

§9-1405 STORMWATER MANAGEMENT REGULATIONS

a. General Provisions

- (1) **Title.** These requirements shall be officially known as “The Phase II Stormwater Requirements.” It is referred to herein as “Phase II Requirements.”
- (2) **Authority.** The Town Board of Fuquay-Varina is authorized to adopt these Phase II Requirements pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; the Charter and Other Related Laws of the Town of Fuquay-Varina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2004-163; Chapter 160A, §§ 174, 185.
- (3) **Findings.** It is hereby determined that:
 - A. *Alteration of Hydrologic.* Development and redevelopment alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge.
 - B. *Increased Quantities of Water-Borne Pollutants.* These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment.
 - C. *Apply Proper Design Controls & Management.* These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from development sites.
 - D. *Federal & State Regulations.* Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to Federal Phase II Regulations, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this Phase II Requirements.
 - E. *Regulations Established.* Therefore, the Town Board of Fuquay-Varina establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

(4) **Purpose.** The purpose of the Phase II Stormwater Requirements are as follows:

- A. *General.* The purpose of the Phase II Stormwater Requirements is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum 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. It has been determined that proper management of construction-related and post-development stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.
- B. *Specific.* The Phase II Requirements seeks to meet its general purpose through the following specific objectives and means:
 - i. *Decision-Making Processes.* Establishing decision-making processes for development that protects the integrity of watersheds and preserves the health of water resources.
 - ii. *Maintain Pre-Development Hydrologic.* Requiring that new development and redevelopment maintain the pre-development hydrologic response in their post-development state as nearly as practicable for the applicable design storm in order to reduce flooding, stream bank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats.
 - iii. *Minimum Post-Development Stormwater.* Establishing minimum post-development stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality.
 - iv. *Design & Review Criteria.* Establishing design and review criteria for the construction, function, and use of structural stormwater BMPs that may be used to meet the minimum post-development stormwater management standards.
 - v. *Better Management & Site Design Practices.* Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of green space and other conservation areas to the maximum extent practicable.

- vi. *Long-Term Responsibility.* Establishing provisions for the long-term responsibility for and maintenance of structural and nonstructural stormwater Best Management Practices (BMPs) to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety.
- vii. *Administrative Procedures.* 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.
- viii. *Coordinate with Open Space Plan & Open Space Developments.* Coordinating site design plans that include open space and natural areas within Open Space Developments, and the “Fuquay-Varina Open Space Plan”.
- ix. *Control Illicit Discharges.* Controlling illicit discharges into the municipality’s separate stormwater system.

(5) ***Applicability & Jurisdiction.*** Phase II Stormwater Requirements shall apply to all development and redevelopment as follows:

A. *General.* Beginning with and subsequent to its effective date, the Phase II Requirements shall be applicable to all development and redevelopment, including, but not limited to, site plan applications, subdivision applications, building applications, floodplain applications, and grading applications within the corporate limits of the Town of Fuquay-Varina as shown on the mapping maintained by the Town of Fuquay-Varina Engineering Department GIS and the map entitled “Areas Subject to Stormwater Requirements”, §9-1405 Stormwater Management Regulations, unless exempt under the Phase II Requirements.

B. *Exemptions*

i. *Disturbance Less Than One (1) Acre*

1. *Development.* Development that cumulatively disturbs less than one (1) acre and is not part of a larger common plan of development or sale is exempt from the provisions of this Phase II Requirements.

2. *Redevelopment.* Redevelopment that cumulatively disturbs less than one (1) acre and is not part of a larger common plan of development or sale is

exempt from the provisions of this Phase II Requirements.

- ii. *Conditions of Non-Exemption.* Development and redevelopment that disturb less than one (1) acre are not exempt if such activities are part of a larger common plan of development or sale, even though multiple, separate or distinct activities take place at different times on different schedules.
- iii. *Ongoing Farming & Forestry Activities.* 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 the Phase II Requirements.
- iv. *Grandfathered Projects.* Projects grandfathered based on the following criteria:
 1. *Industrial & Commercial Projects under Construction.* Industrial and commercial projects under construction as of July 1, 2007 and were extended by the North Carolina Permit Extension Act of 2009.
 2. *Approved Construction Plans for Industrial & Commercial Projects.* Industrial and commercial projects with approved construction plans as of July 1, 2007 and were extended by the North Carolina Permit Extension Act of 2009.
 3. *Industrial & Commercial Projects within the Town's Review Cycle.* Industrial and commercial projects within the Town's review cycle prior to July 1, 2007 and were extended by the North Carolina Permit Extension Act of 2009.
 4. *Residential Single Phase Projects.* Residential single phase projects either within the Town's review cycle, or with an approved preliminary subdivision plat, or approved construction plans, or under construction as of the July 1, 2007 and were extended by the North Carolina Permit Extension Act of 2009.
 5. *Residential Multi-Phase Projects.* Residential multi-phase projects either within the Town's review cycle, or with an approved preliminary subdivision plat, or approved construction plans, or under construction as of the effective date of the Land Development Ordinance, with the provision that exempt phases must be under construction within 5 years of July 1, 2007 and were extended by the North Carolina Permit Extension Act of

2009. If changes to the approved preliminary subdivision plat result in an increase in the number of lots and/or an increase in the overall impervious surface area by ten percent (10%) or more, the requirements of the Phase II Regulations shall then apply to that changed phase of the project.

