



Fuquay-Varina Board of Commissioners

June 3, 2024

*AN ORDINANCE BY THE GOVERNING BOARD
OF THE TOWN OF FUQUAY-VARINA, NORTH CAROLINA
AMENDING THE TOWN CODE OF ORDINANCES
PART 9, LAND DEVELOPMENT ORDINANCE
AMENDMENT NO. 27*

CTA-2024-02

NOW, THEREFORE BE IT ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina, North Carolina, the following:

Section 1. Article I ENVIRONMENTAL PROTECTION STANDARDS is amended as follows:

§9-1405 STORMWATER MANAGEMENT REGULATIONS

[See Attachment A – CTA-2024-02 –§9-1405 STORMWATER MANAGEMENT REGULATIONS](#)

Section 2. Article S INTERPRETATIONS & DEFINITIONS is amended as follows:

§9-1901 GENERAL DEFINITIONS

APPROVED ACCOUNTING TOOL (Stormwater Management). The most recent version of the accounting tool for calculating nutrient loading and reduction approved by the Division for the relevant geography and development type under review.

BUILT-UPON AREA (BUA) (Stormwater Management) (Watershed Protection). Built-upon area" means impervious surface and partially impervious surface to the extent that the partially impervious surface does not allow water to infiltrate through the surface and into the subsoil. The term defining built upon areas that shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, paved parking and roads, recreation facilities (e.g. tennis courts), etc. (Note: gravel, wooden slatted decks and the water area of a swimming pool are considered pervious.)

COMMISSION (Erosion & Sedimentation Control). The North Carolina Sedimentation Control Commission.
(Stormwater Management). The North Carolina Environmental Management Commission, in the Department.

DESIGN MANUAL (Stormwater Management). The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the Design Manual are to the latest published edition or revision.

DEVELOPMENT (Flood Damage Prevention). The term defining any man-made change or land disturbing activity to improve an unimproved real estate, property, which adds to or changes the amount of impervious or partially impervious cover on a land area, or which otherwise decreases the infiltration of precipitation into the soil including, but not limited to, buildings or other structures, timber harvesting, conversion of forest land to non-forest use, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. **(Stormwater Management).** Any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the subsoil. When additional development occurs at a site that has existing development, the built-upon area of the existing development shall not be included in the density calculations for additional stormwater control requirements, and stormwater control requirements cannot be applied retroactively to existing development, unless otherwise required by federal law.

DEVELOPMENT APPROVAL (Stormwater Management). An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.

DIVISION (Stormwater Management). The Division of Water Resources in the Department.

ENGINEERED STORMWATER CONTROL (Stormwater Management). A physical device designed to trap, settle out, filter, or otherwise remove pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Engineered stormwater control includes physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control" is synonymous with "structural practice," "Primary SCM", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

EXISTING DEVELOPMENT (Stormwater Management). Means the same as defined in 15A NCAC 02H .1002(18).

LAND DISTURBING ACTIVITY (Erosion & Sedimentation Control) (Stormwater Management). The term defining any use of the land by any person in residential, industrial, education, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

LOAD (Stormwater Management). Means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Load in this ordinance refers to pounds of nitrogen per year.

LOADING RATE (Stormwater Management). Means the mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this ordinance refers to pounds of nitrogen per acre per year.

MAJOR VARIANCE (Stormwater Management). A variance that is not a "minor variance" as that term is defined in this Rule. For provisions in this ordinance that are more stringent than the state's minimum water supply protection rules and Neuse rules, a variance to this ordinance is not considered a major variance as long as the result of the variance is not less stringent than the state's minimum requirements.

MINOR VARIANCE (Stormwater Management). A variance from the minimum Neuse Stormwater rules that results in the relaxation of up to 10 percent of any vegetated setback, density, or minimum lot size requirement applicable to low density development, or the relaxation of up to five percent of any vegetated setback, density, or minimum lot size requirement applicable to high density development. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.

MINIMUM DESIGN CRITERIA (Stormwater Management). Means the same as defined in 15A NCAC 02H .1002(24).

NITROGEN, NUTRIENT (Stormwater Management). Means total nitrogen unless specified otherwise.

