

MONTREAT CODE OF GENERAL ORDINANCES

CHAPTER K - ENVIRONMENT

ARTICLE III: STORMWATER MANAGEMENT

(Revised 6/11/2009)

(Revised 2/11/2010)

300. General Provisions

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

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

http://www.ncforestry.org/docs/Landowners/regulations/mgmt_practices.htm

- c) Activities for which a permit is required under the mining act, G.S. 74-46 et. seq.

<http://www.dlr.enr.state.nc.us/pages/miningprogram.html>

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

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

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

301. Interpretations and Definitions

- 1. Meaning and Intent. If a different or more specific meaning is given for a term defined elsewhere in the Town of Montreat Code, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

- 2. Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

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3. Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.
4. References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
5. Word Usage.
 - a) The term “Town” shall herein refer to the Town of Montreat.
 - b) The term “Administrator” shall herein refer to the Stormwater Administrator of the Town of Montreat.
 - c) The term “Department” shall herein refer to the NC Department of Environment and Natural Resources (NCDENR).
 - d) The term “Division” shall herein refer to the NC Division of Water Quality (NCDWQ).
 - e) “Design Manual” shall herein refer to the most current edition of the *Stormwater Best Management Practice Manual* approved by NCDWQ. Development projects, or *qualified* redevelopment projects, less than 10,000 square feet may use the *Community Conservation Assistance Program (CCAP) Stormwater Best Management Practice Design Manual* prepared by the Biological and Agricultural Engineering Department of NCSU approved by NCDENR.
 - f) Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.
6. When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

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

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

Built-upon Area(BUA): The portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

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

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

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

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

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

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

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

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Impervious surface: Any surface that, in whole or in part, restricts or prevents the natural absorption of water into the ground. Such surfaces may include, but are not limited to, gravel, concrete, asphalt or other paving material, and all areas covered by the footprint of buildings or structures.

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

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

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

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

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

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

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

Redevelopment: Any new construction on a site with pre-existing uses involving either partial or full demolition of existing structures, establishing new use(s) with a

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corresponding increase in impervious or partially pervious surface, or which otherwise decreases the infiltration of precipitation into the soil.

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

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

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

Stream: A watercourse that collects surface runoff.

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

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

302. Effective Date and Transitional Provisions

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

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this

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ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

303. Administration and Procedures.

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

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

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3. Review and Appeals Procedure.

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

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

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

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5. Plan review fees shall be double posted amount when land disturbing activity begins before a required Stormwater Control Permit is issued by the Town.
6. The Administrator shall review the submittal for completeness and for compliance with the requirements of this ordinance. An incomplete or nonconforming permit application will be returned to the applicant within two business days with an explanation of issues requiring resolution before plan review can be initiated.
7. Within thirty (30) days of receipt of complete application for development approval, the Administrator shall take action on the plan.
8. Approval, approval with modifications, or denial of the proposed stormwater control measures shall be in writing. In the case of denial, the reasons for denial shall be clearly stated. The applicant may appeal the decision of the Administrator to the Board of Adjustment. In the event a Stop Work Order has been issued for any violation of this ordinance, the party seeking to challenge the Order may request a special meeting of the Board of Adjustment to ensure a timely resolution of the matter.
9. Upon appeal, the Montreat Board of Adjustment will conduct a hearing in the nature of a quasi-judicial proceeding with all findings of fact supported by material evidence.
10. Decisions appealing the final decision by the Board of Adjustment may be filed in Buncombe County Superior Court, to be reviewed by proceedings in the nature of certiorari, within thirty (30) days of the final decision of the Board of Adjustment.
11. The Administrator shall take action on revisions to a stormwater control application which has been previously denied, within fifteen (15) days of receipt of the revised plan application for approval.
12. If a revised application is not re-submitted within sixty (60) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee and pursuant to the then current standards.
13. Application for an amendment to an approved Stormwater Control Plan in written and graphic form may be made at any time. Until such time as an amendment is approved by the Administrator, it shall be unlawful to deviate from the approved plan.

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14. A Stormwater Control Permit shall become null and void if the applicant has failed to make substantial progress within the prescribed timeframe as defined in this ordinance. The Administrator may grant a single, one-month extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

304. Permit Application and Plans.

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

1. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
2. Natural Resources Inventory: A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
3. Stormwater Management System Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

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4. Area-Based Requirements.

