STAFF REPORT Engineering Department



MEETING DATE:	February 9, 2021
PROJECT:	Consideration of an Ordinance to Amend the Town of Bluffton Code of Ordinances, Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Sec. 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation Related to Adopting the Southern Lowcountry Post Construction Stormwater Ordinance and <i>Southern Lowcountry Stormwater Design Manual</i> – Second and Final Reading (Public Hearing)
PROJECT MANAGER:	Bryan McIlwee, P.E., Director of Engineering

RECOMMENDATION:

Approve Second and Final Reading (Public Hearing) of an Ordinance to amend the Town of Bluffton Code of Ordinances Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Section 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation Related to Adopting the Southern Lowcountry Post Construction Stormwater Ordinance and *Southern Lowcountry Stormwater Design Manual*.

No changes were made as a result of Town Council's approval of the Ordinance at First Reading on December 8, 2020.

BACKGROUND/DISCUSSION:

Southern Lowcountry Regional Board

Elected officials from the Towns of Bluffton, Ridgeland and Hilton Head Island, City of Hardeeville, and Beaufort and Jasper Counties re-established the Southern Lowcountry Regional Board (SoLoCo) on August 29, 2017. The Mission of SoLoCo is "to create a regional think tank that will identify the problems and opportunities that face the entire southern Lowcountry, as defined by the members and regardless of municipal or county boundaries; to discuss the zoning, housing, employment, quality of life and social issues; and to propose action plans to the appropriate legislative bodies."

SoLoCo prioritized the need for a uniform set of stormwater standards and design guidelines to meet the goal of protecting the region's sensitive environment, residents' quality of life, and future economic development opportunities. Seven (7) jurisdictions (Town of Bluffton, Beaufort County, City of Hardeeville, Jasper County, City of Beaufort, Town of Port Royal, and Town of Yemassee, referred to as the "Project Partners") agreed to work with a consultant team of Center for Watershed Protection and McCormick Taylor to draft a regional model stormwater ordinance and design manual.

The consultant team and the Project Partners received local stakeholder input from the project's outset and garnered feedback from the professional design community during local, statewide, regional, and national presentations as well as three (3) local Public Meetings in early 2020, and a formal Public Review and Comment period of the Final Draft documents.

Upon completion of the Public Meetings and Public Comment period, comments were reviewed and evaluated by the consultant team and the Project Partners resulting in the final version the model

Southern Lowcountry Post Construction Stormwater Ordinance (SoLoCo Stormwater Ordinance) and Southern Lowcountry Stormwater Design Manual (Design Manual), as presented for adoption today.

Town of Bluffton Strategic Plan

On May 8, 2018, the Town of Bluffton Town Council approved a Resolution adopting the Strategic Plan for Fiscal Years 2019-2020 ("Strategic Plan"). Updating the Town's stormwater design standards was a priority project relating to Strategic Focus Areas of May River & Surrounding Rivers and Watersheds and Community Quality of Life, which includes updating policies and ordinances to sustain the Town's "unique and authentic" character, as well as preserving its natural resources, culture, and history.

The proposed stormwater regulatory amendments to Town of Bluffton Municipal Code Chapter 23 Unified Development Ordinance (UDO), Article 5 (Design Standards), Section 10 (Stormwater) are intended to incorporate the SoLoCo Stormwater Ordinance to provide a consistent set of regulations across the southern Lowcountry region to manage stormwater on a watershed basis to protect water quality and natural resources. Section 10 amendments also include proposed requirements for a grading plan to ensure proper lot drainage, protection of topography, and protection of vegetative resources. Further stormwater design detail guidance is provided in the *Design Manual*. Additional amendments in Article 3 (Application Process) and Article 9 (Definitions and Interpretation) are proposed to provide consistency with the proposed Article 5, Section 10 amendments.

MAY RIVER WATERSHED ACTION PLAN ADVISORY COMMITTEE and PLANNING COMMISSION RECOMMENDATIONS:

As part of the Town's formal code amendment and document adoption process, additional public review has included:

- Planning Commission Workshop on August 26, 2020;
- May River Watershed Action Plan Advisory Committee review and formal recommendation for adoption on August 27, 2020;
- Town Council Workshop on October 13, 2020; and
- Planning Commission Public Hearing and formal recommendation for adoption of the ordinance amendments and *Design Manual* on October 28, 2020; and
- Town Council First Reading on December 8, 2020.

PROPOSED AMENDMENTS:

The proposed changes are in line with best practices and will allow Town Staff to better regulate stormwater drainage system standards. If the Second and Final Reading is approved by Town Council it is proposed that the effective date of the ordinance be March 1, 2021.

Because of length, the proposed amendments are provided in detail in Attachment 2, Exhibit A. Below is a summary of the sections of the UDO proposed to be amended as part of the SoLoCo Stormwater Ordinance and Design Manual adoption process.

- UDO Article 3 Application Process
 - Changes proposed relate to the stormwater permit and process to establish a stormwater surety,
 - Section 3.10 Development Plan
 - o Section 3.13 Development Surety and Stormwater Surety
- UDO Article 5 Design Standards
 - o Section 5.10 Stormwater
 - For clarity and consistency with partner jurisdictions, the proposed SoLoCo Stormwater Ordinance elements have been incorporated into existing UDO Article 5.10 Stormwater with reference to the regional Design Manual.
- UDO Article 9 Definitions and Interpretation

Proposed new and refined Definitions relating to the proposed incorporation of the SoLoCo Stormwater Ordinance and Design Manual into the UDO.

TOWN COUNCIL ACTIONS:

As granted by the powers and duties set forth in Section 2.2.6.C.4 of the UDO, Town Council has the authority to take the following actions with respect to this application:

- 1. Approve the application as submitted;
- 2. Approve the application with amendments; or
- 3. Deny the application as submitted.

NEXT STEPS:

UDO Text Amendment Procedure	Date	Complete
Step 1. SoLoCo – Recommendation to Adopt by Partner Organizations	July 28, 2020	✓
Step 2. Planning Commission – Workshop	August 26, 2020	✓
Step 3. May River Watershed Action Plan Advisory Committee – Recommendation to Adopt	August 27, 2020	\checkmark
Step 4. Town Council – Workshop	October 13, 2020	\checkmark
Step 5. Planning Commission – Public Hearing and Recommendation to Town Council	October 28, 2020	\checkmark
Step 6. Town Council – 1st Reading	December 8, 2020	\checkmark
Step 7. Town Council Meeting – Final Reading and Public Hearing* <i>(Anticipated)</i> <i>*Effective date would be March 1, 2021.</i>	February 9, 2021	\checkmark

SUMMARY:

The adoption of the *Southern Lowcountry Stormwater Design Manual* is consistent with the Comprehensive Plan and supports the May River and Surrounding Rivers and Watersheds Focus Area as a priority within the Strategic Action Plan for Fiscal Years 2019 - 2020. Thus, Town Staff recommends that Town Council approve a Resolution to adopt the *Southern Lowcountry Stormwater Design Manual* as a supporting document to the Unified Development Ordinance, Article 5 – Design Standards, Sec. 5.10 Stormwater Management.