- C. *Compliance & Permit Required.* No development or redevelopment shall occur except in compliance with the provisions of the Land Development Ordinance or unless exempted. No development for which a permit is required pursuant to the Land Development Ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.
- D. *Violation(s) Continues.* Any violation of provisions existing on the effective date of the Phase II Stormwater Requirements, February 3, 2014, shall continue to be a violation under the Phase II Requirements and be subject to penalties and enforcement under the Land Development Ordinance unless the use, development, construction, or other activity complies with the provisions of the Phase II Stormwater Requirements.

(6) ***Interpretation.*** Phase II Stormwater Requirements shall be interpreted as follows:

- A. *Meaning & Intent.* All provisions, terms, phrases, and expressions contained in the Phase II Requirements shall be construed according to the general and specific purposes set forth in §9-1405 Stormwater Management Regulations (4), Purpose of this Article. If a different or more specific meaning is given for a term defined elsewhere in the Code of Ordinances of the Town of Fuquay-Varina, the meaning and application of the terms in the Phase II Requirements shall control for purposes of application of the Land Development Ordinance.
- B. *Text Controls in Event of Conflict.* In the event of a conflict or inconsistency between the text of the Land Development Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.
- C. *Authority for Interpretation.* The Stormwater Administrator has the authority to determine the interpretation of this Article in the Land Development Ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of the Phase II Requirements.
- D. *References to Statutes, Regulations, & Documents.* Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the Design 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. *Computation of Time.* The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, State/Federal holiday, or holiday observed by the Town of Fuquay-Varina, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, State/Federal Holiday, or holiday observed by the Town of Fuquay-Varina. References to days are calendar days unless otherwise stated.
- F. *Delegation of Authority.* Any act authorized by the Phase II Requirements to be carried out by the Stormwater Administrator of the Town of Fuquay-Varina may be carried out by his or her designee.
- G. *Usage.* Terms shall be interpreted as follows:
 - i. *Mandatory & Discretionary Terms.* The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.
 - ii. *Conjunctions.* Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one (1) or more of the connected items, conditions, provisions or events apply.
 - iii. *Tense, Plurals, & Gender.* Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.
- H. *Measurement & Computation.* Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

(7) ***Design Manual.*** The design manual stormwater management shall apply as follows:

A. *References to Design Manual*

- i. *Stormwater Administrator Responsibility.* The Stormwater Administrator 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.
- ii. *Acceptable Stormwater Practices.* The Design Manual includes a list of acceptable stormwater treatment practices, including the 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.

B. *Relationship of Design Manual with North Carolina Department of Environmental & Natural Resources.* Relationship of the Design Manual published by the North Carolina Department of Environmental Quality (DEQ), Division of Energy, Mineral and Land Resources (DEMLR) to Other Laws and Regulations. 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 or guidelines in the Design Manual.

C. *Changes to Standards & 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 the Land Development Ordinance, but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing the Land Development Ordinance with regard to the application.

D. *Amendments to Design Manual.* Procedures for amending the Design Manual shall apply as follows:

- i. *Updated & Expanded Design Manual.* The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, improved knowledge of local conditions, or local monitoring or maintenance experience.

ii. *Public Notice to Amend Design Manual.* Prior to amending or updating the Design Manual, proposed changes shall be generally publicized and made available for review, and an opportunity for comment by interested persons shall be provided. Currently, DEQ provides public notices and asks for comments regarding updates to the Design Manual. This information is available on their website or by subscription to their email list serve.

