



TOWN OF AYDEN
PHASE II STORMWATER ORDINANCE

Adopted September 8th, 2008

TOWN OF AYDEN

PHASE II STORMWATER ORDINANCE

- Art. I. General Provisions
- Art. II. Applicability and Jurisdiction
- Art. III. Administration and Procedures
- Art. IV. Standards
- Art. V. Maintenance
- Art. VI. Enforcement and Violations
- Art. VII. Illicit Discharges
- Art. VIII. Definitions

ARTICLE I. GENERAL PROVISIONS

Section 10.1 TITLE

This ordinance shall be officially known as the “Phase II Stormwater Ordinance for the Town of Ayden, North Carolina,” and may be referred to as “stormwater ordinance”.

Section 10.2 AUTHORITY

The Board of Commissioners of the Town of Ayden is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission there under; Session Law 2004-163; Chapter 160A, §§ 174, 185.

Section 10.3 FINDINGS

It is hereby determined that:

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

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

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

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

Therefore, the Board of Commissioners of the Town of Ayden establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

Section 10.4 PURPOSE

(A) General

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

(B) Specific

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 preserves the health of water resources;
2. Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank 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 Best Management Practices (BMPs) that may be used to meet the minimum post-development stormwater management standards.
5. Encouraging the use of better management and site design practices, such the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the

inspection of approved projects, and to assure appropriate long-term maintenance.

8. Coordinating site design plans that include open space and natural areas that are consistent with the Town of Ayden Subdivision Ordinance and the most current officially adopted Future Land Use Plan.

ARTICLE II. APPLICABILITY AND JURISDICTION

Section 20.1 AUTHORITY

(A) General

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

(B) Exemptions

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

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

Development and redevelopment that disturb less than one acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.

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

(C) Map

The provisions of this ordinance shall apply within the areas designated on the the most current map titled “Official Zoning Map for the Town of Ayden, North Carolina”, as adopted by the Ayden Board of Commissioners.

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

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Section 20.2 INTERPRETATION

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(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Town of Ayden's Code of ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

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

(C) Authority for Interpretation

The Stormwater Administrator has the authority to determine the interpretation of this ordinance; any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within thirty (30) days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

(D) References to Statutes, Regulations, and Documents

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

(E) Computation of Time

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

(F) Delegation of Authority

Any Act authorized by this Ordinance to be carried out by the Stormwater Administrator or the Town of Ayden, may be carried out by his or her designee.

(G) Usage

(1) Mandatory and Discretionary Terms

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

(2) Conjunctions

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

(3) Tense, Plurals, and Gender

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

(H) Measurement and Computation

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

Section 20.3 DESIGN MANUAL

(A) Reference to Design Manual

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the latest approved North Carolina Division of Water Quality Stormwater Best Management Practices Manual (Design Manual) as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMP's.

The Design Manual includes a list of acceptable stormwater treatment practices, including the 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

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

(C) Changes to Standards

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.

Section 20.4 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this

ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

(B) Private Agreements

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

Section 20.5 SEVERABILITY

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

Section 20.6 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on September 9, 2008.

(B) Final Approvals, Complete Applications

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

A phased development plan shall 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. Future phases of the development are designed and constructed in a manner sufficiently consistent with the approved original development plan.

(C) Violations Continue

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

ARTICLE III. ADMINISTRATION AND PROCEDURES

Section 30.1 REVIEW AND DECISION-MAKING ENTITIES

(A) Designation

A Stormwater Administrator shall be designated by the Town Manager to administer and enforce this ordinance.

(B) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Town of Ayden Code of Ordinances and other laws, the Stormwater Administrator shall have the following powers and duties under the 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 establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Board of Commissioners on applications for development or redevelopment approvals.
- (4) To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- (5) To maintain records, maps, and official materials that relate to the adoption, amendment, enforcement, or administration of this ordinance.
- (6) To provide expertise and technical assistance to the Board of Commissioners and Planning Board, upon request.
- (7) To designate appropriate other persons who shall carry out the powers and duties of the Stormwater Administrator.
- (8) To take any other action necessary to administer the provisions of this ordinance.

Section 30.2 REVIEW PROCEDURES

(A) Permit Required; Must Apply for Permit

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

(B) Effect of Permit

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs.

The Permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design. This 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.

(C) Authority to File Applications

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

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

(1) Application Contents and Form

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

(2) Submission Schedule

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

(3) Permit Review Fees

Stormwater permit fees shall be established and approved by the Ayden Board of Commissioners, and shall be provided on the most current adopted fee schedule. These fees may be amended and updated from time to time.

(E) Submittal of Complete Application

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

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

(F) Review

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

(1) Approval

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

(2) Fails to Comply

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

(3) Revision and Subsequent Review

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

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

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

Section 30.3 APPLICATIONS FOR APPROVAL

(A) Conceptual Sketch Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete the Stormwater Administrator or developer may request a consultation on a concept sketch 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 sketch plan of subdivision or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Overall site design, watershed plans, open space requirements, and other relevant resource protection plans may be consulted in the discussion of the concept plan.

