

## **Chapter 157: THE PHASE II STORMWATER ORDINANCE**

### **Sec. 157.01 Purpose.**

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to control the adverse effects of increased post-development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment as well as illicit discharges into municipal stormwater systems. Proper management of construction-related and post development stormwater runoff will prevent surface water quality degradation to the extent practicable in the streams and lakes within Town jurisdiction.

This ordinance seeks to meet the requirements of the Town's National Pollutant Discharge Elimination System (NPDES) Permit and its general purposes through:

1. Establishing decision-making processes for development that protects the integrity of watersheds and preserve the health of water resources;
2. Requiring new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of structural stormwater BMPs to meet post-development stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater BMPs to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;
7. Establishing administrative procedures for the submission, review, approval and disapproval of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance;
8. Coordinating site design plans that include open space and natural areas with the Town of Black Mountain's goals for the protection of open space and natural areas;
9. Controlling illicit discharges into the municipal separate stormwater system; and
10. Controlling erosion and sedimentation from construction activities.

## **Sec 157.02 Applicability and Jurisdiction**

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all development and redevelopment which results in a cumulative disturbance of 12,000 square feet (0.275 acre) of land or which increases impervious surface area by a net amount of 5,000 square feet or more if said project is less than or equal to one acre in disturbance. No development or redevelopment shall occur within the Town of Black Mountain's jurisdiction except in compliance with the provisions of this ordinance. No development for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

### **A. Exemptions.**

1. Any redevelopment as defined in this ordinance.
2. Any development that cumulatively results in an increase of less than 5,000 square feet of built upon area and that cumulatively disturbs less than 12,000 square feet.
3. Development that disturbs less than 12,000 square feet is not exempt if such activities result in a net increase of 5,000 square feet or more of built upon area or if such activities are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, Unified Housing Development, or development resulting in four or more parcels, dwellings or commercial units, even though multiple, separate or distinct activities take place at different times on different schedules.
4. Development activities that are within the Town's designated Historic District within the C-1 District and which cumulatively disturb less than one acre are exempt from this ordinance.
5. Activities that are exempt from permit requirements of Section 404 of the Federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

**B. Jurisdiction.** The provisions of this ordinance shall apply within all planning and zoning jurisdictions of the Town of Black Mountain, including its extra-territorial jurisdiction. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances. This ordinance does not affect the legal requirements to obtain other permits which may be required by the Division of Water Quality, the Division of Land Resources, the local Flood Hazard Prevention Ordinance, Zoning or Building Permits or any other State, Federal or local government permit that may be required.

**C. Map.** The Planning Department shall develop and maintain a Storm Sewer System Base Map ("the Stormwater Map") of stormwater drainage system components including outfalls, BMP locations, drainage areas and receiving streams in accordance with the Town's NPDES permit. The Stormwater Map shall be updated to take into account changes in the land area

covered by this ordinance and the geographic location of structural BMPs permitted under this ordinance.

### **Sec 157.03 Interpretation and Definitions.**

- A. **Meaning and Intent.** If a different or more specific meaning is given for a term defined elsewhere in the Town of Black Mountain’s Land Use Code, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.
- B. **Text Controls in Event of Conflict.** In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- C. **Authority for Interpretation.** The Stormwater Administrator or his/her designee has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.
- D. **References to Statutes, Regulations, and Documents.** Whenever reference is made to a resolution, ordinance, statute, regulation, manual or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.
- E. **Word Usage.**
  - 1. The term “Town” shall herein refer to the Town of Black Mountain.
  - 2. The term “Department” shall herein refer to the NC Department of Environment and Natural Resources.
  - 3. The term “Division” shall herein refer to the NC Division of Water Quality.
  - 4. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.
- G. When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

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

**Best Management Practices<sup>3</sup>** or “BMPs” control urban storm water runoff and can include “structural BMPs” such as infiltration devices, ponds, filters and constructed wetlands; and “non-

structural BMPs such as maintenance practices, street sweeping, public education and outreach programs.

**Design Manual:**<sup>4</sup> The stormwater design manual approved for use in Phase II jurisdictions by the North Carolina Division of Water Quality. *The design manual includes a local appendix of recommendations for BMP's that any property owner could utilize to help in managing stormwater.* All references herein to the Design Manual are to the latest published edition or revision.

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

**High-density project:** Any project that exceeds the low density threshold for dwelling units per acre (two dwelling units per acre) or built-upon area (24%).

**Larger common plan of development or sale:** Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

**Low-density project:** A project that has no more than two dwelling units per acre or twenty-four percent built-upon area (BUA) for all residential and non-residential development.

