

**Guidance for Implementation of
S.L. 2014-120, Section 29: REFORM AGENCY
REVIEW OF ENGINEERING WORK**

*Prepared by the N.C. League of Municipalities and
the N.C. Association of County Commissioners*

December 12, 2014

OVERVIEW

New requirements for certain local government development plan review procedures became effective December 1. The requirements, included in last session's omnibus regulatory reform bill (S. L. 2014-120, Section 29), sought to standardize some aspects of plan review and use of the title "engineer." All programs subject to the new law must report to the legislative Environmental Review Commission (ERC) on their implementation of various aspects of the new law before January 14, 2015. This guidance explains the requirements of this new law and includes a template report.

AFFECTED PROGRAMS

To know if the requirements apply to a specific development plan review process, you must answer YES to BOTH of these questions:

1. Is the review being conducted pursuant to a program *approved by or delegated by* the N.C. Department of Environment and Natural Resources or the N.C. Department of Health and Human Services?
2. As a result of the review, will the local government grant a permit, license, or approval to a member of the public?

Examples of program areas that must follow the new requirements (detailed below) include those that review sedimentation/erosion control, stormwater, and water/sewer designs, as well as cross-connection plans and 401 certifications. Other programs may also be subject to the requirements of this law. Notably, review of transportation designs is NOT subject to these new requirements.

NEW REQUIREMENTS

If a local government's programs fall under the description above, the law requires those programs to make the following adjustments to their plan review processes by December 1, 2014:

1. ***Identify "required" vs. "suggested" changes.*** The new law requires plan reviewers in affected programs to distinguish between plan changes that are *required* by a statutory or other legal authority and those that the reviewer *offers as suggestions* for improvement. The law directs plan reviewers to specifically identify the legal authority for any *required* changes when communicating with the plan submitter.
2. ***Innovative designs involving a Professional Engineer (PE).*** The new law specifies a procedure for local governments to follow when (1) a PE submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures (i.e., "innovative" designs), AND (2) the submitting PE requests additional internal review of that design or practice. For these cases, the local government must establish a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of the design details. As an additional requirement, if the first local government plan reviewer was not a PE, then the submitting PE may request that a PE conduct this secondary, "escalated" plan

review. If the local government does not employ a PE, the new law makes allowances for the submitting party to pay for an outside PE of the local government's choice.

3. ***Disputes involving changes that are "required."*** The new law also directs local governments to establish an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Unlike the informal internal review procedure described in (2) above, the law leaves the details for this procedure up to the local government to determine.
4. ***Job titles.*** The new law prohibits local government employees whose responsibilities include review of plans in affected programs from including the word "engineer" in their public job titles *unless* that employee is a PE. If the employee does not hold a PE license, then the local government must propose revisions to those employees' public job titles in order to remove the word "engineer." However, in recognition of unintended consequences of this new requirement, the law allows local governments to retain the word "engineer" in job titles for these positions for human resources purposes. For example, an employee without a PE may hold a position called "Civil Engineer I" for job advertisement, recruitment, and classification purposes, yet when that employee communicates with the public, the title that appears on the employee's business cards, emails, and other correspondence must use alternate language such as, "Stormwater Plan Review Technician" or "Engineering Associate."
5. ***Selection of a private-sector PE if local unit does not employ a PE:*** The requirements outlined in (2) above note that the local government must provide an opportunity for secondary "escalated" review by a PE, if the submitting PE requests a secondary review by an individual with those qualifications. If the local unit does not employ a PE, the new law directs those local governments to develop a process for developing and maintaining a list of outside consulting PEs.

REPORTING REQUIREMENTS

The new law requires local governments to submit a report to the ERC on how they implemented requirements (1)-(4) above. The first report is due January 14, 2015. After that first report, local governments must make three additional annual reports, due January 15, 2016; January 15, 2017; and January 15, 2018. Unlike the first report, these additional annual reports must only state how many times the local government utilized the informal review procedures detailed in (2) and (3) above, and the outcome of the secondary "escalated" reviews that took place.

Local governments may wish to utilize the reporting template below for the initial report due to the ERC by January 14, 2015.

S.L. 2014-120: Regulatory Reform Act of 2014

REFORM AGENCY REVIEW OF ENGINEERING WORK

SECTION 29.(a) Definitions. – The following definitions apply to Section 6 of this act:

- (1) Practice of Engineering. – As defined in G.S. 89C-3.
- (2) Professional Engineer. – As defined in G.S. 89C-3.
- (3) Regulatory Authority. – The Department of Environment and Natural Resources, the Department of Health and Human Services, and any unit of local government operating a program (i) that grants permits, licenses, or approvals to the public and (ii) that is either approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (4) Regulatory Submittal. – An application or other submittal to a Regulatory Authority for a permit, license, or approval. In the case of a unit of local government, Regulatory Submittal shall mean an application or submittal submitted to a program approved by or delegated from the Department of Environment and Natural Resources or the Department of Health and Human Services.
- (5) Submitting Party. – The person submitting the Regulatory Submittal to the Regulatory Authority.
- (6) Working Job Title. – The job title a Regulatory Authority uses to publicly identify an employee with job duties that include the review of Regulatory Submittals. Working Job Title does not mean job titles that are used by the human resources department of a Regulatory Authority to classify jobs containing technical aspects related to the Practice of Engineering.

