit a greater profit from the property shall not be considered adequate justification for the exception.
2. Notwithstanding subdivision (1) of this Section, exceptions shall be granted in any of the following instances:
  - a. 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.

- b.** When there is a lack of practical alternatives for a storm water management facility; a storm water management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 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.
- c.** A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

## **SECTION 3 STANDARDS**

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### **3.1 GENERAL STANDARDS**

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

### **3.2 WATERSHED DISTRICTS**

Standards for development and redevelopment vary depending on the watershed district in which a project is located as described in the Storm Water Map of the Town of Indian Trail, North Carolina, which is adopted simultaneously herewith as described in Section 1. The Town of Indian Trail is divided into the following watershed districts for purposes of this ordinance.

#### **A. Twelve Mile and Crooked Creek District**

That area of land that drains to Twelve Mile Creek and Crooked Creek in the Town of Indian Trail, including all creeks and tributaries.

#### **B. Goose Creek District**

That area of land that drains to Goose Creek in the Town of Indian Trail, including all creeks and tributaries.

### **3.3 DEVELOPMENT STANDARDS FOR TWELVE MILE AND CROOKED CREEK DISTRICT**

#### **A. Development Standards for Low Density Projects (<24% BUA)**

Any drainage area within a project is considered low density when said drainage area has less than 24% built upon area. Such low-density projects shall comply with each of the following standards.

##### **1. Vegetated Conveyances**

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



## **2. Stream Buffers**

All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters in the Twelve Mile Creek and Crook Creek Watersheds. Buffer widths shall be measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. Allowable stream buffer uses include the following: road crossings, driveway crossings, greenway/hiking trails, bike trails, fences, utility line crossings, parallel or near parallel utility lines, flood control structures, stream and bank stabilization/restoration projects, grading and revegetation, storm water best management practices, temporary sediment and erosion control devices, animal trails, and activities permitted under Section 404 of the Clean Water Act.

## **B. Development Standards For High Density Projects ( $\geq 24\%$ BUA)**

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

### **1. Storm Water Quality Treatment Volume**

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

### **2. Storm Water Quality Treatment**

All structural storm water treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.

### **3. Storm Water Treatment System Design**

General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.

### **4. Stream Buffers**

All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters in the Twelve Mile Creek and Crooked Creek Watersheds. Buffer widths shall be measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream. Allowable stream buffer uses include the following: road crossings, driveway crossings, greenway/hiking trails, bike trails, fences, utility line crossings, parallel or near parallel utility lines, flood control structures, stream and bank stabilization/restoration projects, grading and revegetation, storm water best management practices, temporary sediment and erosion control devices, animal trails, and activities permitted under Section 404 of the Clean Water Act.

### **5. Storm Water Volume Control**

Storm water treatment systems shall be installed to control the difference in the storm water runoff from the pre-development and post-development conditions for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

### **6. Storm Water Peak Control**

Peak control shall be installed to control the 2-, 10-, and 25-year, 24-hour storm events to pre-development levels. 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 as specified in the design manual. Requirements for Downstream Impact Analysis (Section 1370.020 of the Unified Development Ordinance) shall be met when applicable. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

### **3.4 DEVELOPMENT STANDARDS FOR GOOSE CREEK DISTRICT**

All development and redevelopment in the Goose Creek District shall comply with the requirements of the State of North Carolina Department of Environment & Natural Resources **Site Specific Water Quality Management Plan for the Goose Creek Watershed**, North Carolina Administrative Code: 15A NCAC 2B .0600 - .0609.

#### **A. Storm Water Control Requirements (15A NCAC 02B .0602)**

Any new development activity that disturbs one acre or more of land within the Goose Creek watershed and will result in addition of impervious surface shall comply with each of the following standards:

##### **1. Storm Water Infiltration Measures**

Implement stormwater management measures that promote infiltration of flows and groundwater recharge for the purpose of maintaining stream base flow.

