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### 5.4 Natural Resources: Wetlands Reserved

#### Sec. 5.4 ~~Natural Resources: Wetlands~~ Reserved

*Proposed Changes: 1) Relocate current verbiage to 5.10.7, "Wetland Buffer" and 2) Mark section 5.4 as "Reserved".*

~~No provisions of this Ordinance shall be construed to relieve the Applicant or Property Owner from the requirement to obtain permits from the United States Army Corps of Engineers and/or the State of South Carolina, as applicable, prior to the commencement of any land disturbance activity within the boundaries of a wetland or wetland buffer. Refer to Section 5.10.7 for specific wetland buffer requirements.~~

#### Sec. 5.10 Stormwater

*Proposed Changes: 1) Revise 5.10, "Stormwater" to include wetland and wetland buffer protection and conservation language as a stormwater design standard, 2) Revise 5.10.7, "Wetland Buffer" language to expand on protections of wetlands themselves, and 3) Revise 5.10.8 "Violations, Enforcement, and Penalties" to encompass enforcement specific to wetland violations.*

##### Sec. 5.10.1. General Provisions

###### A. Intent

1.-7. *(No Changes)*

8. Further, the protection of wetlands and wetland buffer areas from encroachment, pollution, degradation, alteration or elimination is a crucial element of the Town's stormwater and water quality management plans and supports resilience efforts in anticipation of more frequent and severe weather events, as well as documented and projected sea level rise. Procedures to protect, conserve, enhance and maintain wetlands and wetland buffers are in the public interest and support the general welfare of the Town.
9. ~~This Article is essential to the public health, safety or welfare and shall apply to any Development that is subject to a development agreement.~~ This Article is not in conflict with any development agreements to which the Town is a party and does not prevent the Development set forth in any development agreement.
10. ~~Laws of general application throughout the Town necessary to protect health, safety and welfare are anticipated and are provided for in development agreements.~~ This Article is essential to the public health, safety or welfare and shall apply to any Development that is subject to a development agreement.
11. ~~Substantial changes in Developmental impacts have occurred since the time the development agreements were signed, which changes, if not addressed in this Article would pose a threat to public health, safety or welfare.~~ Laws of general application throughout the Town necessary to

protect health, safety and welfare are anticipated and are provided for in development agreements.

12. Substantial changes in Developmental impacts have occurred since the time the development agreements were signed, which changes, if not addressed in this Article would pose a threat to public health, safety or welfare.

## **B. Purpose**

1. It is the purpose of this Article to protect, maintain, and enhance the environment of the Town and the short and long-term public health, safety, and general welfare of the citizens of the Town by establishing requirements and procedures to control the potential adverse effects of increased stormwater runoff associated with both future Development and existing developed land. Proper management of existing natural features, including wetlands and wetland buffers, and stormwater runoff will minimize damage to public and private property, ensure a functional drainage system, reduce the effects of Development on land and stream channel erosion, attain and maintain water quality standards, enhance the local environment associated with the drainage system, reduce local flooding, reduce pollutant loading to the maximum extent practicable and maintain to the extent practicable the pre- developed hydrologic characteristics of the area, and facilitate economic development while minimizing associated pollutant, flooding, and drainage impacts.
2. This Article specifically authorizes and enables the Town at a minimum to:
  - a.-q. *(No Changes)*
  - r. Define procedures for protection, conservation, enhancement, and proper maintenance of all existing wetlands and wetland buffer areas for water quality management.
3. *(No Changes)*

## **C. Applicability**

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;
  - d. ~~A Major Substantial Improvement of an existing property~~ Any Land Disturbance within a wetland or wetland buffer area.
  - e. A Major Substantial Improvement of an existing lot.
2. The following activities are exempt from this 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 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.
  - e. Installation of nature trails or pervious pedestrian access paths no greater than four (4) feet in width;
  - f. Pruning or trimming of grasses, shrubs, and other smaller vegetation;
  - g. Planting native species of plants;
  - h. Removal of invasive species of plants;
  - i. Any outdoor recreation activities not otherwise proscribed by the property owner or another applicable law or regulation, to include hiking, swimming, kayaking, canoeing, boating, horseback riding, hunting, fishing, shell fishing, and camping;
  - j. Research of soil, vegetation, water, fish, or wildlife for educational, scientific, or conservation purposes;
  - k. Maintenance or repair of existing water-control devices or structures, provided the device or structure is not “degraded” as defined herein, and the maintenance or repair does not involve enlarging, expanding, constructing, or relocating such water-control structures or devices; or
  - l. Maintenance and repair of existing utilities and roadways, provided the activity does not involve enlarging, expanding, constructing, or relocating such utilities and roadways.
- 3. Any illicit discharges.
  - 4. The provisions of this Section shall apply throughout the incorporated areas of the Town.