(8) ***Relationship to Other Laws, Regulations, & Private Agreements.*** The relationship to other laws, regulations and agreements shall apply as follows:

A. *Conflict with Laws.* The Phase II Requirements are not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of the Phase II Requirements are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of the Phase II Requirements imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

B. *Private Agreements.* The Phase II Requirements are not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of the Phase II Requirements are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of the Land Development Ordinance, which this Article is a part, shall govern. Nothing in the Phase II Requirements shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with the Land Development Ordinance. In no case shall the Town of Fuquay-Varina be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

(9) ***Severability.*** If the provisions of any section, subsection, paragraph, subdivision or clause of this Article shall be adjudged invalidated 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 Article.

b. **Definitions**

When used in this Article, the words and terms shall have the meaning set forth in **Article S Interpretations & Definitions** of the Land Development Ordinance.

c. **Administration & Procedures**

(1) **Review & Decision-making Entities.** The Stormwater Administrator shall review, oversee and make determinations as follows:

A. **Designation.** The Stormwater Administrator shall be the Town Manager or his/her designee.

B. **Powers & Duties.** In addition to the powers and duties that may be confirmed by other provisions of the Code of Ordinances of the Town of Fuquay-Varina and other laws, the Stormwater Administrator shall have the following powers and duties under the Phase II Requirements:

- i. **Applications.** To review and approve, approve with conditions, or disapproved applications for approval of plans pursuant to the Phase II Requirements.
- ii. **Interpretations.** To determine and render interpretations of the Phase II Requirements.
- iii. **Requirements, Schedules, Reviews, & Recommendations.** To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Board of Commissioners of the Town of Fuquay-Varina on such applications for development or redevelopment approvals.
- iv. **Enforcement.** To enforce the provisions of the Phase II Requirements in accordance with its enforcement provisions.
- v. **Maintain Records & Documentation.** To maintain records, maps, and official materials as they relate to the adoption, amendment, enforcement, or administration of the Phase II Requirements.
- vi. **Technical Assistance.** To provide expertise and technical assistance to the Board of Commissioners of the Town of Fuquay-Varina upon request.
- vii. **Designate Personnel.** To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- viii. **Other Action & Administration.** To take any other action necessary to administer the provisions of the Phase II Requirements.

- (2) **Review Procedures.** The following procedures shall apply to obtain a stormwater management permit:
- A. *Permit Required/Must Obtain a Permit.* A stormwater permit is required for all development and redevelopment unless exempt pursuant to the Phase II Requirements.
 - B. *Effect of Permit.* Stormwater Management permits shall govern as follows:
 - i. *Permit Governs Design & Construction.* 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.
 - ii. *Permit is Mechanism for Review, Approval & Inspection.* 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 the Phase II Requirements, whether the approach consists of structural BMPs or other techniques such as low-impact or low-density designs. 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 the Phase II Requirements.
 - C. *Authority to File Applications.* All applications required pursuant to the Phase II Requirements shall be submitted to the Stormwater Administrator by the land owner or the land owners duly authorized agent.
 - D. *Establishment of Application Requirements, Schedule, & Fees.* The following documentation and procedures shall apply:
 - i. *Application Contents & Form.* The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-development stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of the Phase II Requirements.
 - ii. *Submission Schedule.* The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by

which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

- iii. *Permit Review Fee.* The Board of Commissioners of the Town of Fuquay-Varina shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.
- iv. *Administrative Manual.* For applications required under the Phase II Requirements, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this section of Article I Environmental Protection Standards, and information on how and where to obtain the Design Manual and Administrative Manual, which shall be made available to the public.

E. *Submittal of Complete Application.* Submission of an application for a Stormwater Management permit shall be in accordance with the following:

- i. *Application Submittal.* Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section of Article I Environmental Protection Standards.
- ii. *Complete Application.* An application shall be considered as submitted only when it contains all elements of a complete application pursuant to the Phase II Requirements, along with the appropriate fee. 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. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established herein.

F. *Review.* The Stormwater Administrator shall review the application and determine whether the application complies with the standards of the Phase II Requirements in accordance with the following:

- i. *Approval.* If the Stormwater Administrator finds that the application complies with the standards of the Phase II Requirements, the Stormwater Administrator

shall approve the application. The Stormwater Administrator may impose reasonable conditions of approval as needed to ensure compliance with the Phase II Requirements. The conditions shall be included as part of the approval.

- ii. *Failure to Comply.* If the Stormwater Administrator finds that the application fails to comply with the standards of the Phase II Requirements, 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.
- iii. *Revisions & Subsequent Review.* Procedures for revisions and reviews shall be in accordance with the following:
 1. *Revised Application.* A complete revised application shall be reviewed by the Stormwater Administrator after its resubmittal and shall be approved, approved with conditions, or disapproved.
 2. *Application Withdrawn.* If a revised application is not resubmitted within 120 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 submittal fee.
 3. *Resubmittal without Payment.* One (1) resubmittal of a revised application may be submitted without payment of an additional permit review fee. Any resubmittal after the first resubmittal shall be accompanied by the appropriate submittal fee, as established pursuant to the Phase II Requirements.