OUTFALL (Stormwater Management). A point at which stormwater (1) enters surface water or (2) exits the property of a particular owner.

PARCEL (Stormwater Management). Means the same as project in this list of definitions.

PERMANENT NUTRIENT OFFSET CREDITS (Stormwater Management). Means the same as defined in 15A NCAC 02B .0701(38).

PROJECT (Stormwater Management). Means the same as defined in 15A NCAC 02H .1002(38).

RUNOFF TREATMENT (Stormwater Management). Means the same as defined in 15A NCAC 02H .1002(43).

RUNOFF VOLUME MATCH (Stormwater Management). Means the same as defined in 15A NCAC 02H .1002(44).

SITE PLAN (Stormwater Management). A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.

STORMWATER RUNOFF (Erosion & Sedimentation Control) (Stormwater Management). The term defining the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.

STORMWATER SYSTEM (Stormwater Management). All engineered stormwater controls and conveyances owned or controlled by a person that drain to the same outfall. A system may be made up of one or more engineered stormwater controls.

TOTAL NITROGEN (Stormwater Management). Means the sum of the organic, nitrate, nitrite, and ammonia forms of nitrogen in water.

This Ordinance of the Town of Fuquay-Varina Board of Commissioners is hereby adopted this 3rd day of June in the year 2024 in Fuquay-Varina, North Carolina.

FUQUAY-VARINA, NORTH CAROLINA

J. Blake Massengill, Mayor

ATTEST

(TOWN SEAL)



Rose H. Rich, Town Clerk

CERTIFICATION BY RECORDING OFFICER

The undersigned duly qualified and acting Town Clerk of the Town of Fuquay-Varina does hereby certify: That the above/attached ordinance is a true and correct copy of the ordinance authorizing an amendment to Part 9: Land Development Ordinance of the Town Code, as regularly adopted at a legally convened meeting of the Town Board of Commissioners duly held on the- - - 3rd day of June, 2024; and, further, that such ordinance has been fully recorded in the journal of proceedings and records in my office. IN WITNESS WHEREOF, I have hereunto set my hand this - - - 3rd day of June 2024.

(Signature of Recording Officer)

(Title of Recording Officer)

§9-1405 STORMWATER MANAGEMENT REGULATIONS

a. General Provisions

- (1) ***Title.*** These requirements shall be officially known as “Stormwater Management Regulations.” It is referred to herein as “this/the section.”
- (2) ***Authority.*** The Town Board of Fuquay-Varina is authorized to adopt these Stormwater Management Regulations 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 (EMC) thereunder; Session Law 2004-163; as well as Chapter 143-215.6A; Chapter 153A-454 & Chapter 153A, Article 18; Chapter 160A, §§ 174, 185; Chapter 160A, Article 19 (Planning and Regulation of Development); & Chapter 160D, Articles 2, 3, 4, 7, & 8, specifically §§ 174, 185, 404, & 459.
- (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. ***Phase II Stormwater Rules.*** 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. *Neuse Rules*. Further, the EMC has identified the Neuse River Basin Estuary, as nutrient sensitive waters; has identified all or a portion of the estuary as impaired waters under the federal Clean Water Act due to exceedances of the chlorophyll a standard; and has promulgated rules (the “Neuse Rules”) to reduce the average annual loads of nitrogen delivered to the estuary from all point and nonpoint sources of these nutrients located within its watershed, including stormwater from new development within the Town;
- F. *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.***

- A. *General*. The purpose of this section 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*. This section seeks to meet its general purpose through the following specific objectives and means:
 - i. *Decision-Making Processes*. Establishing decision-making processes for development that protect 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 engineered stormwater control measures (SCMs) 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 engineered stormwater controls (SCMs) 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 denial of stormwater management plans, for the inspection of approved projects, and to assure appropriate long-term maintenance.
- viii. Requiring that new development not exceed export targets for nitrogen in stormwater runoff for the watershed through site layout, engineered stormwater controls, or permanent nutrient offset credits.
- ix. *Coordinate with Open Space Plan & Planned Unit Developments*. Coordinating site design plans that include open space and natural areas within Planned Unit Developments, and the “Fuquay-Varina Open Space Plan”.
- x. *Control Illicit Discharges*. Controlling illicit discharges into the municipality’s separate stormwater system and waters of the State within the extraterritorial jurisdiction (ETJ) and the Neuse River Basin Estuary.