SECTION 29.(b) Standardize Certain Regulatory Review Procedures. – No later than December 1, 2014, each Regulatory Authority shall review and, where necessary, revise its procedures for review of Regulatory Submittals to accomplish the following:

- (1) Standardize the provision of review and comments on Regulatory Submittals so that revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval are clearly delineated from revisions or requests for additional information that constitute suggestions or recommendations by the Regulatory Authority. For purposes of this subdivision, "suggestions or recommendations by the Regulatory Authority" means comments made by the reviewer of the Regulatory Submittal to the Submitting Party that make a suggestion or recommendation for consideration by the Submitting Party but that are not required by the Regulatory Authority in order to proceed with the permit, license, or approval.
- (2) With respect to revisions or requests for additional information that are required by the Regulatory Authority in order to proceed with the permit, license, or approval, the Regulatory Authority shall identify the statutory or regulatory authority for the requirement.

SECTION 29.(c) Informal Review. – No later than December 1, 2014, each Regulatory Authority shall create a process for each regulatory program administered by the Regulatory Authority for an informal internal review at the request of the Submitting Party in each of the following circumstances:

- (1) The inclusion in a Regulatory Submittal of a design or practice sealed by a Professional Engineer but not included in the Regulatory Authority's existing guidance, manuals, or standard operating procedures. This review should first be conducted by the reviewing employee's supervisor or, in the case of a Regulatory Authority that is a

unit of local government, either the reviewing employee's supervisor or the delegating or approving State agency. If this initial review was not conducted by a Professional Engineer, then the Submitting Party may request review by (i) a Professional Engineer on the staff of the Regulatory Authority or (ii) the delegating or approving State agency in the case of a Regulatory Authority that is a unit of local government. If the Regulatory Authority or delegating or approving State agency does not employ a Professional Engineer qualified and competent to perform the review, it may provide for review by a consulting Professional Engineer selected from a list developed and maintained by the Regulatory Authority. The Regulatory Authority may charge the Submitting Party for the costs of the review by the consulting Professional Engineer. Nothing in this subdivision is intended to limit the authority of the Regulatory Authority to make a final decision with regard to a Regulatory Submittal following the reviews described in this subdivision.

- (2) A disagreement between the reviewer of the Regulatory Submittal and the Submitting Party regarding whether the statutory or regulatory authority identified by the Regulatory Authority for revisions or requests for additional information designated as "required" under the procedures set forth in Section 29(b) of this act justifies a required change.

SECTION 29.(d) Scope. – Nothing in Section 29(c) of this act shall limit or abrogate any rights available under Chapter 150B of the General Statutes to any Submitting Party.

SECTION 29.(e) Procedure to Develop List of Consulting Professional Engineers. – Regulatory Authorities shall develop formal written procedures to prepare and maintain a list of consulting Professional Engineers required pursuant to subdivision (1) of Section 29(c) of this act.

SECTION 29.(f) Pilot Study. – No later than March 1, 2015, the Department of Environment and Natural Resources shall complete a pilot study on the Pretreatment, Emergency Response and Collection System (PERCS) wastewater collection system permitting program and the stormwater permitting program and perform the following activities with the assistance and cooperation of the North Carolina Board of Examiners for Engineers and Surveyors and the Professional Engineers of North Carolina:

- (1) Produce an inventory of work activities associated with the operation of each regulatory program.
- (2) Determine the work activities identified under subdivision (1) of this subsection that constitute the Practice of Engineering.
- (3) Develop recommendations for ensuring that work activities constituting the Practice of Engineering are conducted with the appropriate level of oversight.

SECTION 29.(g) Report. – The Department shall report the results of the pilot study to the Environmental Review Commission no later than April 15, 2015.

SECTION 29.(h) Review of Working Job Titles. – No later than December 1, 2014, each Regulatory Authority and the Department of Transportation shall do the following:

- (1) Review the Working Job Titles of every employee with job duties that include the review of Regulatory Submittals.
- (2) Propose revisions to the Working Job Titles identified under subdivision (1) of this subsection or other administrative measures that will eliminate the public identification as "engineers" of persons reviewing Regulatory Submittals who are not Professional Engineers.

SECTION 29.(i) Initial Report. – Each Regulatory Authority shall report to the Environmental Review Commission prior to the convening of the 2015 Regular Session of the 2015 General Assembly on implementation of the following, if applicable:

- (1) The standardized procedures required by Section 29(b) of this act.
- (2) The informal review process required by Section 29(c) of this act.
- (3) The review of Working Job Titles required by Section 29(h) of this act.