##### **2. Storm Water Quality Treatment**

All structural storm water treatment systems used to meet these requirements shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.

##### **3. Storm Water Treatment System Design**

General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.

##### **4. Storm Water Volume Control**

Storm water treatment systems shall be installed to control the difference in the storm water runoff from the pre-development and post-development conditions for the 1-year, 24-hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours. Storm water volume shall discharge at a rate equal to or less than the pre-development discharge rate for the 1-year, 24-hour storm.

##### **5. Storm Water Peak Control**

For developments greater than or equal to 10% built upon area (high density developments) peak control shall be installed to control the 2-, 10-, and 25-year, 24-hour storm events to pre-development levels. 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 as specified in the design manual. Requirements for Downstream Impact Analysis (Section 1370.020 of the Unified Development Ordinance) shall be met when applicable. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.

**A. Riparian Buffers (15A NCAC 02B .0605 - .0607)**

1. **Undisturbed Riparian Buffers** are required within 200 feet of waterbodies within the 100-Year Floodplain and within 100 feet of waterbodies that are not within the 100-Year Floodplain.
2. **Redevelopment** of residential structures is allowed. Redevelopment of non-residential structures is allowed provided that less than an additional 0.50 acre is disturbed during the redevelopment activity.
3. **Activities Within Riparian Buffers** See Table 1 below for Exempt, Potentially Allowable, and Prohibited Activities within Riparian Buffers.

**B. Variance Requests**

Persons who wish to undertake uses designated as prohibited within the protected riparian buffer area may pursue a variance. Variance requests are made directly to the North Carolina Department of Environment and Natural Resources, Division of Water Quality, The variance request procedure is set forth in 15 NCAC 02B.0606.

**Table 1 Exempt, Potentially Allowable, and Prohibited Activities within Riparian Buffers**

	Exempt	Potentially Allowable *	Prohibited
Airport facilities: <ul style="list-style-type: none"> <li>• that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer;</li> <li>• that impact greater than 150 linear feet or one-third of an acre of riparian buffer</li> </ul>		X X*	
Archaeological activities	X		
Bridges		X	
Dam maintenance activities	X		
Drainage ditches, roadside ditches and stormwater outfalls through riparian buffers: <ul style="list-style-type: none"> <li>• Existing drainage ditches, roadside ditches, and stormwater outfalls provided that they are managed to minimize the sediment, nutrients including ammonia and other pollution that convey to waterbodies;</li> <li>• New drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before the conveyance discharges through the riparian buffer;</li> <li>• New drainage ditches, roadside ditches and stormwater outfalls that do not minimize the sediment, nutrients including ammonia and other pollution and attenuate flow before discharging through the riparian buffer</li> <li>• Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch</li> </ul>	X	X	X X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the diffuse flow requirements of this ordinance is established adjacent to the new channel	X		

	Exempt	Potentially Allowable *	Prohibited
Driveway crossings of streams and other surface waters subject to this ordinance: <ul style="list-style-type: none"> <li>• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet in width and are perpendicular<sup>3</sup>;</li> <li>• Driveway crossings on single family residential lots that disturb greater than 25 linear feet in width and are perpendicular<sup>3</sup>;</li> <li>• In a subdivision that cumulatively disturbs equal to or less than 150 linear feet in width and are perpendicular</li> <li>• In a subdivision that cumulatively disturbs greater than 150 linear feet in width and are perpendicular</li> </ul>	X	X  X  X*	
Fences provided that disturbance is minimized and installation does not result in removal of forest vegetation	X		
Forest harvesting – see 15A NCAC 2B .0608			
Fertilizer application: <ul style="list-style-type: none"> <li>• One-time fertilizer application at agronomic rates to establish replanted vegetation;</li> <li>• Ongoing fertilizer application</li> </ul>	X		X
Greenway/hiking trails		X	
Historic preservation	X		
Landfills as defined by G.S. 130A-290			X
Mining activities: <ul style="list-style-type: none"> <li>• Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the diffuse flow requirements of this Rule are established adjacent to the relocated channels;</li> <li>• Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the diffuse flow requirements of this ordinance are not established adjacent to the relocated channels;</li> <li>• Wastewater or mining dewatering wells with approved NPDES permit</li> </ul>		X          X*	X
Non-electric utility lines with impacts other than perpendicular crossings <sup>3</sup> : <ul style="list-style-type: none"> <li>• If activity is within 50 feet of the stream;</li> <li>• If activity is outside of the inner 50 feet nearest the stream;</li> <li>• Wastewater collection system utility lines and lift station lines may impact the riparian zone if both gravity and force main collections systems are made of ductile iron and 50% of the collection system is cleaned annually.</li> <li>• Lift Stations require Supervisory Control and Data Acquisition System (SCADA), telemetry, audio and visual alarms, signage with emergency contact, daily visitation (365 days/year), and documentation must be maintained for 3 years of all of the above and available upon request [note: this requirement also applies to collection system perpendicular crossings, detailed below.]</li> </ul>		X* X  X*    X*	