ATTACHMENTS:

- 1. Presentation
- 2. Proposed Ordinance
 - a. Exhibit A UDO edits
- 3. Recommended Motion



Southern Lowcountry Post Construction Stormwater Ordinance and Southern Lowcountry Stormwater Design Manual – Second and Final Reading (Public Hearing)

Presentation to Town Council February 9, 2021 Department of Engineering Bryan Mcllwee, P.E., Director of Engineering

Proposed Amendments



 Amendments to the Town of Bluffton Code of Ordinances, Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Section 5.10 Stormwater Management, and Article 9 – Definitions and Interpretations Related to Adopting the Southern Lowcountry Post Construction Stormwater Ordinance and Southern Lowcountry Stormwater Design Manual

Proposed Amendments



UDO ARTICLE 3 – APPLICATION PROCESS

- Section 3.10 Development Plan
- Section 3.13 Development Surety and Stormwater Surety

Changes are required related to the Stormwater Permit and process to establish a Stormwater Surety.

UDO ARTICLE 5 – DESIGN STANDARDS

• Section 5.10 – Stormwater

For clarity and consistency with partner jurisdictions, the proposed SoLoCo Stormwater Ordinance elements have been incorporated into existing UDO Article 5.10 Stormwater with reference to the regional *Southern Lowcountry Stormwater Design Manual.*

UDO ARTICLE 9 – DEFINITIONS AND INTERPRETATION

• Proposed new and refined Definitions relating to the proposed incorporation of the SoLoCo Stormwater Ordinance and *Southern Lowcountry Stormwater Design Manual* into the UDO.

Background – SoLoCo Board

2017 – Southern Lowcountry Board of elected officials charged respective staff to summarize & compare stormwater standards to protect natural resources and waterways

2017 – Stormwater Technical subcommittee report to SoLoCo:

• Findings:

- Most restrictive/highest criteria stormwater standards are not necessarily "the best"
- \odot Stormwater runoff does not follow political boundaries

 \odot Not every watershed is the same (saltwater v. freshwater)

<u>Recommendation to SoLoCo:</u>

- Partner to develop a regional stormwater standard to provide consistent protection of water resources and consistent design requirements that are current "State of Knowledge"
- Procure consultant team to assist staff in drafting a regionally consistent stormwater ordinance and design manual

ATTACHMENT 1



7 Project Partners:



Background – Town Strategic Plan

ATTACHMENT 1



- Fiscal Year 2019-20 included review of May River Watershed Action Plan policies including updating the Town's stormwater regulations and stormwater design manual.
- 12/2018 Project initiated by Center for Watershed Protection seeking design community input on existing stormwater ordinances.
- 1/6/2020 2/27/2020 Draft SoLoCo Stormwater Ordinance and Design Manual available online for Public Review and Formal Comment.
- 1/23/2020 Jasper County and City of Hardeeville Public Meeting.
- 1/28/2020 Beaufort County, City of Beaufort, and Town of Port Royal Public Meeting.
- 1/30/2020 Town of Bluffton Public Meeting.
- 7/28/2020 Staff update provided to SoLoCo for adoption schedules.
- 8/26/2020 Planning Commission Workshop
- 8/27/2020 May River Watershed Action Plan recommendation to Planning Commission
- 10/13/2020 Town Council Workshop
- 10/28/2020 Planning Commission recommendation to Town Council
- 12/8/2020 Town Council First Reading

Town Council Actions

ATTACHMENT



As granted by the powers and duties set forth in Section 2.2.6.C.4 of the UDO, the Town Council has the authority to take any of the following actions:

- 1. Approve the application as submitted;
- 2. Approve the application with conditions; or
- 3. Deny the application as submitted.

Next Steps

ATTACHMENT 1

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UDO Text Amendment Procedure	Date	Complete
Step 1. SoLoCo – Recommendation to Adopt by Partner Organizations	July 28, 2020	\checkmark
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Step 5. Planning Commission – Public Hearing and Recommendation to Town Council	October 28, 2020	\checkmark
Step 6. Town Council – 1st Reading	December 8, 2020	✓
Step 7. Town Council Meeting – Final Reading and Public Hearing* <i>(Anticipated)</i>	February 9, 2021	\checkmark
Lijective date would be March 1, 2021.		



QUESTIONS?



Consideration of an Ordinance to Amend the Town of Bluffton Code of Ordinances, Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Sec. 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation – Second and Final Reading

"I make a motion to approve Second and Final Reading of Amendments to the Town of Bluffton Code of Ordinances, Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Sec. 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation Related to Adoption of the Southern Lowcountry Post Construction Stormwater Ordinance and Southern Lowcountry Stormwater Design Manual."

ORDINANCE NO. 2020-____

TOWN OF BLUFFTON, SOUTH CAROLINA

AN ORDINANCE AMENDING THE TOWN OF BLUFFTON'S MUNICIPAL CODE OF ORDINANCES, CHAPTER 23, UNIFIED DEVELOPMENT ORDINANCE, ARTICLE 3 – APPLICATION PROCESS, ARTICLE 5 – DESIGN STANDARDS, SECTION 5.10 STORMWATER MANAGEMENT AND ARTICLE 9 – DEFINITIONS AND INTERPRETATION, RELATING TO ADOPTING THE SOUTHERN LOWCOUNTRY POST CONSTRUCTION STORMWATER ORDINANCE AND SOUTHERN LOWCOUNTRY STORMWATER DESIGN MANUAL

WHEREAS, the Town of Bluffton desires to improve the general safety, welfare, health and properties of the citizens of the Town of Bluffton; and

WHEREAS, to establish the necessary provisions to accomplish the above, the Town of Bluffton has authority to enact resolutions, ordinances, regulations, and procedures pursuant to South Carolina Code of Laws 1976, Section 5-7-30; and,

WHEREAS, the Town of Bluffton's Town Code and Ordinances provide guidance and requirements for development within the Town of Bluffton through regulations set forth to protect and promote the health, safety, and welfare of the Town's citizens, as espoused through the provisions of the Town of Bluffton Comprehensive Plan and as authorized by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994, Title 6, Chapter 29 of the Code of Laws for South Carolina; and

WHEREAS, the Town of Bluffton Town Council adopted the aforementioned standards, which are known as the Unified Development Ordinance (UDO), Chapter 23 of the Code of Ordinances for the Town of Bluffton, South Carolina on October 11, 2011 through Ordinance 2011-15; and

WHEREAS, the UDO unifies the subdivision, land use, development/design regulations including stormwater design standards into a single set of integrated, updated, and streamlined standards; and

WHEREAS, the Town Council shall from time to time examine ordinances to ensure that they are properly regarded, enforced, sufficient and satisfactory to the needs of the community and can further suggest changes as deemed appropriate; and,

WHEREAS, the Town Council last amended UDO "Article 5.10 Stormwater" and the referenced Stormwater Design Manual in 2011; and

WHEREAS, to protect water quality and citizen quality of life, an update of both UDO "Article 5.10 Stormwater" and the Stormwater Design Manual to current stormwater management State of the Knowledge practices were identified in the Fiscal Years (FY) 2019 – 2020 Strategic Plan Focus Area "May River & Surrounding Rivers and Watersheds" as priority initiatives in the May River Watershed Action Plan Update; and

