



**AN ORDINANCE AMENDING THE CODE OF ORDINANCES  
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA**

**WHEREAS**, pursuant to N.C.G.S. § 160A-459 the Town of Nags Head (the "Town") is authorized to adopt and enforce a stormwater control ordinance to protect water quality and control water quantity. Pursuant to this authority, the Town has previously adopted a stormwater management ordinance which is codified as Chapter 34 of the Town's Code of Ordinances (the "Town Code") for that purpose; and

**WHEREAS**, pursuant to N.C.G.S. § 160A-381, the Town may enact and amend ordinances regulating the zoning and development of land within its jurisdiction and specifically the location and use of buildings, structures and land. Pursuant to this authority and the additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has adopted a comprehensive zoning ordinance (the "Town's Zoning Ordinance") and has codified the same as Chapter 48 of the Town Code; and

**WHEREAS**, pursuant to N.C.G.S. § 160A-458 the Town may enact, amend and enforce erosion and sedimentation control ordinances as authorized by Article 4 of Chapter 113A of the General Statutes. Pursuant to this authority and additional authority granted by N.C.G.S. Chap. 160A, Art. 19 et. seq, the Town has previously adopted sedimentation and erosion control ordinances which have been codified in Chapter 28 of the Town Code and as portions of the Town's Zoning Ordinance; and

**WHEREAS**, pursuant to N.C.G.S. § 160A-174 the Town may also enact and amend ordinances that define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the Town; and

**WHEREAS**, pursuant to N.C.G.S. § 160A-175 the Town may adopt, establish and amend procedures for exercising remedies available for violations of the Town Code; and

**WHEREAS**, the Town acknowledges that stormwater poses a threat to the public health, safety, and welfare, and;

**WHEREAS**, the Town has experienced significant localized flooding during heavy and/or frequent rain events that in many cases can be attributed to stormwater and;

**WHEREAS**, it is the Town's intent to preserve residential neighborhoods and to support local businesses and;

**WHEREAS**, the Town finds that the improper use of fill and lack of maintenance of stormwater management practices contributes to stormwater run-off and;

**WHEREAS**, the 2010 Land Use Plan states that "the Town shall seek strict enforcement of existing laws and regulations and shall consider new regulations, if needed, to protect estuarine and ocean water quality (p. 80)" and;

**WHEREAS**, the Town finds that to protect coastal waters we should limit non-point source pollution attributed to run-off from impervious surfaces such as parking lots and roof tops and;

**WHEREAS**, the Town finds that as more lots are developed and the built upon area is increased throughout Nags Head, stormwater collection and conveyance systems within the

public rights-of-way are being overburdened and must be supplemented with additional management practices on private property and;

**WHEREAS**, the Town manages resources to protect the public infrastructure, quality of life, environment, and property of the citizens of Nags Head through fair and equitable, cost effective means, and the Stormwater Ordinance seeks to improve, enhance, and protect the quality of life for the citizens of Nags Head, and;

**WHEREAS**, the Town finds that these text amendments are consistent with the goals, objectives and policies of the Town's adopted Land Use Plan, and that this action is reasonable and in the public interest;

**NOW THEREFORE BE IT ORDAINED**, by the Board of Commissioners of the Town of Nags Head, North Carolina, that the Town's Code of Ordinances be amended as follows:

**PART I. That Chapter 34, Stormwater, Fill, and Runoff Management be amended as follows:**

Sec. 34-5. - General standards for commercial, mixed-use and all non-single family or non-duplex residential development, including multifamily development.

