ORDINANCE #

AN ORDINANCE TO AMEND CHAPTER 8, SECTIONS 8.2.2, 8.2.7, 8.2.14, 8.2.15, 8.2.18, AND 8.2.29, PHASE II STORMWATER ORDINANCE TO ALIGN THE PHASE II STORMWATER ORDINANCE WITH THE TOWN'S REQUIREMENTS FROM THE NC DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE TOWN'S NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NDPES) PERMIT AND THE STORMWATER MANAGEMENT PLAN (SWMP)

WHEREAS, the Town of Black Mountain Planning Board is charged with reviewing and updating land use planning, zoning and subdivision regulations; and

WHEREAS, the Planning Board made a commitment to the Town Council to review the text of the Land Use Code in the years since its adoption to address any residual inconsistencies in the text and to look for opportunities to clarify or improve text; and

WHEREAS, upon recommendation of the Planning Board, the following text amendment is consistent with the comprehensive plan and reasonable in the public interest because it promotes a green and resilient environment and promotes the general safety and welfare of the community.

WHEREAS, the Town of Black Mountain has the authority, pursuant to Article 7 of Chapter 160D of the North Carolina General Statutes, to adopt land development regulations, clarify such regulations, and may amend regulations from time to time in the interest of public health, safety and welfare; and

WHEREAS, the Town Council finds that the land use code text amendments are consistent with the comprehensive plan and are in the public interest because of the following findings:

- Promotes a green and resilient environment and promotes the general safety and welfare of the community.

WHEREAS, after notice duly given, a public hearing was held on May 12, 2025, as part of the regularly scheduled Town Council meeting at 6:00 p.m. in the Council Room of Town Hall, 160 Midland Avenue.

NOW, THEREFORE, BE IT RESOLVED that Chapter 8, Sections 8.2.2, 8.2.7, 8.2.14, 8.2.15, 8.2.18, and 8.2.29 of the Town of Black Mountain Land Use Code, be amended with the following (additions are underlined in bold and deletions are shown as red struck text):

Chapter 8

8.2.1 Purpose.

A. General. The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment ~~as well as illicit discharges into municipal stormwater systems~~. It has been determined that proper management of post-development stormwater runoff will minimize damage to public and private property and infrastructure; safeguard the public health, safety, and general welfare; and protect water and aquatic resources.

The ordinance seeks to meet the requirements for the town's National Pollutant Discharge Elimination System (NPDES) Permit.

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

~~(1) Establishing decision-making processes for development that protect the integrity of watersheds and preserve the health of water resources;~~

~~(2) Requiring that new development and redevelopment maintain the predevelopment hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;~~

~~(3) Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;~~

~~(4) Establishing design and review criteria for the construction, function, and use of structural stormwater SCMs that may be used to meet the minimum post-development stormwater management standards;~~

~~(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers and other conservation areas to the maximum extent practicable;~~

~~(6) Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater SCMs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;~~

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

~~(8) Coordinating site design plans that include open space with the subdivision ordinance requirements for open space with the zoning administrator or planning board if required.~~

~~(9) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage measures.~~

8.2.2 Applicability and jurisdiction of this ordinance.

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

B. Activity threshold requiring a stormwater permit. A stormwater permit is required for any development and redevelopment which **disturbs one-half acre of land or more in all zoning districts, with the exception of the Central Business District where a stormwater permit is required for 1 acre or greater of disturbance** ~~results in an increase of impervious surface area by a net amount of 5,000 square feet or more. Projects developed under a common plan adding 5,000 square feet or more of impervious surface, regardless of the number of parcels included in the plan, requires a stormwater permit~~.

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

C. Exemptions.

(1) Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

(2) Development which **disturbs less than one-half acre of land** ~~adds less than 5,000 square feet of impervious surface and is not part of a larger common plan of development does not require a stormwater permit~~.