WHEREAS, the May River Watershed Action Plan is intended to restore and protect shellfish harvesting in the May River which is a SC Department of Health and Environmental Control-designated Outstanding Resource Water for its oyster production, aesthetic qualities, and recreational opportunities; and

WHEREAS, research shows that waterways experience water quality degradation when impervious surface in a watershed exceeds 10% due to stormwater runoff water quality and quantity; and

WHEREAS, development within the Town of Bluffton is resulting in changes in land use and topography causing in an increase in impervious surfaces in the May River watershed from 5.78% in 2002 to 15.31% in 2018; and

WHEREAS, similar development rates are causing increases in population and impervious surface rates in most watersheds located in the Southern Lowcountry Region, which is comprised of the Towns of Bluffton, Port Royal, Yemassee, Ridgeland, and Hilton Head Island, Cities of Hardeeville and Beaufort, and Beaufort and Jasper Counties; and

WHEREAS, on August 29, 2017, elected officials from City of Hardeeville, Towns of Bluffton, Ridgeland, and Hilton Head Island, Beaufort County, and Jasper County, known as the Southern Lowcountry (SoLoCo) Regional Board, prioritized and requested a uniform set of stormwater standards and design guidelines to meet the goal of protecting the region's sensitive environment, residents' quality of life, and future economic development opportunities; and

WHEREAS, understanding the importance of a regional, collaborative, watershed-based approach to stormwater management, the Towns of Bluffton, Port Royal and Yemassee, Cities of Hardeeville and Beaufort, and Beaufort and Jasper Counties partnered with a consultant team with stakeholder input to develop a model "Southern Lowcountry Post Construction Stormwater Ordinance" and Southern Lowcountry Stormwater Design Manual based on current State of the Knowledge; and

WHEREAS, the model "Southern Lowcountry Post Construction Stormwater Ordinance" and *Southern Lowcountry Stormwater Design Manual* are unique in that they accomplish 1) Regional collaboration for consistent, effective management of stormwater; 2) Unification of the current diversity of stormwater design requirements resulting from Municipal Separate Storm Sewer System permits, community need, and community dynamics; and 3) Protection of water quality by regulating stormwater design standards from a watershed-based approach, not by jurisdiction; and

WHEREAS, incorporation of the model "Southern Lowcountry Post Construction Stormwater Ordinance" language and requirements into the UDO establishes the regulatory framework to preserve, protect, and revitalize the critical watersheds of the May River, Okatie/Colleton Rivers, and New River; and

WHEREAS, the *Southern Lowcountry Stormwater Design Manual* is in conformance with the UDO and shall serve as a supplement to the UDO to provide the standards for design of stormwater management facilities/stormwater systems within the Town; and

WHEREAS, the Town of Bluffton Town Council desires to amend the Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Sec. 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation to adopt the model "Southern Lowcountry Post Construction Stormwater Ordinance" and Southern Lowcountry Stormwater Design Manual.

NOW, THEREFORE, BE IT ORDERED AND ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BLUFFTON, SOUTH CAROLINA, in accordance with the foregoing, the Town hereby amends the Code of Ordinances for the Town of Bluffton, Chapter 23, Unified Development Ordinance as follows:

SECTION 1. AMENDMENT. The Town of Bluffton hereby amends the Code of Ordinances for the Town of Bluffton, South Carolina by adopting and incorporating amendments to Chapter 23 – Unified Development Ordinance, Article 3 – Application Process; Article 5 – Design Standards, Section 5.10 Stormwater Management; and Article 9 – Definitions and Interpretation Related to Adopting the "Southern Lowcountry Post Construction Stormwater Ordinance" and Southern Lowcountry Stormwater Design Manual as shown On Exhibit A attached hereto and fully incorporated herein by reference.

SECTION 2. REPEAL OF CONFLICTING ORDINANCES. All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

SECTION 3. ORDINANCE IN FULL FORCE AND EFFECT. This entire Ordinance shall take full force and effect February 1, 2021.

DONE, RATIFIED AND ENACTED this _____ day of _____, 2020.

This Ordinance was read and passed at first reading on _____, 2020.

Lisa Sulka, Mayor Town of Bluffton, South Carolina

Kimberly Chapman Town Clerk, Town of Bluffton, South Carolina

A public hearing was held on this Ordinance on ______, 2021.

Lisa Sulka, Mayor Town of Bluffton, South Carolina

Kimberly Chapman Town Clerk, Town of Bluffton, South Carolina

This Ordinance was passed at second reading held on _____, 2021.

Lisa Sulka, Mayor Town of Bluffton, South Carolina

Kimberly Chapman Town Clerk, Town of Bluffton, South Carolina Black – Struck text since First Reading (12/8/20)

3.10 Development Plan, 3.10.3. Application Review Criteria

3.10.3.B. Final Development Plan

The UDO Administrator shall consider the following criteria in assessing an application for a Final Development Plan:

5. The Applicant has provided Sureties as required by Section 3.13 of the UDO, as applicable-;

3.13 Development Surety 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

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.

- A. 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: 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.
- 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:
 - 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
- 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 Certificate of Construction Compliance.
- 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 days 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.

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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 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.

5.10 Stormwater

5.10.1 General provisions

A. Intent

- 1. The May River and the surrounding receiving waters have been designated by the State of South Carolina as Outstanding Resource Waters. The use of the river's natural resources has historical and traditional significance to the area in general and to the Town of Bluffton in particular. It is in the public interest that the pristine condition of these areas be maintained and preserved for future generations. Uncontrolled stormwater runoff may have significant, adverse impact on the health, safety and general welfare of the Town and the quality of life of its citizens by transporting pollutants into receiving waters and by causing erosion and/or flooding. Development can alter the hydrologic response of local watersheds by increasing stormwater runoff rates, volumes, and pollutant loads; flooding; soil erosion; stream channel erosion; non-point source pollution; pollutant and sediment transport and deposition in rivers and streams, wetlands, and estuaries; and fluctuations in salinity concentrations and productivity in estuaries. Certain Development including removal of trees and alteration of natural drainage patterns, can alter the hydrologic response of local watersheds, increasing stormwater runoff rates and volumes, and, consequently, decreasing the amount of rainfall that is available to recharge shallow groundwater aquifers. These changes in stormwater runoff may contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health, safety, and welfare, as well as to the natural environment.
- 2. Point source pollution may have significant, adverse impact on the health, safety and general welfare of the Town and the quality of life of its citizens by transporting pollutants into receiving waters. The allowance of discharge pipes and outfalls for non-stormwater discharges, illegal dumping, and improper handling of accidental spills and intentional disposals increase the quantities of water-borne pollutants which are harmful to public health, safety, and welfare, as well as to the natural environment.
- 3. The effects of point and non-point source pollution, such as uncontrolled runoff, have shown evidence of degrading the Town's receiving waters; thereby adversely affecting the unique qualities of the Town's receiving waters, its recreational opportunities and commercial, oystering, boating and fishing, the ecosystem's ability to naturally reproduce and thrive, and the general ability of the area to sustain its natural estuarine resources.
- 4. Grading can create problems with storm drainage and water quality by generating non-pint source pollution. Grading plans for compliance with overall Development shall be to maximize

groundwater recharge, minimize runoff, ensure positive drainage within and from the site with no impact on adjacent property, ensure offsite drainage is received to an existing, adequate conveyance system, and prevent Mass Grading and Clearing of a site without review per this Section.