SECTION 29.(j) Annual Report. – Beginning in 2016, each Regulatory Authority shall annually report to the Environmental Review Commission no later than January 15 on the informal review process required by Section 29(c) of this act. The report shall include the number of times the informal review process was utilized and the outcome of the review.

SECTION 29.(k) Annual Reporting Sunset. – Section 29(j) of this act expires on January 1, 2019.

Report to the Environmental Review Commission

Pursuant to S.L. 2014-120, Sec. 29 REFORM AGENCY REVIEW OF ENGINEERING WORK

January 14, 2015

Name of Local Government Unit: Town of Wrightsville Beach

Approved/delegated program subject to reporting requirements:

☐ Sedimentation/erosion control

☒ Stormwater

☐ Water/sewer

☐ Cross-connection

☐ 401 certifications

☐ Other **Phase II MS4 Permit**

Type name of person preparing report

Jonathan Babin (Stormwater Manager)

Type date

12/16/14

*Submit this report electronically to Mariah Matheson, Commission Assistant,
Environmental Review Commission, at Mariah.Matheson@ncleg.net.*

Name of local government unit: Town of Wrightsville Beach

Please attach any written procedures that may have been developed to implement the provisions of this law.

☒ Check to indicate that this plan review program implemented procedures whereby plan reviewers distinguish between plan changes that are required by statutory or other legal authority and those that the reviewer offers as suggestions for improvement. Refer to S.L. 2014-120, Section 29.(b)(1) for further details about this requirement.

☒ Check to indicate that this plan review program identifies the statutory or regulatory authority for any revisions or requests for additional information that are required by the program in order to grant the requested plan permit, approval, or license. Refer to S.L. 2014-120, Section 29.(b)(2) for further details about this requirement.

☒ Check to indicate that this plan review program implemented procedures for local governments to follow when (1) a Professional Engineer submits a sealed design or practice that is not in the local government's guidance, manuals, or standard operating procedures, and (2) the submitting Professional Engineer requests additional internal review of that design or practice. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program established a procedure whereby the plan reviewer's supervisor OR the approving/delegating state agency can provide further review and oversight of these design details. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program either employs a Professional Engineer who can conduct further review of these innovative designs, or maintains a list of consulting Professional Engineers of the local government unit's choice that may conduct this review, if requested by and paid for by the submitting Professional Engineer. Refer to S.L. 2014-120, Section 29.(c)(1) for further details about this requirement.

☒ Check to indicate that this plan review program established an informal internal process to address disputes when a plan reviewer identifies a change to the plans as being "required" under a specific, identified legal authority. Refer to S.L. 2014-120, Section 29.(c)(2) for further details about this requirement.

☒ Check to indicate that this plan review program discontinued use of the word "engineer" in the job titles of all program employees whose responsibilities include review of plans in affected programs, *unless* those employees hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h) for

further details about this requirement.

Name of local government unit: Town of Wrightsville Beach

☒ Check to indicate that this plan review program reviewed the titles of all employees conducting plan reviews for this program. Refer to S.L. 2014-120, Section 29.(h)(1) for further details about this requirement.

☒ Check to indicate that this plan review program proposed revisions to those employees' job titles in order to eliminate use of the word "engineer" when publicly identifying those employees, if those employees do not hold Professional Engineer licenses. Refer to S.L. 2014-120, Section 29.(h)(2) for further details about this requirement.

Additional information:

I attached a copy of our stormwater ordinance for review.

STORMWATER MANAGEMENT

§ 50.130 TITLE.

This subchapter shall be officially known as the "Stormwater Management Ordinance." It is referred to herein as "this subchapter."

(Ord. 1538, passed 5-24-07)

§ 50.131 AUTHORITY.

The town is authorized to adopt this subchapter pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; G.S. § 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185 and Chapter 153A, Article 18.

(Ord. 1538, passed 5-24-07)

§ 50.132 FINDINGS.

(A) It is hereby determined that:

(1) Development and redevelopment alter the hydrologic response of local watersheds and increase 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;

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

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

(B) 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 minimum stormwater controls such as those included in this subchapter.

(C) Therefore, the town 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.
(Ord. 1538, passed 5-24-07)

§ 50.133 PURPOSE.

(A) General. The purpose of this subchapter 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 and illicit discharges into 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 subchapter 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 pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm to reduce flooding, stream bank erosion, non-point 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 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 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 longterm 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) Controlling illicit discharges into the municipal separate stormwater system;

(9) Controlling erosion and sedimentation from construction activities; and

(10) Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention measures.

(Ord. 1538, passed 5-24-07)

§ 50.134 APPLICABILITY AND JURISDICTION.

(A) General. Beginning with and subsequent to its effective date, this subchapter shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, and grading applications.

(B) No development or redevelopment until compliance and permit. No development or redevelopment shall occur except in compliance with the provisions of this subchapter or unless exempted. Development for which a permit is required pursuant to this subchapter shall not occur except in compliance with the provisions, conditions, and limitations of the permit.

