

  
**Town of Navassa**  
**Environmental & Stormwater**  
**Advisory Committee**

September 13, 2010  
5:30 PM

**Environmental & Stormwater**  
**Advisory Committee**

Gregory Westfield, Chairman  
Dorsey Jones Jr., Vice Chairman  
Eulis Willis, Ex Officio  
Ella Beatty  
John Klein

Travis Barnes, Town Planner

**Call to Order**

**Approval of Minutes**

**Old Business**

1. Address Outstanding Issues from DRAFT Stormwater Ordinance: (No Action Needed)
  - a) Review some changes to the maintenance section
  - b) Discuss comments and draft language from July 20<sup>th</sup> meeting with Cameron Moore from BASE and Larry Sneed with Coastal Carolina Resource Group
  - c) Additional work is needed and we are waiting on additional information from the DWQ

**New Business**

1. Eagles Island Coalition: Navassa has been asked to review the coalition materials. The Eagles Island Coalition is just forming into a formal organization and will seek a non-profit status. Navassa has been asked to be a member of the coalition and the town can benefit by partnering with this group on a number of issues including: the North Brunswick Blueway, conservation easements, recreational opportunities on Eagles Island, preservation of Gullah-GeeChee culture, etc. Please review the attached materials and provide staff with comments.
2. Second Rain Garden planting scheduled for Saturday, October 9<sup>th</sup>, 2010.
3. Staff will be conducting interviews for the Planning Internship on Tuesday, Sept. 14th

**Staff Report**

1. Discuss the Planning Board's proposed text amendments for enhancing tree preservation
2. Staff has created an Environmental Initiatives page on the town's website

**Chair's Report**

1. The next EVS meeting will be on Monday, October 4<sup>th</sup> at 5:30 PM at Town Hall.

**Member Comments**

**Public Comment**

**Adjournment**

**Town of Navassa  
Environmental & Stormwater Advisory  
Committee Minutes  
August 2, 2010  
5:30 PM**

**IN ATTENDANCE:**

Committee Members Present: Gregory Westfield, Dorsey Jones Jr., John Klein, Ella Beatty, Mayor Eulis Willis

Committee Members Absent: None

Staff: Travis Barnes, Town Planner

Other Attendees: None

**CALL TO ORDER:** Chairman Gregory Westfield called meeting to order at 5:35 pm

**APPROVAL OF MINUTES:** Mr. Barnes reminded the committee that they need to approve the minutes from both the June and July meetings. Mr. Klein made a motion to accept the minutes from the June and July meetings. Mr. Willis seconded the motion and it passed unanimously.

**OLD BUSINESS:**

**1. Review Draft Environmental Plan and NCLM Green Challenge Requirements:** Mr. Barnes stated that the committee members have been given a copy of the final draft of the town's Environmental Plan as part of their agenda packet. Mr. Barnes stated that he has also given a copy of the draft plan and discussed its requirements with Steve Pagley, Navassa Public Works Director, and Claudia Bray, Navassa Town Administrator, and they have no issues with the draft. Mr. Barnes said that he will also provide copies of the plan to the Town Council members, in which he will highlight any of the requirements that the plan creates for the town. He also said that he will be providing the Town Council with an executive summary that will have bullet points clearly describing the main aspects of the Environmental Plan. For example, the plan requires an annual report, so that item will be listed as a bullet point on the executive summary and the section of the plan that describes this requirement will also be highlighted in yellow in the body of the Environmental Plan for quick reference. Mr. Barnes said that based on the committee's comments from the previous meeting, he removed a lot of the requirements from the Environmental Plan and replaced them with softer language that states that the town will work towards those goals, without requiring the town to do so. In this way the plan is still a step in the right direction and will help the town achieve environmental progress overtime, without being overly burdensome from the start. As the town grows in staff and its capacity to administer additional projects, the Environmental Plan can also continue to improve. Mr. Barnes stated that the only other significant change is the addition of the section regarding the public environmental education program, because that section was not finished last month. Mayor Willis asked if this plan would need to have a public hearing, when it goes to the Town Council. Mr. Barnes stated that this plan is an internal town policy to handle municipal operations and does not need a public hearing to be adopted, although it will be good to have the public made aware of the plan. Mr. Barnes stated that he intends to put a new page on the town's website that will be dedicated to the town's environmental initiatives. Mr. Klein asked if the plan required the creation of a new Sustainability Manager position. Mr. Barnes stated that the plan does not require a new position at this time, and it merely states that the Town Planner would be the acting Sustainability Manager. However 5-10 years down the road, there might become a need for a new position depending on how fast the town grows.

