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April 17, 2012

To: All Development Community Members, Consultants, Development Design Professionals, BMP Certifying Engineers (BCEs), BMP Maintenance Certifiers (BMCs), and BMP Maintenance Professionals Practicing in Durham, NC

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Subject: Letter to Industry 03-15-12 (Amendment to LTI 10-26-11 and 12-21-10): Stormwater Building Permit and Certificate of Compliance Issuance Operating Policy

Background

The proceeding operating procedures are provided to guide the City of Durham and the development community in the release of building permits (BPs) and certificates of compliance (CoCs) on development projects that include one or more permitted stormwater Best Management Practice (BMP), now and herein referred to as Stormwater Control Measures (SCMs).

Residential Development (Single Family and Townhome) Projects with Permitted SCMs

Building Permits (BPs)

After the Construction Drawings (CDs) have been approved or utility permits have been issued, and prior to the City's receipt and acceptance of all required items (e.g. the recorded final plat, the recorded Stormwater Agreement and Covenants [Residential Version], the recorded covenants for the property, the attorney certification, the payment into the Stormwater Facility Replacement Fund, and the payment of all permit fees), the Stormwater Services Section (S3) of the Engineering and Stormwater Services Division will place a hold in the Land Development Office (LDO) on the release of all BPs for the entire project or project phase in question. Once the City has received and accepted the aforementioned items, 75% of the total number of BPs associated with the project will be eligible for release. To obtain this release, a Letter of Request/Building Permits (LoR/BPs) from the owner shall be submitted to S3. The LoR/BPs shall include a listing of those lots for which BPs are requested to be released as well as a listing of those lots for which BPs are requested to be held. A site plan drawing delineating the above shall accompany the LoR/BPs. To prevent delays, it is recommended that the LoR/BPs be submitted with (or even prior to) the aforementioned required items. Upon receipt and acceptance of the LOR/BPs by S3, S3 will remove the stormwater hold on BPs in accordance with the accepted LoR/BPs.

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To obtain release of an additional 10% of the BPs (in addition to the initial 75%), a revised LoR/BPs, with a revised illustrated site plan drawing, shall be submitted to S3 (note that conventional SCMs must be constructed to a Tier 3 status). Upon receipt and acceptance of the revised LoR/BPs by S3, S3 will remove the stormwater hold on BPs in accordance with the accepted LoR/BPs. Until the SCMs on the site have been completed, the City will continue to hold all remaining BPs (e.g., the last 15% of the total BPs associated with the project or project phase in question.)

For projects that do not have a building permit and/or that do not require the issuance of utility permits, the aforementioned items and the construction security are to be provided to S3 prior to the approval of the CDs.

Due to the considerable amount of administrative effort needed to implement this policy, the allowance of submitting multiple LoR/BPs to revise which BPs are being held versus those being released will be limited. It is suggested that considerable thought be given to which BPs are requested to be held/released. **If** switching of the holds/releases of BPs is approved, the change in the holding/releasing of BPs will take time due to the amount of administrative effort needed to make the appropriate changes.

Certificates of Compliance (CoCs)

After the CDs have been approved or the utility permits have been issued, and prior to the City's receipt and acceptance of all required items (e.g. the recorded final plat, the recorded Stormwater Agreement and Covenants [Residential Version], the recorded covenants for the property, the attorney certification, the payment into the Stormwater Facility Replacement Fund, and the payment of all permit fees), S3 will place a hold in the Land Development Office (LDO) on the release of all CoCs for the entire project.

To obtain release of the first CoC, the owner must provide an acceptable construction security instrument to guarantee the completion of the SCMs in the project phase in question. The amount of the instrument for each SCM will be determined by S3 in accordance with Tables 1.1 and 1.2, below. To obtain this release, a Letter of Request/Certificates of Compliance (LoR/CoCs) from the owner shall be submitted to S3. The LoR/CoCs shall include the CoC requested to be released as well as a listing of those lots for which CoCs are to be held. A site plan drawing delineating the above shall accompany the LoR/CoCs. Upon receipt and acceptance of the construction security and the LoR/CoCs by S3, S3 will remove the stormwater hold on the requested CoC in accordance with the accepted LoR/CoCs.

