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Sec. 3.13, Development and Stormwater Surety

3.13.1 Intent

This Section is intended to provide procedures and standards to facilitate the review of Development Surety Applications and Stormwater Surety Applications. Review of Development Surety Applications and Stormwater Surety Applications will be required to ensure completion of the required improvements within a specified time period.

3.13.2 Applicability

A. Development Surety ~~and/or Stormwater Surety~~ as set forth herein shall be accepted where the Applicant desires to record a plat before completion of all required improvements and where a Temporary Certificate of Compliance is being issued pursuant to this Article. The Development Surety ~~and/or Stormwater Surety~~ shall ensure the satisfactory completion of all required improvements shown on the approved Subdivision Plan or Development Plan.

1. **Development Surety.** The installation and maintenance of drinking water systems, sewer systems, streetlights and signs, open space areas, and any other improvements to be constructed or indicated in lieu of actual construction prior to final approval; and

B. Stormwater Surety as set forth herein shall be accepted where the approved Final Development Plan or Stormwater Permit involves the installation of stormwater infrastructure, facilities, or practices. The Stormwater Surety shall ensure the satisfactory completion of all stormwater improvements shown on the approved Final Development Plan and/or Stormwater Permit.

1. **Stormwater Surety.** The installation and maintenance of erosion and sediment control Best Management Practices (BMPs), drainage systems, stormwater management systems, street systems (roadway paving, curb and gutter, roadway swales, roadway stormwater inlets, pipes, and structures), grading, any other improvements to be constructed or indicated in lieu of actual construction prior to final stormwater permit approval not included in the Development Surety.

3.13.3 Application Review Criteria

The UDO Administrator shall consider the following criteria in assessing an application for Development Surety and/or Stormwater Surety:

- A. The application must comply with applicable requirements in the Applications Manual and/or Southern Lowcountry Stormwater Design Manual (Design Manual);
- B. The following types of Development Surety and/or Stormwater Surety may be accepted by the UDO Administrator:
 - 1. Cash;
 - 2. A surety bond that names the Town of Bluffton as beneficiary;
 - 3. A bank certified check payable to "Town of Bluffton"; and
 - 4. An irrevocable letter of credit approved by the UDO Administrator that names the Town of Bluffton as beneficiary.

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- C. Prior to the UDO Administrator's acceptance of any Development Surety and/ or Stormwater Surety, the Applicant shall submit to the UDO Administrator a copy of a contract signed by both the developer and a licensed contractor for the completion of required improvements and infrastructure, or an itemized and certified cost estimate for such work prepared by a licensed contractor, registered engineer, registered architect, or registered landscape architect, or any combination thereof, as appropriate, which will cover the costs for completion of all required improvements and infrastructure. The amount of a Development Surety and/or Stormwater Surety shall be the amount determined by the UDO Administrator to be necessary to assure completion of required improvements and infrastructure, based on such contract or cost estimate, but not less than 150% of the improvement and infrastructure costs. The surety amount includes a contingency amount to ensure completion of work which may have been underestimated or unanticipated, a maintenance fee to cover the cost of maintenance and stabilization of the site improvements, and an administrative fee to cover any potential cost incurred by the Town of Bluffton in administering completion of any unfinished portion of the work and may include, but shall not be limited to, staff time and expenses, use of Town of Bluffton equipment, and/or possible professional consultant fees.

3.13.4 Effect and Expiration of Approvals

- A. Subsequent to on-site inspection by the UDO Administrator verifying that all improvements subject to the Development Surety and/or Stormwater Surety have been satisfactorily completed or a percentage has been satisfactorily completed in the opinion of the UDO Administrator, the surety, either in whole, in part, or any remaining balance thereof, shall be released in accordance with the following:
1. A release of an appropriate portion of a Development Surety and/or Stormwater Surety, which has been accepted by the UDO Administrator in the form of cash or certified check (hereinafter a "drawdown") or amendment of the face value of any letter of credit or performance bond (hereinafter a "markdown") that has previously been accepted by the UDO Administrator may be permitted provided that:
 - a. Prior to a request for a drawdown or markdown, the Applicant shall submit, to the UDO Administrator, the contractor's itemized list of work completed, including requisite submittals, certifications, and preliminary As-Built Drawings, or any other documents or information deemed reasonably necessary by the UDO Administrator, and work remaining as secured by the surety, which has been certified by the project engineer or owner;
 - b. The UDO Administrator has inspected the work site and has verified in writing that, to the best of his/her knowledge, all such respective work has been completed;
 - c. The requested drawdown or markdown shall be at least twenty percent (20%) of the original face value of the approved surety, but not less than 30% of the original surety posting plus administrative fees; and
 - d. No more than one such drawdown or markdown shall be approved during any thirty day period, except for the request for a final drawdown or markdown.
 2. In all cases where a drawdown or markdown is requested, the contingency fee and the administrative fee shall remain intact until the work secured by the Development Surety and/or Stormwater Surety is verified by the UDO Administrator to have been completely finished and a final drawdown or markdown has been requested; and