- (a) Redevelopment of property with existing commercial use, mixed land uses or residential uses other than single-family or duplex residential uses does not require submission of a stormwater plan under the following circumstances:
  - (1) The redevelopment is consistent with the zoning regulations of chapter 48 of this Code relating to redevelopment and nonconformities;
  - (2) The redevelopment does not result in a net gain in built upon area; and
  - (3) The redevelopment does not include the importation of any fill material.
- (b) All redevelopment of property with commercial uses, mixed land uses or residential uses other than single-family or duplex residential uses resulting in a net gain in built upon area requires submission of a stormwater plan showing that the stormwater runoff generated by the increase will be directed into an approved stormwater management system designed to accommodate 4.3 inches of rainfall and that any best management practices constructed for the additional runoff comply with the same commercial standards established in section 34-5(c).
- (c) All other development or redevelopment of property with commercial uses, mixed land uses or residential uses other than single-family or duplex residential uses requires submission of a stormwater plan showing that the development will meet or exceed the following standards:
  - (1) All runoff from the project's built-upon area must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 4.3-inch design storm.
  - (2) Infiltration systems shall provide a minimum of one foot of vertical clearance from the seasonal high water table and must be located in soils classified as sandy texture soils with a minimum infiltration rate of 0.52 inches per hour. Infiltration systems shall maintain a maximum retention time of five days for the 4.3-inch design storm.
  - (3) Wet retention systems shall maintain a minimum retention time of 48 hours and a maximum retention time of five days for the 4.3-inch design storm.
  - (4) Overflows and discharges from best management practices shall discharge to an established drainage outfall or drainage way which is maintained by a government entity or the subdivision homeowner's association or as approved by the town or other appropriate federal, state or local entity.
  - (5) All required state and federal permits shall be acquired prior to the establishment of a discharge into a drainage way. In no instance shall the system discharge to adjoining private property without the written consent of the adjoining property owner, establishment of appropriate easements, and filing of maintenance agreements with the town.

(6) Fill shall not be permitted to exceed base flood elevation except in cases where it is placed directly beneath a slab that is designed to meet the regulatory flood protection elevation as defined in Town Code Section 22-32. In these instances, fill may exceed the base flood elevation by up to 12 inches to support a turn-down or thickened edge slab. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab, and in areas in which there is no base flood, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet above pre-development surface elevation, whichever is higher.

In no case shall fill be placed or a lot be graded such that off-site drainage patterns are altered to direct stormwater runoff onto another property unless part of an approved plan with appropriate agreements or easements.

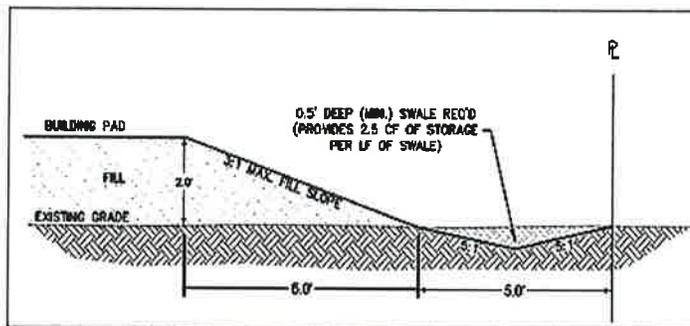
- (7) Copies of operations and maintenance agreements must be filed with the town prior to the issuance of the certificate of compliance.
- (d) Allowance for partial, temporary retention of stormwater within parking lots on all commercial sites:
- (1) Up to 20 percent of a site's parking area may retain runoff up to 48 hours after a 4.3-inch rainfall event, so long as:
    - a. Handicap parking shall not be affected.
    - b. Drive aisles, fire lanes, loading zones, ingress and egress facilities, traffic ways, pedestrian ways and other site access features shall not be affected.
    - c. No impacts of stormwater shall be allowed to entities other than parking spaces and stormwater BMPs.
- (e) Allowance for stormwater control and conveyance facilities built by others on town rights-of-way or on adjacent or town owned properties upon approval of the board of commissioners.
- (1) If as part of development or redevelopment there is an opportunity to improve, mitigate or correct a drainage problem caused by stormwater runoff from the site under review, the board of commissioners may approve stormwater management improvements outside of the subject property boundary if:
    - a. An encroachment agreement and/or easement is put in place to allow for construction and use of the stormwater management improvements, and
    - b. A maintenance agreement is filed with the town establishing maintenance responsibilities and enforcement methods.

Sec. 34-6. - General standards for residential or duplex development on individual lots.