- 5. These deleterious effects can be managed and minimized by applying proper design and wellplanned controls to manage stormwater runoff from Development sites, to protect existing natural features, such as trees and contours, that maintain hydrology and provide water quality control, and to eliminate potential sources of pollution to receiving waters. Public education regarding the cause and effect of these types of pollutions and the implementation of the controls and management policies is key to fundamentally changing public behavior.
- 6. The Town of Bluffton is required to comply with a number of State and Federal regulations that require the adverse impacts of stormwater runoff rates, volumes and pollutant loads to be controlled and minimized.
- 7. The Town of Bluffton has determined that it is in the public interest to control and minimize the adverse impacts of certain Development activities and has established this set of stormwater management provisions to regulate post-construction stormwater runoff rates, volumes and pollutant loads on Development sites.
- 8. 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.
- 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.
- 10. Laws of general application throughout the Town necessary to protect health, safety and welfare are anticipated and are provided for in development agreements.
- 11. Substantial changes in Development 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 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:

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- a. Establish decision-making processes surrounding Development activities that protect the integrity of local aquatic resources;
- b. Prohibit Illicit Discharges to the Stormwater System and receiving waters.
- c. Define procedures for site plan review, inspection, and enforcement relative to stormwater management.
- d. Control the discharge of spills, dumping or disposal of materials other than stormwater to the Stormwater System and receiving waters.
- e. Address specific categories of non-stormwater discharges and similar other incidental nonstormwater discharges.
- f. Require temporary erosion and sediment controls to protect water quality to the maximum extent practicable during construction activities, in accordance with current state regulations.
- g. Define procedures for receipt and consideration of information submitted by the public.
- h. Address runoff, particularly volume, rate, and quality through the control and treatment of stormwater with stormwater management facilities and/ or Best Management Practices (BMPs) to provide volume control and at least an eighty (80) percent reduction in total suspended solids loads, thirty (30) percent reduction of total nitrogen load, and sixty (60) percent reduction in bacteria load.
- i. Develop post-construction stormwater quality performance standards, through enforcement of minimum design standards for BMPs.
- j. Ensure effective long-term operation and maintenance of BMPs.
- k. Carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to determine compliance and noncompliance with this article and stormwater permit (permit) conditions including the prohibition of Illicit Discharges to the Town's Stormwater System and the protection of water quality of the receiving waters.
- I. Establish minimum post-Development stormwater management standards and design criteria set forth by the *Southern Lowcountry Stormwater Design Manual* (*Design Manual*) with the intent of reducing flooding, channel erosion, and pollutant transport and deposition in local aquatic resources;
- m. Establish minimum post-Development stormwater management standards and design criteria in the *Design Manual* with the intent of preserving existing hydrologic conditions on Development sites;
- n. Establish design criteria in the *Design Manual* for structural and nonstructural stormwater management practices that can be used to meet the minimum post-Development stormwater management standards and design criteria;
- Establish that Better Site Design (BSD), natural vegetative buffers, tree conservation, and site planning have been incorporated, documented, and presented in the Development design process.
- p. Maintain structural and nonstructural stormwater management practices to ensure that they continue to function as designed and pose no threat to public safety; and,

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- q. In the event these requirements cannot be met, a fee-in-lieu shall be required as outlined in Section 5.10.3.K.
- 3. The article requires prudent site planning, including special considerations for the purposes of preserving natural drainage ways incorporating on-site stormwater detention and infiltration, including natural resource preservation, to minimize runoff from individual sites to receiving waters by use of effective runoff management, structural and nonstructural BMPs, drainage structures, and stormwater facilities to maintain the pre-development hydrology of a Development.

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.
- 2. The following activities are exempt from this Article:
 - a. Any maintenance, alteration, renewal, or improvement as approved by the Town which does not alter existing drainage pattern, 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 land Development activity when the original Development is wholly or partially lost due to natural disaster or other acts of God occurring after January 1, 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 shall apply throughout the incorporated areas of the Town.

5.10.2 Stormwater Management Program

A. Coordination with Other Agencies.

The UDO Administrator will coordinate the Town's activities with other federal, state, and local agencies, which manage and perform functions relating to the protection of receiving waters.

B. Cooperation with Other Governments.

The Town may enter into agreements with other governmental and private entities to carry out the purposes of this article Section.

These agreements may include, but are not limited to enforcement, resolution of disputes, cooperative monitoring, and cooperative management of stormwater systems and cooperative implementation of stormwater management programs.

Nothing in this article Article or in this section Section shall be construed as limitation or repeal of any ordinances of these local governments or of the powers granted to these local governments by the South Carolina Constitution or statutes, including, without limitation, the power to require additional or more stringent stormwater management requirements within their jurisdictional boundaries.

C. Southern Lowcountry Stormwater Design Manual

The UDO Administrator shall utilize the standards, criteria, and information presented in the *Design Manual* or applicable addendums, appendices, technical memorandums, and/or applicable revisions that may be applied for the proper implementation of this Article Section. This Manual may be updated and expanded periodically, based on improvements in science, engineering, monitoring, local experience, and state or federal water quality requirements.

The *Design Manual* identifies Special Watershed Protection Areas that have standards and criteria specific to land Development in these areas.

D. Compatibility with Other Regulations

This Article Section is not intended to interfere with, modify or repeal any other ordinance, rule, regulation, or other provision of law. The procedures and standards set forth in this Ordinance, and the policies, procedures, and design data specified in the *Design Manual* provide the minimum standards to be adhered to by land Development activities under the jurisdiction of the Town of Bluffton. If any regulation or requirement of this Article Section is in conflict with any other local, state or federal law, the most restrictive, or whichever imposes the highest protective standards for human health or the environment, shall apply.

5.10.3 Standards

A. General Requirements

- All land Development activities shall utilize Structural and Nonstructural Stormwater Management Practices to control and minimize the increased stormwater runoff rates, volumes, and pollutant loads caused by land Development in accordance with the criteria presented in the Design Manual.
- 2. For Structural and Nonstructural Stormwater Management Practices not included in the *Design Manual*, or for which pollutant removal and runoff reduction rates have not been provided, the effectiveness

of the Structural and Nonstructural Stormwater Management Practices must be documented through prior studies, literature reviews, or other means and receive approval from the Town before being included in the design of a stormwater management system. In addition, if the site is located in a Watershed Protection Area or a Special Watershed Protection Area the Town may impose additional requirements as deemed necessary, which are located in the *Design Manual*.