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

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

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

D. ~~No development or redevelopment until compliance and permit. No development or redevelopment shall occur except in compliance with the provisions of this ordinance 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.~~

E. Map. The stormwater map ~~shall~~ **will** be kept on file by the stormwater administrator and ~~shall~~ **will** be updated to take into account changes in the land area covered by this ordinance and the geographic location of all structural SCMs permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or SCM ~~shall~~ **will** be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

8.2.3 Interpretation.

A. Meaning and intent. All provisions, terms, phrases, and expressions contained in this ordinance ~~shall~~ **will** be construed according to the general and specific purposes set forth in section 8.2.1, purpose and also defined in section 8.2.28. If a different or more specific meaning is given for a term defined elsewhere in Town of Black Mountain Code of Ordinance, the meaning and application of the term in this ordinance ~~shall~~ **will** 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~~ **will** control

C. Authority for interpretation. The stormwater administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the stormwater administrator, who ~~shall~~ **will** respond in writing within 30 days. The stormwater administrator ~~shall~~ **will** keep on file a record of all written interpretations of this ordinance.

D. References to statutes, regulations, and documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the design manual), or document, it ~~shall~~ **will** 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~~ **will** 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 Black Mountain, the deadline or required date of action ~~shall~~ **will** be the next day that is not a Saturday, Sunday or holiday observed by the Town of Black Mountain. 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 ~~Planning Director~~ **Assistant Town Manager** of Town of Black Mountain may be carried out by his or her designee as Stormwater Administrator.

8.2.4 Design manual.

A. Reference to **North Carolina Department of Environmental Quality Stormwater Design Manual** ~~design manual~~. The stormwater administrator ~~shall~~ **will** use the policy, criteria, and information, including technical specifications and standards, in the **NC DEQ** design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater SCMs.

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

B. Relationship of design manual to other laws and regulations. **The North Carolina Department of Environmental Quality Stormwater Design Manual is hereby adopted by reference.**

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

~~C. Changes to standards and specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the design manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.~~

~~D. Amendments to design manual. 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.~~

8.2.5 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. 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~~ **will** 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 an easement, covenant, or other private agreement, the requirements of this ordinance ~~shall~~ **will** govern. Nothing in this ordinance ~~shall~~ **will** modify or repeal any private covenant or deed restriction, but such covenant or restriction ~~shall~~ **will** not legitimize any failure to comply with this ordinance. In no case shall Town of Black Mountain be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

8.2.6 Severability.

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

8.2.7 Effective date and transitional provisions.

A. Effective date. This ordinance ~~shall~~ **will** take effect on ~~December 1, 2019~~ **May 12, 2025**.

B. Final approvals, complete applications. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain prior to the effective date of this ordinance and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of development or redevelopment ~~shall~~ **will** be exempt from complying with all provisions of this ordinance dealing with management of post-construction runoff, but ~~shall~~ will be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions. If previously approved SCMs are not maintained as approved and regulated by the stormwater ordinance in effect at the time of their approval, such ~~LCMs~~ SCMs shall ~~must~~ be made to comply with this ordinance to the greatest extent possible when repaired or brought into compliance.

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

(1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

(2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

C. Violations continue. Any violation of provisions existing on the effective date of this ordinance **for development that has disturbed one half acre or more** ~~shall~~ **will** continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, development, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

8.2.8 Review and decision-making entities.

A. Stormwater administrator.

(1) Designation. A stormwater administrator ~~shall~~ **will** be designated by the **Assistant Town Manager** ~~planning director~~ to administer and enforce this ordinance in whole or in part, at the **Assistant Town Manager's** ~~planning director's~~ discretion.

B. Powers and duties. In addition to the powers and duties that may be conferred by other provisions of the Town of Black Mountain Code of Ordinances and other laws, the stormwater administrator ~~shall~~ **will** have the following powers and duties under this ordinance:

(1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

(2) To make determinations and render interpretations of this ordinance.

(3) To enforce the provisions of this ordinance in accordance with its enforcement provisions.