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3. A Development Surety shall be completely released by the UDO Administrator upon the full completion of all required improvements and infrastructure and the issuance by the UDO Administrator of a ~~Final final~~ Certificate of Construction Compliance~~;~~ and
 4. A Stormwater Surety shall be completely released by the UDO Administrator upon the full completion of all required improvements, infrastructure, Final As-Builts (Final As-Builts include re-survey and As-Built of previously submitted information and new development and stormwater systems constructed as part of the phase and/or subphase), or any other documents or information deemed reasonably necessary by the UDO Administrator, and the issuance by the UDO Administrator of a Notice of Termination of the stormwater permit.
- B. Time limits on Development Surety and/or Stormwater Surety shall be as follows:
1. The maximum length of time for which a Development and/or Stormwater Surety may be held by the UDO Administrator shall be one year. Any Development Surety and/or Stormwater Surety submitted as a letter of credit or performance bond shall state on its face that, subsequent to the date of expiration, the Town of Bluffton as beneficiary shall have 30 days from the date of expiration to make demand upon the issuing bank or agency for the honoring of such surety, if the respective work has not been fully completed; and
 2. Any Development Surety and/or Stormwater Surety submitted as a letter of credit or performance bond shall also state that the letter of credit or performance bond shall be automatically renewed until such time that the surety issuer provides the UDO Administrator with a 30 day~~s~~ written notice of the expiration of such surety.
- C. If all improvements and infrastructure work secured by a Development and/ or Stormwater Surety have not been completed as of the stated date for such completion, the UDO Administrator shall contract to complete the remaining work and stabilize and maintain the site following normal Town of Bluffton procurement procedures.
1. In the case of a cash or certified check surety, the Town of Bluffton shall take possession of the full amount or remaining balance of such surety.
 2. In the case of a letter of credit or bond, the UDO Administrator shall make demand upon the issuer of such surety for immediate payment to the Town of Bluffton of the full or amended face value of such surety.
- D. In addition to any Penalties set forth in this Ordinance, failure by the Applicant to keep current any Development and/or Stormwater Surety prior to the issuance of a ~~Final~~ Certificate of Construction Compliance shall cause the UDO Administrator to immediately order all development work stopped and all necessary Town of Bluffton inspections of the development work suspended until a Development and/or Stormwater Surety meeting the requirements of this Article has been approved.

Sec. 3.14, Certificate of Construction Compliance

3.14.1 Intent

This Section is intended to provide procedures and standards for the review of Certificate of Construction Compliance Applications. The Certificate of Construction Compliance process ensures that all site improvements, including landscaping, comply with the approved Final Development Plan and are completed.

3.14.2 Applicability

The regulations set forth in this Section shall apply to any development which is subject to a Development Plan approval pursuant to the provisions of this Article.

3.14.3 Application Review Criteria

The UDO Administrator shall consider the following criteria in assessing an application for Certificate of Construction Compliance:

- A. Compliance with all applicable provisions of this Ordinance, including Subdivision and/or Development Plan approval requirements, as applicable;
- B. Compliance with all requirements of the approved Final Development Plan;
- C. The approved site or phase must be able to function on its own with all required infrastructure, including but not limited to vehicular and pedestrian facilities, stormwater facilities, utilities, and landscaping; and,
- D. The application complies with applicable requirements in the Applications Manual.

3.14.3 Effect and Expiration of Approvals

A Final Certificate of Construction Compliance is required for all development. In certain circumstances, a Temporary Certificate of Construction Compliance may be issued. Requirements for both Final and Temporary Certificates of Construction Compliance are described herein.

A. Temporary Certificate of Construction Compliance:

1. If improvements and landscaping have not been completed as described herein for single-family residential development, an application for a Temporary Certificate of Construction Compliance may be approved by the UDO Administrator for a maximum of one (1) year from date of issuance when the following conditions are met:
 - a. Unless otherwise provided in an approved and valid development agreement, the site or phase shall be seventy-five (75%) percent complete as referenced to the monetary value of the

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improvements, including landscaping. The existing construction cost estimate must be current to within twelve (12) months of the approved construction cost estimate. If the time period is exceeded, the construction cost estimate shall be updated and approved by the UDO Administrator.

- b. The site or phase shall be in safe, accessible, and useable condition as determined by the UDO Administrator.
 - c. The Applicant shall provide financial guarantees in accordance with this Article and assure completion of all requirements of the approved Final Development Plan; and,
 - d. The application must comply with applicable requirements in the Applications Manual.
2. If a Temporary Certificate of Construction Compliance is approved by the UDO Administrator, an application for a Building Permit can be made. Before a Certificate of Occupancy can be issued, a Final Certificate of Construction Compliance must be approved.