- a) *Larger Development Projects:* All stormwater management plans relating to subdivisions or development or redevelopment plans on lots equal to or greater than one acre, or on lots less than an acre with at least 10,000 square feet disturbed area, or which are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, or other Special Use shall be prepared by a qualified registered North Carolina professional engineer, environmental scientist or landscape architect, and the consulting professional shall perform services only in their area of competence. The Administrator shall determine if the consulting professional may verify that the design of all stormwater management facilities and practices meets submittal requirements for complete applications, and that the designs and plans are sufficient to comply with this ordinance.
- b) *Smaller Projects:* Stormwater management plans relating to development or qualifying redevelopment on lots less than 10,000 square feet disturbed area in size shall meet the minimum permit application requirements of Section 304. 1-3, and applicants shall provide designs demonstrating adequate stormwater management measures selected from a list of approved BMP's as follows:
- Diffuse or Directed Flow Designs
 - Rain Gardens
 - Backyard Wetland
 - Stormwater Collection (Cistern) and Reuse Systems
 - Vegetated Swales
 - Impervious Removal
 - Permeable Pavement*

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

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

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

5. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.

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

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

305. General Standards.

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

1. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3) (a) or similar site-specific determination made using Division of Water Quality-approved methodology.
2. All other projects which are not exempt from this ordinance must submit a stormwater management plan in order to receive a permit.

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3. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, or designated space on approved preliminary plat or master plan to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
4. When a Stormwater BMP or management system is established under the control of a neighborhood association or other private entity, the developer shall develop and provide an operations and maintenance manual on the BMP to the entity as well as to the Town of Montreat Zoning and Inspections Department for future reference.
5. All development and qualifying redevelopment projects which cumulatively disturb at least 10,000 square feet or which are a part of a larger plan shall implement stormwater control measures that comply with the following standards:
 - a) Project sites must employ Low Impact Development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall.

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

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

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

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

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- c) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.
- d) Peak storm water runoff rates shall be controlled for all development at or exceeding 24% built upon area for both LID and conventional approaches. The peak storm water runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak storm water runoff release rates for the 1-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
- e) No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.
- f) *Encroachments:* Water quality BMPs may encroach into a required buffer or yard setback as long as the encroachment does not disturb the majority of existing vegetation. Minor under story may be disturbed in order to accommodate water quality structures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place. Installation of water quality BMP's shall not affect calculation of the Approved Graded Area (AGA) as defined in Chapter K - Environment, Article IV: Hillside Development if revegetation of the disturbed area is determined to adequately offset negative impacts of disturbance.

306. Standards for Stormwater Control Measures.

1. Evaluation According to Contents of Design Manual. All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the Design Manual.

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The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.

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

307. Additional Standards.

1. Trout Waters. In addition to standards for stormwater handling set out in the design manual, larger development and redevelopment projects that drain in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance. Smaller qualified projects that are determined to create a potential negative impact to class TR waters due to design, type of improvement, or other relevant factors, shall also be required to comply with this standard.
2. Onsite Wastewater.
 - a) *Operation and Maintenance Requirements:* New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a Town Building Permit may be issued.
 - b) *Standards for Operation and Maintenance:* Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate

contamination of groundwater. Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

308. General Standards for Maintenance

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

2. Annual Maintenance Inspection and Report. The person responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report using standard forms supplied by the Administrator or, if deemed acceptable, provided by the designer of each engineered system. The inspection report shall contain all of the following:
 - The name and address of the land owner;
 - The recorded book and page number of the lot of each structural BMP;
 - A statement that an inspection was made of all structural BMPs;
 - The date the inspection was made;
 - A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance or, if not functioning as designed, a detailed description of each deficiency and how the condition was corrected, and
 - For engineered structural systems requiring detailed monitoring of specific water quality parameters and indicators, the original signature and seal of the engineer, surveyor, or landscape architect performing services only in their area of competence. Systems requiring more frequent monitoring or inspections shall be maintained according to design requirements.

3.

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

309. Operation and Maintenance Agreement

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

The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the structural BMP.

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

2. Special Requirement for Homeowners' and Other Associations. For all structural BMPs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
 - a) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities;
 - b) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs;

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

- c) Both developer contribution and annual deposits for future use of “sinking funds” shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen per cent (15%) of the initial construction cost of the structural BMPs;

Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs.