	Exempt	Potentially Allowable *	Prohibited
<p>Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Rule that are not collection systems<sup>3</sup>:</p> <ul style="list-style-type: none"> <li>• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width;</li> <li>• Perpendicular crossings that disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width;</li> <li>• Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width;</li> <li>• Perpendicular crossings that disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width;</li> <li>• Perpendicular crossings that disturb greater than 150 linear feet of riparian buffer</li> </ul> <p>Non-electric perpendicular utility line crossings that are collections systems as defined in Rule 15A NCAC 02T .0300 (note: must follow constraints listed under wastewater collection system utility lines and lift stations, above):</p> <ul style="list-style-type: none"> <li>• That use any of the following installation methods to minimize the sediment, nutrient and other pollution through the riparian buffer: underground directional boring methods, bore-and-jack techniques or another appropriate microtunnelling method.</li> <li>• That does not minimize the sediment, nutrient and other pollution through the riparian buffer by the most appropriate exempt method.</li> </ul>	X	X X X* X*	X
On-site sanitary sewage systems - new ones that use ground absorption			X
Overhead electric utility lines <sup>1,2,3</sup> :	X	X*	
Periodic maintenance of modified natural streams such as canals and a grassed travelway on one side of the surface water when alternative forms of maintenance access are not practical.		X	
Playground equipment:	X	X	
Ponds in natural drainage ways, excluding dry ponds:			
<ul style="list-style-type: none"> <li>• New ponds provided that a riparian buffer that meets the</li> </ul>			

	Exempt	Potentially Allowable *	Prohibited
diffuse flow requirements of this ordinance is established adjacent to the pond; <ul style="list-style-type: none"> <li>New ponds where a riparian buffer that meets the diffuse flow requirements of this ordinance is NOT established adjacent to the pond</li> </ul>		X	X
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this ordinance			X
Railroad crossings of streams and other surface waters subject to this ordinance: <ul style="list-style-type: none"> <li>Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer;</li> <li>Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer</li> <li>Railroad crossings that impact greater than 150 linear feet of riparian buffer</li> </ul>	X	X	X
Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Rule		X*	
Road crossings of streams and other surface waters subject to this ordinance: <ul style="list-style-type: none"> <li>Road crossings that impact equal to or less than 40 linear feet of riparian buffer and is perpendicular;</li> <li>Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet and is perpendicular;</li> <li>Road crossings that impact greater than 150 linear feet of riparian buffer</li> </ul>	X	X  X*	
Scientific studies and stream gauging	X		
Stormwater management ponds excluding dry ponds: <ul style="list-style-type: none"> <li>New stormwater management ponds provided that a riparian buffer that meets the diffuse flow requirements of this Rule is established adjacent to the pond;</li> <li>New stormwater management ponds where a riparian buffer that meets the diffuse flow requirements of this ordinance is NOT established adjacent to the pond</li> </ul>		X	X
Stream restoration	X		
Streambank stabilization		X	
Temporary roads: <ul style="list-style-type: none"> <li>Temporary roads that disturb less than or equal to 2,500 square feet provided that vegetation is restored within six months of initial disturbance;</li> <li>Temporary roads that disturb greater than 2,500 square feet provided that vegetation is restored within six months of initial disturbance;</li> <li>Temporary roads used for bridge construction or replacement provided that restoration activities, such as soil stabilization and revegetation, are conducted immediately after construction</li> </ul>	X	X  X	