(3) ***Review & Approval Schedule.*** The submittal, review and approval of a stormwater management permit shall be in accordance with the following:

- A. *Concept Plan & Consultation Meeting.* 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 preliminary plan of a subdivision or site plan, or other early step in the development process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints,

opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the Town of Fuquay-Varina open space plan, and other relevant resource protection plans may be consulted in the discussion of the concept plan. To accomplish this goal the following information must be included in the concept plan, which should be submitted in advance of the meeting:

- i. *Existing Conditions & Proposed Layout.* Existing conditions and proposed site layout sketch plans, which illustrates at a minimum; existing and proposed topography, perennial and intermittent streams, mapping of predominant soils from the 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.
 - ii. *Natural Resources Inventory.* A written or graphic inventory of the natural resources on 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 system setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
 - iii. *Stormwater Management System Concept 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, swells, and storm drains; flow paths; location of floodplain/floodway limits; relationship of the site to upstream and downstream properties and drainages; and preliminary location of a proposed stream channel modifications, such as bridge or culvert crossings.
- B. *Stormwater Management Permit Application.* The stormwater management permit application shall detail how post-development stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of the Phase II Requirements, including **§9-1405 Stormwater Management Regulations, d. Standards** of the Section. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist, or landscape architect, and the

engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence and practice, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the Design Manual, and that the designs and plans ensure compliance with the Phase II Requirements.

C. *As-Built Plans & Final Approval.* The final documentation and certifications required upon completion of a project are as follows:

- i. *Certification of Stormwater Management Plan.* 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.
- ii. *Final Design Specifications.* 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. 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 the Phase II Requirements.

D. *Other Permits.* No Certificate of Compliance or Occupancy shall be issued by the Inspections Department without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Inspections Department may elect to withhold a percentage of permits or Certificates of Occupancy until as-built plans are submitted and final inspection and approval has occurred by the Stormwater Administrator.

(4) *Approvals.* Approvals shall mean the following:

A. *Effect of Approval.* Approval authorizes the applicant to go forward with only the specific plans and activities 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.

B. *Time Limit/Expiration.* Approvals shall be limited based on the following criteria:

- i. *Plan Null & Void.* An approved plan shall become null and void if the applicant has failed to make substantial progress on the site within one (1) year after the date of approval of the permit. The Stormwater Administrator may grant a single one (1) 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.
- ii. *Extension.* In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe on the applicant's vested rights, if any.

(5) ***Appeals.*** Any aggravated person affected by any decision, order, requirement, or determination related to the interpretation or application of the Phase II Requirements and made by the Stormwater Administrator may file an appeal to the Board of Adjustment within 30 days of the written decision. Procedures for filing appeals and for Superior Court review are covered in **Article Q Procedures & Administration**.

d. **Standards**

All development and redevelopment to which the Phase II Requirements applies shall comply with the standards of this Section.

(1) ***Development Standards for Low Density Projects.*** Low density projects shall comply with each of the following standards:

- A. *Vegetative Conveyance.* Stormwater runoff from the development shall be transported from the development by vegetative conveyances to the maximum extent practicable.
- B. *Built-upon Area & Riparian Buffers.* The relation of built-upon area and riparian buffers shall be as described in **Article I Environmental Protection Standards, §9-1404 Riparian Buffers Regulations**.
- C. *Enforceable Restriction.* 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, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

- D. As determined by the Engineering Director, developments may be considered both high- and low-density, based on one (1) or more of the following criteria:
- i. Natural drainage area boundaries
 - ii. Variations in land use throughout the project
 - iii. Construction phasing
- (2) ***Development Standards for High Density Projects.*** High density projects shall implement stormwater control measures that comply with each of the following standards:
- A. ***Stormwater Runoff Rate.*** The measures shall control and treat the difference in stormwater runoff rate leaving the project site between the pre-and post-development conditions for, at a minimum, the 1-year, 24-hour storm, the 2-year, 24 hour storm, and the 10 year, 24 hour storm. Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - B. ***Storage Volume.*** The measures shall provide sufficient storage volume to retain on-site the runoff from the first inch of rainfall. Runoff drawdown time shall be a minimum of 48 hours, but not more than 120 hours.
 - C. ***Total Suspended Solids.*** 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.
 - D. ***Project in Accordance with Design Manual.*** General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the Design Manual.
 - E. ***Built-upon Area & Riparian Buffers.*** The relation of built upon area and riparian buffers shall be as described in **Article I Environmental Protection Standards, §9-1404 Riparian Buffers Regulations.**
 - F. ***Enforceable Restriction.*** The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
- (3) ***Standards for Stormwater Control Measures.*** The following standards shall apply for the implementation of 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 the Phase II Requirements 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 the Phase II Requirements.
- B. *Determination of Adequacy of Alternatives.* Stormwater treatment practices that are designed, and constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presented to meet the minimum water quality and quantity performance standards of the Phase II Requirements. 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 the Phase II Requirements. 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.
- (4) ***Completion of Stormwater BMPs.*** The developer of any nonresidential development will be expected to have installed and stabilized the final stormwater BMPs supporting their development prior to issuance of a Certificate of Occupancy, unless otherwise specified in [§9-1808 Common Application Procedures, z. Site Plan, \(3\) Site Plan Components, N. Phasing, vi. Stormwater Control Measures](#). For residential development, the final stormwater device must be installed at such point that 75% of the residential lots are completed and sold.
- (5) ***On-Site Wastewater.*** On-site systems for domestic wastewater covered by the Phase II Requirements 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 assume the proper operation of the system to meet these standards, and the septic system shall be reused or disposed of in a manner that does not present significant risk to human health, surface water or groundwater.
- (6) ***Variances.*** The procedures for applying for a variance are provided in [Article Q Procedures & Administration](#).