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

- d) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town depending on the design and materials of the stormwater control and management facility;
- e) Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs;
- f) Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement;

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

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

310. Inspection Program

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

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

311. Performance Security for Installation and Maintenance

1. The Town may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are (1) installed by the permit holder as required by the approved stormwater management plan, and/or (2) maintained by the owner as required by the operation and maintenance agreement. This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the Town may require in conjunction with a subdivision or development plan.

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2. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus twenty-five percent (25%).
3. The amount of a maintenance performance security shall be determined based on the type of BMP and a projected annual maintenance cost as recorded in the maintenance agreement.
4. Uses of Performance Security.
 - a) *Forfeiture Provisions:* The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
 - b) *Default:* Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate.

Such expenditure of funds shall be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security which shall be retained for maintenance.
 - c) *Costs in Excess of Performance Security:* If the Town takes action upon such failure by the applicant or owner, it may collect from the applicant or owner for the difference, should the amount of the reasonable cost of such action exceed the amount of the security held.
 - d) *Refund:* Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected

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one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

312. Notice to Owners

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

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

2. Signage. For homeowners and other associations, and where else deemed appropriate for the compliance of this ordinance, the Stormwater Administrator may require a structural BMPs to be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.
3. Records of Installation and Maintenance Activities. The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

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

313. Illicit Municipal Discharges and Connections

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

1. Consists of a discharge pursuant to an NPDES permit; or

2. Consists of a discharge from fire fighting activities; or
3. Consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:
 - Water line flushing;
 - Landscape irrigation;
 - Diverted stream flows;
 - Rising ground waters;
 - Uncontaminated ground water infiltration;
 - Uncontaminated pumped ground water;
 - Discharges from potable water sources;
 - Foundation drains;
 - Air conditioning condensation (commercial/residential);
 - Irrigation waters;
 - Springs;
 - Water from crawl space pumps;
 - Footing drains;
 - Lawn watering;
 - Individual residential car washing and charity car washing;
 - Flows from riparian habitats and wetlands;
 - De-chlorinated swimming pool discharges; and
 - Street wash water.

314. Other Illicit Discharges

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

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

- Water line flushing;
- Landscape irrigation;

- Diverted stream flows;
- Rising ground waters;
- Uncontaminated ground water infiltration;
- Uncontaminated pumped ground water;
- Discharges from potable water sources;
- Foundation drains;
- Air conditioning condensation (commercial/residential);
- Irrigation waters;
- Springs;
- Water from crawl space pumps;
- Footing drains;
- Lawn watering;
- Individual residential car washing and charity car washing;
- Flows from riparian habitats and wetlands;
- De-chlorinated swimming pool discharges;
- Street wash water;
- Flow from fire fighting activities; and
- Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

315. Illicit Connections

1. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
2. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are

likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

3. Where it is determined that said connection: i) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat; or ii) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take the following into consideration:
 - The consequences of delay,
 - The potential harm to the environment, to the public health, and to public and private property, and
 - The cost of remedying the damage.

316. Spills

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

317. Nuisances

1. The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a condition that creates a potential hazard or nuisance to the health, safety and welfare of the general public.

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2. Illicit discharges and illicit connections which exist within the Town of Montreat jurisdictions, are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and shall be abated.

318. Enforcement and Violations.

1. Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee and any authorized agent of the Town.
2. Violation Unlawful. Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to the same civil or criminal penalties as other zoning violations, with each day that a violation continues constituting a separate offense.
3. Responsible Persons/Entities. Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an owner, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or development of the property on which the violation occurs.

4. Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

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

6. Remedies and Penalties. The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order and can include:
 - a) *Withholding of Certificate of Occupancy:* The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

 - b) *Disapproval of Subsequent Permits and Development Approvals:* As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning and Zoning Commission or Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this ordinance for the land on which the violation occurs.

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

 - d) *Correction as Public Health Nuisance, Costs as Lien, etc.:* If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization

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of the Town Administrator, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

- e) *Stop Work Order:* The Stormwater Administrator may issue a stop work order to the person violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
- f) *Civil Penalties:* Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within thirty (30) days after notice of the violation is issued by the Stormwater Administrator or his/her designee. Civil penalties may be assessed up to the full amount of penalty to which the Town is subject for violations of its Phase II Stormwater permit up to \$500.
- g) *Criminal Penalties:* Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

7. Procedures.

- a) *Violations:* Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in the Town of Montreat Code.
- b) *Extension of Time:* A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation.

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The Stormwater Administrator may grant extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance.

The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

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

- d) *Emergency Enforcement:* If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.