- xi. *Public Education and Outreach.* Providing education and outreach to the public regarding methods to prevent and minimize pollutant contributions to the municipal separate stormwater system and waters of the State within the ETJ and the Neuse River Basin Estuary.

(5) ***Applicability & Jurisdiction.***

A. *General.* Beginning with and subsequent to its effective date [July 1, 2024], this ordinance shall be applicable to all development and expansion of development throughout the corporate limits and within the extraterritorial jurisdiction of the Town of Fuquay-Varina, including, but not limited to: site plan applications, subdivision applications, building applications, floodplain applications, and grading applications, unless exempt pursuant to this section, **§9-1405 Stormwater Management Regulations.**

B. *Exemptions*

- i. Single family and duplex residential and related recreational development and expansion of development that disturbs less than one (1) acre;
- ii. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half (1/2) acre and does not expand existing structures on a parcel;
- iii. Commercial, industrial, institutional, multifamily residential or local government development that disturbs less than one half (1/2) acre and expands existing structures on a parcel, but does not result in a cumulative built-upon area for the parcel exceeding twenty-four percent;
- iv. Development that disturbs less than the above thresholds are not exempt if such activities are part of a larger common plan of development or sale and the larger common plan exceeds the relevant threshold, even though multiple, separate or distinct activities take place at different times on different schedules;

- v. Development of an individual single-family or duplex residential lot that is not part of a larger common plan of development or sale and does not result in greater than five percent (5%) built-upon area on the lot;
- vi. Existing development or redevelopment prior to July 1, 2024;
- vii. Development or expansion of development for which the permit application was submitted prior to July 1, 2024, is optionally exempt from the provisions of §9-1405 Stormwater Management Regulations per the requirements of N.C.G.S. 143-755;
- viii. 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) or activities subject to requirements of the Neuse River Basin Agriculture Rule, 15A NCAC 02B.0712 are exempt from the provisions of **§9-1405 Stormwater Management Regulations**.

C. *Compliance & Permit Required.* No development or redevelopment shall occur except in compliance with the provisions of the Land Development Ordinance or unless exempted by section B. above. 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. *Federal, State, and local government projects.* Federal, state, and Town projects must comply with this section unless otherwise exempted.

E. *Stormwater Map.*

- i. The provisions of **§9-1405 Stormwater Management Regulations** shall apply as shown on the mapping maintained by the Town of Fuquay-Varina and the map entitled “Town of Fuquay-Varina Stormwater Regulations”, which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this section.
- ii. The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this section and the geographic location of all engineered stormwater controls permitted herein. In the event of a

dispute, the applicability of §9-1405 Stormwater Management Regulations to a particular area of land or engineered stormwater control shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and the Land Development Ordinance.

- F. *Violation(s) Continues.* Any violation of provisions existing on the effective date of this section shall continue to be a violation this section and be subject to penalties and enforcement under this section unless the use, development, construction, or other activity complies with the provisions of this section.

(6) ***Interpretation.***

- A. *Meaning & Intent.* All provisions, terms, phrases, and expressions contained in the section shall be construed according to the general and specific purposes set forth in §9-1405 Stormwater Management Regulations, a. General Provisions, (4) Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Land Development Ordinance, the meaning and application of the terms in the section shall control for purposes of application of the Land Development Ordinance.
- B. *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.
- C. *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.***

- 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 defined in Article S, as the basis for decisions about stormwater permits and about the design, implementation and performance of engineered

stormwater controls and other practices for compliance with this section.

- 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 Requirements and the Neuse Rules.

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 this ordinance but prior to approval, the applicant shall have the choice of using the new Design Manual in reviewing the application and in implementing this ordinance with regard to the application or using the old Design Manual.