e. **Maintenance**

(1) **General Standards for Maintenance.** The following maintenance standards shall apply structural BMP's as follows:

A. *Function of BMPs as Intended.* The owner of each structural BMP installed pursuant to the Phase II Requirements 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 & Report.* The following maintenance inspections and reports are required:

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

1. The name and address of the landowner.
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. *BMP Performance.* A statement that all inspected structural BMPs is performing properly and is in compliance with the terms and conditions of the approved maintenance agreement required by the Phase II Requirements.
6. The original signature and seal of the engineer, surveyor or landscape architect.

ii. *Stormwater Administrator Forms.* 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 (1) year from the

date of as-built certification and each year thereafter on or before the date of the as-built certification.

(2) ***Operation & Maintenance Agreement***

- A. *General.* The following standards and responsibilities shall apply to all operation and maintenance agreements:
- i. *Homeowners' Association Established.* For subdivisions, the Town requires that a homeowner's association (HOA) be formed if only for the purpose of completing the construction, maintenance, and inspection responsibilities as set forth by the Phase II Requirements. The HOA structure and responsibilities shall be established during the preliminary platting process for the subdivision.
 - ii. *Execute Operation & Maintenance Agreement.* Prior to the conveyance or transfer of any lot or building site to be served by a structural BMP pursuant to the Phase II Requirements, 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 this maintenance agreement. Transference to a properly formed HOA can occur as set forth in e. Maintenance, (2), B, viii.
 - iii. *Maintenance & Repair.* 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 of the structural BMP. In addition, the owner or applicant shall grant to the Town of Fuquay-Varina a right of entry in the event that the Stormwater Administrator has reason to believe that 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 Fuquay-Varina to assume responsibility for the structural BMP.
 - iv. *Operation & Maintenance Agreement Approval.* The operation and maintenance agreement shall be approved by the Stormwater Administrator prior to plan approval, and it shall be referred on the final plat and shall be recorded with the Wake County Register of Deeds upon final plat approval. A

copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within 14 days following the recordation.

- B. *Special Requirement for Homeowners' & Other Associations.* For all structural BMPs required pursuant to the Phase II Requirements that are to be or are owned and maintained by a homeowner's association, property owner's association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
- i. *Association Acknowledges Responsibility.* Acknowledgment that the association shall continually operate and maintain the stormwater control and management facilities.
 - ii. *Collection of Dues for Operation & Maintenance.* Pursuant to the responsibilities of the homeowner's association to maintain and fund inspection of structural best management practices, the homeowner's association covenant shall include the right of the homeowner's association to collect dues for the purposes of supporting the operation, maintenance, and repair of structural best management practices that are included in the operation and maintenance agreement. The homeowner's association shall establish in its covenants the ability to assess properties for activities associated with the operation and maintenance of the stormwater devices. The homeowner's association must establish officers and the president of the homeowner's association shall be the primary point of contact regarding management of the BMPs and maintenance.
 - iii. *Town Access Granted.* Granting to the Town of Fuquay-Varina a right of entry to inspect, monitor, maintain, repair, and reconstruct structural BMPs.
 - iv. *Town to Recover Costs.* Allowing the Town of Fuquay-Varina to recover from the association and the members any and all costs the Town of Fuquay-Varina expends to maintain or repair the structural BMPs or to correct any operational deficiencies. Failure to pay the Town of Fuquay-Varina all of its extended cost, after 45 days written notice, shall constitute a breach of the agreement. The Town of Fuquay-Varina shall thereafter be entitled to bring an action against the association 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.
 - v. *Town not Obligated to Maintain or Repair.* A statement that this agreement shall not obligate the Town of Fuquay-Varina to maintain or repair any

structural BMPs and the Town of Fuquay-Varina shall not be liable to any person for the condition or operation of the structural BMPs.