B. Final Certificate of Construction Compliance. When the required improvements, including landscaping, have been completed and a Final Certificate of Construction Compliance approved for the site or phase where the building is located, a Certificate of Occupancy can be issued. For commercial uses, including multi-family residential, the Applicant may apply for a Building Permit without a Final Certificate of Construction Compliance; however, a Certificate of Occupancy will not be issued for the building until such time as a Final Certificate of Construction Compliance is obtained for the site or phase where the building is located.

Sec. 5.10 Stormwater

Sec. 5.10.1 General provisions

A. Intent *(No Changes)*

B. Purpose *(No Changes)*

C. Applicability

~~Beginning with and subsequent to its effective date, this Article shall be applicable to:~~

~~1. The following activities, unless exempt pursuant to Section 5.10.1.C.2 below:~~

~~a. Development and/or Redevelopment that involves the creation, addition or replacement of 5,000 square feet or more of impervious surface or that involves other Land Disturbing activities of one acre or more.~~

~~b. Development and/or Redevelopment, regardless of size, that is part of a Larger Common Plan of Development, even though multiple, separate, and distinct Land Disturbing activities may take place at different times and on different schedules.~~

~~c. A Major Substantial Improvement of an existing property.~~

1. This Section shall apply to the following activities unless otherwise exempted by Sec. 5.10.1.C.2:

a. Any Development of 5,000 or more square feet of land disturbance;

b. Any Redevelopment/Infill that will result in an additional 2,000 or more square feet of impervious surface;

c. Any Land Disturbance, regardless of size, within a Larger Common Plan of Development where multiple, separate and distinct land disturbing activities may occur at different times and on different schedules; and,

d. A Major Substantial Improvement of an existing lot.

2. The following activities are exempt from this ~~Article~~ Section:

a. Any maintenance, alteration, renewal, or improvement as approved by the Town which does not alter existing drainage patterns, does not result in change or adverse impact on adjacent property, or create adverse environmental or water quality impacts, and does not increase the temperature, rate, quality, or volume or location of stormwater runoff discharge;

b. Projects that are exclusively for agricultural or silvicultural activities, not involving relocation of drainage canals, within areas zoned for these uses;

c. Redevelopment that constitutes the replacement of the original square footage of impervious cover and original acreage of other Development activity when the original

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Development is wholly or partially lost due to natural disaster or other acts of God occurring after September 14, 2021; and,

d. Work by governmental agencies or property owners required to mitigate emergency flooding conditions. If possible, emergency work should be approved by the duly appointed officials in charge of emergency preparedness or emergency relief. Property owners performing emergency work will be responsible for any damage or injury to persons or property caused by their unauthorized actions. Property owners will stabilize the site of the emergency work within 60 days, or as soon as reasonable, following the end of the emergency period.

3. Any illicit discharges.

4. The provisions of this [Article Section](#) shall apply throughout the incorporated areas of the Town.

Sec. 5.10.3 Standards

A.-B. *(No Changes)*

C. Stormwater Surety

Financial sureties for the cost of stormwater facilities approved for the proposed Development [and/or Redevelopment](#) shall be provided in accordance with the Town Stormwater Surety and stormwater permit issuance process in [this Article Section](#) 3.13.

D.-I. *(No Changes)*

J. Grading

Mass Grading and Clearing shall not be permitted. No land within the Town shall be cleared, disturbed, graded, excavated, except as follows:

~~1. It shall be unlawful to perform any Land Disturbance, or land disturbing activity, in excess of 5,000 square feet or create an increase in impervious surface in excess of 2,000 square feet unless a Grading Plan has been submitted to and approved by the Town of Bluffton as provided for herein.~~

It shall be unlawful to perform any Land Disturbance, or land disturbing activity, of 5,000 or more square feet or accruing a total exceedance of 5,000 square feet of impervious surface without a Grading Plan approved by the Town of Bluffton.

2. ~~A~~ Grading Plans shall be filed with and become part of any Application that equals or exceeds the threshold limits provided above. Such plans shall be prepared in accordance with Article 3 [and shall follow the requirements set forth in Article 5 Design Standards](#).

3. Amendments to Grading Plans. Amendments, changes or modifications of a minor nature to a plan required as a result of field conditions arising during construction may be ordered or approved by the UDO Administrator.

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~~4.— All Grading Plans shall follow the requirements set forth in Article 5 Design Standards.~~

~~5.—~~4. Soil erosion and sediment control measures shall, at a minimum, conform to the Standards for Soil Erosion and Sediment Control per the *Design Manual*.

K. Fee-in-Lieu. A fee-in-lieu may be approved by the UDO Administrator when none or only partial stormwater requirements, as defined in this Article Section and in the *Design Manual*, cannot be attained on the site ~~(due to impractical site characteristics or constraints)~~. A Maximum Extent Practicable analysis shall be required by the applicant for review by the UDO Administrator to make this determination.

L. Waiver. Individuals seeking a waiver from the requirements of this Article Section may submit to the UDO Administrator a request for a waiver in accordance with the *Design Manual*.