**1-year, 24-hour storm:** The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

**Owner:** The legal or beneficial owner of land or business, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

**Redevelopment:** Any land disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

**Structural BMP:** A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed

wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural BMP” is synonymous with “structural practice”, “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater control measures,” “structural stormwater treatment systems,” and similar terms used in this ordinance.

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

#### **Sec 157.04 Design Manual**

- A. The Planning Director or his/her designee shall use the policy, criteria, and information, including technical specifications and standards, in the Design Manual as the basis for decisions about stormwater permits and about the design, implementation and performance of structural and non-structural stormwater BMPs.
- B. The Design Manual includes a list of acceptable stormwater treatment practices, including specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws. If the specifications or guidelines of the Design Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications in the Design Manual.
- C. Changes to Standards and Specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the Design Manual are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.
- D. The local appendix to the Design Manual shall provide a selection of low cost BMPs for controlling stormwater on-site as part of development or redevelopment that is exempt from this ordinance for public reference as all property owners are encouraged to implement some form of run-off controls.

#### **Sec 157.05 Private Agreements**

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose

higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the Town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

#### **Sec 157.06 Severability**

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

#### **Sec 157.07 Effective Date and Transitional Provisions**

This Ordinance shall take effect on July 1, 2007. All development and redevelopment projects for which complete and full applications were submitted and approved by the Town of Black Mountain, or for which conditional use permits have been issued, prior to the effective date of this ordinance shall be exempt from complying with provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

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

#### **Sec 157.08 Stormwater Administrator**

- A. **The Planning Director** shall serve as the Stormwater Administrator or designate someone by assignment or contract as the Stormwater Administrator.
- B. **Powers and Duties.** The Stormwater Administrator shall have the following powers and duties under this ordinance:
  - 1. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance;
  - 2. To make determinations and render interpretations of this ordinance;
  - 3. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Planning Board and/or Zoning Board of Adjustment on applications for development or redevelopment approvals;

4. To enforce the provisions of this ordinance in accordance with its enforcement provisions;
5. To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance;
6. To provide expertise and technical assistance upon request;
7. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator; and
8. To take any other action necessary to administer the provisions of this ordinance.

#### **Sec 157.09 Review Procedures**

- A. Permit Required; Must Apply for a Permit. A stormwater permit is required for all development unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.
- B. Effect of Permit. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including structural BMPs and elements of site design for stormwater management other than structural BMPs. The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the development or redevelopment site consistent with the requirements of this ordinance, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density design.
- C. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance and requires an annual submission of a maintenance inspection report on each structural BMP, conducted by a qualified professional.
- D. Authority to File Applications. All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land owner or the land owner's duly authorized agent along with the building permit and zoning permit applications.
- E. Fees and submission. The Town of Black Mountain Board of Aldermen shall establish a fee schedule and stormwater review policy which may be amended and updated at the Board's direction.
- F. Applications must be complete and submitted to the Planning Department along with the appropriate fee established pursuant to this section. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed development project. This consultation meeting should take place at the time of the technical review of the preliminary plan of a subdivision, special use or other early step in the development process.

- G. The Stormwater Administrator shall review the application and make a determination whether the application complies with the standards of this ordinance and try to provide this review within fifteen (15) working days. Failure to receive a response from the Stormwater Administrator within a fifteen (15) day period however does not imply approval of the permit, and applicants are encouraged to contact the Planning Department if they have not received a response after the 15-day target period.
1. Approval. If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.
  2. Fails to Comply. If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.
  3. Revision and Subsequent Review. A complete revised application shall be reviewed by the Stormwater Administrator after its re-submittal and shall be approved, approved with conditions or disapproved. One re-submittal of a revised application may be submitted without payment of an additional permit review fee.
  4. If a revised application is not re-submitted within thirty (30) working days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.
- H. The stormwater permit application shall describe in detail how post-development stormwater run-off will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance. The following information should also be included in the submittal:
1. Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.
  2. Natural Resources Inventory. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.