- vi. *Town's Right to Enforce Ordinances & Laws.* A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Fuquay-Varina to enforce any of its ordinances as authorized by law.
- vii. *Indemnify & Hold Harmless.* A provision indemnifying and holding harmless the Town of Fuquay-Varina for any costs and injuries arising from or related to the structural BMPs, unless the Town of Fuquay-Varina has agreed in writing to assume the maintenance responsibility for the BMPs and has accepted dedication of any and all rights necessary to carry out that maintenance.
- viii. *Transfer Responsibility for Maintenance & Repair.* At such times 75% of the lots within the residential subdivision are completed and sold, the property owner/developer will be permitted to transfer responsibility for the BMPs to the homeowner's association that has been established in accordance with the Phase II Requirements if the stormwater management system, including structural BMPs are properly maintained and functioning as designed, as certified by a qualified professional acting within their area of expertise.

(3) ***Inspection Program.*** The establishment of an inspection program shall be in accordance with the following:

- A. *Inspection Program Established.* Inspections and inspection programs by the Town of Fuquay-Varina 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 the BMPs.
- B. *Inspections Requiring Search Warrants.* 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 NC General Statutes 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.

(4) ***Performance Security for Installation & Maintenance.*** Security for the installation and maintenance of stormwater structural BMP's may be required as follows:

A. ***Underlying Agreement.*** The Town of Fuquay-Varina may, at its discretion and with the execution of an underlying agreement satisfying the requirements of the Town Attorney, require the submittal of a performance security or bond with surety, cash escrow, irrevocable letter of credit or other acceptable legal arrangements prior to approval of a final plat, or prior to completion of a phase of non-residential development as defined in §9-1808 Common Application Procedures, z. Site Plan, (3) Site Plan Components, N. Phasing, in order to ensure that the structural BMPs meet the following conditions:

- i. ***Permit Holder Installs.*** Installed by the permit holder as required by the approved stormwater management plan.
- ii. ***Maintained by Owner.*** Maintained by the owner as required by the operation and maintenance agreement.

B. ***Performance Security Amount.*** The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

C. ***Uses of Performance Security***

- i. ***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 the Phase II Requirements, approvals issued pursuant to the Phase II Requirements, or an operation and maintenance agreement established pursuant to the Phase II Requirements.
- ii. ***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 only be made after requesting the owner to comply with the permit and/or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Fuquay-Varina shall not return

any of the unused deposit cash funds or other security, which shall be retained for maintenance.

- iii. *Cost in Excess of Performance Security.* If the Town of Fuquay- Varina takes action upon such failure by the applicant or owner, the Town of Fuquay-Varina may collect from the applicant or owner for the difference should the amount of the reasonable costs of such action exceed the amount of the security held.
- iv. *Refund.* Within 60 days of the final approval, the installation performance 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.

(5) ***Notice to Owners***

- A. *Deed Recordation & Indications on Plat Map.* The applicable operations and maintenance agreement and private stormwater easement pertaining to every structural BMP shall be referenced on the final plat and shall be recorded with the Wake County Register of Deeds upon final plat approval.
- B. *Signage.* Where appropriate and in the determination of the Stormwater Administrator to assure compliance with the Phase II Requirements, 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.

- (6) ***Records of Installation & 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.
- (7) ***Nuisance.*** The owner of each stormwater BMP, whether a structural or non-structural BMP, shall maintain the BMPs so as not to create or result in a nuisance condition.
- (8) ***Private Stormwater Easement.*** Every structural BMP install pursuant to the Phase II Requirements shall be made accessible for adequate maintenance and repair by a private stormwater easement. The private stormwater easement shall provide access to the BMP by way of a public right-of-way. The easement shall be recorded and its terms shall

specify who may make use of the easement and for what purposes.

- (9) ***Special Tax Districts.*** The Town of Fuquay-Varina reserves the right to use its authority, under Article 23 of the North Carolina General Statutes to establish a special tax district for the purposes of funding stormwater maintenance and compliance activities.

f. **Enforcement & Violations**

- (1) ***General.*** The following procedures for enforcement and abatement of violations shall apply:
- A. ***Authority to Enforce.*** The provisions of the Phase II Requirements shall be enforced by the Stormwater Administrator or his/her designee, or any authorized agent of the Town of Fuquay-Varina. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of the Town of Fuquay-Varina.
- B. ***Violations are Unlawful.*** Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by the Phase II Requirements, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to the Phase II Requirements, is unlawful and shall constitute a violation of the Phase II Requirements.
- C. ***Each Day is a Separate Violation.*** Each day that a violation continues shall constitute a separate and distinct violation or offense.
- D. ***Responsible Persons/Entities.*** Any person who directs, 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 the Phase II Requirements shall be subject to the remedies, penalties and/or enforcement actions in accordance with the Land Development Ordinance. 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 the Phase II Requirements, or fails to take appropriate action, so that a violation of the Phase II Requirements 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. For the purposes of this section responsible person(s) shall include but not be limited to:

- i. *Person Maintaining Condition Resulting in or Constituting a 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 the Phase II Requirements, or fails to take appropriate action, so that a violation of the Phase II Requirements results or persists.
- ii. *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.