D. *Amendments to Design Manual.*

- i. *Updated & Expanded Design Manual.* The Design Manual may be updated and expanded from time to time, based on advancements in technology and engineering, changes to State Minimum Design Criteria,- 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.***

- 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 this section are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this section 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.* This section is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this section 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 this section 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 their 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 this section:

- i. *Applications.* To review and approve, approve with conditions, or disapproved applications for approval of plans pursuant to this section.
- ii. *Interpretations.* To determine and render interpretations of this section.
- 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 expansion of development approvals.
- iv. *Enforcement.* To enforce the provisions of this section 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 this section.
- 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 this section.

- (2) ***Review Procedures.***

A. *Permit Required/Must Obtain a Permit.* A stormwater permit is required for all development and expansion of development unless exempt pursuant to this section. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

B. *Effect of Permit.*

- i. *Permit Governs Design & Construction.* A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, engineered stormwater controls and elements of site design for stormwater management other than engineered stormwater controls.
- 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 site consistent with the requirements of this section, whether the approach consists of engineered stormwater controls or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this section.

C. *Authority to File Applications.* All applications required pursuant to this section shall be submitted to the Stormwater Administrator by the landowner, a leasee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

D. *Establishment of Application Requirements, Schedule, & Fees.*

- 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 engineered stormwater controls, and how the proposed project will meet the requirements of this section.

- 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 by this section, 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 this section, 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 this section in accordance with the following:

- i. *Approval.* If the Stormwater Administrator finds that the application complies with the standards of this section, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose reasonable conditions of approval as needed to ensure compliance with this section. 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 this section, 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.*
 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 denied.
 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 this section.
- (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 engineered 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 this section, 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 this section.
- C. *Submittal Checklist.* The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator.
- D. *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 this section. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.
- 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.***

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.*

- 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 this section and made by the Stormwater Administrator may file an appeal to the Board of Adjustment within 30 days of the written decision. In the case of requests for review of proposed civil penalties for violations of this ordinance, the Board of Adjustment shall make a final decision on the request for review within 90 days of receipt of the date the request for review is filed. Procedures for filing appeals and for Superior Court review are covered in **Article Q Procedures & Administration**.

d. **Standards**

(1) ***Development Standards for the Neuse River Basin Watershed***

A. *Nitrogen Loading Rate Targets.*

- i. The project shall meet either a nitrogen stormwater loading rate target of 3.6 pounds per acre per year (lb/ac/yr) or meet “runoff volume match” as defined in 15A NCAC 02H .1002.
- ii. The project area used for nutrient calculation and stormwater requirements includes the site area less any existing built-upon area. The project density used for determining stormwater requirements is the amount of built-upon area subject to this section at project completion divided by the project area.
- iii. The developer shall determine the nitrogen load and loading rate generated from the project area without engineered stormwater controls and determine the needed nitrogen load reduction to meet nutrient targets by using the approved accounting tool.
- iv. The nitrogen loading standards in this section are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 02B .0714 and .0295.

B. *Methods to Meet Nutrient Control Requirements.* Projects subject to this ordinance shall meet nitrogen loading targets through a combination of the following methods:

- i. Projects may reduce export of nitrogen through any combination of engineered stormwater controls treating runoff on the site, in an approved offsite regional engineered stormwater control, or through the acquisition of permanent nutrient offset credits. The developer shall calculate the nitrogen reduction provided by these controls using the approved accounting tool.
- ii. Proposed development undertaken by a local government solely as a public road expansion or public sidewalk project, or proposed

development subject to the jurisdiction of the Surface Transportation Board, may meet nitrogen reduction needs for the project entirely through the use of permanent nutrient offset credits pursuant to the Nutrient Offset Credit Trading Rule, 15A NCAC 02B .0703.

C. Use of Permanent Nutrient Offset Credits

- i. Sufficient permanent nutrient offset credits to meet project nutrient reduction needs not provided by engineered stormwater controls serving the project shall be acquired prior to approval of the development plan. The Stormwater Administrator shall issue an approval letter for the development that documents the needed nitrogen credits and where the development is located relative to the Neuse River Basin Watershed Rules' geographic requirements. All permanent nutrient offset credits permitted by this section shall meet the requirements of 15A NCAC 02B .0703.
- ii. Permanent nutrient offset credits shall be acquired pursuant to N.C. Gen. Stat. §143-214.26 and 15A NCAC 02B .0703 prior to the start of construction of the project.
- iii. A developer subject to this ordinance may acquire permanent nutrient offset credits through one of the following methods:
 1. Through a private nutrient bank;
 2. Through offsite offset provided by the developer and approved by the Town of Fuquay-Varina;
 3. Through payment into the Riparian Buffer Restoration Fund established in N.C. Gen. Stat. §143-214.21.
- iv. Excess permanent nutrient offset credits acquired beyond what is required for the development may not be applied to any other development.