	Exempt	Potentially Allowable *	Prohibited
Temporary sediment and erosion control devices: <ul style="list-style-type: none"> <li>• To control impacts associated with uses approved by the Division or that have received a variance provided that sediment and erosion control for upland areas is addressed to the maximum extent practical outside the buffer;</li> <li>• In-stream temporary erosion and sediment control measures for work within a stream channel</li> </ul>	X	X	
Underground electric utility lines: <ul style="list-style-type: none"> <li>• Impacts other than perpendicular crossings<sup>3,4</sup></li> </ul>	X		
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this ordinance: <ul style="list-style-type: none"> <li>• Perpendicular crossings that disturb less than or equal to 40 linear feet of riparian buffer<sup>3,4</sup>;</li> <li>• Perpendicular crossings that disturb greater than 40 linear feet of riparian buffer<sup>3,4</sup></li> </ul>	X	X	
Vegetation management: <ul style="list-style-type: none"> <li>• Emergency fire control measures provided that topography is restored;</li> <li>• Planting vegetation to enhance the riparian buffer;</li> <li>• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised;</li> <li>• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life;</li> <li>• Removal of poison ivy;</li> <li>• Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30</li> </ul>	X X X X X X		
Water dependent structures as defined in 15A NCAC 02B .0202		X	
Water wells	X		
Wetland restoration	X		

\* Potentially allowable requires, at a minimum, DWQ approval. The (X\*) identifies those uses that require both DWQ approval and mitigation.

**Table 1 Notes:**

1. Provided that all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Division of Water Quality:

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed;
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut
- Rip rap shall not be used unless it is necessary to stabilize a tower
- No fertilizer shall be used other than a one-time application to re-establish vegetation.

- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
  - Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
  - In wetlands, mats shall be utilized to minimize soil disturbance.
2. Provided that poles or towers shall not be installed within 10 feet of a water body unless the Division of Water Quality completes a no practical alternatives evaluation.
  3. Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.
  4. Provided that all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Division of Water Quality:
    - Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
    - Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut
    - Underground cables shall be installed by vibratory plow or trenching
    - The trench shall be backfilled with the excavated soil material immediately following cable installation
    - No fertilizer shall be used other than a one-time application to re-establish vegetation.
    - Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
    - Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
    - In wetlands, mats shall be utilized to minimize soil disturbance.

### 3.5 BUFFER DELINEATION

#### Goose Creek District Buffer Delineation

Shall comply with the requirements of the State of North Carolina Department of Environment & Natural Resources **Site Specific Water Quality Management Plan for the Goose Creek Watershed**, North Carolina Administrative Code: 15A NCAC 2B .0600 - .0609.

#### Twelve Mile and Crooked Creek District Buffer Delineation

Shall comply with the following:

##### A. Determination of Surface Waters to be Buffered

The buffer requirements of this ordinance shall apply as stated in Sections 3 if a surface water is shown on either the most recent version of the Soil Survey Map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) 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). Surface waters that do not appear on either of the aforementioned maps shall not be subject to the aforementioned buffer requirements of this ordinance. Surface waters that appear on either of the aforementioned maps shall be subject to this ordinance unless one of the following applies.