(1) The provisions of this subchapter shall apply within the areas designated on the map titled "USMP Stormwater Map of the Town of Wrightsville Beach, North Carolina" (the "stormwater map"), which is adopted simultaneously herewith. The stormwater map and all explanatory matter contained thereon accompanies and is hereby made a part of this subchapter.

(2) The stormwater map shall be kept on file by the Stormwater Manager and shall be updated to take into account changes in the land area covered by this subchapter and the geographic location of all structural BMPs permitted under this subchapter. In the event of a dispute, the applicability of this subchapter 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.

(Ord. 1538, passed 5-24-07)

§ 50.135 INTERPRETATION.

(A) Meaning and intent. All provisions, terms, phrases, and expressions contained in this subchapter shall be construed according to the general and specific purposes set forth in §50.133. If a different or more specific meaning is given for a term defined elsewhere in the Town of Wrightsville Beach or New Hanover County's code of ordinances, the meaning and application of the term in this subchapter shall control for purposes of application of this subchapter.

(B) Text controls in event of conflict. In the event of a conflict or inconsistency between the text of this subchapter and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) Authority for interpretation. The Stormwater Manager or his designee has authority to determine the interpretation of this subchapter. Any person may request an interpretation by submitting a written request to the Stormwater Manager, who shall use his best efforts to respond in writing within 30 days. The Stormwater Manager shall keep on file a record of all written interpretations of this subchapter.

(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 Wrightsville Beach, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the town. References to days are calendar days unless otherwise stated.

(F) Delegation of authority. Any act authorized by this subchapter to be carried out by the Stormwater Manager of the town 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 and events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

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

(H) Measurement and Computation. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(Ord. 1538, passed 5-24-07)

§ 50.136 DEFINITIONS.

For the purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

"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.

"COASTAL AREA MANAGEMENT ACT (CAMA)." An act that requires the establishment of a cooperative program of coastal land management between local government and the State of North Carolina for preparing, adopting and enforcing local land use plans. CAMA requires that

local governments within the 20 coastal counties prepare land use plans that provide for the protection, preservation, orderly development, and management of the coastal area of North Carolina.

"DESIGN MANUAL." The stormwater design manual approved for use by the town for the proper implementation of the requirements of the Federal Phase II Stormwater Program. 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.

"FLOODPLAIN." The 1% Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management.

"HIGH QUALITY WATERS (HQW)." Supplemental classification intended to protect waters with quality higher than state water quality standards. In general, there are two means by which a water body may be classified as HQW:

(1) By definition; or

(2) They may be supplementally classified as HQW through the rule-making process.

"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.

"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.

"SA WATERS." Surface waters that are used for shellfishing or marketing purposes and all SC and SB uses. All SA waters are also HQW by definition. Stormwater controls are required under CAMA. No domestic discharges are permitted in these waters.

"SB WATERS." Surface waters that are used for primary recreation, including frequent or organized swimming and all SC uses. Stormwater controls are required under CAMA and there are no categorical restrictions on discharges.

"SC WATERS." All tidal salt waters protected for secondary recreation such as fishing, boating and other activities involving minimal skin contact; aquatic life propagation and survival; and wildlife. Stormwater controls are required under CAMA and there are no categorical restrictions on discharges.

"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 subchapter.

"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 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.

(Ord. 1538, passed 5-24-07)

§ 50.137 DESIGN MANUAL.

(A) Reference to design manual.

(1) The Stormwater Manager shall use the policy, criteria, and information, including technical specifications and standards, in the design manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.

(2) 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 and other applicable stormwater 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 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 subchapter but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this subchapter 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.

(Ord. 1538, passed 5-24-07)

§ 50.138 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS.

(A) Conflict of laws. This subchapter is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this subchapter are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any

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

(Ord. 1538, passed 5-24-07)

📖 § 50.139 SEVERABILITY.

If the provisions of any section, subsection, paragraph, subdivision or clause of this subchapter 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 subchapter.

(Ord. 1538, passed 5-24-07)

📖 § 50.140 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS.

(A) Effective date. This subchapter shall take effect on June 28, 2007.

(B) Final approvals, complete applications.

(1) All development and redevelopment projects for which complete and full applications were submitted and approved by the town prior to the effective date of this subchapter 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 subchapter dealing with the control and/or management of discharge provisions.

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

(a) 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.

(b) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this subchapter 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 subchapter shall continue to be a violation under this subchapter and be subject to penalties and enforcement under this subchapter unless the use, development, construction, or other activity complies with the provisions of this subchapter.

(Ord. 1538, passed 5-24-07)

📖 § 50.141 REVIEW AND DECISION-MAKING ENTITIES.

(A) Stormwater Manager.

(1) Designation. A Stormwater Manager shall be designated by the Board of Aldermen to administer and enforce this subchapter.

(2) Powers and duties. In addition to the powers and duties that may be conferred by other provisions of the town ordinances and other laws, the Stormwater Manager shall have the following powers and duties under this subchapter:

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

(b) To make determinations and render interpretations of this subchapter.