#### **Sec. 5.10.2. Stormwater Management Program**

*(No Changes)*

#### **Sec. 5.10.3. Standards**

##### **A. General Requirements**

1.-5. *(No Changes)*

##### **6. Better Site Design, Natural Vegetative Buffers, Wetland Conservation and Tree Conservation.**

Better natural vegetative buffers, wetland conservation, and tree conservation play an integral part in minimizing the volume of stormwater runoff by promoting infiltration and acting as a first line of treatment of water quality pollution. As such all Development subject to this Article shall comply with the following:

- a. Better Site Design practices set forth in the Design Manual to the Maximum Extent Practicable;
- b. Any and all buffer requirements of this Article; other applicable Sections of the UDO, and if applicable, any approved concept plan, and/or approved master plan.

- c. ~~Tree conservation requirements of the UDO 3.22, 5.3, and other applicable sections that may apply.~~ Wetland conservation requirements of this Article, and if applicable, any approved concept plan, and/or approved master plan.
- d. Tree conservation as required by this UDO.

**B. Permit Application Requirements**

No owner or Developer shall perform any Development activity without first meeting the requirements of this Section 5.10 and the Design Manual and having been issued a Stormwater Permit from the Town. Unless specifically exempted by this Section 5.10, any owner or Developer proposing Development activity shall submit to the Town a Stormwater Permit application and accompanying items as required in the Design Manual.

The UDO Administrator shall use the criteria and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater plans and about the design, implementation and performance of Structural and Non-structural Stormwater Practices. The Design Manual standards shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, the components of a project plan necessary to meet the requirements of this Article and post-construction maintenance and inspection requirements.

The Stormwater Permit shall be valid for five (5) years unless an extension is applied for an approved by the UDO Administrator or their designee.

C.– L. *(No Changes)*

**Sec. 5.10.4. – 5.10.5.**

*(No Changes)*

**Sec. 5.10.6. Inspections**

A.-C. *(No Changes)*

- D. Wetland Inspections. The Town is authorized under this Section to inspect a project's impact to wetlands and wetland buffer areas to determine compliance with conditions and provisions of this Article or to perform any duty imposed upon the owner or developer by this Ordinance.

**Sec. 5.10.7. Wetlands ~~Buffer~~**

**A. General Requirements**

1. This Section shall apply to all building, development, redevelopment, and site alteration within a wetland or wetland buffer area. Any person proposing to carry out a wetland disturbance under this Ordinance must, prior to the commencement of the activity, submit a Stormwater Permit application to the UDO Administrator.
2. The UDO Administrator shall review all materials submitted by an applicant and shall have the authority to require additional information about the project from the applicant, schedule a site visit, or require a preliminary meeting with the applicant. The UDO Administrator may also request a review of the project by the Development Review Committee (DRC).

3. The UDO Administrator has the authority to issue, deny, or conditionally approve Wetland Certifications consistent with the standards, goals, and criteria set forth in this Ordinance, and subject to the procedures established herein.
4. The regulation of land uses both within and adjacent to Wetlands, having been determined to be in the best interest of the Town, shall be done in a manner consistent with the review procedures and performance standards identified herein which reflect the relative importance, values, and functions of these areas.
5. No provisions of this Ordinance shall be construed to relieve the Applicant from the requirement to obtain permits issued by local, state, or federal agencies, prior to the commencement of any land disturbance activity within the boundaries of a wetland or wetland buffer.

~~on any land located on or immediately adjacent to wetlands as shown on: (a) the National Wetlands Inventory Map; (b) a wetland exhibit prepared by and certified as accurate by a professional environmental consultant, which shall be dated within twelve (12) months of the date of the application; or, (c) a set of drawings sealed by a South Carolina Registered Land Surveyor, which shall be dated within twelve (12) months of the date of the application. No provisions of this Ordinance shall be construed to relieve the Applicant or Property Owner from the provisions of Section 5.4.~~

~~A wetland buffer shall be established for all building, development, redevelopment, or site alteration when the land on which the action is adjacent to wetlands.~~

Wetland Buffers shall comply with the following:

- ~~A. For any land disturbance activity, a 25-foot minimum undisturbed buffer shall be established adjacent to a wetland unless a larger buffer is required by OCRM. The buffer shall be measured from the edge of the wetland.~~
- ~~B. All vegetation within the wetland buffer shall be retained, including but not limited to groundcover, shrubs and trees.~~
- ~~C. Utilities shall not be located within the wetland buffer; provided, however, the UDO Administrator shall have the discretion to approve encroachments into the wetland and/or wetland buffer if the applicant provides reasonable evidence that any impacts to the buffer and/or wetland have been avoided or minimized to the fullest extent practicable.~~