3. Stormwater Management System Plan. A written or graphic concept plan of the proposed post-development stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.
  4. All stormwater management plans relating to subdivisions or development or redevelopment plans on lots equal to or greater than one acre or on lots less than an acre which are part of a larger common plan of development or sale, including a subdivision, Planned Unit Development, or other Special Use shall be prepared by a qualified registered North Carolina professional engineer, environmental scientist or landscape architect, and the consulting professional shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, and that the designs and plans are sufficient to comply with this ordinance.
- I. As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.
1. The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed.
  2. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance.
  3. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities or a Certificate of Occupancy is issued.
  4. Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.
- J. An approved plan shall become null and void if the applicant has failed to make substantial progress on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

K. Right of Appeal. Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the acting Stormwater Administrator may file an appeal to the Planning Department for a hearing by the Zoning Board of Adjustment within 30 days of the determination of the application per their procedures. Every decision of the Zoning Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the Zoning Board of Adjustment Hearing.

#### **Sec. 157.10 General Standards.**

Until such time as a comprehensive watershed management plan for the Swannanoa Basin is developed, the following guidelines apply.

- A. All built-upon area shall be at a minimum of 30 feet landward on all sides of any surface water as measured horizontally on a line perpendicular to a vertical line marking the edge of the top of the bank. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division of Water Quality-approved methodology.
- B. All other projects which are not exempt from this ordinance must submit a stormwater management plan in order to receive a permit.
- C. The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, or designated space on an approved preliminary plat or master plan to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
- D. When a Stormwater BMP or management system is established under the control of a neighborhood association or other private entity, the developer shall develop and provide an operations and maintenance manual on the BMP to the entity as well as to the Town of Black Mountain Planning Department for future reference.
- E. All development and redevelopment projects which cumulatively disturb more than 12,000 square feet or which are a part of a larger plan shall implement stormwater control measures that comply with the following standards:
  1. Project sites must employ Low Impact Development (LID) practices to analyze the infiltration capacity and natural drainages of the site and develop a system of controls which mimic the existing natural hydrology and which cumulatively capture and treat the runoff from the first inch of rainfall. LID practices may include any combination of site

design techniques, strategies, and BMPs to store, infiltrate, evaporate, retain, and detain runoff on the site to more closely replicate pre-development runoff thereby limiting the increase in pollutant loads caused by development.

2. Wherever LID practices are not achievable, or have not been demonstrated the management measures controlling the final run-off from the site shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-development conditions for, at a minimum, the 1-year, 24-hour storm as determined by NOAA data for Black Mountain ([http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc\\_pfds.html](http://dipper.nws.noaa.gov/hdsc/pfds/orb/nc_pfds.html)). Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
3. All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids.
4. Peak storm water runoff rates shall be controlled for all development at or exceeding 24% built upon area or high density projects as defined by this ordinance, for both LID and conventional approaches. The peak storm water runoff release rates leaving the site during post-construction conditions shall be equal to or less than the pre-development peak storm water runoff release rates for the 1-year frequency, 24-hour duration storm event as determined by NOAA data for Black Mountain. The emergency overflow and outlet works for any pond or wetland constructed as a stormwater BMP shall be capable of safely passing a discharge with a minimum recurrence frequency of 50 years. For detention basins, the temporary storage capacity shall be restored within 72 hours. Requirements of the Dam Safety Act shall be met when applicable.
5. No one BMP shall receive runoff from an area greater than three (3) acres. However, the total drainage area from BMPs used in series (i.e., integrated) can exceed this three (3) acre maximum.
6. Encroachments. Water quality BMPs may encroach into a required buffer or yard setback as long as the encroachment does not disturb the majority of existing vegetation. Minor understory may be disturbed in order to accommodate water quality structures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.

## **Sec 157.11 Standards for Stormwater Control Measures**

### **A. Evaluation According to Contents of Design Manual**

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

## **B. Determination of Adequacy; Presumptions and Alternatives**

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

### **Sec. 157.12 Dedication of BMPs, facilities and improvements**

The Town of Black Mountain may accept dedication of any existing or future stormwater management facility for maintenance, provided such facility meets all the requirements of this ordinance and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

This dedication may or may not be in conjunction with a conservation easement or within a common open space dedication as part of a subdivision, PUD or other development plan. Dedication of BMP and stormwater facility areas shall be identified on preliminary plats, PUD plans and other development proposals for consideration as part of the approval process.

### **Sec. 157.13 Variances**

- A. Any person may petition the Town for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must follow the procedures outlined in Section 153.162 of the Town of Black Mountain Code of Ordinances.
- B. The Town may impose reasonable and appropriate conditions upon any variance it grants.

### **Sec. 157.14 Additional Standards**

#### **A. Trout Waters**

In addition to the standards for stormwater handling set out in the design manual, development and redevelopment that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance.

## **Sec 157.15 Onsite wastewater**

### **A. Operation and Maintenance Requirements**

New and replaced onsite systems for domestic wastewater installed after the effective date of this ordinance must be approved and permitted by the Buncombe County Health Department. Both the Buncombe County septic permit and documentation showing the operation and maintenance for the system are required before a Town Building Permit may be issued.