(c) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Board of Aldermen on applications for development or redevelopment approvals.

(d) To enforce the provisions of this subchapter in accordance with its enforcement provisions.

(e) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this subchapter.

(f) To provide expertise and technical assistance to the Board of Aldermen, upon request.

(g) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Manager.

(h) To take any other action necessary to administer the provisions of this subchapter.

(Ord. 1538, passed 5-24-07)

📖 § 50.142 REVIEW PROCEDURES.

(A) Permit required; must apply for permit. A stormwater permit is required for all development and redevelopment unless exempt pursuant to this subchapter. 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 subchapter, whether the approach consists of structural BMPs 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 subchapter.

(C) Authority to file applications. All applications required pursuant to this subchapter shall be submitted to the Stormwater Manager by the land owner or the land owner's duly authorized agent.

(D) Establishment of application requirements, schedule, and fees.

(1) Application contents and form. The Stormwater Manager 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 subchapter.

(2) Submission schedule. The Stormwater Manager shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be

submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

(3) Permit review fees. The Board of Aldermen shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

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

(E) Submittal of Complete Application.

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

(2) An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this subchapter, along with the appropriate fee. If the Stormwater Manager 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 45 calendar days after a complete application is submitted, the Stormwater Manager shall review the application and determine whether the application complies with the standards of this subchapter.

(1) Approval. If the Stormwater Manager finds that the application complies with the standards of this subchapter, the Stormwater Manager shall approve the application. The Stormwater Manager may impose conditions of approval as needed to ensure compliance with this subchapter. The conditions shall be included as part of the approval.

(2) Fails to comply. If the Stormwater Manager finds that the application fails to comply with the standards of this subchapter, the Stormwater Manager 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) A complete revised application shall be reviewed by the Stormwater Manager within 45 calendar days after its re-submittal and shall be approved, approved with conditions or disapproved.

(b) If a revised application is not resubmitted within 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 for a new submittal.

(c) 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 an additional permit review fee, as established pursuant to this subchapter.

(Ord. 1538, passed 5-24-07)

§ 50.143 APPLICATIONS FOR APPROVAL.

(A) Concept plan and consultation meeting.

(1) Before a stormwater management permit application is deemed complete, the Stormwater Manager or developer may 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 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. Local watershed plans, the CAMA Land Use Plan, and other relevant resource protection plans should be consulted in the discussion of the concept plan.

(2) To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(a) 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.

(b) 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, 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 ponds, floodplains, stream buffers and other setbacks. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development and stormwater management.

(c) 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.

(1) 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 subchapter, including the section entitled 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 subchapter.

(2) The submittal shall include all of the information required in the submittal checklist established by the Stormwater Manager. Incomplete submittals shall be treated pursuant to § [50.142\(E\)](#).

(C) As-built plans and final approval.

(1) Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater

management plans and designs, and shall submit actual "as built" plans (both hardcopy and electronic format) for all stormwater management facilities or practices after final construction is completed.

(2) The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. 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 subchapter. A final inspection and approval by the Stormwater Manager shall occur before the release of any performance securities.

(D) Other permits. No certificate of compliance or occupancy shall be issued by the Town of Wrightsville Beach Planning and Inspections Department without final as-built plans and a final inspection and approval by the Stormwater Manager, except where multiple units are served by the stormwater practice or facilities, in which case the Town of Wrightsville Beach Planning and Inspections Department may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

(Ord. 1538, passed 5-24-07)

📖 § 50.144 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 not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(B) Time limit/expiration.

(1) An approved plan shall 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 Manager 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.

(2) In granting an extension, the Stormwater Manager 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.

(Ord. 1538, passed 5-24-07)

📖 § 50.145 APPEALS.

(A) Right of appeal. Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this subchapter made by the Stormwater Manager, may file an appeal to the Board of Adjustment within 30 days.

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

(C) Review by superior court. Every decision of the Board of Adjustment shall be subject to superior court review by proceedings in the nature of certiorari. Petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the latter of the following:

- (1) The written decision of the Board of Adjustment is filed; or
 - (2) A written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Board of Adjustment at the time of its hearing of the case.
- (Ord. 1538, passed 5-24-07)

📖 § 50.146 GENERAL STANDARDS.

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

(Ord. 1538, passed 5-24-07)

📖 § 50.147 IMPERVIOUS SURFACE REQUIREMENTS.

(A) Setback requirement.

(1) All impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters.

(2) A perennial or intermittent surface water shall be deemed present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent complete 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 by the Division of Water Quality, using Division-approved methodology.

(B) Land draining to shellfish waters. All development activities that are located within 75 feet of waters designated by the Environmental Management Commission as estuarine shellfishing waters or 575 feet from designated Outstanding Resource Waters shall be limited to a maximum impervious surface density of 36%.

(Ord. 1538, passed 5-24-07)

📖 § 50.148 STRUCTURAL STORMWATER CONTROL REQUIREMENTS.