(4) To maintain records, maps, forms and other official materials as related to the adoption, amendment, enforcement, and administration of this ordinance.

(5) To provide expertise and technical assistance to the Town of Black Mountain Town Council, upon request.

~~(6) To designate appropriate other person(s) who shall carry out the powers and duties of the stormwater administrator.~~

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

8.2.9 Review procedures.

A. Permit required~~; must apply for permit~~. A stormwater permit is required for all development and redevelopment **disturbing one-half acre or more of land** unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly

submitted and reviewed permit application, pursuant to this section. A stormwater permit ~~shall~~ **will** govern the design, installation, and construction of stormwater management and control practices on the site, including structural SCMs and elements of site design for stormwater management other than structural SCMs.

~~The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural SCMs or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.~~

B. Authority to file applications. All applications required pursuant to this Code ~~shall~~ **will** be submitted to the stormwater administrator by the land owner or the land owner's duly authorized agent.

C . Establishment of application requirements, schedule, and fees.

(1) Before submitting a stormwater permit application the applicant will hold a concept plan and consultation meeting with the stormwater administrator.

(2) Application contents and form. The stormwater administrator ~~shall~~ **will** establish requirements for the content and form of all applications and ~~shall~~ **will** amend and update those requirements from time to time. At a minimum, the stormwater permit application ~~shall~~ **will** describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(3) Submission schedule. The stormwater administrator ~~shall~~ **will** establish a submission schedule for applications. The schedule ~~shall~~ **will** 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.

(4) Permit review fees. **Are set forth in the Town's schedule of fees.** ~~The Town of Black Mountain Town Council 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.~~

~~(5) Administrative manual. For applications required under this ordinance, the stormwater administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the design manual in an administrative manual, which shall be made available to the public.~~

D. Submittal of complete application. Applications ~~shall~~ **will** be submitted to the stormwater administrator pursuant to the application submittal schedule in the form established by the stormwater administrator, along with the ~~appropriate~~ fee **set forth in the Town's schedule of fees** ~~established pursuant to this section. An application shall will be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee.~~ If the stormwater administrator finds that an application is incomplete, the applicant ~~shall~~ **will** be notified of the deficient elements and ~~shall~~ **will** 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.~~

E. Review. Within 15 working days after a complete application is submitted, the stormwater administrator ~~shall~~ **will** review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval. If the stormwater administrator finds that the application complies with the standards of this ordinance, the stormwater administrator ~~shall~~ **will** approve the application. The stormwater administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to comply. If the stormwater administrator finds that the application fails to comply with the standards of this ordinance, the stormwater administrator ~~shall~~ **will** 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~~ **will** be reviewed by the stormwater administrator within 15 working days after its re-submittal and ~~shall~~ **will** be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within 30 calendar days from the date the applicant was notified, the application ~~shall~~ **will** be considered withdrawn, and a new submittal for the same or substantially the same project ~~shall~~ **will** be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted **within 30 calendar days** without payment of an additional permit review fee. Any re-submittal after the first re-submittal ~~shall~~ **will** be accompanied by a permit review fee additional fee, as established **by the adopted fee schedule** ~~pursuant to this ordinance~~.

8.2.10 Applications ~~for approval~~.

A. Concept plan and consultation meeting required. Before a stormwater management permit application is deemed complete, the stormwater administrator or developer ~~shall~~ **will** request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting

should take place at the time of the preliminary plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the **requirements of the** post-construction stormwater **ordinance** ~~management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the town's comprehensive plan and land use code, and other relevant resource protection plans should be consulted in the discussion of the concept plan~~.

~~To accomplish this goal, the~~ **The** following information should be included in the concept plan, which should be submitted in advance of the meeting:

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

(2) Natural resources inventory. A written or graphic inventory of natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide ~~particular~~ opportunities or constraints for development and stormwater management.