### **B. Standards for Operation and Maintenance**

Onsite systems for domestic wastewater covered by this ordinance shall be operated and maintained so as to avoid adverse effects on surface water and groundwater, including eutrophication of surface water and microbial or nitrate contamination of groundwater.

Septic tank residuals shall be pumped whenever necessary to assure the proper operation of the system to meet these standards, and the septage shall be reused or disposed of in a manner that does not present significant risks to human health, surface water or groundwater.

## **Sec 157.16 General Standards for Maintenance**

### **A. Function of BMPs as Intended**

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

### **B. Annual Maintenance Inspection and Report**

The person responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

1. The name and address of the land owner;
2. The recorded book and page number of the lot of each structural BMP;
3. A statement that an inspection was made of all structural BMPs;
4. The date the inspection was made;
5. A statement that all inspected structural BMPs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and;
6. The original signature and seal of the engineer, surveyor, or landscape architect.

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

## **Sec. 157.17 Operation and Maintenance Agreement**

### **A. In General.**

1. Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to this ordinance, and prior to issuance of any permit for development or redevelopment requiring a structural BMP pursuant to this ordinance, the applicant or owner of the site must execute an operation and maintenance agreement that shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.
2. The operation and maintenance agreement shall require the owner or owners to maintain, repair and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for the structural BMP. In addition, it shall grant to the Town a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the structural BMP; however, in no case shall the right of entry, of itself, confer an obligation on the Town to assume responsibility for the structural BMP.
3. The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval and shall be referenced on the final plat recorded with the County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

### **B. Special Requirement for Homeowners' and Other Associations**

For all structural BMPs required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

1. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
2. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Planning Director or his/her designated Stormwater Administrator shall first consent to the expenditure.
3. Both developer contribution and annual deposits for future use of "sinking funds" shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount

equal to fifteen per cent (15%) of the initial construction cost of the structural BMPs. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account to cover the cost of maintenance. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

4. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town depending on the design and materials of the stormwater control and management facility.
5. Granting to the Town a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
6. Allowing the Town to recover from the association and its members any and all costs the Town expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of its expended costs, after forty-five (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.
7. A statement that this agreement shall not obligate the Town to maintain or repair any structural BMPs, and that the Town shall not be liable to any person for the condition or operation of structural BMPs.
8. 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.
9. 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 BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

### **Sec 157.18 Inspection Program**

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

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

## Sec 157.19 Performance Security for Installation and Maintenance

- A. The Town may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the structural BMPs are (1) installed by the permit holder as required by the approved stormwater management plan, and/or (2) maintained by the owner as required by the operation and maintenance agreement. This requirement may be instituted in addition to and in conjunction with other performance security or bond requirements the Town may require in conjunction with a subdivision or development plan.
- B. The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus twenty-five (25%).
- C. The amount of a maintenance performance security shall be determined based on the type of BMP and a projected annual maintenance cost as recorded in the maintenance agreement.
- D. Uses of Performance Security
  1. **Forfeiture Provisions.** The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or owner in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.
  2. **Default.** Upon default of the owner to construct, maintain, repair and, if necessary, reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall be made after requesting the owner to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town shall not return any of the unused deposited cash funds or other security which shall be retained for maintenance.
  3. **Costs in Excess of Performance Security.** If the Town takes action upon such failure by the applicant or owner, it may collect from the applicant or owner for the difference, should the amount of the reasonable cost of such action exceed the amount of the security held.
  4. **Refund.** Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

## **Sec 157.20 Notice To Owners**

### **A. Deed Recordation and Indications On Plat**

The applicable operations and maintenance agreement, including but not limited to conservation easement, or dedication and acceptance into public maintenance, pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement, or conservation easement, or dedication and acceptance into public maintenance, {whichever is applicable] shall be recorded with the County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

### **B. Signage**

For homeowner's and other associations, and where else deemed appropriate for the compliance of this ordinance, the Stormwater Administrator may require a structural BMPs to be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

## **Sec. 157.21 Records of installation and Maintenance Activities**

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

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair in accordance with the maintenance agreement, including, but not limited to a maintenance easement. If a maintenance easement is provided then it shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

## **Sec 157.22 Illicit Municipal Discharges and Connections**

The Federal Phase II rule specifies that local communities shall prohibit any discharge to a municipal separate storm **unless it:**