1. Exemption when an on-site determination shows that surface waters are not present. Surface waters include intermittent streams, perennial streams, lakes, ponds, and estuaries. Wetlands are excluded. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be



considered as part of the riparian buffer but are regulated pursuant to 15A NCAC 2H .0506. When a landowner or other affected party believes that the USDA or USGS maps described in this Section inaccurately depict surface waters, he or she shall consult with the Storm Water Administrator. Upon request, the Storm Water Administrator shall make on-site determinations. Such determinations can also be made at the discretion of the Storm Water Administrator in the absence of a request from a landowner or other concerned party. The bSurface waters that appear on the maps shall not be subject to this ordinance if an on-site determination by the Storm Water Administrator shows that they fall into one of the following categories.

- a. Ditches and manmade conveyances other than modified natural streams unless constructed for navigation or boat access;
    - b. Manmade ponds and lakes that are not intersected by a buffered stream segment and that are located outside natural drainage ways; and
    - c. Ephemeral (storm water) streams.
2. Exemption when existing uses are present and ongoing. The buffer requirements of this ordinance shall not apply to portions of buffers where a use is existing and ongoing. Only the portion of the buffer that contains the footprint of the existing and ongoing use is exempt. The determination of whether a use is existing and ongoing shall be made by the North Carolina Department of Environment and Natural Resources, Division of Water Quality. A use is existing and ongoing when it is a completed and maintained activity, an activity with appropriate valid permits, or an activity with documentation for unexpired vested rights, as described below:
  - a. A use that was present within the riparian buffer as of the effective date of this ordinance and has continued since that time. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided the site remains similarly vegetated, no impervious surface is added within the buffer area where it did not exist as of the effective date of this ordinance and existing diffuse flow is maintained.
  - b. A use that can be documented to the Division of Water Quality that meets at least one of the following criteria:
    1. Project requires a 401 Certification/404 Permit, issued prior to the effective date of this ordinance and are still valid;
    2. Project requires a state permit, such as a landfill, NPDES wastewater discharge, land application residuals and road construction activities, and has begun construction or is under contract to begin construction and has received all required state permits prior to the effective date of this ordinance;
    3. Project is being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with Department of Environment and Natural Resources on avoidance and minimization by the effective date of this ordinance; or

4. Project is not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process or Safe Accountable Flexible Efficient Transportation Equity Act; a Legacy for Users (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Division of Water Quality prior to the effective date of this ordinance.
- c. At the time the existing use is changed to another use, this ordinance shall apply. An existing use shall be considered converted to another use or a change of use, if any of the following applies:
1. Impervious surface is added to the riparian buffer in locations where it did not exist previously.
  2. An agricultural operation within the riparian buffer is converted to a non-agricultural use.
  3. A lawn within the riparian buffer ceases to be maintained.

#### **B. Buffer Identification**

The following buffer identifications are required:

1. Surface waters and buffer boundaries must be clearly identified on all construction plans, including grading and clearing plans, erosion, drainage and sediment control plans and site plans.
2. Outside buffer boundaries must be clearly marked on-site prior to any land disturbing activities.
3. The outside boundary of the buffer must be permanently marked at highway stream crossings.
4. Surface waters and buffer boundaries must be specified on all surveys and record plats.
5. Buffer boundaries as well as all buffer requirements must be specified on all surveys and record plats, on individual deeds and in property association documents for lands held in common.

### **3.6 DIFFUSE FLOW REQUIREMENT**

Direct discharges of runoff to streams are not allowed. Diffuse flow of runoff shall be maintained in the buffer by dispersing concentrated flow and reestablishing vegetation as follows: (techniques for providing diffuse flow are also specified in the Design Manual):

Concentrated runoff from new ditches or other manmade conveyances shall be converted to diffuse flow before the runoff enters the buffer.

Periodic corrective action to restore diffuse flow shall be taken by the property owner if necessary to impede the formation of erosion gullies.

### **3.7 PONDS**

Ponds which intersect the stream channel shall have the same buffers as the original stream measured from the top of the bank of the pond.