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

(A) The measures shall control and treat runoff from the first one and one-half inches of rain. Runoff volume drawdown time for wet detention ponds shall be a minimum of 48 hours, but not more than 120 hours.

(B) All structural stormwater treatment systems used shall be designed to have a minimum of 90% average annual removal for Total Suspended Solids (TSS).

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

(D) The measure shall discharge the storage volume at a rate equal or less than the pre-development discharge rate for the one-year, 24-hour storm, or as specified in the design manual.

(E) The approval of the stormwater permit shall require enforceable restrictions on property usage that runs with the land, including recorded deed restrictions and protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

(Ord. 1538, passed 5-24-07)

📖 § 50.149 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 subchapter shall be evaluated by the Stormwater Manager 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 Manager shall determine whether proposed BMPs will be adequate to meet the requirements of this subchapter.

(B) Determination 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 subchapter. 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 subchapter. The Stormwater Manager may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Manager 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.

(Ord. 1538, passed 5-24-07)

📖 § 50.150 VARIANCES.

(A) Any person may petition the town for a variance granting permission to use the person's land in a manner otherwise prohibited by this subchapter. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this subchapter.
- (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 subchapter; will secure public safety and welfare; and will preserve substantial justice.

(B) The town may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

(C) Statutory exceptions. Notwithstanding division (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 be granted in any of the following instances:

(1) When there is a lack of practical alternatives for a road crossing, bridge, 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 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.

(Ord. 1538, passed 5-24-07)

📖 § 50.151 ADDITIONAL STANDARDS FOR SA WATERS.

(A) In addition to the standards for stormwater handling set out in the Design Manual, development and redevelopment that is located within one-half mile of and that drains in whole or part to class SA waters shall design and implement the best stormwater practices that ensure reduction of fecal coliform loading. The best practices are ones that result in the highest degree of fecal die-off and control sources of fecal coliform to the maximum extent practicable while still meeting the other requirements of this subchapter.

(B) No direct discharge or expansion of discharges to SA waters. No new direct points of stormwater discharge to SA waters or increases in the volume of stormwater flow through conveyances or increases in capacity of conveyances in existing stormwater conveyance systems that drain to Class SA waters are permitted. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to Class SA waters. Diffuse flow of stormwater at a nonerosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the one-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(Ord. 1538, passed 5-24-07)

📖 § 50.152 GENERAL STANDARDS FOR MAINTENANCE.

(A) Function of BMPs as intended. The owner of each structural BMP installed pursuant to this subchapter 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 and report.

(1) The Stormwater Manager will conduct annual inspections of all structural BMPs installed pursuant to this subchapter. At the Stormwater Manager's discretion, the town may require the person responsible for maintenance of any structural BMP installed to submit to the Stormwater Manager 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.

(2) The inspection report shall contain all of the following:

- (a) The name and address of the land owner;
- (b) The recorded book and page number of the lot of each structural BMP;
- (c) A statement that an inspection was made of all structural BMPs;
- (d) The date the inspection was made;
- (e) 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 subchapter; and
- (f) The original signature and seal of the engineer, surveyor, or landscape architect.

(3) All inspection reports shall be on forms supplied by the Stormwater Manager. An original inspection report shall be provided to the Stormwater Manager, if requested, beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(Ord. 1538, passed 5-24-07)

📖 § 50.153 OPERATION AND MAINTENANCE AGREEMENT.

(A) In general.

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

(2) 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 Wrightsville Beach a right of entry in the event that the Stormwater Manager has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the town to assume responsibility for the structural BMP.

(3) The operation and maintenance agreement must be approved by the Stormwater Manager 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 Manager within 14 days following its recordation.

(B) Special requirement for homeowners' and other associations. For all structural BMPs required pursuant to this subchapter 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) That the association shall continuously operate and maintain the stormwater control and management facilities.

(2) That the town shall have a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.

(3) That the town shall be allowed to recover from the association and its members any and all costs the town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the town all of its expended costs, after 45 days written notice, shall constitute a breach of the agreement. In case of a deficiency, the town shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both. Interest, collection costs, and attorney fees shall be added to the recovery.

(4) That this agreement shall not obligate the town to maintain or repair any structural BMPs, and the town shall not be liable to any person for the condition or operation of structural BMPs.

(5) That this agreement shall not in any way diminish, limit, or restrict the right of the town to enforce any of its ordinances as authorized by law.

(6) That the association, or similar entity, shall indemnify and hold harmless the Town of Wrightsville Beach for any costs and injuries arising from or related to the structural BMP, unless the town has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

(Ord. 1538, passed 5-24-07)

 § 50.154 INSPECTION PROGRAM.

(A) Inspections and inspection programs by the Town of Wrightsville Beach 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.

(B) If the owner or occupant of any property refuses to permit such inspection, the Stormwater Manager 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 Manager while carrying out his or her official duties.

(Ord. 1538, passed 5-24-07)

 § 50.155 NOTICE TO OWNERS.