Mr. Barnes stated the town should meet the qualifications for the NCLM Green Challenge, assuming the Town Council approves the Environmental Plan. Mayor Willis asked if it would get the town to the "intermediate" level of the green challenge. Mr. Barnes said he would submit all of the various environmental activities that the town has been working on and that he anticipated the town would qualify for the "intermediate" level, although the League of Municipalities makes that decision. Mr. Klein asked if the Public Works Director is okay with having to do the monthly water loss report. Mr. Barnes stated that Mr. Pagley has actually already set up a meeting with the NC Rural Water Association to look at water conservation and that he and the town's administrative assistant are in support of

water conservation. Mr. Barnes added that he would work with the rest of the staff to create a monthly report for the town. The committee thanked Mr. Barnes for his hard work and they agreed the plan is a good thing for the town.

**2. Address Outstanding Issues from DRAFT Stormwater Ordinance:** \*Note: The voice recorder stopped recording this section of the meeting because it ran out of batteries, so this section will not be as detailed as others.

Mr. Barnes informed the committee that he included some new comments regarding the stormwater ordinance that he received from the North Carolina Department of the Environment and Natural Resources (NCDENR), from the Business Alliance for the Sound Economy (BASE), and from Larry Sneed with the Coastal Carolina Resource Group. Mr. Barnes reiterated that the only real issue with the current draft of the Stormwater Ordinance is with the maintenance section, which is Article IV in the ordinance. Mr. Barnes stated that he has highlighted all of the newly added ordinance language in green and has underlined it. All of the language that is recommended to be deleted has been highlighted in red and struck through. Additionally, Mr. Barnes stated that his comments and concerns are highlighted in yellow.

According to the comments received, NCDENR wants the town to require the developer to fund an escrow account for the ongoing maintenance of the stormwater BMPs associated with a particular development, and BASE feels this requirement is overly burdensome and too costly for developers. BASE also stated that this is not a requirement found in the state legislation. The committee agreed that some form of an escrow account should be required in order to ensure that the stormwater BMPs operate as they are designed to do over the long term. After discussing some of the proposed changes to the draft ordinance the committee agreed there are seven main issues that need to be resolved within the ordinance and they are as follows:

1. ***How will the town calculate the amount of funding to be placed in the escrow account?*** The committee decided that the developer shall be responsible for having to fund 50% of the estimated construction cost for the stormwater BMPs associated with the project into the required escrow account for ongoing maintenance in case a BMP fails. The ordinance will require the developer to submit a certified construction cost estimate that will be required to have an engineer's seal in order for the town to verify that it is a fair and accurate cost estimate. Mr. Klein stated that it is common for engineers to certify cost estimates, so obtaining the certified construction cost estimate should not be difficult.
2. ***How will the town require the escrow account to be funded over time?*** This particular issue is addressed in Section 1-55 (B)(3) of the draft. The committee decided that the developer will have to pay the required 50% of the certified construction costs in equal annual installments. The developer shall pay 10% of the construction costs upfront prior to plat recordation or the issuance of construction permits. The developer shall then have to pay an additional 10% of the certified construction costs annually for the next four years until the escrow account totals 50% of the certified construction cost. This annual escrow contribution must be deposited by February 1<sup>st</sup> of each year in order to correspond with the annual operations and maintenance report that must be submitted to the town for review. The town must be able to verify that the money has been deposited. The town will also need to think about how they will enforce this requirement if the developer does not deposit the required funds. The town could possibly withhold building permits.
3. ***How will the town require the escrow account to be replenished if it is used to repair a stormwater BMP after it fails?*** The committee decided that the HOA should be allowed a period up to five years for the escrow account to be reimbursed for any money that is expended for BMP replacement or maintenance. The HOA shall have to deposit 10% of the expended escrow account funds back into the escrow account each year until the escrow account is back to its account balance prior to the BMP replacement. This money and any annual escrow contribution from the HOA must be deposited by February 1<sup>st</sup> of each year in order to correspond with the annual operations and maintenance report that must be submitted to the town for review. Due to the rising price of construction over time and the fact that future dollars are not worth as much as current dollars, the committee asked staff to research an appropriate discount rate to be included in the calculation of the required replacement funding. The committee still needs to determine how this requirement will be enforced if the money is not deposited back into the escrow account.