- A. Consists of a discharge pursuant to an NPDES permit; or
- B. Consists of a discharge from fire fighting activities; or
- C. Consists of a discharge in any of the following categories, *and* the operator of the small MS4 has not identified that category as a significant contributor of pollutants to its small MS4:
  - Water line flushing;
  - landscape irrigation;
  - diverted stream flows;

- rising ground waters;
- uncontaminated ground water infiltration;
- uncontaminated pumped ground water;
- discharges from potable water sources;
- foundation drains;
- air conditioning condensation (commercial/residential);
- irrigation waters;
- springs;
- water from crawl space pumps;
- footing drains;
- lawn watering;
- individual residential car washing and charity car washing;
- flows from riparian habitats and wetlands;
- de-chlorinated swimming pool discharges; and
- street wash water.

### **Sec 157.23 Other Illicit Discharges**

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, pet feces or animal waste, paints, garbage, and litter, or any liquid, solid, gas, or other substance, other than stormwater, provided that non-stormwater discharges associated with **the following activities are allowed**, provided that they do not significantly impact water quality:

- Water line flushing;
- landscape irrigation;
- diverted stream flows;
- rising ground waters;
- uncontaminated ground water infiltration;
- uncontaminated pumped ground water;
- discharges from potable water sources;
- foundation drains;
- air conditioning condensation (commercial/residential);
- irrigation waters;
- springs;
- water from crawl space pumps;

- footing drains;
- lawn watering;
- individual residential car washing and charity car washing;
- flows from riparian habitats and wetlands;
- dechlorinated swimming pool discharges;
- street wash water;
- flow from fire fighting activities; and
- other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.

#### **Sec 157.24 Illicit Connections**

- A. Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section 150.1305 above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
- B. Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.
- C. Where it is determined that said connection: a) May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or b) Was made in violation of any applicable regulation or ordinance, other than this section; the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:
1. The consequences of delay,
  2. The potential harm to the environment, to the public health, and to public and private property, and
  3. The cost of remedying the damage.

### **Sec 157.25 Spills**

- A. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
- B. Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Town of the release or discharge, as well as making any required notifications under State and Federal law.
- C. 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.

### **Sec 157.26 Nuisances**

- A. The owner of each stormwater BMP, whether structural or non-structural BMP, shall maintain it so as not to create or result in a condition that creates a potential hazard or nuisance to the health, safety and welfare of the general public.
- B. Illicit discharges and illicit connections which exist within the Town of Black Mountain jurisdictions, are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and shall be abated.

### **Sec 157.27 Enforcement and Violations**

- A. **Authority to Enforce.** The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town. Whenever this section refers to the Stormwater Administrator, it includes his or her designee and any authorized agent of the Town.
- B. **Violation Unlawful.** Any failure to comply with applicable requirements, prohibitions, standards, or limitations imposed by this ordinance, or the terms or conditions of any permit, maintenance agreement, or other development or redevelopment approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance and is subject to the same civil or criminal penalties as other zoning violations, with each day that a violation continues constituting a separate offense.
- C. **Responsible Persons/Entities.** Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or

maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section.

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

- D. **Person Maintaining Condition Resulting In or Constituting Violation.** An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.
- E. **Responsibility For Land or Use of Land.** The owner of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, development or redevelopment of the property.

#### **Sec 157.28 Remedies and Penalties**

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order and can include:

1. **Withholding of Certificate of Occupancy:** The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.
2. **Disapproval of Subsequent Permits and Development Approvals:** As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Planning Board or Zoning Board of Adjustment may disapprove, any request for permit or development approval or authorization provided for by this ordinance for the land on which the violation occurs.
3. **Injunction, Abatements, etc.:** The Stormwater Administrator, with the written authorization of the Town Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

4. **Correction as Public Health Nuisance, Costs as Lien, etc.:** If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.
5. **Stop Work Order:** The Stormwater Administrator may issue a stop work order to the person violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.
6. **Civil Penalties:** Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator or his/her designee. Civil penalties may be assessed up to the full amount of penalty to which the Town is subject for violations of its Phase II Stormwater permit up to \$2,500..
7. **Criminal Penalties:** Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

#### **Sec 157.29 Procedures**

- A. **Violations.** Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint in accordance with the procedures established in Section 150. 45 of the Town of Black Mountain Land Use Code.
- B. **Extension of Time.** A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation. The Stormwater Administrator may grant extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance.
- C. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.
- D. **Enforcement After Time to Correct.** After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater

Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

- E. **Emergency Enforcement.** If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

*Ordinance Adopted at June 11, 2007 Board of Aldermen Meeting.*