- 3. All Development, including single family lots not part of a Larger Common Plan of Development meeting applicability requirements in Section 5.10.1.C.1, in the Town shall meet the following General Requirements to the Maximum Extent Practicable. Developments requiring the stormwater management plans for construction shall meet all Requirements of this article.
- 4. All Development shall disconnect Impervious Surfaces with vegetative surfaces to the maximum extent practicable.
- 5. Stormwater runoff shall be controlled in a manner that:
 - a. Promotes positive drainage from structures resulting from Development as detailed in the *Design Manual*.
 - b. Includes the use of vegetated conveyances, such as swales and existing natural channels to promote infiltration.
 - c. Promotes runoff velocities that maintain sheet flow condition to prevent erosion and promote infiltration.
 - d. Limits its interaction with potential pollutant sources that may become water-borne and create non-point source pollution.
- 6. Better Site Design, Natural Vegetative Buffers, and Tree Conservation

Better Site Design, natural vegetative buffers, 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. Any and all Better Site Design practices set forth in *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 Unified Development Ordinance Article Section UDO 3.22, 5.3, and other applicable sections that may apply.

B. Permit Application Requirements

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

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systems. 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 Section and post-construction maintenance and inspection requirements.

C. Maximum Extent Practical Practicable Guidelines and Process

The Maximum Extent Practicable, or "MEP," is the language of the Federal Clean Water Act that sets the standards to evaluate efforts pursued to achieve pollution reduction to the waters of the United States. It is the determination of this Article that all proposed development, sites meet the requirements of the *Design Manual* to achieve reduction of pollution to the waters of the Southern Lowcountry. If it is technically infeasible to do so, the applicant shall document and provide such information to the Town for review. Information provided shall demonstrate how a combination of several iterations of Better Site Design and post development stormwater management design scenarios fail to meet the minimum requirements of the *Design Manual* and justification of their determination of infeasibility. Cost is not a viable justification.

The MEP process defined by the *Design Manual* shall be the basis of submittals for plan approval under this Article Section. The MEP submittal must provide documentable evidence of the process the applicant has performed that demonstrates the restrictions to the use and implementation of BMPs to meet the requirements of this Manual in whole or in part. The consideration for a waiver of this Article's Section's requirements will rely on the MEP submittal and UDO Administrator review.

D. Stormwater Surety

The Town is authorized under this Article to require stormwater performance bonds for construction of stormwater management systems, as detailed in the *Design Manual*.

Financial sureties for the cost of stormwater facilities approved for the proposed Development shall be provided in accordance with the Town Stormwater Surety performance bond and stormwater permit issuance process in Article Section 3.13 3.10.3.B. The Town shall require from the developer a surety or cash bond, irrevocable letter of credit, or other means of security acceptable to the Town prior to the issuance of any grading and/or stormwater permit for any land development, redevelopment or major substantial improvement activity. The bond required in this Section shall include provisions relative to forfeiture for failure to complete work specified in the approved stormwater management design plan, compliance with all of the provisions of this Article, other applicable laws and regulations, and any time limitations.

E. Stormwater Volume Control

Some portion of the stormwater runoff generated on a land development or, redevelopment and major substantial improvement site shall be captured and retained, reused, or otherwise reduced in order to preserve and/or replicate pre-development site hydrology, recharge shallow groundwater aquifers, promote baseflow to on-site and downstream aquatic resources, and minimize the water quality impacts of land development. Applicants shall follow the runoff reduction, peak flow and extreme flood requirements in the *Design Manual*.

F. Stormwater Conveyance Systems

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Stormwater conveyance systems, which may include but are not limited to culverts, stormwater drainage pipes, catch basins, drop inlets, junction boxes, headwalls, gutters, swales, channels, ditches, and energy dissipaters, shall be provided when necessary for the protection of public right-of-way and properties adjoining Development sites. Stormwater conveyance systems that are designed to convey stormwater runoff from more than one parcel shall meet the following requirements:

- a. Methods used to calculate stormwater runoff rates and volumes shall be in accordance with the latest edition of the *Design Manual*;
- b. All culverts, pipe systems, and open channel flow systems shall be sized in accordance with the stormwater management design plan using the methods included in the latest edition of the *Design Manual*; and,
- c. Planning and design of stormwater conveyance systems shall be in accordance with the criteria and specifications found in the latest edition of the *Design Manual*.
- d. Off-site discharge points in the final approved stormwater plan submission and/or grading permit plan must be identified on the plan. and The receiving conveyance system must be determined and certified by the Applicant Engineer to be adequate by the applicant/engineer to safely convey the 25-year storm, as certified by a licensed South Carolina Engineer, and to not have negative adversely impact on downstream properties.

G. Overbank Flood Protection

All stormwater management systems shall be designed to control the post-development peak discharge generated by the Overbank Flood Protection storm event, as defined in the latest edition of the *Design Manual*, to prevent an increase in the frequency and magnitude of damaging overbank flooding and safely convey the design storms. A stormwater management system complies with this requirement if:

- a. It provides Overbank Flood Protection in accordance with the criteria and information provided in the latest edition of the *Design Manual*; and,
- b. Appropriate Structural and Nonstructural Stormwater Management Practices have been selected, designed, constructed, and maintained in accordance with the standards, criteria, and information presented in the latest edition of the *Design Manual*.
- c. Off-site discharge points in the final approved stormwater plan submission must be identified on the plan. and The receiving conveyance system must be determined and certified by the Applicant Engineer to be adequate by the applicant/engineer to safely convey the 2- to 25-year, 24-hour storm, as certified by a licensed South Carolina Engineer, and to not have negative adversely impact on downstream properties.

H. Extreme Flood Protection

All stormwater management systems shall be designed to control and/or safely convey the postdevelopment peak discharge generated by the Extreme Flood Protection storm event, as defined in the latest edition of the *Design Manual*, to protect downstream properties from flood damage, maintain the boundaries of existing floodplains, and protect the physical integrity of downstream stormwater conveyance features and flood control facilities. A stormwater management system complies with this requirement if:

- a. It provides Extreme Flood Protection in accordance with the criteria and information provided in the latest edition of the *Design Manual*;
- b. Appropriate Structural and Nonstructural Stormwater Management Practices have been selected, designed, constructed, and maintained in accordance with the standards, criteria, and information presented in the latest edition of the *Design Manual*; and
- c. Adequate 100 year flow overflow path (as documented in the 10% analysis submission) from the site to adjacent properties is identified and determined to not have a negative impact on existing downstream receiving conveyance system(s), adjacent properties, and/or structures.; This overflow path must be certified by a professional licensed South Carolina Engineer.

I. Structural Stormwater Management Practices

All Structural Stormwater Management Practices shall be selected, designed, constructed, and maintained in accordance with the standards, criteria, and information presented in the latest edition of the *Design Manual* and any relevant addenda. Applicants shall consult the latest edition of the *Design Manual* for guidance on selecting Structural Stormwater Management Practices that can be used to satisfy the post-construction stormwater management criteria.

J. Grading

Mass Grading and Clearing shall not be permitted except in compliance with this Ordinance. 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.
- 2. A Grading Plan shall be filed with and become part of any Application that equals or exceeds the threshold limits provided above. Such plan shall be prepared in accordance with Article Section 3.3 3.2.
- 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.
- 4. All Grading Plan shall follow the requirements setforth in Article 5 Design Standards.
- 5. 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 the 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.