4. ***The committee felt that they should delete Section 1-55 (B)(4) because it places too much subjectivity into the decision-making process of the stormwater administrator and the town in determining the percent of developer contribution to the escrow account and the length of time allowed to fund the account.*** Everyone felt that it would be a good decision to remove this item from the ordinance.
5. ***What is the deadline or threshold at which the town will require the stormwater permit for a subdivision to be transferred from the developer to the Home Owners Association?*** Larry Sneed submitted comments arguing that it would be best to transfer the permit to the HOA as soon as possible so that they are aware of the required operations and maintenance agreements from the start and they have experience administering their stormwater permits. According to the comments received from NCDENR, the state requires developers to transfer stormwater permits to the HOA when: 1. The BMP has been certified by the engineer for a high density project and either the developer or the designer of the Low density has sent them a statement that the LD has been built according to the approved plan (they recommend that the designer (who should have a license) certify the LD design and the developer certify the construction. That way both are held accountable for the system). 2. The HOA is legally established and can accept the permit 3. Over 50% of the lots have been sold and are owned privately or the legally established HOA has at least 33% membership associated with lots having been sold in the project. 4. They have all signatures on the transfer document (go to DWQ website for copy of transfer application) 5. The property or common area has been transferred to the HOA. 6. AND last but not least, the system has been maintained and is in compliance with the O & M requirements.

The committee felt that the NCDENR recommended transfer requirements were appropriate except for the percentage of lots that are required to be sold. The committee asked staff to change the ordinance to state that a permit must be transferred sometime between when 25%-50% of the lots have been sold and are owned privately. The committee also agreed that there should be a required inspection of all the BMPs before the stormwater permit is allowed to be transferred.

6. ***How will the escrow account be administered?*** The committee decided to make the HOA responsible for administering the escrow account, however the Stormwater Ordinance will need to require an annual financial report to be submitted along with the operations and maintenance report so that the Stormwater Administrator can verify that the escrow account is being used for the proper purposes and to ensure that the annual contributions into the account are being made. The committee still needs to consider whether or not they want to have a penalty or some other enforcement mechanism for the HOA not contributing to the escrow account as required.
7. ***When is the developer no longer responsible for funding the escrow account?*** The committee decided that the developer should be required to pay into the escrow account for 50% of the certified construction costs as described in item 2 above. The developer shall also have to pay his portion of the annual HOA contribution to the escrow account, which is dependent on the amount of lots he still owns. Once the stormwater permit is transferred to the HOA then the developer will only have to pay the pro-rated portion of the annual fee for that year.

#### **NEW BUSINESS:**

1. ***Deciding on Monthly Meeting Schedule for the remainder of the year and future committee initiatives:*** Mr. Barnes stated that once the Stormwater Ordinance is approved he was thinking about changing the committee meeting schedule to every other month as opposed to having monthly meetings. Mr. Barnes stated that the committee will need to continue to work on implementing the town's stormwater program by having activities and taking care of some of the other requirements, but that the committee should not have to meet every month to accomplish this. The committee agreed that meeting every other month would be fine and that this issue would be discussed in greater detail once the Stormwater Ordinance is approved and they see how much other work is left to be accomplished.

#### **Staff Report**

3. Mr. Barnes stated that he wanted to give the committee an update on the Planning Board's progress regarding text amendments to the town's Tree Preservation Article of the Zoning Ordinance. Staff has been working on text amendments to the town's Zoning Ordinance to enhance the tree preservation article to include a pay in lieu mechanism that would enable developers to pay for replacement trees if they could not plant them on the development site. Staff will provide more details based on the Planning Board's final decision, but he wanted to let the committee know that they are working to protect the town's tree canopy.

**Chair's Report:**

The next EVS meeting happens to fall on the Labor Day Holiday so Mr. Westfield made a motion to reschedule the meeting to the following Monday. Mr. Klein seconded the motion and it passed unanimously. The next EVS meeting will be on Monday, September 13<sup>th</sup> at 5:30 PM at Town Hall.

**Member Comments**

**Public Comment**

**Adjournment**

Mr. Jones motioned for adjournment, seconded by Mr. Klein. The meeting was adjourned at 7:30 pm.

Minutes prepared by Travis Barnes, Town Planner, on August 20, 2010.

## **ARTICLE IV. MAINTENANCE**

### **Sec. 1-54. General Standards for Maintenance.**

(A) *Function of BMPs as intended.* The permittee 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. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.