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

B. Stormwater management permit application. The stormwater management permit application ~~shall~~ **will** detail how post development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including section 8.2.13, standards. All such plans ~~shall~~ **will** be prepared by a qualified registered North Carolina professional engineer~~, surveyor, soil scientist~~ or landscape architect, and the engineer~~, surveyor, soil scientist~~ or landscape architect ~~shall~~ **will** perform services only in their area of competence, and ~~shall~~ **will** verify that the design of all stormwater management facilities and practices meets the submittal requirements for

complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the design manual, and that the designs and plans ensure compliance with this ordinance.

The submittal ~~shall~~ **will** include all of the information required in the submittal checklist established by the stormwater administrator. Incomplete submittals ~~shall~~ **will** be treated pursuant to section 8.2.9.D.

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

The plans ~~shall~~ **will** show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans ~~shall~~ **will** 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~~ **will** occur before the release of any performance securities.

D. Other permits. No certificate of compliance or occupancy ~~shall~~ **will** be issued by the building inspector without final as-built plans and a final inspection and approval by the stormwater administrator, except where multiple units are served by the stormwater practice or facilities, in which case the building inspector may elect to withhold ~~a percentage~~ **fifty percent** of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

8.2.11 Approvals.

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

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

C. Permit renewal required for high-density projects. Post construction stormwater permits determined to be high-density are required to be renewed every eight years.

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

8.2.12 Appeals.

A. Right of appeal. Any aggrieved person affected by any decision, order, requirements, or determination relating to the interpretation or application of this ordinance made by the stormwater administrator, may file an appeal to the board of adjustment within 30 days.

SECTION 3: STANDARDS FOR POST-CONSTRUCTION STORMWATER MANAGEMENT

8.2.13 General standards.

~~All development and redevelopment to which this ordinance applies shall comply with the standards of this section.~~ **All proposed stormwater management design and methods submitted with a post-construction stormwater permit will eet the general standards of this section.**

8.2.14 Development standards for all permitted projects.

High- and low-density projects ~~shall~~ **will** comply with each of the following standards requiring a stormwater permit:

A. Stormwater runoff from the development ~~shall~~ will be transported from the development by vegetated conveyances to the maximum extent practicable.

B. Project sites must employ low impact development (LID) practices to analyze the infiltration capacity of natural drainage 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 practice may include any combination of site design techniques, and SCMs to store, infiltrate, evaporate, retain and detain runoff on the site to more closely replicate the pre-development runoff thereby limiting the increase in pollutant loads caused by development.

C. All built-upon area ~~shall~~ **will** be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water ~~shall~~ **will** be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B.0233 (3)(a) or similar site-

specific determination made using Division-approved methodology. Encroachment allowances may be made as described in 4.3.2.

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

E. The measures ~~shall~~ **will** control and treat runoff from the first inch of rain. Runoff volume drawdown time ~~shall~~ **will** be a minimum of 48 hours, but not more than 120 hours.

All structural stormwater treatment systems used to meet these requirements ~~shall~~ **will** be designed to have a minimum of 85 percent average annual removal for total suspended solids (TSS);

F. General engineering design criteria for all projects ~~shall~~ **will** be in accordance with 15A NCAC 2H.1008(c), as explained in the design manual;

8.2.15 Standards for stormwater control measures.

Owners of property subject to this ordinance and required to install structural stormwater control measures ~~shall~~ **will** implement those measures in compliance with each of the following standards:

A. Evaluation according to contents of design manual. All stormwater control measures and stormwater treatment practices (also referred to as Stormwater Control Measures, or SCMs) required under this ordinance ~~shall~~ **will** be evaluated by the stormwater administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the design manual. The stormwater administrator shall determine whether proposed SCMs will be adequate to meet the requirements of this ordinance. It is presumed that all standards in the design manual will result in a minimum of 85 percent average annual removal of total suspended solids.

B. Determination of adequacy; presumptions and alternatives. Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the design manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the design manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The stormwater administrator may require the applicant to provide the documentation, calculations, and examples necessary for the stormwater administrator to determine whether such an affirmative showing is made.