### **3.8 STANDARDS FOR STORM WATER CONTROL MEASURES**

#### **A. Evaluation According to Contents of Design Manual**

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

#### **B. Determination of Adequacy; Presumptions and Alternatives**

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

### **3.9 DEED RECORDATION AND INDICATIONS ON PLAT**

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

## **SECTION 4 MAINTENANCE**

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### **4.1 GENERAL STANDARDS FOR MAINTENANCE**

#### **A. Function of BMPs as Intended**

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

#### **B. Annual Maintenance Inspection and Report**

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

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each structural BMP;
3. A statement that an inspection was made of all structural BMPs;
4. The date the inspection was made;
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
6. The original signature and seal of the engineer, surveyor, or landscape architect.
7. All inspection reports shall be on forms supplied by the Storm Water Administrator that are contained in the Administrative Manual. An original inspection report shall be provided to the Storm Water Administrator beginning one year from the date of as-built certification and each year thereafter on or before the anniversary date of the as-built certification.

### **4.2 OPERATION AND MAINTENANCE AGREEMENT**

#### **A. General**

At the time that as-built plans are provided to the Storm Water Administrator as described in Section 2 and prior to final approval of a project for compliance with this ordinance, but in all cases prior to placing the BMPs in service, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all current and subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Failure to execute an operation and maintenance agreement within the time frame specified by the Storm Water Administrator may result in assessment of penalties as specified in Section 5, Violations and Enforcement. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement. At the discretion of the Storm Water Administrator, certificates of occupancy may be withheld pending receipt of an operation and maintenance agreement.

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town of Indian Trail a right of entry

in the event that the Storm Water Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town of Indian Trail to assume responsibility for the structural BMP.

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

## **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 the provisions described in the Administrative Manual.

### **4.3 INSPECTION PROGRAM**

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

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

### **4.4 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE**

The Town of Indian Trail requires the submittal of a performance and maintenance surety prior to issuance of a permit in accordance with the provisions contained in the Administrative Manual.

### **4.5 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES**

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

### **4.6 NUISANCE**

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

### **4.7 MAINTENANCE EASEMENT**

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate inspection, maintenance, reconstruction and repair by a maintenance easement. The easement shall be recorded as described in Section 3 and its terms shall specify who may make use of the easement and for what purposes.

## **SECTION 5 VIOLATIONS AND ENFORCEMENT**

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### **5.1 GENERAL**

#### **A. Authority to Enforce**

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

#### **B. Violation Unlawful**

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

#### **C. Each Day a Separate Offense**

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

#### **D. Responsible Persons/Entities**

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

##### **1. Person Maintaining Condition Resulting In or Constituting Violation**

Any person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

##### **2. Responsibility For Land or Use of Land**

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

### **5.2 INSPECTIONS AND INVESTIGATIONS**

#### **A. Authority to Inspect**

The Storm Water Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance, or rules or orders adopted or issued pursuant to this ordinance, and to determine whether the activity is being

conducted in accordance with this ordinance and the approved storm water management plan, Design Manual and Administrative Manual and whether the measures required in the plan are effective. No person shall willfully resist, delay, or obstruct the Storm Water Administrator while the Storm Water Administrator is inspecting or attempting to inspect an activity under this ordinance.

## **B. Notice of Violation and Order to Correct**

When the Storm Water Administrator finds that any building, structure, or land is in violation of this ordinance, the Storm Water Administrator shall notify in writing the responsible person/entity. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation occurred or is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. The notice shall, if required, specify a date by which the responsible person/entity must comply with this ordinance, and advise that the responsible person/entity is subject to remedies and/or penalties or that failure to correct the violation within the time specified will subject the responsible person/entity to remedies and/or penalties as described in Section 5 of this ordinance. In determining the measures required and the time for achieving compliance, the Storm Water Administrator shall take into consideration the technology and quantity of work required, and shall set reasonable and attainable time limits. The Storm Water Administrator may deliver the notice of violation and correction order personally, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Storm Water Administrator may take appropriate action, as provided in Section 5, Remedies and Penalties, to correct and abate the violation and to ensure compliance with this ordinance.