(B) *Annual maintenance inspection and report.* The permittee responsible for maintenance of any structural BMP installed pursuant to this ordinance shall submit to the Stormwater Administrator an annual inspection report for the calendar year due on or before February 1<sup>st</sup> of the following year to include each separate BMP permitted. The purpose of the inspection is to assure compliance with the stormwater permit and operation and maintenance agreement. The inspection shall cover the entire stormwater system including but not limited to pipes, channels, swales, vegetation, berms, outlet/inlet structures, pond areas, etc. Any deficiencies shall be noted in the inspection report. The annual report shall include copies of monthly maintenance activity reports. Inspection reports shall be on a Town approved form(s) supplied by the Stormwater Administrator, and shall be executed by one of the following persons performing services only in their area of certification: a registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

(Base recommends that we get rid of listing the requirements below because we can simply include them on our inspections form and thereby simplify this ordinance, staff agrees this can be done easily)

- (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 signed 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) Copies of the monthly maintenance and inspections reports required by the Operations and Maintenance Agreement for each structural BMP and any other reports of maintenance work that has been performed on each structural BMP.~~

~~(7) Verification that the requirements of the Operations and Maintenance Agreement have been adhered to.~~

~~(8) If applicable, all financial reports for deposits and withdraws associated with the required operations and maintenance escrow account as described in Sec. 1-55 (B) of this ordinance.~~

~~(9) The original signature of the inspector(s) executing the reports.~~

If reports aren't submitted or the reports demonstrate that the BMP is not functioning properly then the town needs to have some sort of code enforcement penalties specified or possibly a fine.

## Sec. 1-55. Operation and Maintenance Agreement.

(A) *In general.* 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 ~~permittee~~ shall have primary responsibility for carrying out the provisions of the maintenance agreement. ~~A separate operations and maintenance agreement shall be executed for each individual BMP associated with the development. Each of these separate agreements shall be combined and submitted to the stormwater administrator as a single comprehensive operation and maintenance agreement for the entire development or phase being permitted.~~

~~The operation and maintenance agreement shall have a statement acknowledging~~ ~~Acknowledgment~~ that the ~~association~~ ~~permittee~~ shall ~~adequately and~~ continuously operate and maintain the stormwater control and management facilities. ~~This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions.~~

(This paragraph was moved from section B below as item 1)

The operation and maintenance agreement shall require the permittee to maintain, repair, and, if necessary, reconstruct the structural BMP, and shall state the terms, conditions, and schedule of maintenance for ~~each the~~ structural BMP. ~~Monthly inspections reports are required for each structural BMP. Reports of monthly inspections and maintenance activities shall be kept in a location available for review by the Stormwater Administrator and shall be included in the annual report submitted to the town.~~

In addition, it shall grant to the Town of Navassa 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 of Navassa to assume responsibility for the structural BMP.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. Two (2) copies 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) Establishment of an escrow account with the homeowners' association, property owners' association, or similar entity ~~Town of Navassa~~, which can be expended solely for the cost of sediment or vegetative removal; structural, or vegetative replacement; repair; or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the homeowners' association, property owners' association, or similar entity shall remedy the situation using funds from the escrow account, and in such instances the escrow account shall be fully reimbursed ~~from the escrow account. Escrowed funds may be spent by the association for sediment removal; structural, biological or vegetative replacement; repair; or, reconstruction of the structural BMPs, provided the Town of Navassa shall first consent to the expenditure.~~ An annual financial report of the escrow account shall be submitted to the Town as part of the required annual inspection report in order for the Stormwater Administrator to verify that any required deposits have been made into the escrow account and to verify that any expenditures from the escrow account are for purposes allowed by this ordinance. Any expenditures from the escrow account that are not listed as a permitted expenditures shall be replaced within one (1) year prior to submittal of the upcoming annual report. Failure to replace unpermitted funds expended from the escrow account by the following annual report shall be treated as a breach of the operations and maintenance agreement and shall be punishable by any enforcement capabilities provided to the Town of Navassa by this ordinance or the General Statutes of North Carolina.
- (2) Both developer contribution and annual accrued association 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 ten percent (10%) of the estimated construction cost of the structural BMPs. Construction cost estimates shall be certified by an engineer and shall bear the seal of the engineer providing the construction cost estimate. The developer shall then pay an additional ten percent (10%) of the certified construction costs annually for the next four years until the escrow account totals fifty percent (50%) of the total certified estimate of construction costs of the structural BMPs. This annual escrow fund contribution must be deposited by February 1<sup>st</sup> of each year and shall be reflected on the annual escrow fund financial report that shall be submitted as part of the required annual operations and maintenance report. ~~Two-thirds (2/3) of the total amount of the escrow fund budget shall be deposited 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. 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 escrow fund budget.~~