Unlike the release of BPs, the release of additional CoCs (beyond the one originally released) will be dependent on where within Table 1.1 the particular SCM (or SCMs) in question fall. Table 1.3, below, provides the minimum tier thresholds that must be achieved for a particular SCM or collection of SCMs before additional CoCs will be released by the City. To obtain release of additional CoCs, the construction of all SCMs within the project phase in question must be evaluated by a BCE as to where in the matrix the SCM (or SCMs) in question fall. Once these determinations are made by a BCE, the owner may then submit a revised LoR/CoCs, which must include a revised illustrated site plan drawing, to S3. Upon receipt and acceptance of the revised LoR/CoCs by S3, S3 will remove the stormwater hold on the CoCs requested in accordance with the accepted LoR/CoCs. The owner may submit multiple LoR/CoCs so long as such requests are in conformance with the guidelines contained in this LTI.

Due to the considerable amount of administrative effort needed to implement this policy, it is suggested that considerable thought be given to which CoCs are requested to be held/released. **If** switching of the holds/releases of CoCs is approved, the change in the holding/releasing of CoCs will take time due to the amount of administrative effort needed to make the appropriate changes.

Construction Security Instruments

The City will accept the following four (4) construction security instruments: (1) An irrevocable Letter of Credit—LoC; (2) an Assignable Certificate of Deposit—CD; (3) a Bank Cashier’s Check—BCC (Note: An Escrow Agreement must be executed by the owner and included with the BCC); and (4) a performance bond—PB (Note: The minimum amount on a PB shall be \$250,000). As written above, the amount of the security instrument will be calculated by S3 in accordance with Tables 1.1 and 1.2, below.

Tables

Table 1.1: Residential SCM Construction Security Instrument Matrix

Tier	Status of SCM Completion	Amount of Security Instrument Per SCM	Length of Time the Construction Security is Allowed to exist before construction is completed or construction security is called
One	The SCM is incomplete.	\$100,000 ¹	2 years ²
Two	The SCM has been certified by a BCE to be “nominally compliant (in terms of basic size and shape by visual inspection)” with the approved CDs, but E&S conversion is required, and additional stabilization of the SCM and/or the drainage area to the SCM is required.	\$60,000 ¹	1 year ²
Three	The SCM is certified “preliminarily complete (based on a BCE’s evaluation of a preliminary as-built and an evaluation of the geotechnical aspects of the facility),” but E&S conversion, and additional stabilization of the SCM and/or the drainage area to the SCM is required.	\$30,000 ¹	9 months ²

Note 1: Completing more of the SCM (e.g., moving from a higher completion tier to a lower tier), will result in a corresponding reduction in the required security instrument amount.

Note 2: Once an initial tier is established, the base timeline will be set for the completion of the SCM. Changing to a different tier status will not add time to the completion date of the SCM. For example, dropping from Tier 1 to Tier 4 yields a two-year completion timeline, not a two-year-and-three-month completion timeline. It should be understood that once the established timeline has been exceeded, a three-month extension will be granted only for SCMs that are in Tier 4. Once this additional three-month

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extension has been exceeded or the timeline for an SCM not in Tier 4 has been exceeded, the City will pull the construction security and will put a hold on the release of all BPs and CoCs until a new arrangement has been executed and a new security instrument has been provided by the owner/developer. The amount of the new security instrument will be the tier amount in accordance with a reevaluation of the SCM by a BCE. The length of time the new construction security will be allowed to exist shall be three months. If the SCM is not completed within this three-month time frame, the City will pull the construction security and will put a hold on the release of all BPs and CoCs until the SCM has been completed. Once the SCM is completed, the City will release any construction securities back to the owner/developer.

Table 1.2: Cost Factor Multipliers for Table 1.1

Type of SCM	DA to Facility	Cost Factor Multiplier (by Tier)		
		1	2	3
<i>Conventional SCMs</i>				
Wet Ponds and Constructed Wetlands	≥ 50 Ac	2.5	2.5	2.5
	≥ 25 Ac and < 50 Ac	1.5	1.5	1.5
	< 25 Ac	1	1	1
Pocket Wetlands	n/a	1	1	1
Dry Ponds (Peak Shaving and/or Extended Detention)	n/a	1	1	1
Underground Detention Systems	n/a	1	1	1
<i>Unconventional SCMs</i>				
Bioretention Areas	≥ 0.25 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Vegetated Sand Filters	≥ 0.25 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Closed System Sand Filters	Not Permitted in Residential Areas			
Rainwater Harvesting Systems	≥ 1 Ac	1	n/a	n/a
	≥ 0.25 Ac and < 1 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Greenroofs	TBD			
Level Spreaders with Riparian Vegetative Filter Strips	n/a	0.2	n/a	n/a
Level Spreaders with Engineered Filter Strips	n/a	0.5	n/a	n/a
Acceptable Proprietary Systems (Open/Semi-open, Vegetated Systems [Example: Filtterra])	≥ 0.25 Ac	0.25	n/a	n/a
	< 0.25 Ac	0.2	n/a	n/a
Acceptable Proprietary Systems (Closed Systems)	Not Permitted in Residential Areas			
Water Quality Swales	n/a	0.2	n/a	n/a