To accomplish this goal the following information should be included in the conceptual sketch 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 (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural Resources Inventory

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

(3) Stormwater Management System Concept Plan

A written or graphic conceptual sketch plan of the proposed post-development stormwater management system including:

preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

(B) Stormwater Management Permit Application

The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 30.2 (D)

(C) As-Built Plans and Final Approval

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

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

and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

No certificate of zoning compliance or occupancy shall be issued by the Town of Ayden or Pitt County, respectively, without final as-built plans and a final inspection and approval by the Stormwater Administrator.

Section 30.4 APPROVALS

(A) Effect of Approval

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

(B) Time Limit / Expiration

An approval plan shall become null and void if the applicant has failed to make substantial progress on the site within one (1) year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

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

Section 30.5 APPEALS

(A) Right of Appeal

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

(B) Filing of Appeal and Procedures

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by the Town of Ayden. The Stormwater Administrator shall forthwith transmit to the Ayden Board of Commissioners all documents constituting the record on which the decision appealed from was taken. The hearing conducted by the Ayden Board of Commissioners shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

ARTICLE IV. STANDARDS

Section 40.1 GENERAL STANDARDS

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

Section 40.2 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

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

- (A) Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
- (B) All Built-upon area shall be at a minimum of thirty (30) feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the 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.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

Section 40.3 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

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

- (A) The measures shall control and treat the runoff from the first one (1) inch of rainfall. Runoff volume drawdown time shall be a minimum of forty-eight (48) hours, but not more than one hundred twenty (120) hours.
- (B) All structural stormwater treatment systems used to meet the requirements of this program shall discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one (1) year, twenty-four (24) hour storm.
- (C) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);
- (D) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual;
- (E) All Built-upon area shall be at a minimum of thirty (30) feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either 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.
- (F) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

Section 40.4 STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation according to contents of Design Manual

All Stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPS) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and criteria for each stormwater practice, in the Design Manual. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.

(B) Determinations of Adequacy; Presumptions and Alternatives

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

(C) Separation from Seasonal High Water Table

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

Section 40.5 RESERVED

Section 40.6 VARIANCES

- (A)** Any person may petition the Ayden Board of Commissioners for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:
- (1)** Unnecessary hardships would result from strict application of this ordinance.
 - (2)** The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
 - (3)** The hardships did not result from actions taken by the petitioner.
 - (4)** The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.
- (B)** The Town of Ayden may impose reasonable and appropriate conditions and safeguards upon any variance it grants.
- (C)** Statutory exceptions

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

- (1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located fifteen (15) feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- (3) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.

Section 40.7 ADDITIONAL STANDARDS

(A) Nutrient Sensitive Waters

In addition to the standards for stormwater handling set out in the Design Manual, development and redevelopment that is within the Neuse River Basin, or drains in whole or part to class Nutrient Sensitive Waters (NSW) waters shall design and implement the best stormwater practices that reduce nutrient loading, while meeting the other requirements of this ordinance.

(B) Downstream Impact Analysis

All concentrated stormwater discharges must be conveyed into an existing channel, storm sewer, or overland flow path, and shall not result in

increased flood and/or drainage hazard to downstream properties during the 10-yr 24-hour storm event.

In the event that the maximum discharge rate, at any point where stormwater leaves the site, exceeds the pre-development discharge rate during the 10-yr 24-hour storm, the applicant shall submit a report to the Stormwater Administrator documenting downstream impacts between the downstream property line and a point within the watershed where the total acreage of the development site is equal to or less than 10% of the total contributing drainage area within the watershed.

If there any adverse impacts to property or structures downstream of the site the Stormwater Administrator may require additional improvements, onsite or offsite, to mitigate the downstream impacts.

ARTICLE V: MAINTENANCE

Section 50.1 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

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

(B) Annual Maintenance Inspection Report

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

The inspection report shall contain all of the following:

- (1) The name, address, phone number and email address (email address if available) of the current land owner;
- (2) The recorded book and page number of the lot of each structural BMP;
- (3) A statement that an inspection was made of all structural BMPs;
- (4) The date the inspection was made;
- (5) A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

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

Section 50.2 OPERATION AND MAINTENANCE AGREEMENT

(A) In General

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

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

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

(B) Special Requirement for Homeowners' and Other Associations

For all structural BMPs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property

owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Acceptable financial security shall be deposited with the Town of Ayden to ensure that each structural stormwater BMPs is adequately maintained. The applicant shall deposit with the Town of Ayden either cash or an evergreen letter of credit as financial security approved by the Town of Ayden that is readily convertible into cash at face value. The cash or evergreen letter of credit shall be in an amount equal to fifteen (15) percent of the total cost of the structural stormwater BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town of Ayden, in its sole discretion, may use the funds to remedy the situation, and in such instances the Town of Ayden shall be fully reimbursed by the association and its members for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Town of Ayden shall first consent to the expenditure.
- (3) Granting to the Town of Ayden a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
- (4) Allowing the Town of Ayden to recover from the association and its members any and all costs the Town of Ayden expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of Ayden all of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Ayden shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.
- (5) A statement that this agreement shall not obligate the Town of Ayden to maintain or repair any structural BMPs, and the Town of Ayden shall not be liable to any person for the condition or operation of structural BMPs.
- (6) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Ayden to enforce any of its ordinances as authorized by law.