- (3) A statement that grants the Town of Navassa and its authorized agents and employees a right to enter upon the property to inspect, monitor, maintain, repair, and reconstruct structural BMPs. (This should probably be moved to the general requirements above)
- (4) Allowing the Town of Navassa to recover from the association and its member's any and all costs the Town of Navassa expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of Navassa all of its expended costs, after forty-five (45) days written notice, shall constitute a breach of the agreement. In case of a deficiency, the Town of Navassa 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. Interest, collection costs, and attorney fees shall be added to the recovery.
- (5) A statement that this agreement shall not obligate the Town of Navassa to maintain or repair any structural BMPs, and the Town of Navassa shall not be liable to any person for the condition or operation of structural BMPs. (This should probably be moved to the general requirements above)
- (6) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Navassa to enforce any of its ordinances as authorized by law. (This should probably be moved to the general requirements above)
- (7) A provision indemnifying and holding harmless the Town of Navassa for any costs and injuries arising from or related to the structural BMP, unless the

Town of Navassa 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. (This should probably be moved to the general requirements above)

### **Sec. 1-56. Inspection Program.**

Inspections and inspection programs by the Town of Navassa 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. 1-57. Performance Guarantee Security for Installation and Maintenance.**

(A) *May be required.* In lieu of requiring the completion, installation, and dedication of all improvements prior to final plat ~~or permit~~ approval the town council may, at its discretion, enter into an agreement with the applicant whereby the applicant shall agree to complete all required improvements. Once said agreement is signed by both parties and the security required herein is provided, the final plat may be approved, if all other requirements of this article are met. To secure this agreement, the applicant shall provide, subject to the approval of the town council, a performance ~~guarantee security of~~ ~~that could be~~ bond with surety, cash escrow, letter of credit or other acceptable legal arrangement for one and twenty-five one-hundredths (1.25) times the entire cost of the guaranteed improvements.

The performance ~~guarantee security~~ will ensure that BMP's are;

- (1) Installed by the permittee as required by the approved stormwater management plan, and/or
- (2) Maintained by the permittee ~~owner~~ as required by the operation and maintenance agreement.

(B) *Amount.* (BASE Recommends deleting this section "B")

- (1) **Installation.** The amount of an installation performance ~~guarantee security~~ shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.
- (2) **Maintenance.** The amount of a maintenance performance ~~guarantee security~~ shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long-term inflation.

(C) **Uses of performance ~~guarantee security~~.**

- (1) **Forfeiture provisions.** The performance ~~guarantee security~~ shall contain forfeiture provisions for failure, after 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, permits 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 construct, maintain, repair or reconstruct any structural BMP in accordance with the applicable permit or operation and maintenance agreement. Such expenditure of funds shall only be made after a written request to 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 of Navassa shall retain any of the unused deposited cash funds or other security, which shall be retained for the maintenance escrow fund.
- (3) **Costs in excess of performance ~~guarantee security~~.** If the Town of Navassa takes action upon such failure by the ~~permittee applicant or owner~~, the town may collect from the ~~permittee applicant or owner~~ the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.
- (4) **Refund.** Within sixty (60) days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance association with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation and deficiencies shall be corrected 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. 1-58. Notice to owners.**

(A) *Deed recordation and indications on plat.* The applicable operations and maintenance agreement or conservation easement (whichever is applicable) pertaining to every structural BMP on the plan 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 (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.* At the determination of the Stormwater Administrator, to assure compliance with this ordinance, 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.

**Sec. 1-59. Records of installation and maintenance activities.**

The owner of each structural BMP shall keep records of inspections, maintenance, and repairs for at least ten (10) years from the date of creation of the record and shall submit the same upon request to the Stormwater Administrator.

**Sec. 1-60. Nuisance.**

The owner of each stormwater BMP, whether structural or non-structural, shall maintain it so as not to create or result in a nuisance condition.

**Sec. 1-61. Maintenance easement.**

Every structural BMP installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

**Secs. 1-62.--1-71. Reserved.**