Table 1.3: SCM Construction Tier Minimums Required to Acquire CoCs

Type of SCM Facility	% of Total Project Phase CoCs Eligible for Release	
	Up to 75 ¹	75.1 to 84.9 ²
<i>Conventional SCMs</i>		
Wet Ponds and Constructed Wetlands	Tier 1	Tier 3
Pocket Wetlands	1	3
Dry Ponds (Peak Shaving and/or Extended Detention)	1	3
Underground Detention Systems	1	3
<i>Unconventional SCMs</i>		
Bioretention Areas	1 ³	1 ³
Vegetated Sand Filters	1 ³	1 ³
Closed System Sand Filters	Not Permitted in Residential Areas	
Rainwater Harvesting Systems	1 ³	1 ³
Greenroofs	TBD	
Level Spreaders with Riparian Vegetative Filter Strips	1 ³	1 ³
Level Spreaders with Engineered Filter Strips	1 ³	1 ³
Acceptable Proprietary Systems (Open/Semi-open Vegetated Systems)	1 ³	1 ³
Acceptable Proprietary Systems (Closed Systems)	Not Permitted in Residential Areas	
Water Quality Swales	1 ³	1 ³

Note 1: To obtain the first CoC, a Tier 1 security must be provided. Once 50% of the eligible CoCs have been released, a warning will be issued to the owner/developer that additional work on the SCM(s) will be required prior to obtaining more than 75% of the CoCs eligible for release on the project.

Note 2: To obtain 85% or more of the total project phase CoCs eligible for release, the SCM BCE certification must have been approved by S3. Note: This applies only to Conventional SCMs. There is no limit to the CoCs eligible for release on Unconventional SCMs.

Note 3: An Unconventional SCM is either complete or it isn't. If the BCE certification for a particular Unconventional SCM has not been approved by S3, the SCM is deemed incomplete and, as such, remains a Tier 1 facility.

Release of Security Instruments, Remaining BPs, and Remaining CoC

If the security instrument option is chosen (either partially or fully), any such instruments, specific to a particular SCM, will be released upon approval by S3 of the as-built certification for the SCM facility. Once all SCMs within the project have been completed, any remaining BPs or CoCs being held by S3 will be released by S3 at that time.

Non-Residential (Parks, Recreational Facilities, Apartment Complexes, Condominium Units, Office, Institutional, Governmental, Commercial, and Industrial Development) Projects with Permitted Stormwater SCMs

Certificates of Compliance

To obtain a partial occupancy, conditional certificate of compliance, or certificates of compliance (CoC) for a building within the project, any and all permitted SCMs tied directly (by approved construction drawings) to the project should be completed and the as-built certification for the facility/ies should be approved by S3. If, however, a CoC is requested and one or more of the permitted SCMs have not been completed, a partial occupancy or conditional CoC will be issued upon the owner’s provision of an acceptable construction security instrument. The amount of the instrument for each SCM will be determined by S3 in accordance with Tables 2.1 and 2.2, below.

For projects that do not have a CoC and/or that do not require the issuance of utility permits, the recorded final plat, the recorded Stormwater Agreement and Covenants [Commercial Version], the recorded covenants for the property, the attorney certification, the payment into the Stormwater Facility Replacement Fund or the posting of a perpetual maintenance security, the payment of all permit fees, and the construction security are required prior to CD approval.

Construction Security Instruments

The City will accept the following four (4) construction security instruments: (1) An irrevocable Letter of Credit—LoC; (2) an Assignable Certificate of Deposit—CD; (3) a Bank Cashier’s Check—BCC (Note: An Escrow Agreement must be executed by the owner and included with the BCC); and (4) a performance bond—PB (Note: The minimum amount on a PB shall be \$250,000). As written above, the amount of the security instrument will be calculated by S3 in accordance with Tables 2.1 and 2.2, below.