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L. Waiver

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

5.10.4 Maintenance

A. General Requirements

- 1. Function of BMPs as Intended. The owner of each structural BMP installed pursuant to this article shall maintain and operate it 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.
- 2. Right of Town to Inspection. Every Structural BMP installed pursuant to this article shall be made accessible for adequate inspection by the Town.
- 3. Annual Maintenance Inspection and Report. The person responsible for maintenance of any structural BMP installed pursuant to this article shall submit to the UDO Administrator an inspection report from a certified post-construction BMP inspector, a registered South Carolina Professional Engineer, or Landscape Architect. The inspection report, at a minimum, 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 or a digital representation of the geographic location 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 as originally designed/intended and comply with the terms and conditions of the approved maintenance agreement required by this article;
 - f. The inspector's original signature and/or seal of the engineer inspecting the structural BMPs; and
 - g. Digital photographs of the structural BMPs and pertinent components integral to its operation, including but not limited to inlet/outlet control structures, downstream receiving channel/area, embankments and spillways, safety features, and vegetation.
 - h. All inspection reports shall be provided to the UDO Administrator. An original inspection report shall be provided to the UDO Administrator one year from the date of As-Built certification and thereafter every three (3) years on or before the date of the As-Built certification.

B. Operation and Maintenance Agreement

 Prior to the issuance of stormwater permit requiring a structural BMP pursuant to this article, the applicant or owner of the site must execute an operation and maintenance agreement/covenant for each structural BMP identified on the approved Stormwater Management Plan for recordation in Land Records. The operations and maintenance agreement must be approved by the UDO Administrator or designee and shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP.

- 2. The operation and maintenance agreement shall:
 - a. Require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP to ensure the BMP functions as designed and intended in perpetuity.
 - b. For each BMP identified on the approved Stormwater Management Plan, state the terms, conditions, and schedule of maintenance for each structural BMP.
 - c. Grant to the Town a right of entry 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.
 - d. Allow the Town to recover from the property or homeowner's 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. 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, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.
 - e. Provide a statement 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.
 - f. Provide a statement 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.
 - g. Contain a provision indemnifying and holding harmless the Town 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 structural BMPs accepted dedication of all rights necessary to carry out that maintenance.
 - h. Contain an attachment with the locations, dimensions, elevations, and characteristics of all structural BMPs detailed in the Stormwater Management Plan. The attachment shall include a north arrow, scale, boundary lines of the site, lot lines, existing and proposed roads and other information necessary to locate the structural BMPs.
- 3. Operation and Maintenance Agreement Recordation

Upon approval by the UDO Administrator or his designee, the operations and maintenance agreement shall be recorded with the county Register of Deeds to appear in the chain of title of all subsequent purchasers under generally accepted searching principles. A copy of the recorded operation and maintenance agreement shall be given to the UDO Administrator prior to issuance of the development permit

C. 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 the record and shall submit the same upon reasonable request to the UDO Administrator.

D. Nuisance.

The owner of each stormwater BMP shall maintain it so as not to create or result in a nuisance condition, such as but not limited to flooding, erosion, excessive algal growth, overgrown vegetation, mosquito breeding habitat, existence of unsightly debris, or impairments to public safety and health.

5.10.6 Illicit Discharges and Connections

Remainder of Current Section 5.10.5 Illicit Discharges and Connections remains unchanged.

D. Spills.

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

Persons in control of the polluting substances shall immediately report the release or discharge to persons owning the property on which the substances were released or discharged, and within two hours of such an event shall notify the Bluffton Township Fire Department and Town of Bluffton Police Department (who will also notify the UDO Administrator), and all required federal and state agencies of the release or discharge. 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.

5.10.7 Inspections

A. Inspections. The Town is authorized under this Article to perform and require ongoing inspections of stormwater management systems as detailed in the *Design Manual*.

The Town will maintain the right to inspect any and all Stormwater Systems within its jurisdiction as outlined below:

- 1. An Inspector designated by the UDO Administrator, bearing proper credentials and identification, may enter and inspect all properties for regular inspections, periodic investigations, monitoring, observation measurement, enforcement, sampling and testing, to ensure compliance with the provisions of this article.
- 2. Upon refusal by any property owner to permit an inspector to enter or continue an inspection, the Inspector may terminate the inspection or confine the inspection to areas concerning which no objection is raised. The Inspector shall immediately report the refusal and the grounds to the UDO Administrator. The UDO Administrator will promptly seek the appropriate compulsory process.
- 3. In the event that the UDO Administrator or Inspector reasonably believes that discharges from the property into the Town's Stormwater System or receiving waters may cause an imminent and substantial threat to human health or the environment, the inspection may take place at any time after an initial attempt to notify the owner of the property or a representative on site. The

Inspector shall present proper credentials upon reasonable request by the owner or representative. Inspection reports will be maintained in a permanent file at the offices of the Town.

B. Construction Inspections. The Town is authorized under this Article Section to perform construction inspections including, but not limited to₇ preconstruction, preclearing, and construction sequence inspections as detailed in the *Design Manual*. The Town is authorized under this Article Section to perform final construction inspections and require As-Built plans for all permanent stormwater management practices as detailed in the *Design Manual*.

C. Post-construction Inspections. The Town is authorized under this Article Section to perform postconstruction inspections and require ongoing maintenance of stormwater management systems as detailed in the *Design Manual*.

5.10.8 Violations, Enforcement, and Penalties

The Town is authorized under this Article to enforce the provisions of this Article as described in UDO Article 8 Penalties and Enforcement. Any action or inaction that violates the provisions of this Article or the requirements of an approved stormwater management design plan, stormwater management inspection and maintenance agreement and plan, or permit may be subject to the 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.

9.0 Definitions and Interpretation

9.2 Defined Terms

All words and phrases shall have their ordinary and customary meanings unless the context of the word or phrase indicates otherwise. The following terms shall have the meaning given below, unless the context of the use of the term clearly indicates otherwise based on the purposes, intent, design objective or other guidance associated with its use in a particular section.

100 Year Flood: The storm, flood or level of floodwater measured from mean sea level from large low-frequency storm events that has a one percent chance of being equaled or exceeded in any given year.

As-built/Record Drawings: A set of drawings prepared by and certified by a South Carolina registered professional engineer, that accurately represents the actual final configuration, locations, site grading, elevations, excavated/constructed dimensions, (depths, lengths, widths, (to verify if constructed volumes meet or exceed design volumes), materials, landscaping of the stormwater systems, and BMPs and other related infrastructure constructed in a development.

Best Management Practices (BMP): Stormwater management practices, either structural, nonstructural or natural that have been demonstrated to effectively control movement of pollutants, prevent degradation of environmental and water resources, especially by reducing runoff volume and the pollutant loads carried in that runoff, and that are compatible with the planned land use.

Better Site Design: Site design techniques that can be used during the site design process to minimize the creation of new impervious cover and reduce a site's impact on the watershed. Better site design techniques include reduced clearing and grading limits, roadway lengths and widths, and parking lot and building footprints.