## **B. Wetland Delineation**

1. **Wetland Delineation Required.** Except as otherwise set forth in this Section, any person proposing to carry out a land disturbance or perform any applicable activity, as set forth in Section 5.10.1.C of this Ordinance, shall, prior to commencing the activity or the land disturbance, provide the Town with a Wetland Delineation.
2. **Exceptions.** A Wetland Delineation shall not be required under the following circumstances:
  - a. If the site is less than five (5) acres and has been exclusively utilized as single-family residential property for at least the last ten (10) years from [date of adoption]; and,
    - (1) The owner of the site certifies to the Town that to the best of their knowledge and belief, there are no Wetlands or Wetland Buffers on the site; and,

- (2) No Wetlands are identified on the site by any prior Wetland Delineations, or any existing watershed plans or Advanced Identification of Disposal Areas (ADID) studies, interim watershed plans, National Resources Conservation Service (NRCS) wetland inventory maps, or United States Fish and Wildlife Service National Wetlands Inventory Maps; and,
  - (3) The land disturbance or activity proposed is accessory to or consistent with a single-family residential use and does not increase the density of the site.
- b. The applicant or landowner of the site provides:
  - (1) An affidavit from a certified environmental firm attesting that no Wetlands or Wetland Buffer areas exist on the site; and,
  - (2) No Wetlands are identified on the site by any prior Wetland Delineations, or any existing watershed plans or ADID studies, interim watershed plans, NRCS wetland inventory maps, or United States Fish and Wildlife Service National Wetlands Inventory Maps.

C. **Wetland Buffers and Setbacks**

- 1. **Wetland Buffer Areas.** Wetland buffers are to be calculated by measuring horizontally outward from and perpendicular to the edge of the wetland, as defined herein. They must extend the entire length of the wetland delineation within the property. If a wetland falls into more than one of the categories below, the more restrictive buffer width shall control.
- 2. **Applicability.** Wetland Buffers shall be provided along the perimeter of all Wetlands. Wetland Buffers shall comply with the following standards:
  - a. **General Wetland Buffers.** A minimum buffer of fifty (50) feet must be observed for all wetlands as defined by this Ordinance.
  - b. **Parks.** A minimum buffer of fifty (50) feet must be observed when a wetland is part of, adjacent to, or within fifty (50) feet of a local, state, or national park.
  - c. **Riparian Wetland Buffers.** A minimum buffer of fifty (50) feet must be observed when a wetland is adjacent to a waterway or a tributary of a waterway.
- 3. **Prohibited Activities within Wetland Buffers.** The following activities are specifically prohibited within a Wetland Buffer unless expressly authorized herein or elsewhere within the UDO.
  - a. Removal, excavation, or disturbance of the soil, except for minimal disturbance associated with the installation of trees and plants as approved by the UDO Administrator, where a Wetland Buffer is re-established;
  - b. Dumping or filling with any materials;
  - c. Placement of any sod or garden of any type;
  - d. Placement of structures or other pervious or impervious surfaces; and,
  - e. Removal or destruction of trees, plants, grasses, or vines.

4. **Exceptions.** The following activities may occur in a required Wetland Buffer, subject to specified limitations and the requirements below.
- a. Maintenance of existing buffer landscaping in a manicured fashion, as approved by the UDO Administrator;
  - b. Construction and maintenance of public multi-purpose pathways, including minor associated structures such as footbridges, benches, and signage, provided the pathway is not more than ten feet wide;
  - c. Construction and maintenance of pedestrian walkways, including minor associated structures such as benches and signage, that provide public access to adjacent wetlands for wildlife management and viewing, fishing, and recreational purposes, or that provide access to approved water-dependent development activities – provided the walkway is not more than four feet wide and is pervious;
  - d. Construction and maintenance of pervious bulkheads or revetments, including associated backfill in tidal wetland buffers – provided:
    - (1) A Wetland Buffer in accordance with the standards in this section is re-established; and
    - (2) The UDO Administrator approves the replanting plan and any tree removal;
  - e. Construction and maintenance of impervious bulkheads or revetments;
  - f. Essential development activities such as stormwater management facilities and water, sanitary sewer, telephone, natural gas, cable TV, or other utility lines -provided:
    - (1) Stormwater management facilities and utility lines that must cross the buffer shall do so at approximately a right angle to minimize the area of buffer width disturbed; and,
    - (2) Stormwater management facilities and utility lines may run approximately parallel to the edge of the wetland if the utility or drainage easement allows the vegetation necessary to provide for significant filtration of stormwater runoff before it reaches the wetland; otherwise additional buffer width shall be required to provide the space for such filtration.
  - g. Water-dependent development activities such as docks, boat ramps, shoreline stabilization, and stream and wetland restoration;
  - h. Limited removal of the following:
    - (1) Trees or other vegetation determined by the UDO Administrator to be dead, dying, or diseased, provided the root system is retained intact;
    - (2) Non-native trees or other vegetation determined by the UDO Administrator to constitute a threat to the growth or reintroduction of native species of vegetation;
    - (3) Fallen trees, tree limbs, brush, and similar debris that have accumulated in or along stream beds and are determined by the UDO Administrator to substantially impede stream flow;