- (7) A provision indemnifying and holding harmless the Town of Ayden for any costs and injuries arising from or related to the structural BMP, unless the Town of Ayden has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.
- (8) An annual certified financial statement shall be provided to the Stormwater Administrator

Section 50.3 INSPECTION PROGRAM

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

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

Section 50.4 PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE

(A) Required

(1) Installation

The Town of Ayden requires the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are installed by the permit holder as required by the approved stormwater management plan, and

(2) Maintenance

The Town of Ayden requires the submittal of a performance security in the form of a cash or evergreen letter of credit prior to issuance of a permit in order to ensure that the structural BMPs are maintained by the owner as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

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

(2) Maintenance

Acceptable financial security shall be deposited with the Town of Ayden to ensure that each structural stormwater BMP is adequately maintained. The applicant shall deposit with the Town of Ayden either cash or an evergreen letter of credit as financial security approved by the Town of Ayden that is readily convertible into cash at face value. The cash or evergreen letter of credit shall be in an amount equal to fifteen (15) percent of the total cost of each structural stormwater BMP.

(C) Uses of Performance Security

(1) Forfeiture Provisions

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

(2) Default

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

(3) Costs in Excess of Performance Security

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

Section 50.5 NOTICE TO OWNERS

(A) Deed recordation and Indication On Plat

The applicable operations, including, but not limited to the maintenance agreement (O&M) pertaining to every structural BMP(s) shall be referenced on the final plat and shall be recorded with the Pitt County Register of Deeds upon final plat approval. If no final plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Pitt County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

To assure compliance with this ordinance, structural BMP(s) shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be erected and maintained by the responsible party and remain visible and legible.

Section 50.6 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The owner of each structural BMP(s) shall keep records of inspections, maintenance, and repairs for at least five (5) years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

Section 50.7 NUISANCE

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

Section 50.8 MAINTENANCE EASEMENT

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

ARTICLE VI: ENFORCEMENT AND VIOLATIONS

Section 60.1 GENERAL

(A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of the Town of Ayden. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the City of Conover.

(B) Violation Unlawful

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

(C) Each Day a Separate Offense

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

(D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this

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

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

(1) Person Maintaining Condition Resulting In or Constituting Violation

An Architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility For Land or Use of Land

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

SECTION 60.2 REMEDIES AND PENALTIES

(A) Remedies

(1) Withholding of Zoning Compliance Certificate

The Stormwater Administrator or other authorized agent may refuse to issue a Zoning Compliance Certificate 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 Ayden Board of Commissioners may disapprove, any request for permit or development approval or authorization provided for by this ordinance or any zoning permit for the land on which the violation occurs.

(3) Injunction, Abatements, etc.

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

(4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S § 160A-193, the Stormwater Administrator, with the written authorization of the Ayden 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) violation this ordinance. The stop work order shall remain in effect until the person(s) 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 thirty (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 Ayden is subject for violations of its Phase II Stormwater permit.

(C) Criminal Penalties

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

Section 60.3 PROCEDURES

(A) Initiation / Complaint

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

(B) Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(C) Notice of Violation and Order to Correct

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

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the Town of Ayden Police Department, or by 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 time as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and 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 thirty (30) days. The Stormwater Administrator may grant fifteen (15) day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which the 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 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 cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

ARTICLE VII. ILLICIT DISCHARGES

Section 70.1 ILLICIT DISCHARGES AND CONNECTIONS

(A) Illicit Discharges

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

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential and charity car washing;
- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water; and
- (19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the City of Conover

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

(B) Illicit Connections

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

(v)

(C) Spills

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

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of Ayden Public Works and Utilities Director of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Nuisance

Illicit discharges and illicit connections which exist within the Town of Ayden are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Chapter (Insert #) of the Ayden Code of Ordinances.

ARTICLE VIII: DEFINITIONS

Section 80.1 TERMS DEFINED

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

Built-upon area (BUA)

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

Department

The North Carolina Department of Environment and Natural Resources.

Design Manual

The stormwater best management design manual approved for use in Phase II jurisdictions by the Department. All references herein to the Design Manual are to the latest published edition or revision.

Development

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

Division

The Division of Water Quality in the Department of Environment and Natural Resources.

High-density project

Any Project that exceeds the low-density threshold for dwelling units per acre and/or built-upon area.

Larger common plan of development or sale

Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is an 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 is a low-density project if it has no more than two dwelling units per acre for residential development and no more than twenty-four (24) percent built-upon area (BUA) for non-residential development.

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

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of intensity expected to be equaled or exceeded, on average, once in 12 months and with duration of 24 hours. For the purposes of this ordinance, the rainfall depth used to calculate runoff shall be 3.15”.

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.

Redevelopment

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

Structural BMP

A physical device designed to trap, settle out or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property.

"Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress

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