C. Whenever LID practices are not achievable, or have not been demonstrated, the measures controlling the final runoff from the site shall control and treat the difference in stormwater runoff volume leaving the project site between pre- and post-development conditions for a minimum rate of ten year, 24-hour storm as determined by NOAA.

D. Peak stormwater runoff rates ~~shall~~ **will** be controlled for all development at or exceeding 24 percent built upon area or high-density projects as defined by this ordinance, for both LID and conventional approaches. The peak stormwater runoff release rates leaving the site during post-construction conditions ~~shall~~ **will** be equal to or less than the pre-development peak stormwater runoff release rates for the one-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 SCM ~~shall~~ **will** be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity ~~shall~~ **will** be restored within 72 hours. Requirements of the Dam Safety Act ~~shall~~ **will** be met when applicable.

E. No single SCM ~~shall~~ **will** receive runoff from an area greater than three acres, however the total drainage area from SCMs used in a series may exceed this maximum.

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

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

H. Separation from seasonal high-water table. For SCMs that require a separation from the seasonal high-water table, the separation ~~shall~~ **will** be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

8.2.16 Variances.

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

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

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

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

(4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

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

(1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of SCMs.

1. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

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

~~8.2.17 Onsite wastewater.~~

~~A. Operation and maintenance requirements. New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance shall be subject to the~~

~~operation and maintenance requirements of the Buncombe County Environmental Health Department.~~

~~B. Standards for operation and maintenance. Onsite systems for domestic wastewater shall be operated and maintained so as to avoid adverse effects on surface water and groundwater. Operation and maintenance of onsite systems for domestic wastewater shall be in accordance with the standards of the Buncombe County Environmental Health Department.~~

~~C. Enforcement. The Buncombe County Environmental Health Department shall be responsible for the enforcement of the installation, operation and maintenance standards for onsite systems for domestic wastewater within the limits of the town.~~

SECTION 4: MAINTENANCE

8.2.18 General standards for maintenance of SCMs.

A. Function of SCMs as intended. The owner of each structural SCM installed pursuant to this ordinance ~~shall~~ **will** maintain and operate the device(s) in accordance with the approved Operation and Maintenance Plan to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the structural SCM was designed.

~~B.~~ **Required inspections. Post-construction permit holders will annually inspect their SCM(s) based on the minimum criteria for the SCM type, which is outlined in their Operations & Maintenance (O & M) Agreement. These inspections can be conducted by the property owner or any other qualified professional they choose to retain. The inspection will be kept on site and made available for inspection by the Town. These inspections maintain compliance between the property owner and the Town's post-construction stormwater ordinance.** ~~Single family and duplex maintenance inspection and report. SCMs installed to meet the needs of this ordinance shall submit to the stormwater administrator an inspection report every three years from either a NC State University (NCSU) Cooperative Extension Certified Stormwater SCM Inspection & Maintenance Inspector, NC professional engineer or landscape architect. The inspection report shall contain all of the following:~~

~~(1) The name and address of the landowner;~~

~~(2) The recorded book and page number of the lot of each structural SCM;~~

~~(3) A statement than an inspection was made of all structural SCMs;~~

~~(4) The date the inspection was made;~~

~~(5) A statement that all inspected structural SCMs 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 of the NCSU Cooperative Extension Certified Stormwater SCM Inspection & Maintenance Inspector, NC professional engineer or landscape architect.~~

C. **Town inspection of private SCMs. The Town will inspect low-density permit SCMs once per NPDES permit cycle. The Town will inspect high-density permit SCMs twice per NPDES permit cycle. These inspections will be conducted by Town staff or a contractor on behalf of the Town to maintain the Town's compliance with the Town's NPDES Small MS4 permit.** ~~Residential developments and commercial properties annual maintenance inspection and report. The person responsible for maintenance of any structural SCM installed pursuant to this ordinance shall submit to the stormwater administrator an inspection report from either a NCSU Cooperative Extension Certified Stormwater SCM Inspection & Maintenance Inspector, NC professional engineer or landscape architect. The inspection report shall contain all of the following:~~

D.

