

Section 15-263.1 Maintenance of Structural BMPs.

(a) For purposes of this section, a “structural BMP” is a device constructed or installed to trap, settle out, or filter pollutants from stormwater runoff or to reduce stormwater discharge volume or velocity in order to satisfy one or more of the requirements of Section 15-263.

(b) 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. Such operation and maintenance shall be in accordance with the Operation and Maintenance Agreement specified in subsection (e) of this section.

(c) The owner of each structural BMP shall ensure that each such facility is inspected in accordance with the Operation and Maintenance Agreement specified in subsection (e) of this section by a qualified registered North Carolina professional or other individual specially qualified by an appropriate training, testing, and certification program. The person performing the inspections shall submit annually to the administrator a report certifying the results of such inspections. The report shall be in a format and shall contain the information prescribed by the administrator. The first report shall be due one year from the date of the as built certification required by Subsection 15-263(i), and subsequent reports shall be due on or before that anniversary date.

(d) The owner of each structural BMP shall ensure that, in accordance with the Operation and Maintenance Agreement, funds are set aside in an escrow account, sinking fund, or other arrangement, sufficient to pay major, non-routine costs associated with keeping such BMPs in proper operational condition, such as the cost of sediment removal, structural, biological, or vegetative replacement, major repair, or reconstruction. The owner shall submit annually to the administrator a report certifying that such funds have been set aside. The report shall be in a format and shall contain the information prescribed by the administrator. The first report shall be due one year from the date of the as-built certification required by Subsection 15-263(i), and subsequent reports shall be due on or before that anniversary date.

(e) Prior to final plat approval, in the case of a subdivision, or prior to the issuance of a certificate of occupancy, in the case of an unsubdivided development, the owner of a development that contains a structural BMP shall enter into an Operation and Maintenance Agreement with the town (and shall record such agreement in the Orange County Registry) that specifies that the owner, and his or her successor and assigns:

- (1) Agrees to comply with the obligations set forth in subsections (b), (c), and (d) of this section;
- (2) Authorizes the town and its employees or agents to enter the property where the structural BMPs are located at reasonable times to inspect the

Art. XVI. FLOOD DAMAGE PREVENTION, STORMWATER MANAGEMENT, AND WATERSHED PROTECTION

same for compliance with the requirements of this section, the permit issued pursuant thereto, and the provisions of the Operation and Maintenance Agreement;

- (3) Agrees that, if the owner fails to operate and maintain such structural BMPs in accordance with the requirements of this section, the permit issued pursuant thereto, and the provisions of the Operation and Maintenance Agreement, the town is authorized (but not obligated) to enter the property to perform such work as is necessary to bring such BMPs into compliance and to charge the owner with the costs of such work.

(f) If structural BMPs are to be owned by a property owners or homeowners association or similar entity, then the covenants applicable to such association shall clearly reference the obligations of the association, as owner of such BMPs, to fulfill the obligations of the owner relating to such BMPs as required by the provisions of this section, the permit issued pursuant thereto, and the provisions of the Operation and Maintenance Agreement.

(g) If a structural BMP is located within a subdivision, then the recorded plat of such subdivision shall include a reference to the book and page number where the Operation and Maintenance Agreement is recorded. **(AMENDED 6/26/12)**

(h) Where appropriate in the determination of the Administrator to assure compliance with this section, structural BMPs shall 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. **(AMENDED 6/26/12)**

Section 15-264 Sedimentation and Erosion Control

(a) No zoning, special use, or conditional use permit may be issued and final plat approval for subdivisions may not be given with respect to any development that would cause land disturbing activity subject to the jurisdiction of the Orange County Erosion Control Officer or the North Carolina Sedimentation Control Commission unless such officer or agency has certified to the town; either that:

- (1) Any permit required by such officer or agency has been issued or any erosion control plan required by such officer or agency has been approved; or
- (2) Such officer or agency has examined the preliminary plans for the development and it reasonably appears that any required permit or erosion control plan can be approved upon submission by the developer of more detailed construction or design drawings. However, in this case, construction of the development may not begin (and no building permits