- (a) Development or redevelopment of detached single-family and duplex residential property does not require submission of a stormwater plan under the following circumstances:
- ~~(1) Where there is no importation of fill other than fill used to replace excavated and removed material or fill used to comply with a newly issued septic permit; and~~
  - (1) Where fill is used to replace excavated or removed material.
  - (2) Where minimal fill is used to create positive drainage away from building foundations or other structures.
    - (i) Any fill that exceeds 12 inches above the lot elevation prior to disturbance shall require a stormwater plan as prescribed in subsections (b) and (c) below.
    - (ii) Applicants shall provide pre-disturbance spot elevations to demonstrate compliance with this requirement.
    - (iii) In no instance shall the toe of a fill slope be within five feet of a property line, except as necessary to accommodate driveway improvements.
  - (3) Where fill is necessary to comply with a newly issued septic permit,
  - ~~(2)~~(4) Where grading or balancing activities are:
    - (i) Are performed in accordance with an approved land disturbance permit;

- (ii) Do not result in an increase to the lot surface elevation, except in accordance with (a)(1), (a)(2), or (a)(3) above; and
  - (iii) Do not produce a slope or ditch which directs stormwater onto another property without appropriate agreements or easements.
- (b) All other development or redevelopment of detached single-family and duplex residential property requires submission of a stormwater plan showing that the development will meet or exceed the following standards:
- (1) All runoff from the project's built-upon area must be directed into an approved stormwater management system designed to accommodate the volume of runoff generated by a 1.5-inch design storm.
  - (2) Infiltration systems shall provide a minimum of one foot of vertical clearance from the seasonal high water table and must be located in soils classified as sandy textured soils within Group I or Group II designations in accordance with 15A NCAC 18.A.1941. Soils deemed suitable by the Dare County Health Department on the septic permit shall be presumed to meet this infiltration requirement. Infiltration systems shall not exceed a maximum retention time of five days for the 1.5-inch design storm.
  - (3) Fill shall not be placed within five feet of a property line, except for the grading of driveway entrances, such that runoff from a fill slope is not "pitched" onto adjoining properties. A maximum of a 3:1 horizontal to vertical fill slope shall be maintained. Setback area may be used to accommodate a drainage swale. See Diagram 34-A.

DIAGRAM 34-A: SETBACK REQUIREMENT WHERE FILL IS USED



- (4) The five-foot setback requirement may be varied or waived as part of a multi-lot development of contiguous properties, or between adjacent properties if and only if a dedicated easement is established to accommodate a shared drainage swale or other BMP between adjacent properties as approved by the town engineer.
  - (5) The construction and use of bulkheads, walls, and other structural controls to retain the placement of fill on property shall only be permitted:
    - a. In the immediate area of the on-site sewage disposal system as approved by the Dare County Health Department for the installation of such system, or
    - b. In those areas of the property where the naturally occurring slope exceeds 3:1 or greater in steepness, or
    - c. In those areas of where a retaining wall is necessary to achieve a five-foot setback of fill from an adjacent property boundary. Retaining walls used on fill slopes shall not be tiered, shall not retain more than two feet of fill, and shall not exceed two feet in maximum height from final grade.
  - (6) The allowable depth or elevations for fill are in subsection (c) of this section.
  - (7) Copies of operations and maintenance agreements must be filed with the town prior to the issuance of the certificate of compliance.
- (c) Standard for depth or elevation of fill. Any residential or duplex development or redevelopment which utilizes fill shall be limited to the following standards according to the zone as designated on the most recent flood insurance rate maps or FIRM.
- (1) Within the Oceanfront V Zone:

- a. Addition of landscape fill is permitted up to two feet above the pre-development surface grade or up to base flood elevation, whichever is lower;
  - b. Fill footprint may not exceed ten percent of the lot area (see sections 48-402, 48-403, 48-404, 48-405 dimensional requirements), excluding the footprint of the active drainfield and septic system as approved by the health department in accordance with the septic permit. Lot area is defined as that portion of the lot landward of the first line of stable vegetation as defined by CAMA;
  - c. No bulkheads are allowed;
  - d. All grading and fill activities must comply with guidance provided in FEMA Technical Bulletin #5.
- (2) Within the Estuarine V Zone:
- a. Addition of fill is permitted but shall not exceed the base flood elevation.
    - i. Any use of fill exceeding two feet above the pre-development surface grade shall require an engineered stormwater management plan that captures and stores the runoff produced by a 2.15-inch rainfall event.
    - ii. Use of fill that is equal to or less than two feet above the pre-development surface grade is allowable with a non-engineered stormwater management plan that captures and stores the runoff produced by a 1.5-inch rainfall event.
  - b. Fill footprint may not exceed 50 percent of the total developable lot area (see sections 48-402, 48-403, 48-404, 48-405 dimensional requirements) as defined by CAMA, excluding:
    - i. The footprint of the active drainfield and septic system as approved by the health department in accordance with the septic permit; and
    - ii. Backfill used as part of a CAMA approved estuarine bulkhead and placed within 25 feet of the bulkhead structure.
- (3) All other flood zones (including AE and X):
- a. Addition of fill is permitted but shall not exceed the base flood elevation in zones where the base flood elevation is established. Fill shall be permitted to exceed base flood elevation only in instances where it is placed directly beneath a slab that is designed to meet the regulatory flood protection elevation as defined in Town Code Section 22-32. In these instances, fill may exceed the base flood elevation by up to 12 inches to support a turn-down or thickened edge slab. Fill placed above the base flood elevation shall not extend beyond the outside edge of the slab. In areas in which there is no base flood elevation, fill shall not exceed the amount required for wastewater permits required by the Dare County Health Department, or two feet above pre-development surface elevation, whichever is higher.
  - b. Use of fill that is equal to or less than two feet above the pre-development surface grade is allowable with a non-engineered plan that captures and stores the runoff produced by a 1.5-inch rainfall event.
  - c. Use of fill exceeding two feet above pre-development surface grade shall require an engineered stormwater plan that captures and stores the runoff produced by a 2.15-inch rainfall event.

Sec. 34-7. - General standards for subdivisions.

- (a) Commercial subdivisions. All runoff from the subdivision's built-upon area, including proposed streets, must be directed into an approved stormwater management system designed to accommodate the runoff generated by a 4.3-inch design storm. Overflow shall not be conveyed off-site to private property or public rights-of-way for disposal except upon the establishment of appropriate easements and maintenance agreements among all impacted parties and upon town approval.
- (b) Residential subdivisions. All runoff from the subdivision's built-upon area, including proposed streets, must be directed into an approved stormwater management system designed to accommodate the runoff generated by a 1.5-inch design storm. Overflow shall not be conveyed off-site to private property or public rights-of-way for disposal except

upon the establishment of appropriate easements and maintenance agreements among all impacted parties and upon town approval.

- (c) Management of stormwater from part or all of the future development on commercial or residential sites may be deferred in a phased plan until a given phase is subject to site plan review. The subdivision plat shall clearly identify the specific areas of future phase development and the extent to which management of stormwater is deferred.
- (d) Use of fill within proposed rights-of-way or other common areas shall not exceed base flood elevation for the zone in which the fill is proposed.
- (e) All stormwater plans must include an operation and maintenance agreement that provides for on-going maintenance of the proposed stormwater management system and which assigns responsibility to an owners association as part of any covenants or deeds that run with the individual parcels.

Sec. 34-8. - Stormwater management plan submittal and approval requirements.

- (a) Preparer's certification.
  - (1) For a project involving an individual single-family or duplex structure on a single lot wherein the importation of fill results in an elevation increase of greater than two feet, technical documents shall be prepared by a qualified and registered design professional to demonstrate compliance with this chapter. For all other single family or duplex residential development, a design professional shall only be required if deemed necessary by the town engineer.
  - (2) For all other development, including for a commercial, mixed-use or multi-lot development such as a subdivision, stormwater management plans and supporting technical documents shall be prepared by a qualified and registered design professional knowledgeable within the field of work for the performance of the design, construction, and operation and maintenance of what is being proposed.
- (b) Supporting plans and documentation including assumptions, methodology, calculations and conclusions shall be submitted to the town as part of the application.
  - (1) For residential or duplex lots that require an engineered stormwater management plan, the plan shall be submitted as part of the land disturbance permit application for approval by the town engineer.
  - (2) For residential or duplex lots that do not require an engineered stormwater management plan, the plan shall be submitted as part of the application for a building permit and shall be reviewed by the planning director or his/her designees.
  - (3) For all subdivisions and commercial applications, a stormwater management plan with all supporting documentation meeting all town requirements and standards shall be submitted with the plat or site plan application for approval by the town engineer.
  - (4) For conditional uses, a preliminary stormwater management plan shall be submitted with the conditional use permit application. A stormwater management plan with all supporting documentation meeting all town requirements and standards shall be submitted with, or in advance of, the application for a building permit.
- (c) The stormwater management plan shall include engineered drawings, non-engineered drawings, maps, assumptions, calculations and narrative statements, including:
  - (1) Existing conditions. Sheets or maps indicating existing features, including buildings, ground surface elevations, landforms, parking areas, roadways, structures, subsurface utilities, surface utilities, surface waters, watercourses, vegetation, and other significant elements. Elevations shall be provided in sufficient detail to determine the efficacy of proposed stormwater improvements and compliance with all stormwater and fill requirements. At a minimum, pre-disturbance spot elevations shall be provided beneath proposed improvements and along property lines adjacent to any fill slopes. Ground surface elevation contours shall be depicted at one-foot intervals with spot elevations depicting depressions and peaks. Contours shall extend 15 feet beyond property boundaries to the maximum extent practicable.
  - (2) Project boundaries clearly depicted and labeled, including any staging areas.
  - (3) Locations and elevations of the adjoining street pavement, shoulder, ditches, and drainage systems, as well as upstream and downstream driveway culverts.