- (4) Fallen trees, tree limbs, and brush that are determined by the UDO Administrator to impede pedestrian or bicycle traffic along approved multi-purpose pathways and pedestrian walkways.
- i. Any impervious surfaces shall either be sloped away from the wetland and stormwater runoff from them shall be routed over a greater distance for filtration purposes, or constructed or installed in accordance with an alternative filtration design approved by the Official as ensuring that the impervious surfaces do not adversely impact the natural functionality of the Wetland Buffer.
- j. The allowed development activity incorporates any additional measures the UDO Administrator deems necessary to adequately protect the wetland's water quality and mitigate any loss of or damage to wildlife habitat or native plant communities.

#### **D. Other Requirements**

1. **Notification of Start of Project.** The holder of a stormwater permit issued pursuant to this Ordinance must notify the UDO Administrator in writing at least five (5) business days prior to the start of a project that the stated project is going to begin.
2. **Temporary Survey Stakes.** Temporary survey stakes or flags delineating boundaries between wetlands, buffer areas, setbacks, and adjacent property must be placed at all project sites by an engineer or surveyor. The markers shall follow the contour of the wetlands, buffer areas, and setbacks and shall be placed not more than fifty (50) feet apart.

#### **Sec. 5.10.8 – Violations, Enforcement, and Penalties**

The Town is authorized to enforce the provisions of this Article as described in *Article 8, Penalties and Enforcement*. Any action or inaction that violates the provisions of this Article or Design Manual requirements shall be subject to enforcement actions. Any such action or inaction that is continuous with respect to time is deemed to be a public nuisance and may be abated by injunctive or other equitable relief.

Furthermore, the UDO Administrator shall have the power to order restoration of a wetland area in the event of a violation. If the person responsible or agent does not complete such restoration within a reasonable time frame determined by the UDO Administrator, Town of Bluffton Town Council shall have the authority to restore the affected wetlands to their prior condition, and the person or agent responsible for the violation shall be held liable to the Town of Bluffton for the costs of such restoration.

Whenever a violation of this Ordinance is alleged, any person may file a complaint with the UDO Administrator. All such complaints must be in writing, accompanied by photos and supporting evidence, if possible. The UDO Administrator shall record such complaints, immediately investigate, and determine the appropriate course of action pursuant to the provisions of this Ordinance.

#### **Sec. 9.2 Defined Terms**



*Proposed Changes: 1) Addition of definitions of “person”, “wetland delineation” and “upland”; and 2) Revise current definition of “wetlands.”*

**Person:** Any individual, firm, partnership, association, trust, corporation, company, organization, or legal entity of any kind, whether public or private, including municipal corporations, governmental agencies, or subdivisions thereof.

**Wetlands:** Any areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions—~~Wetlands generally include swamps, marshes, bogs, and similar areas;~~ or areas that are defined and delineated in accordance with the “Federal Manual For Identifying And Delineating Jurisdictional Wetlands” dated January 10, 1989, as may be amended from time to time; or as further defined and delineated by the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, or the South Carolina Department of Environmental Services. Wetlands typically include the following: (1) predominantly hydric soils, meaning soils that are formed under wet conditions; (2) species of plants that tolerate wet conditions, including but not limited to hydrophytes; and (3) the presence of water above or just below the soil surface for at least a portion of the growing season each year. Wetlands generally include lands and waters meeting this definition, and encompass areas referred to as swamps, marshes, tidal flats, bays, bogs, estuaries, wetland meadows, ephemeral and tributary systems, vernal ponds, banks, reservoirs, ponds, lakes, lands under water bodies, and other similar areas. Wetlands shall include any and all areas identified in a Wetland Delineation as a Wetland, regardless of whether such Wetlands are considered jurisdictional or non-jurisdictional.

**Wetland Delineation:** A wetland delineation report identifying and evaluating the boundaries, location, limits, area, and quality of all on-site Wetlands, with such delineation to be conducted in accordance with the “Corps of Engineers Wetland Delineation Manual,” technical report: Y-87-1, from 1987, as may be amended from time to time. When such a delineation and report is required as part of a land use application, such report and delineation may be required to be updated and revised if the original report was prepared more than three (3) years prior to the date of submission of the land use application.

**Upland:** An area of land that does not qualify as a Wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, or hydrologic characteristics associated with Wetlands.