## **C. Extension of Time**

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

## **D. Penalties Assessed Concurrent with Notice of Violation**

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

1. Failure to submit a storm water management plan.
2. Performing activities without an approved storm water management plan.

3. Obstructing, hampering or interfering with an authorized representative who is in the process of carrying out official duties.
4. A repeated violation for which a notice was previously given on the same project and to the same responsible person/entity responsible for the violation.
5. Willful or negligent violation of this ordinance.
6. Failure to install or maintain best management practices per the approved plan.

#### **E. Authority to Investigate**

The Storm Water Administrator shall have the authority to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this ordinance, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting. No Person shall refuse entry or access to the Storm Water Administrator who requests entry for purpose of inspection or investigation, and who presents appropriate credentials, nor shall any Person obstruct, hamper, or interfere with the Storm Water Administrator while in the process of carrying out official duties.

The Storm Water Administrator shall also have the power to require written statements, or the filing of reports under oath as part of an investigation.

#### **F. Enforcement After Time to Correct**

After the time has expired to correct a violation, including any extension(s) if authorized by the Storm Water Administrator, the Storm Water Administrator shall determine if the violation is corrected. If the violation is not corrected, the Storm Water Administrator may act to impose one or more of the remedies and penalties authorized by Section 5.

#### **G. Emergency Enforcement**

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Storm Water Administrator may order the immediate cessation of a violation. Any Person so ordered shall cease any violation immediately. The Storm Water Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty specified in Section 5.

### **5.3 REMEDIES AND PENALTIES**

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

#### **A. Remedies**

##### **1. Withholding of Certificate of Occupancy**

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



## **2. Disapproval of Subsequent Permits and Development Approvals**

As long as a violation of this ordinance continues and remains uncorrected, the Storm Water Administrator or other authorized agent may withhold, and the Town of Indian Trail may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the zoning, subdivision, and/or building regulations, as appropriate for the land on which the violation occurs.

## **3. Injunction, Abatements, etc.**

The Storm Water Administrator, with the written authorization of the Town Manager may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

## **4. Correction as Public Health Nuisance, Costs as Lien, etc.**

If the violation is deemed dangerous or prejudicial to the public health or public safety as provided in North Carolina General Statute 160A-193, the Storm Water Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

## **5. Stop Work Order**

The Storm Water Administrator may issue a stop work order to the Person(s) violating this ordinance. The stop work order shall remain in effect until the Person has taken the remedial measures set forth in the notice of violation or has otherwise corrected the violation or violations described therein. The stop work order may be withdrawn or modified to enable the Person to take the necessary remedial measures to correct such violation or violations.

## **6. Restoration of Areas Affected by Failure to Comply**

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

# **B. Civil Penalties**

## **1. Violations of Ordinance**

A violation of any of the provisions of this ordinance or rules or other orders adopted or issued pursuant to this ordinance may subject the violator to a civil penalty. A civil penalty may be assessed from the date the violation occurs. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation except as provided in Section 5 of this ordinance in which case the penalty is assessed concurrently with a notice of violation. Refusal to accept the notice or failure to notify the Storm Water Administrator of a change of address shall not relieve the violator's obligation to comply with this ordinance or to pay such a penalty.

## **2. Amount of Penalty**

The maximum civil penalty for each violation of this ordinance is \$27,500. Civil penalties may be assessed up to the full amount of penalty to which the Town of Indian Trail 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. Each day of continuing violation shall constitute a separate violation. In determining the amount of the civil penalty, the Storm Water Administrator shall consider any relevant mitigating and aggravating factors including, but not limited to, the effect, if any, of the violation; the degree and extent of harm caused by the violation; the cost of rectifying the damage; whether the violator saved money through noncompliance; whether the violator took reasonable measures to comply with this ordinance; whether the violation was committed willfully; whether the violator reported the violation to the Storm Water Administrator; and the prior record of the violator in complying or failing to comply with this ordinance or any other post-construction ordinance or law. The Storm Water Administrator is authorized to vary the amount of the per diem penalty based on criteria specified in the Administrative Manual and based on relevant mitigating factors. Civil penalties collected pursuant to this ordinance shall be credited to the Town of Indian Trail's general fund as non-tax revenue.