Tables

Table 2.1: Non-Residential SCM Construction Security Instrument Matrix

Tier	Status of SCM Completion	Amount of Security Instrument Per SCM	Length of Time the Construction Security is Allowed to exist before construction is completed or security is called
One	The SCM is incomplete.	\$100,000 ¹	1 year ²
Two	The SCM has been certified by a BCE to be “nominally compliant (in terms of basic size and shape by visual inspection)” with the approved CDs, but E&S conversion is required, and additional stabilization of the SCM and/or the drainage area to the SCM is required.	\$60,000 ¹	6 months ²

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Three	The SCM is certified “preliminarily complete (based on a BCE’s evaluation of a preliminary as-built and an evaluation of the geotechnical aspects of the facility),” but E&S conversion, and additional stabilization of the SCM and/or the drainage area to the SCM is required. Additional vegetative establishment in the SCM is required.	\$30,000 ¹	3 months ²
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Note 1: Completing more of the SCM (e.g., moving from a higher completion tier to a lower tier), will result in a corresponding reduction in the required security instrument amount.

Note 2: Once an initial tier is established, the base timeline will be set for the completion of the SCM. Changing to a different tier status will not add time to the completion date of the SCM. For example, dropping from Tier 1 to Tier 3 yields a one year completion timeline, not a one-year-and-three-month completion timeline. It should be understood that once the established timeline has been exceeded, a three-month extension will be granted only for SCMs that are in Tier 3. Once this additional three-month extension has been exceeded or the timeline for a SCM not in Tier 3 has been exceeded, the City will pull the construction security and will put a hold on the release of all BPs and CoCs until a new arrangement has been executed and a new security instrument has been provided by the owner/developer. The amount of the new security instrument will be the tier amount in accordance with a reevaluation of the SCM by a BCE. The length of time the new construction security will be allowed to exist shall be three months. If the SCM is not completed within this three-month time frame, the City will pull the construction security and will put a hold on the release of all BPs and CoCs until the SCM has been completed. Once the SCM is completed, the City will release any construction securities back to the owner/developer and will reimburse, to the owner/developer, the face amount of any construction securities that were called.

Table 2.2: Adjustment Factors for Table 2.1

Type of SCM Facility	DA to Facility	Cost Factor Multiplier (by Tier)		
		1	2	3
<i>Conventional SCMs</i>				
Wet Ponds and Constructed Wetlands	≥ 50 Ac	2.5	2.5	2.5
	≥ 25 Ac and < 50 Ac	1.5	1.5	1.5
	< 25 Ac	1	1	1
Pocket Wetlands	n/a	1	1	1
Dry Ponds (Peak Shaving and/or Extended Detention)	n/a	1	1	1
Underground Detention Systems	n/a	1	1	1
<i>Unconventional SCMs</i>				
Bioretention Areas	≥ 0.25 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Vegetated Sand Filters	≥ 0.25 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Closed System Sand Filters	≥ 2 Ac	2	n/a	n/a
	≥ 0.25 Ac and < 2 Ac	1.5	n/a	n/a
	< 0.25 Ac	1	n/a	n/a
Rainwater Harvesting Systems	≥ 1 Ac	1	n/a	n/a
	≥ 0.25 Ac and < 1 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Greenroof Systems	≥ 0.5 Ac	1	n/a	n/a
	≥ 0.25 Ac and < 0.5 Ac	0.5	n/a	n/a
	< 0.25 Ac	0.25	n/a	n/a
Level Spreaders with Riparian Vegetative Filter Strips	n/a	0.2	n/a	n/a
Level Spreaders with Engineered Filter Strips	n/a	0.5	n/a	n/a
Acceptable Proprietary Systems (Open/Semi-open, Vegetated Systems [Example: Filterra])	≥ 0.25 Ac	0.25	n/a	n/a
	< 0.25 Ac	0.2	n/a	n/a
Acceptable Proprietary Systems (Closed Systems)	≥ 2 Ac	1.5	n/a	n/a
	≥ 0.25 Ac	1	n/a	n/a
	< 0.25 Ac	0.5	n/a	n/a
Water Quality Swales	n/a	0.2	n/a	n/a

Release of Security Instruments and Remaining BPs

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If the security instrument option is chosen, any such instruments, specific to a particular SCM, will be released upon approval by S3 of the as-built certification for the SCM. Once all SCMs within the project have been completed, any stormwater conditions attached to previously issued CoCs on the property will be removed.

Timing

Proposed Projects

The implementation of this requirement shall be effective immediately for all new projects not under construction or just beginning construction at this time (but have no securities all ready in place).

Existing Projects

Existing subdivisions will have until August 1st, 2012 to come into compliance with the new policy unless 75% of CoC's have been issued in the phase of subdivision. All projects with over 75% of CoCs issued will have to come into compliance almost immediately but we recognize projects of this nature will have to be handled on a case by case basis.