(1) **If the Town finds issues with the SCM, the Town will require maintenance/improvements to be made following the O & M agreement.** ~~The name and address of the landowner;~~

~~(2)~~ **If the Town finds issues and no O & M is recorded for the property, the conditions can be deemed a public nuisance, and the Town can require abatement following the nuisance ordinance.** ~~The recorded book and page number of the lot of each structural SCM;~~

~~(3) A statement that an inspection was made of all structural SCMs;~~

~~(4) The date the inspection was made;~~

~~(5) A statement that all inspected structural SCMs 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 NCSU Cooperative Extension Certified Stormwater SCM Inspection and Maintenance Inspector, NC professional engineer, or landscape architect.~~

~~All inspection reports shall be on forms supplied by the stormwater administrator. An original inspection report shall be provided to the stormwater administrator beginning one year from the date of as-built certification and annually thereafter.~~

8.2.19 Operation and maintenance agreement.

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

The operation and maintenance agreement ~~shall~~ **will** require the owner or owners to maintain, repair and, if necessary, reconstruct the structural SCM, and ~~shall~~ **will** state the terms, conditions, and schedule of maintenance for the structural SCM. In addition, it ~~shall~~ **will** grant to Town of Black Mountain 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 SCM; however, in no case ~~shall~~ **will** the right of entry, of itself, confer an obligation on Town of Black Mountain to assume responsibility for the structural SCM. The operation and maintenance agreement must be approved by the stormwater administrator prior to plan approval, and it ~~shall~~ **will** be referenced on the final plat and ~~shall~~ **will** be recorded with the county register of deeds upon final plat approval. A copy of the recorded maintenance agreement ~~shall~~ **will** be given to the stormwater administrator within 14 days following its recordation.

The Operation and Maintenance Agreement must be recorded with the Buncombe County Register of Deeds prior to issuance of Certificate of Occupancy.

B. Special requirement for homeowners' and other associations. For all structural SCMs 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~~ **will** include all of the following provisions:

(1) Acknowledgment that the association ~~shall~~ **will** continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural SCMs. If structural SCMs are not performing adequately or as intended or are not properly maintained, the Town of Black Mountain, in its sole discretion, may remedy the situation, and in such instances the Town of Black Mountain ~~shall~~ **will** 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 SCMs, provided that the Town of Black Mountain ~~shall~~ **will** first consent to the expenditure.

(3) Both developer contribution and annual sinking funds ~~shall~~ **will** fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever ~~shall~~ **will** first occur, the developer ~~shall~~ **will** pay into the escrow account an amount equal to 15 percent of the initial construction cost of the structural SCMs.

Two-thirds of the total amount of sinking fund budget ~~shall~~ **will** be deposited into the escrow account within the first five years and the full amount ~~shall~~ **will** be deposited within ten years following initial construction of the structural SCMs. Funds ~~shall~~ **will** be deposited each year into the escrow account. A portion of the annual assessments of the association ~~shall~~ **will** include an allocation into the escrow account. Any funds drawn down from the escrow account ~~shall~~ **will** be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Black Mountain depending on the design and materials of the stormwater control and management facility.

(5) Granting to the Town of Black Mountain a right of entry to inspect, monitor, maintain, repair, and reconstruct structural SCMs.

(6) Allowing the Town of Black Mountain to recover from the association and its member's any and all costs the Town of Black Mountain expends to maintain or repair the structural SCMs or to correct any operational deficiencies. Failure to pay the Town of Black Mountain all of its expended costs, after 45 days written notice, ~~shall~~ **will** constitute a breach of the agreement. In case of a deficiency, the Town of Black Mountain ~~shall~~ **will** thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees ~~shall~~ **will** be added to the recovery.

(7) A statement that this agreement ~~shall~~ **will** not obligate the Town of Black Mountain to maintain or repair any structural SCMs, and the Town of Black Mountain ~~shall~~ **will** not be liable to any person for the condition or operation of structural SCMs.