## **3. Notice of Assessment of Civil Penalty**

The Storm Water Administrator shall determine the amount of the civil penalty and shall notify the violator of the amount of the penalty and the reason for assessing the penalty. This notice of assessment of civil penalty shall be served by any means authorized under North Carolina General Statute 1A-1, Rule 4 and shall direct the violator to either pay the assessment or file an appeal within 30 days of receipt of the notice as specified in Section 5.

## **4. Failure to Pay Civil Penalty Assessment**

If a violator does not pay a civil penalty assessed by the Storm Water Administrator within 30 Days after it is due, or does not request a hearing as provided in Section 5, the Storm Water Administrator shall request the initiation of a civil action, including the filing of a lis pendens, to recover the amount of the assessment. The civil action shall be brought in Union County Superior Court or in any other court of competent jurisdiction. A civil action must be filed within three (3) years of the date the assessment was due. An assessment that is appealed is due at the conclusion of the administrative and judicial review of the assessment.

## **5. Appeal of Remedy or Penalty**

The issuance of an order of restoration and/or notice of assessment of a civil penalty by the Storm Water Administrator shall entitle the responsible party or entity to an appeal before the Board of Adjustment or other applicable body for the Town of Indian Trail if such Person submits written demand for an appeal hearing within 30 days of the receipt of an order of restoration and/or notice of assessment of a civil penalty. The appeal of an order of restoration and/or notice of assessment of a civil penalty shall be conducted as described in Section 2 of this ordinance.

## **C. Criminal Penalties**

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

## SECTION 6 DEFINITIONS

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

### 1. **Administrative Manual**

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

### 2. **Best Management Practices (BMPs)**

A structural management facility used singularly or in combination for storm water quality and quantity treatment to achieve water quality protection goals.

### 3. **Buffer**

A natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants.

### 4. **Buffer Widths**

Viewed aerially, the stream buffer width is measured horizontally on a line perpendicular to the surface water, landward from the top of the bank on each side of the stream.

### 5. **Built-Upon Area (BUA)**

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

### 6. **Design Manual**

The storm water design manual shall be approved for use in the Town of Indian Trail by the North Carolina Department of Environment and Natural Resources and shall be at least as stringent as the storm water design manual approved for use in Phase II jurisdictions by the Department for the proper implementation of the requirements of the Federal Phase II storm water program. All references herein to the Design Manual are to the latest published edition or revision.

### 7. **Development**

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

### 8. **Disturbance**

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

**9. Drainage Area**

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

**10. Larger common plan of development or sale**

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

**11. Non-Point Source (NPS) Pollution**

Forms of pollution caused by sediment, nutrients, organic and toxic substances originating from land use activities and carried to lakes and streams by surface runoff.

**12. Owner**

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

**13. Person(s)**

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

**14. Redevelopment**

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

**15. Storm Water Administrator**

The Town Engineer is designated by the Town of Indian Trail to administer and enforce this ordinance.

**16. Storm Water Management Permit**

A permit required for all development and redevelopment unless exempt pursuant to this ordinance, which demonstrates compliance with this ordinance.

**17. Top Of Bank**

The landward edge of the stream channel during high water or bankfull conditions at the point where the water begins to overflow onto the floodplain.

**18. Total Suspended Solids (TSS)**

Total suspended matter in water which includes particles collected on a filter with a pore size of 2 microns as measured by Standard Method 2540-D, which is commonly expressed as a concentration in terms of milligrams per liter (mg/l) or parts per million (ppm).