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### **12.5.8 Exceptions to the 30-Foot Setback.**

Exceptions from the 30-foot landward location of built-upon area requirement of all perennial and intermittent surface waters as well as the deed restrictions and protective covenants requirements shall be granted by the Administrator in any of the following instances:

- A. When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing (including water, sewer, or gas construction and maintenance corridors) as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.
- B. When there is a lack of practical alternatives for a stormwater treatment measures. A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration, or density of the proposed activity and all alternative designs, the basic project purpose cannot be practically accomplished in a manner which would avoid or result in less adverse impact to surface waters.
  1. These measures shall be located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable.
  2. The implementation of the alternative stormwater treatment measures shall not disturb existing vegetation.
  3. Minor understory trees may be disturbed in order to accommodate these measures. Trees and shrubs shall be placed to maximize screening where the encroachment takes place.

### **12.5.9 Illicit Discharges and Connections.**

- A. Illicit Discharges: No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State unless permitted by an NPDES Permit. Prohibited instances include but are not limited to: anti-freeze, chemicals, animal waste, paints, garbage, and litter. However, non-stormwater discharges associated with the following activities are allowed provided that the do not significantly impact water quality:
  - Dechlorinated swimming pool discharges.
  - Landscape irrigation and lawn watering.
  - Springs, diverted stream flows, rising ground waters, and flows from riparian habitats and wetlands.
  - Filter backwash and draining associated with raw water intake screening and filtering devices.
  - Condensate from residential or commercial air conditioning.
  - Residential vehicle washing.
  - Flushing and hydrostatic testing water associated with utility distribution systems.
  - Discharges associated with emergency removal and treatment activities, for hazardous materials, authorized by the federal, state or local government on-scene coordinator.

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- Uncontaminated ground water (including the collection or pumping of springs, wells, or rising ground water and ground water generated by well construction or other construction activities).
  - Collected infiltrated stormwater from foundation or footing drains.
  - Collected ground water and infiltrated stormwater from basement or crawl space pumps.
  - Irrigation water.
  - Street wash water.
  - Flows from fire fighting.
  - Discharges from the pumping or draining of natural watercourses or water bodies.
  - Flushing and cleaning of stormwater conveyances with unmodified potable water.
  - Wash water from the cleaning of the exterior of buildings, including gutters, provided that the discharge does not pose an environmental or health threat.
  - Other non-stormwater discharges for which a valid NPDES discharge permit has been authorized and issued by the U.S. Environmental Protection Agency or by the State of North Carolina, provided that any such discharges to the municipal separate storm sewer system shall be authorized by the Town.
- B. **Illicit Connections:** Connections to a stormwater conveyance or stormwater conveyance system which allow the discharge of non-stormwater, other than the exclusions described in subsection 12.5.11.A above, are unlawful. Prohibited connections include, but are not limited to: industrial/commercial floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.
1. **Prior Illegal Connections To Cease Within One (1) Year:** Where connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property owner or the person using said connection shall remove the connection within one (1) year following application of this regulation.
  2. **Hazardous Material Connections to Cease Immediately:** The aforementioned one (1) year grace period shall not apply to connections that result in the discharge of hazardous material. Nor shall the grace period apply to other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife or habitat. For such connections, the Public Works Director shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the director shall take into consideration: the quantity and complexity of the work; the consequences of delay; the potential harm to the environment, public health and to public and private property; and, the cost of remedying the damage.
- C. **Spills:** Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.
- Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall

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immediately notify the Town of Waynesville of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

**12.5.10 Operations and Maintenance Agreement.**

- A. **Private Development:** Prior to the conveyance or transfer of any private lot or building site to be served by a structural BMP pursuant to this section and prior to issuance of any permit for development or redevelopment requiring a structural stormwater BMP 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 structural BMP. Until the transference of all property, sites, or lots served by the structural BMP, the original owner or applicant shall have the primary responsibility for carrying out the provisions of the maintenance agreement.
- B. **Public Development:** BMPs that are constructed on public land within public rights-of-way and/or within public easements shall be maintained by the public body with ownership/ jurisdiction of the subject property.
- C. **Requirements for Homeowners' and Other Associations:**
  - 1. For all structural BMPs required pursuant to this section and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:
  - 2. Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
  - 3. Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the structural BMPs. If structural BMPs are not performing adequately or as intended or are not properly maintained, the Town, in its sole discretion, may remedy the situation, and in such instances the Town shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the structural BMPs, provided that the Stormwater Administrator shall first consent to the expenditure.
  - 4. Both developer contribution and annual deposits for future use of "sinking funds" shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen percent (15%) of the initial construction cost of the structural BMPs. Two-thirds ( $\frac{2}{3}$ ) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the structural BMPs. Funds shall be deposited each year into the escrow account to cover the cost of maintenance. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
  - 5. The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town depending on the design and materials of the stormwater control and management facility.