(2) *Development Standards for Projects within both the Neuse River Basin Watershed and Cape Fear River Basin Watershed*

A. Control and Treatment of Runoff Volume.

- i. All projects shall meet the stormwater system design requirements set forth in 15A NCAC 02H .1003. Projects shall use a project density threshold of greater than twenty-four (>24%) percent built-upon area, whereupon high-density stormwater design is required. All engineered stormwater controls will meet the standards set in the Design Manual and the State's Minimum Design Criteria, 15A NCAC 02H .1050 through .1062.
 - ii. Where high-density stormwater design is required, stormwater systems shall meet the standards set forth in 15A NCAC 02H .1003(3) and be designed to control and treat the volume of runoff generated from all built-upon area by one inch of rainfall or equivalent runoff volume in one or more Primary SCMs. These projects may utilize offsite Primary SCMs dedicated to treating an area encompassing the project.
 - B. *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.
- (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 engineered stormwater controls and stormwater systems (also referred to as Stormwater Control Measures, or SCM) required under this section 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 proposed engineered stormwater controls will be adequate to meet the requirements of this section.
 - B. *Determination of Adequacy of Alternatives.* Engineered stormwater controls that are designed, constructed, and maintained in accordance with the criteria and specifications in the Design Manual will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the Design

Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

- (4) ***Completion of Engineered Stormwater Controls.*** The developer of any nonresidential development will be expected to have installed and stabilized the final SCMs 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, iv. 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 to SCMs as follows:
 - A. ***Function of SMCs as Intended.*** The owner of each SCM installed pursuant to this section 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 SCM 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 SCM installed pursuant to this section shall submit to the Stormwater Administrator an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect service 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 SCM.
 3. A statement that an inspection was made of all SCMs.
 4. The date the inspection was made.
 5. *SCM Performance.* A statement that all inspected SCMs are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this section.
 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 of Engineered Stormwater Control Measures (SCMs).*

- 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 homeowners' association (HOA) be formed if only for the purpose of completing the construction, maintenance, and inspection responsibilities as set forth by this section. 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 SCM pursuant to this section, 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 SCM. Until the transference of all property, sites or lots served by the SCM, 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 SCM, and shall state the terms, conditions, and schedule of maintenance of the SCM. 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 SCM; 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 SCM.
- iv. *Operation & Maintenance Agreement Approval.* The operation and maintenance agreement shall be approved by the Stormwater Administrator prior to final plat approval, and it shall be referred to 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.
- v. *Operation and Maintenance Plan.* There shall be an Operation and Maintenance Plan (O&M Plan) for every SCM, and the plan shall:
 - 1. specify all operation and maintenance work necessary for the function of all SCM components, including the stormwater conveyance system, perimeter of the device, inlet(s), pretreatment measures, main treatment area, outlet, vegetation, and discharge point;

2. require the owner to maintain, repair and, if necessary, reconstruct the SCM, and shall state the terms, conditions, and schedule of maintenance for the SCM. The O&M Plan shall specify methods to be used to maintain or restore SCM to design specifications in the event of failure.
3. be signed by the owner and notarized. The owner shall keep maintenance records, and these shall be available upon request by the Stormwater Administrator.

B. *Special Requirement for Homeowners' & Other Associations.* For all SCMs required pursuant to this section 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 continuously operate and maintain the SCM according to the specifications laid out in the Operation and Maintenance Plan.
- ii. *Collection of Dues for Operation & Maintenance.* Pursuant to the responsibilities of the homeowner's association to maintain and fund inspection of SCMs, 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 SCMs 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 SCMs and maintenance.
- iii. *Town Access Granted.* Granting to the Town of Fuquay-Varina a right of entry to inspect, monitor, maintain, repair, and reconstruct SCMs.
- 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 SCMs 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 SCMs and the Town of Fuquay-Varina shall not be liable to any person for the condition or operation of the SCMs.
- 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 SCMs, unless the Town of Fuquay-Varina has agreed in writing to assume the maintenance responsibility for the SCMs 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 SCMs to the homeowner's association that has been established in accordance with this section if the stormwater management system, including SCMs are properly maintained and functioning as designed, as certified by a qualified professional acting within their area of expertise.