- (4) Approximate elevation of seasonal high water table. "Seasonal high wetness condition" as indicated by the Dare County Health Department site evaluation is acceptable for determining vertical separation compliance of BMPs on single family and duplex residential projects. Also include any fill requirements provided with the Dare County Health septic approval.
  - (5) Distance measurements. Lateral and vertical separation distances from AECs, state surface waters, subsurface water conditions, above ground and underground utilities, or other separation distances as required by existing federal, state or local laws clearly depicted.
  - (6) Proposed conditions. Sheets or maps indicating location of proposed features including areas where fill will be placed including the toe of fill slopes, buildings, ground surface elevations, landforms, parking areas, roadways, structures, subsurface utilities, landscaping, and other significant elements.
  - (7) Proposed elevation contours. Drawings shall be depicted at one-foot intervals describing the proposed elements and their association with existing elements with spot elevations depicted in areas of proposed fill and finished floor elevations for all proposed buildings/structures described. Notational information shall be provided which includes existing surface elevation at each site element, proposed maximum fill depths for each site element, and maximum fill depth within the project site.
  - (8) Location and description of stormwater BMPs proposed to capture runoff from all surfaces within a given drainage area.
  - (9) Location of erosion control measures relative to fill slopes and disturbed areas. This shall include any temporary measures that will be necessary to retain stormwater or other construction related water discharges on the property during construction prior to the installation of final stormwater improvements.
- (d) An operations and maintenance agreement shall be submitted to and be approved by the town. The operations and maintenance agreement shall address sediment removal, mowing and re-vegetation, immediate repair of eroded areas, debris removal, and unclogging of any structures. The operations and maintenance agreement may provide for access by the town and its agents to all stormwater management measures at the site for the purposes of inspection, maintenance, reporting, and repair operations. The operations and maintenance plan shall run with the property and compliance shall be the responsibility of the property owner.
  - (e) Copies of all recorded easements or covenants that run with the property and are necessary for continued function of the best management practices utilized for plan approval.
  - (f) Certification. Upon completion of construction, stormwater management facilities shall be certified by the stormwater plan preparer or a qualified and authorized professional as having been constructed in substantial conformity with the town-approved plans and specifications. The acceptability of a certification by any other person than the person who prepared the original design shall be at the sole discretion of the town. A copy of this documentation shall be submitted to the town prior to the issuance of a certificate of compliance.
  - (g) Construction record or as-built plans. The construction record survey or plan shall include any on-site stormwater management measures and shall be prepared once final construction has been completed. These plans shall be prepared by a licensed surveyor and shall include all of the elements shown as proposed on the approved construction plans and depict sufficient topographic information to demonstrate compliance with the approved plans. These shall be submitted to the town prior to the issuance of a certificate of compliance.

**PART II.** All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. This ordinance shall be in full force and effect from and after the 3<sup>rd</sup> day of June 2015.



Robert C. Edwards, Mayor  
Town of Nags Head

ATTEST:

  
Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John Leidy, Town Attorney

Date adopted: June 3, 2015

Motion to adopt by Commissioner \_\_\_\_\_

Motion seconded by Commissioner \_\_\_\_\_

Vote: \_\_\_\_\_ AYES \_\_\_\_\_ NAYS