(8) A statement that this agreement ~~shall~~ **will** not in any way diminish, limit, or restrict the right of the Town of Black Mountain to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the Town of Black Mountain for any costs and injuries arising from or related to the structural SCM, unless the Town of Black Mountain has agreed in writing to assume the maintenance responsibility for the SCM and has accepted dedication of any and all rights necessary to carry out that maintenance.

8.2.20 Inspection program.

Inspections and inspection programs by Town of Black Mountain 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 SCMs; and evaluating the condition of SCMs.

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

8.2.21 Performance security for installation and maintenance.

A. May be required. The Town of Black Mountain 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 SCMs are:

(1) Installed by the permit holder as required by the approved stormwater management plan, and/or

(2) Maintained by the owner as required by the operation and maintenance agreement.

B. Amount.

(1) Installation. The amount of an installation performance security ~~shall~~ **will** be the total estimated construction cost of the SCMs approved under the permit, plus 25 percent.

(2) Maintenance. The amount of a maintenance performance security ~~shall~~ **will** be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the SCMs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

C. Uses of performance security.

(1) Forfeiture provisions. The performance security ~~shall~~ **will** contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the

applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default. Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structure SCM in accordance with the applicable permit or operation and maintenance agreement, the stormwater administrator ~~shall~~ **will** obtain and use all or any portion of the security to make the necessary improvements based on an engineering estimate. Such expenditure of funds ~~shall~~ **will** only be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Black Mountain ~~shall~~ **will** not return any of the unused deposited cash funds or other security, which ~~shall~~ **will** be retained for maintenance.

(3) Costs in excess of performance security. If Town of Black Mountain takes action upon such failure by the applicant or owner, the Town of Black Mountain may collect from the applicant or owner the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund. Within 60 days of the final approval, the installation performance security ~~shall~~ **will** be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25 percent) of landscaping installation and ongoing maintenance associated with the SCMs covered by the security unless a separate landscaping and ongoing maintenance security has been provided. Any such landscaping ~~shall~~ **will** be inspected one 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~~ **will** be released.

8.2.22 Notice to owners.

A. Deed recordation and indications on plat. The applicable operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable), pertaining to every structural SCM ~~shall~~ **will** be referenced on the final plat and ~~shall~~ **will** be recorded with the county register of deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable, ~~shall~~ **will** 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.

The Operation and Maintenance Agreement must be recorded with the Buncombe County Register of Deeds prior to issuance of Certificate of Occupancy.

B. Signage. Where appropriate in the determination of the stormwater administrator to assure compliance with this ordinance, structural SCMs ~~shall~~ **will** be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign ~~shall~~ **will** be maintained so as to remain visible and legible.

8.2.23 Records of installation and maintenance activities.

The owner of each structural SCM ~~shall~~ **will** keep records of inspections, maintenance, and repairs ~~for at least five years from the date of creation of the record~~ and ~~shall~~ **will** submit the same upon reasonable request to the stormwater administrator.

8.2.24 Nuisance

Theowner of each stormwater SCM, whether structural or non-structural SCM, ~~shall~~ **will** maintain it so as not to create or result in a nuisance condition.

8.2.25 Maintenance easement.

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

SECTION 5. ENFORCEMENT AND VIOLATIONS FOR COMPLIANCE AND PERMITS

8.2.26 General.

A. Authority to enforce. The provisions of this ordinance ~~shall~~ **will** be enforced by the stormwater administrator, or any authorized agent of Town of Black Mountain. Whenever this section refers to the stormwater administrator, it includes his or her designee as well as any authorized agent of Town of Black Mountain.

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~~ **will** constitute a violation of this ordinance.

C. Each day a separate offense. Each day that a violation continues ~~shall~~ **will** 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, SCM, practice, or condition in violation of this ordinance ~~shall~~ **will** 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.