Better Site Planning: Site planning techniques that can be used during the site planning process to protect and conserve natural areas that are critical in preserving pre-development site hydrology and reducing a site's impact on the watershed. Better site planning techniques include conserving significant stands of trees and other vegetation, natural drainage features, and riparian buffers.

Building: Any structure, either temporary or permanent, used or intended for supporting or sheltering any use or occupancy. Each portion of a building separated from other portions by a firewall shall be considered as a separate building.

Caliper: The width of a tree trunk as measured six (6) inches above the root ball.

Channel: Means a natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

Clearing: The cutting or removal of trees or other vegetation as regulated by the Town of Bluffton Tree Conservation, Planting, and Landscaping standards (Article 5.3).

Clear–cutting: The complete or nearly complete removal of trees and understory within the proposed disturbed land area and/or limit of lot grading area of a development site or forestry activity.

Detention: The collection and temporary storage of surface water or stormwater runoff for subsequent controlled discharge at a rate that is less than the rate of inflow.

Developer: A person who undertakes land development or redevelopment activities.

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Development: The performance of any building or mining operation; the making of any material; change in the use of any structure or land; or the division of land into two or more parcels. The following specific activities or uses shall be categorized as Development, Redevelopment and/or Major Substantial Improvements:

- A. A material change in type of use of a structure or land which would tangibly affect the area's natural environment, drainage, transportation patterns, public health, or economic values;
- B. A building operation involving construction, reconstruction, or alteration of the size of a structure which would result in a tangible effect on the area's natural environment, transportation patterns, public health, or economic values;
- C. A material increase in the intensity of land use, such as an increase in the number of businesses, manufacturing establishments, offices, or dwelling units in a structure or on land; when such increase would tangibly affect the area's natural environment, transportation patterns, public health, or economic values;
- D. Subdivision of a parcel or tract of land into two or more lots, parcels, or pieces for the purpose of sale or transfer of title;
- E. Commencement of any mining operation on a parcel of land;
- F. In connection with the use of land, the making of any material, change in noise levels, thermal conditions, or emissions of waste materials;
- G. Alteration of a shore, bank, or flood plain of a seacoast, river, stream, lake, or other natural water body;
- H. Reestablishment of a use which has been abandoned for one year; and
- I. Construction of major electrical and telephone utility lines over three-fourths of a mile in length and involving tree removal, construction of any utility line substation, or construction of any utility line crossing wetlands;
- J. Any change in land cover, including, but not limited to, clearing, digging, grubbing, stripping, removal of vegetation, dredging, grading, excavating, filling, and paving, that alters the hydrologic response of local watersheds; and

The following operations or uses do not constitute development for the purpose of this Ordinance:

- A. The construction of any public street or other public way, grounds, buildings, Town of Bluffton Unified Development Ordinance 9-7 structures, or facilities. Such public project Development Plans are submitted and reviewed for approval under a separate administrative procedure;
- B. Work for the maintenance, renewal, improvement, or alteration, of any structure, if the work affects only the interior or the color of the structure, or decoration of the exterior of the structure;
- C. The use of any structure or land devoted to dwelling uses for any purposes customarily incidental to enjoyment of the dwelling;
- D. The use of any land for the purpose of growing plants, crops, trees, or for other agricultural purposes;
- E. A transfer of title to land not involving the division of land into parcels;
- F. The division of land into parcels of five acres or more where no improvements are involved;
- G. The division of land into parcels for conveyance to other persons through the provisions of a will or similar document and in the settlement of an intestate's estate;

- H. The division of land into lots for the purpose of sale or transfer to members of one's own immediate family, where no new street is involved, is exempt from the standard submission and review procedures;
- I. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;
- J. The recordation of a plat of land or property for purposes other than the sale or transfer of title to land including:
 - 1. The creation or termination of mortgages, leases, easements, or liens;
 - 2. Lot line corrections on existing recorded properties;
 - 3. The creation, termination, or amendment of private covenants or restrictions on land;
 - 4. Property trades or swaps between immediately adjacent landowners not resulting in the creation of new parcels of record; and
 - 5. Division of land for the purpose of sale or transfer to an immediately adjacent landowner for the sole purpose of enlarging the adjacent landowner's property and not resulting in the creation of new parcels.

Easement: An interest in land of another that entitles the holder to a specified limited use.

Erosion and Sedimentation Control Plan: A plan that is designed to minimize the accelerated erosion and sediment runoff at a site during land development or redevelopment activities.

Existing Conditions: Land use and land cover conditions at the time of a land development or redevelopment permit application.

Extreme Flood Protection: Stormwater control measures taken to prevent adverse impacts from large low-frequency storm events that have a one percent chance of being equaled or exceeded in any given year.

Fee-in-lieu: A payment collected by approval of the UDO Administrator as an alternative to meeting the requirements of onsite stormwater control facilities and/or tree conservation.

Flooding: A volume of surface water that cannot be confined within the banks or walls of a conveyance or stream channel and that overflows onto adjacent lands.

Grading: Any activity involving the clearing, grading, transporting, filling or excavation of land, stump removal or any other activity which causes land to be exposed to danger of erosion.

Grading Plan: A plan that depicts existing and proposed elevations, contours and drainage which meets or exceeds the standards for soil erosion and sediment control as outlined in the Southern Lowcountry Stormwater Design Manual.

Greenspace: As pertaining to Stormwater, permanently protected area(s) of the site that are preserved in a natural state.

Hydrologic Soil Group (HSG): A Natural Resource Conservation Service classification system in which soils are categorized into four runoff potential groups. The groups range from group A soils, with high permeability and little runoff produced, to group D soils, which have low permeability rates and produce much more runoff.

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Impaired Waters: Those streams, rivers and lakes that currently do not meet their designated use classification and associated water quality standards and as identified in the Clean Water Act Section 303(d) list by the South Carolina Department of Health and Environmental Control.

Impervious Surface: A surface compacted or composed of any material that impedes or prevents the passive, natural infiltration of water into soil. Impervious surfaces include, but are not limited to, rooftops, buildings, streets, roads, and compacted stone or gravel, except those designed specifically to provide active, engineered infiltration.

Infill Development: Land development that occurs within designated areas based on local land use, watershed, and/or utility plans where the surrounding area is generally developed, and where the site or area is either vacant or has previously been used for another purpose.

Infiltration: The process of percolating stormwater runoff into the subsoil.

Infiltration Practice: Any stormwater management practice designed to provide active, engineered infiltration of retained water to the subsurface. These stormwater management practices may be above or below grade.

Inspection and Maintenance Agreement and Covenant: A written agreement and covenant providing for the long-term inspection and maintenance of stormwater management facilities and practices on a site or with respect to a land development or redevelopment project, which when properly recorded in the deed records constitutes a restriction on the title to a site or other land involved in a development project.

Land Disturbance or Land Disturbing Activity: The use of land by any person that results in a change in the natural vegetated cover or topography, including clearing vegetation that may contribute to or alters the quantity and/or quality of stormwater runoff.