(A) Deed recordation and indications on plat. The applicable operations and maintenance agreement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage. Where appropriate in the determination of the Stormwater Manager to assure compliance with this subchapter, structural BMPs shall be posted with a conspicuous sign stating who is responsible for required maintenance. The sign shall be maintained so as to remain visible and legible.

(Ord. 1538, passed 5-24-07)

 § 50.156 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES.

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

(Ord. 1538, passed 5-24-07)

 § 50.157 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.

(Ord. 1538, passed 5-24-07)

 § 50.158 ENFORCEMENT.

(A) Authority to enforce. The provisions of this subchapter shall be enforced by the Stormwater Manager, his or her designee, or any authorized agent of the Town of Wrightsville Beach. Whenever this section refers to the Stormwater Manager, it includes his or her designee as well as any authorized agent of the Town of Wrightsville Beach.

(B) Violation unlawful. Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this subchapter, or the terms or conditions of any permit or

other development or redevelopment approval or authorization granted pursuant to this subchapter, is unlawful and shall constitute a violation of this subchapter.

(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.

(1) 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 subchapter 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 subchapter, or fails to take appropriate action, so that a violation of this subchapter 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.

(2) For the purposes of this section, responsible person(s) shall include but not be limited to:

(a) 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 subchapter, or fails to take appropriate action, so that a violation of this subchapter results or persists.

(b) 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.

(Ord. 1538, passed 5-24-07)

§ 50.159 REMEDIES.

The remedies and penalties provided herein are not exclusive; may be exercised singly, simultaneously, or cumulatively; may be combined with any other remedies authorized under the law; and may be exercised in any order.

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

(B) Disapproval of subsequent permits and development approvals. As long as a violation of this subchapter continues and remains uncorrected, the Stormwater Manager or other authorized agent may withhold, and the Board of Aldermen may disapprove, any request for permit or development approval or authorization provided for by this subchapter or the (zoning, subdivision, and/or building regulations, as appropriate) for the land on which the violation occurs.

(C) Injunction, abatements, etc. The Stormwater Manager, with the written authorization of the Town Manager, may initiate an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this subchapter. Any person violating this subchapter shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(D) Correction as public health nuisance, costs as lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Manager, 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.

(E) Stop work order. The Stormwater Manager may issue a stop work order to the person(s) violating this subchapter. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(Ord. 1538, passed 5-24-07; Am. Ord. 1590, passed 1-29-09)

§ 50.160 PROCEDURES.

(A) Initiation/complaint. Whenever a violation of this subchapter occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Manager, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Manager.

(B) Inspection. The Stormwater Manager shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this subchapter.

(C) Notice of violation and order to correct.

(1) When the Stormwater Manager finds that any building, structure, or land is in violation of this subchapter, the Stormwater Manager shall notify, in writing, the property owner or other person violating this subchapter. 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.

(2) The Stormwater Manager may deliver the notice of violation and correction order personally, by the Code Enforcement Administrator, 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.

(3) If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Manager may take appropriate action under this subchapter to correct and abate the violation and to ensure compliance with this subchapter.

(D) Extension of time.

(1) 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 Manager 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 Manager may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 90 days. The Stormwater Manager may grant 30-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this subchapter.

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

(E) Enforcement after time to correct. After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Manager, the Stormwater Manager shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Manager may act to impose one or more of the remedies and penalties authorized by this subchapter.

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

(Ord. 1538, passed 5-24-07)

📖 § 50.161 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 manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater. Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, fertilizer, animal waste, paints, garbage, litter and rubbish. It is also prohibited to deposit in any manner (sweeping, blowing, etc) yard waste, to include but not limited to: grass and plant trimmings, leaves and thatch. Non-stormwater discharges associated with the following activities are allowed provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Rising ground waters;
- (4) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (5) Uncontaminated pumped ground water;
- (6) Discharges from potable water sources;
- (7) Foundation and footing drains;
- (8) Air conditioning condensation;
- (9) Irrigation water;
- (10) Lawn watering;
- (11) Individual residential car washing;
- (12) Flows from riparian habitats and wetlands;
- (13) Street wash water; and
- (14) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town of Wrightsville Beach.

(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 division (A) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from

washing machines or sanitary sewers and wash water from commercial vehicle washing or steam cleaning.

(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 subchapter. 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 Manager shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Manager shall take into consideration:

1. The quantity and complexity of the work,
2. The consequences of delay,
3. The potential harm to the environment, to the public health, and to public and private property, and
4. The cost of remedying the damage.

(C) Spills.

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

(2) Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of Wrightsville Beach Public Works Department 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 Wrightsville Beach are hereby found, deemed, and declared to be dangerous or prejudicial 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 130: Offenses Against Public Peace And Safety.

(Ord. 1538, passed 5-24-07)

§ 50.162 STORMWATER FEES.