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

(1) Person maintaining condition resulting in or constituting violation. An architect, engineer, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

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

8.2.27 Remedies and penalties.

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

A. Remedies.

(1) Withholding of certificate of occupancy. The stormwater administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of subsequent permits and development approvals. As long as a violation of this ordinance continues and remains uncorrected, the stormwater administrator or other authorized agent may withhold, and the planning board may disapprove, any request for permit or development approval or authorization provided for by this ordinance or the subdivision for the land on which the violation occurs.

(3) Injunction, abatements, etc. The stormwater 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~~ **will** be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits of the Town of Black Mountain G.S. 160A-193, the stormwater 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 stormwater administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order ~~shall~~ **will** 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.

B. Civil penalties. Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the stormwater administrator. Civil penalties may be assessed up to the full amount of penalty to which the Town of Black Mountain 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.

8.2.28 Procedures

A. Initiation/complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint ~~shall~~ **will** state fully the alleged violation and the basis thereof, and ~~shall~~ **will** be filed with the stormwater administrator, who ~~shall~~ **will** record the complaint. The complaint ~~shall~~ **will** be investigated promptly by the stormwater administrator.

B. Inspection. The stormwater administrator ~~shall~~ **will** have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

C. Notice of violation and order to correct. When the stormwater administrator finds that any building, structure, or land is in violation of this ordinance, the stormwater administrator ~~shall~~ will notify, in writing, the property owner or other person violating this ordinance. The notification ~~shall~~ **will** indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation ~~shall~~ **will** also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The stormwater administrator may deliver the notice of violation and correction order personally, by the Code Enforcement staff, 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 stormwater administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

D. Extension of time. A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the stormwater administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the stormwater administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The stormwater administrator may grant 60-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The stormwater administrator may grant an extension only by written notice of extension. The notice of extension ~~shall~~ **will** 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.

E. Enforcement after time to correct. After the time has expired to correct a violation, including any extension(s) if authorized by the stormwater administrator, the stormwater administrator ~~shall~~ **will** 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.

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

SECTION 6: DEFINITIONS

8.2.29 Terms defined.

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

Built-upon area (BUA): That portion of a development project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and

gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department: The North Carolina Department of Environment and Natural Resources.

Design manual: All references herein to the Design Manual are to the latest published edition or revision as published by the North Carolina Department of Environmental Quality.

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

Disturbance of land: Any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics including construction activity such as clearing, grading, excavation, or the filling of land.

Division: The Division of Water Quality in the Department.

High-density project: High-density projects shall comply with the requirements set forth in Rule .1003(3). See 15A NCAC 02H.1003 for calculation of project density and requirements for high-density projects.

Impervious: Not allowing fluid to pass through.

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

Low-density project: A project shall be considered a low-density project if it meets the low-density criteria set forth in Rule .1003(2) and contains no more than 24 percent built-upon area or no more than two dwelling units per acre. See 15A NCAC 02H.1003 for calculation of project density and requirements for low-density projects.

Low impact development: The term low impact development (LID) refers to systems and practices that use or mimic natural processes that result in the infiltration, evapotranspiration or use of stormwater in order to protect water quality and associated aquatic habitat. LID is an approach to land development (or re-development) that works with nature to manage stormwater as close to its source as possible. LID employs principles such as preserving and recreating natural landscape features, minimizing effective imperviousness to create functional and appealing site drainage that treat stormwater as a resource rather than a waste product. There are many practices that have been used to adhere to these principles such as bio retention facilities, rain gardens, vegetated rooftops, rain barrels and permeable pavements.

25 year, 24-hour storm: The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 25 years and with a duration of 24 hours as defined by the National Weather Service.

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

Post-construction: The point in which construction activity has been concluded prior to issuing a certificate of occupancy or otherwise putting the property into use.

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

Stormwater Control Measure (formally known as Best Management Practice): An alternation of land or physical device engineered and/or designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural SCM includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural SCM" is synonymous with "structural practice," "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

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