Larger Common Plan of Development: A common plan for development or sale. It identifies a site where multiple separate and distinct construction activities (areas of disturbance) are occurring on contiguous areas. Such sites may have one operator or owner or several operators and owners. Construction activities may take place at different times on different schedules, in separate stages, and/or in separate phases, and/or in combination with other construction activities. Each developer, operator or owner for each site or project determined to be a part of a larger common plan of development are subject to land development approval and permitting requirements as defined herein and the *Southern Lowcountry Stormwater Design Manual*.

Limits of Disturbance (LOD): The outermost boundary of the area planned to be disturbed by construction, grading, grubbing, landscaping, excavating, filling, plowing, tilling, or stockpiling of material as indicated by the approved design plan.

Low Impact Development: Small-scale, distributed stormwater management practices that can be used during the site design process to replicate existing hydrologic conditions, help offset the creation of new impervious cover, and reduce impact on the watershed.

Maintenance: Any action necessary to preserve stormwater management facilities in proper working condition, in order to serve the intended purposes and meet original design intent set forth in this article and to prevent structural failure of such facilities.

Major Substantial Improvement: Specific to stormwater, a renovation or addition to a structure that meets the following cost and size thresholds: a) construction costs for the building renovation/addition are greater than or equal to 50% of the pre-project assessed value of the structure as developed using current Building Valuation Data of the International Code Council, and b) combined footprint of

structure(s) exceeding the cost threshold and any land disturbance is greater than or equal to 5,000 square feet.

Mass Grading: The movement of earth by mechanical means to alter the gross topographic features (elevations, slopes, etc.) to prepare a site for final grading and the construction of facilities (buildings, roads, parking, etc.).

Maximum Extent Practicable (MEP): The extent of efforts to comply with the post-construction stormwater management requirements.

Nonpoint Source Pollution: A form of water pollution that does not originate from a discrete point, such as a sewage treatment plant or industrial discharge, but involves the transport of pollutants, such as sediment, fertilizers, pesticides, heavy metals, oil, grease, bacteria, nutrients, organic materials, and other contaminants from land to surface water and groundwater via mechanisms such as precipitation, stormwater runoff and leaching. Nonpoint source pollution is a by-product of land use practices, such as agriculture, silviculture, mining, construction, subsurface disposal, suburban and urban runoff.

Nonstructural Stormwater Management Practice or **Nonstructural Practice**: Any natural or planted vegetation or other nonstructural component of the stormwater management plan that provides for or enhances stormwater quantity and/or quality control or other stormwater management benefits and includes, but is not limited to, riparian buffers, open and greenspace areas, overland flow filtration areas, natural depressions, and vegetated channels.

Overbank Flood Protection: Measures taken to prevent an increase in the frequency and magnitude of out-of-bank flooding (i.e. flow events that exceed the capacity of the channel and enter the floodplain) and that are intended to protect downstream properties from flooding for the 2-year through 25-year frequency storm events.

Post-development: The time period or the conditions that may reasonably be expected or anticipated to exist, after completion of the land development or redevelopment activity on a site.

Pre-development: The time period or the conditions that exist, on a site prior to land development. For the purpose of determining pre-development surface runoff conditions, it is assumed that predevelopment is meadow conditions.

Project: A land development, major substantial improvement, or redevelopment project.

Recharge: The replenishment of groundwater aquifers.

Redevelopment: As pertains to stormwater, change to previously existing, improved property, including but not limited to the building of structures, filling, grading, paving, or excavating, but excluding ordinary maintenance activities, remodeling of buildings on the existing footprint, resurfacing of paved areas, and exterior changes or improvements that do not materially increase or concentrate stormwater runoff or cause additional nonpoint source pollution.

Regional Stormwater Management Facility or **Regional Facility**: Stormwater management facilities designed to control stormwater runoff from multiple properties, where the owners or developers of the individual properties may assist in the financing of the facility and the requirement for on-site controls in the contributing drainage area is either eliminated or reduced.

Riparian Buffer: An area of land at or near a streambank, wetland, or waterbody that has intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation of water quality.

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Runoff: Stormwater runoff.

Runoff Reduction: The total annual runoff volume reduced through canopy interception, soil infiltration, evaporation, transpiration, rainwater harvesting, engineered filtration, or extended filtration.

Special Watershed Protection Area: A watershed or drainage catchment designated by the Town to provide specific stormwater management requirements beyond those established in the *Southern Lowcountry Stormwater Design Manual* for the general three watershed protection areas of the Southern Lowcountry.

Stop Work Order: An administrative order that requires development activity on a site to be stopped. The extent of the stop work order is determined by the UDO Administrator and is identified in accompanying details of each Order.

Stormwater: Stormwater runoff, precipitation runoff, and surface runoff.

Stormwater Hotspot: An area where land use or activities generate highly contaminated runoff with concentrations of pollutants in excess of those typically found in stormwater runoff. The following operations are examples of, but not limited to, stormwater hot spots in this ordinance: car washes, industrial sites, auto repair shops, parking garages, vehicle fueling and storage areas, golf courses, marinas, and transportation equipment repair facilities.

Stormwater Management: The collection, conveyance, storage, treatment, and disposal of stormwater runoff in a manner intended to prevent increased flood damage, streambank channel erosion, habitat degradation, and water quality degradation, and to enhance and promote the public health, safety, and general welfare.

Stormwater Management Facility: Any infrastructure that controls or conveys stormwater runoff.

Stormwater Management Plan (SWMP): The set of drawings and other documents that comprise all of the information and specifications for the programs, drainage systems, Stormwater Management Systems, structures, BMPs, concepts, and techniques for the control of stormwater.

Stormwater Retrofit: A stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the requirements of the *Southern Lowcountry Stormwater Design Manual*.

Structural Stormwater Management Practice: A structural stormwater management facility or device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and quality, the period of release, or the velocity of flow of such runoff.

Surety: A financial guarantee in the form of a letter of credit, bond, cash or other form as may be accepted by the UDO Administrator that ensures he completion of all required improvement per approved plan.

Watercourse: A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

Watershed Management Plan: A document, usually developed cooperatively by government agencies and other stakeholders, to protect, restore, and/or otherwise manage the water resources within a particular watershed or subwatershed. The plan commonly identifies threats, sources of impairment, institutional issues, and technical and programmatic solutions or projects to protect and/or restore water resources.

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Watershed Protection Area: A watershed or drainage catchment designated in the *Southern Lowcountry Stormwater Design Manual* with specific stormwater management requirements that are intended to enhance the quality of development, protect and enhance stormwater quality and management, protect aquatic resources from the negative impacts of land development process, address water quality impairments or a total maximum daily load, as identified by the South Carolina Department of Health and Environmental Control (DHEC), or address localized flooding issues.

RECOMMENDED MOTION LANGUAGE

"I make a motion to approve Second and Final Reading of Amendments to the Town of Bluffton Code of Ordinances, Chapter 23 – Unified Development Ordinance, Article 3 – Application Process, Article 5 – Design Standards, Sec. 5.10 Stormwater Management, and Article 9 – Definitions and Interpretation Related to Adoption of the Southern Lowcountry Post Construction Stormwater Ordinance and *Southern Lowcountry Stormwater Design Manual.*"