(3) ***Inspection Program.***

- 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 SCMs, and evaluating the condition of the SCMs.

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 North Carolina General Statutes §15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out their official duties.

(4) ***Performance Security for Installation & Maintenance.*** Security for the installation and maintenance of SCMs 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 SCMs 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 SCMs approved under the permit, plus 25%. The amount of a maintenance performance 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 engineered stormwater controls approved under the permit, at a discount rate that reflects the Town's cost of borrowing minus a reasonable estimate of long-term inflation.

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 this section, approvals issued pursuant to this section, or an operation and maintenance agreement established pursuant to this section.
- ii. *Default.* Upon default of the owner to construct, maintain, repair and if necessary, reconstruct any SCM 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, in addition to any other penalties or damages due.
- 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 SCMs 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

SCM shall be referenced on the final plat and shall be recorded with the Wake County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the Operations and Maintenance Agreement 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*. Where appropriate and in the determination of the Stormwater Administrator to assure compliance with this section, SCMs 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 SCM 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 engineered stormwater control, whether engineered stormwater control or non-engineered stormwater control, shall maintain it so as not to create or result in a nuisance condition.

(8) ***Private Stormwater Easement***. Every SCM installed pursuant to this section shall be made accessible for adequate maintenance and repair by a private stormwater easement. The private stormwater easement shall provide access to the SCM 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. The engineered stormwater control will be shown and labeled within the easement. The easement shall be granted in favor of the Stormwater Administrator.

(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***.

A. *Authority to Enforce*. The provisions of this section shall be enforced by the Stormwater Administrator or their designee, or any authorized agent of the

Town of Fuquay-Varina. Whenever this section refers to the Stormwater Administrator, it includes their 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 this section, or the terms or conditions of any permit or other development or redevelopment approval or authorization granted pursuant to this section, is unlawful and shall constitute a violation of this section.
- 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 erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, SCM, practice, or condition in violation of this section 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 this section, or fails to take appropriate action, so that a violation of this section 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 this section, or fails to take appropriate action, so that a violation of this section 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 this section, 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 with 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 notice of violation or has otherwise cured the violation described herein.
- ii. *Disapproval of Subsequent Permits & Development Approvals.* As long as a violation of this section continues and it remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Town Board of Commissioners may deny, 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 this section in accordance with **Article R Violations, Penalties & Legal Provisions** of the Land Development Ordinance. Any person violating this section 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 this section 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.* The Stormwater Administrator may assess a civil penalty against any person who violates any provision of this ordinance or of a permit or other requirement pursuant to this ordinance. Civil penalties may be assessed up to the full amount of penalty authorized by N.C.G.S. 143-215.6A. Violation of this section 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 section 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 this section 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 basis 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 this section.

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 this section, the Stormwater Administrator shall notify, in writing, the property owner or other person violating this section 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 this section to correct and abate the violation and to ensure compliance with this section.

- 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 this section. 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 this section 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 this section, and said connections were made prior to the adoption of this section 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 this section.
 - 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 this section.
 - 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

- (1) ***Effective Date***. This section shall take effect on July 1, 2024. Upon this effective date, any and all previous versions of this section are hereby repealed and replaced.
- (2) ***Final Approvals, Complete Applications***. All development and expansion of development projects for which complete and full applications were submitted to the Town of Fuquay-Varina prior to the effective date of this ordinance may be exempted from complying with all provisions of this ordinance dealing with the control and/or management of stormwater by the choice of the developer. A phased development plan shall be deemed complete prior to the effective date of this section, and it shows:
 - A. For the initial or first phase of development or expansion of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.
 - B. For any subsequent phase of development or expansion of development, sufficient detail so that implementation of the requirements of this section to that phase of development would require a material change in that phase of the plan.