(A) Stormwater fees as set forth in the Schedule of Fees listed below shall be determined from time to time by the Board of Aldermen and kept on file in the office of the Town Clerk. Adjustments to the stormwater fees shall be applicable to the first building following the effective date of the modified rate.

(B) The following fees are hereby established by the Board of Aldermen:

Parcel size in square feet	Monthly fee
<2,000	\$2
>2,000 and <8,000	\$5
>8,000 and <20,000	\$6

Parcel size in square feet	Monthly fee
>20,000 and <100,000	\$10
>100,000	\$20

For the purposes of this section, “parcel” shall mean a tax parcel as identified on the records of the New Hanover County Tax Office.

(Ord. 1516, passed 8-24-06)

📖 § 50.999 PENALTY.

(A) Any person violating any provision of this chapter shall be subject to the penalties set forth in this section. If the violation is continued, each day's violation shall be a separate offense.

(B) Any violation of this chapter shall subject the offender to a civil penalty to be recovered by the town in a civil action in the nature of a debt if the offender does not pay any penalty called for hereunder within the prescribed period of time after notice of violation of the chapter.

Penalties shall be as prescribed herein but in no case less than \$10 per day.

(C) This chapter may be enforced by an appropriate equitable remedy such as an injunction or order of abatement issuing from any court of competent jurisdiction.

(D) This chapter may be enforced by any, all, or a combination of the remedies as authorized and prescribed above.

(E) It shall be unlawful for any person to violate any provision of §§ [50.120](#) through [50.126](#), including any mandatory water conservation measure.

(F) A violation of §§ [50.130](#) through [50.162](#) 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 Manager.

(1) Civil penalties.

(a) Any person who allows, acts in concert, participates, directs, or assists directly or indirectly in the creation of a violation of §§ [50.130](#) through [50.162](#) is subject to a civil penalty. A civil penalty may be assessed from the date the violation first occurs.

(b) Civil penalties may be assessed up to the full amount of penalty to which the town is subject for violations of its NPDES stormwater permit, or up to \$5,000 for each violation of §§ [50.130](#) through [50.162](#), whichever is greater. Each day of violation shall constitute a separate violation.

(c) No penalty shall be assessed until the person alleged to be in violation has been served notice of the violation as described in § [50.160](#)(C). Refusal to accept the notice shall not relieve the violator of the obligation to pay such penalty.

(d) Penalties may be assessed concurrently with a notice of violation for any of the following:

1. Obstructing, hampering or interfering with an authorized town representative who is in the process of carrying out official duties under §§ [50.130](#) through [50.162](#);

2. A repeated violation for which a notice of violation was previously given to the person responsible for the violation; or

3. Willful violation of §§ [50.130](#) through [50.162](#).

(e) In determining the amount of a civil penalty, the Stormwater Manager shall consider any relevant mitigating and aggravating factors including, but not limited to the following:

1. Degree and extent of harm caused by the violation;

2. Cost of rectifying the damage;

3. Amount of money saved through noncompliance;

4. Whether the violator took reasonable measures to comply with this chapter;

5. Knowledge of the requirements by the violator and/or reasonable opportunity or obligation to obtain such knowledge;

6. Whether the violator voluntarily took reasonable measures to restore any areas damaged by the violation;

7. Whether the violation was committed willfully;

8. Whether the violator reported the violation to an appropriate authority;

9. Technical and economic reasonableness of reducing or eliminating the discharge; and

10. Prior record of the violator in complying or failing to comply with §§ [50.130](#) through [50.162](#) or any other water pollution control ordinance or regulation.

(f) The Stormwater Manager shall determine the amount of the civil penalty to be assessed under this section and shall make written demand for payment upon the person in violation and shall set forth in detail a description of the violation for which the penalty was imposed. Notice of said assessment shall be by registered or certified mail or other means reasonably calculated to give adequate notice. If a violator does not pay a civil penalty assessed by the town within 30 days after it is due, the Stormwater Manager shall request the Town Attorney to institute a civil action to recover the amount of the assessment. The civil action shall be brought in New Hanover County Superior Court or in any other court of competent jurisdiction. Such civil action must be filed within three years of the date the notice of assessment was served on the violator.

(g) An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.

(h) Civil penalties collected pursuant to this chapter shall be credited to the town's water and sewer fund as a non-tax revenue.

(i) A violation of §§ [50.130](#) through [50.162](#) shall not constitute a misdemeanor or infraction punishable under G.S. § 14-4, but instead shall be subject to the civil penalties fixed by this section.

(2) Cost recovery. The town may also recover from the violator:

(a) Costs to restore damaged property based on restoration costs, which include, but are not limited to, cleanup costs, value of animal and plant life damaged, and town administrative costs;

(b) Compensation for damage to or destruction of the stormwater system.

(G) In no case shall the maximum penalty per day exceed the amount as specified in § [50.999](#)(F)(1)(b).

(Ord., passed 7-28-83; Am. Ord. 1422, passed 8-8-02; Am. Ord. 1538, passed 5-24-07; Am. Ord. 1590, passed 1-29-09)

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