(2) **Remedies & Penalties.** The remedies and penalties provided for violations of the Phase II Requirements, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law and in accordance with **Article R Violations, Penalties & Legal Provisions** in the Land Development Ordinance, and may be exercised in any order in accordance to the following:

A. *Remedies.* Remedies shall be applied as follows:

- i. *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 or has otherwise cured the violation described herein.
- ii. *Disapproval of Subsequent Permits & Development Approvals.* As long as a violation of the Phase II Requirements continues and it remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Board of Commissioners may disapprove, any request for a permit or development approval or authorization provided for by the Land Development Ordinance, or any other ordinance as appropriate, for the land on which the violation occurs.
- iii. *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 the Phase II Requirements in accordance with **Article R Violations, Penalties & Legal Provisions** of the Land

Development Ordinance. Any person violating the Phase II Requirements shall be subject to the full range of equitable remedies provided in the North Carolina General Statutes, in common law and the Land Development Ordinance.

- iv. *Correction as Public Health Nuisance/Cost as Lien.* 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 General Statutes §160A-193, the Stormwater Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the cost to be assessed as a lien against the property.
- v. *Stop Work Order.* The Stormwater Administrator may issue a stop work order to the person(s) violating the Phase II Requirements in accordance with **Article R Violations, Penalties & Legal Provisions**. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the Notice of Violation & Correction Order or has otherwise cured the violation or violations described herein. The stop work order may be withdrawn or modified to enable the person(s) to take the necessary remedial measures to cure such violation or violations.

B. *Civil Penalties.* Violation of the Phase II Requirements 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 in accordance with **Article R Violations, Penalties & Legal Provisions** after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of the penalty to which the Town of Fuquay-Varina is subject for violations of its Phase II Stormwater permit with the North Carolina Department of Environmental and Natural Resources.

C. *Criminal Penalties.* Violation of this Phase II Requirements may be enforced as a misdemeanor subject to the maximum fine permissible in accordance with **Article R Violations, Penalties & Legal Provisions** and under North Carolina law.

(3) **Procedures.** Where a complaint and/or violation has been identified in the following steps shall apply as the procedure to abate such complaint and/or violation:

A. *Initiation/Complaint.* Whenever a violation of the Phase II Requirements occurs, or is alleged to have occurred, any person may file a signed and written complaint. Such complaint shall state fully the alleged violation and the bases thereof, and shall be filed with the Stormwater Administrator who shall record the complaint. The complaint

shall be investigated promptly by the Stormwater Administrator.

- B. *Inspection.* The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with the Phase II Requirements.
- C. *Notice of Violation & Order to Correct*
- i. *Notice of Violation in Writing.* When the Stormwater Administrator finds that any building, structure, or land is in violation of the Phase II Requirements, the Stormwater Administrator shall notify, in writing, the property owner or other person violating the Phase II Requirements in accordance with **Article R Violations, Penalties & Legal Provisions**. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.
 - ii. *Delivery of Notice of Violation.* The Stormwater Administrator shall deliver the Notice of Violation & Correction Order in accordance with **Article R Violations, Penalties & Legal Provisions**.
 - iii. *Violations Not Corrected.* If a violation is not corrected within the specified period of time, as provided in the notification, the Stormwater Administrator in accordance with **Article R Violations, Penalties & Legal Provisions** shall take appropriate action under the Phase II Requirements to correct and abate the violation and to ensure compliance with the Phase II Requirements.
- D. *Extension of Time.* A person who receives a Notice of Violation & 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 in accordance with **Article R Violations, Penalties & Legal Provisions**. 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 the Phase II Requirements. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which the correction must be made, after which the violator will be subject to the penalties described in the Notice of Violation &

Correction Order.

- E. *Enforcement after Time to Correct.* After the time has expired to correct the 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 in accordance with **Article R Violations, Penalties & Legal Provisions**.
- F. *Emergency Enforcement.* If delay in correcting a violation would seriously threaten the effective enforcement of the Phase II Requirements or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation in accordance with **Article R Violations, Penalties & Legal Provisions**. Any person so ordered shall cease any violation immediately.

g. **Illicit Discharges**

- (1) ***Illicit Discharges Determined.*** No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly into any stormwater conveyance, the waters of the State, or upon the land in any manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, in a liquid, solid, gas, or other substance form, other than stormwater. It is further provided that non-stormwater discharges associated with the following activities may be allowed and provided that they do not significantly impact water quality:
 - A. Water line flushing
 - B. Landscape irrigation
 - C. Diverted stream flows
 - D. Rising groundwater
 - E. Uncontaminated groundwater infiltration (as defined at 40 CFR 35.2005(20))
 - F. Uncontaminated pumped groundwater
 - G. Discharges from potable water sources

- H. Foundation drains
- I. Air conditioning condensation
- J. Irrigation water
- K. Springs
- L. Water from crawl space pumps
- M. Footing drains
- N. Lawn watering
- O. Individual residential car washing
- P. Flows from riparian habitats and wetlands
- Q. De-chlorinated swimming pool discharges
- R. Street wash-water
- S. 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 municipality's separate storm-sewer system shall be authorized by the Town of Fuquay-Varina.
- T. Prohibited Substances including but are not limited to; oil, antifreeze, chemicals, animal waste, paints, garbage, litter, hazardous substance under the Resource Conservation and Recovery Act.

(2) ***Illicit Connections***

- A. *Connection to a Stormwater Conveyance.* Connection to a stormwater conveyance or stormwater conveyance system that allows the discharge of non-stormwater, other than the exclusions described in (1) above, are unlawful. Prohibited connections include but are not limited to, floor drains, wastewater from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and wastewater from septic systems.

- B. *Existing Connections in Violation.* Where such connections exist in violation of the Phase II Requirements, and said connections were made prior to the adoption of the Phase II Requirements or any other ordinance prohibiting such connections, the property owner or the person using said connections shall remove the connection within one (1) year following the effective date of the Phase II Stormwater Requirements.
 - C. *Designated Time to Remove Connection.* The Stormwater Administrator shall designate the time within which the connection shall be removed where it is determined that said connection:
 - i. *Discharge of Hazardous Material.* 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.
 - ii. *Validation of other Regulations or Ordinance.* Was made in violation of any applicable regulation or ordinance, other than the Phase II Requirements.
 - D. *Set Time Limit for Compliance.* In setting the time limit for compliance, the Stormwater Administrator shall take into consideration the following:
 - i. *Quantity & Complexity.* The quantity and complexity of the work.
 - ii. *Delays.* The consequences of delay.
 - iii. *Potential Harm.* The potential harm to the environment, to the public health, and to public and private property.
 - iv. *Cost.* The cost of remedying the damage.
- (3) **Spills.** Spills or leaks having the potential to discharge into a stormwater conveyance system shall be abated in accordance with the following standards:
- A. *Spills or Leaks Discharge.* Spills or leaks of polluting substance released, discharged to, or having the potential to be released or discharge to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.
 - B. *Responsible Person(s).* Persons in control of the polluting substance immediately prior to their release or discharge, and persons owning the property on which the substance

were released or discharge, shall immediately notify the Stormwater Administrator, Public Utilities Director, and/or Fire Chief, as appropriate, of the release or discharge, as well as making any required notifications under State and Federal law.

- (4) **Nuisance.** Illicit discharges and illicit connections which exist within the Town limits or within one (1) mile thereof 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. Such public nuisances shall be abated in accordance with the procedures set forth in the Town Code of Ordinances, **Part 8 Offenses, Chapter 4 Health, Sanitation & Public Nuisances, §8-4002 Nuisances Prohibited**, Enumeration.

h. Effective Date

The Phase II Stormwater Requirements took effect on February 3, 2014 and come forward by reenactment of all the provisions and continue to be in effect for past and present developments and projects under the Phase II Stormwater Requirements, and shall be effective upon adoption of the Land Development Ordinance. The Phase II Stormwater Requirements in whole comes forward with all the provisions of the Phase II Stormwater Requirements enacted February 3, 2014, and it is not the intention to repeal but rather to reenact and continue to enforce without interruption of such existing provisions, such that all rights and liabilities that have occurred thereafter are reserved and may be enforced. The enactment of the Land Development Ordinance, which the Phase II Stormwater Requirements are a part, shall not affect any action, suit or processing instituted or pending.

§9-1406 CLEAR-CUTTING & PROTECTION OF HERITAGE TREES REGULATIONS

a. Authority

The State of North Carolina Legislature adopted Secession Law, 2001-191, HB 910, which was ratified on June 12, 2001 authorizing the Town of Fuquay-Varina to limit the clear-cutting of trees in perimeter buffer zones prior to development and allow for the protection of specimen or “Heritage” trees during the development process. The Town Board of Commissioners of the Town of Fuquay-Varina hereby ordain and enacts into law the following regulations to regulate clear-cutting and the protection of heritage trees.

b. Purpose

The Town of Fuquay-Varina desires to develop in a manner that allows development to occur in harmony with the natural environment and protect existing vegetation when and where practical to improve the quality and character of the Town. The Clear-Cutting and Protection of Heritage