

CHAPTER 151: WATERSHED PROTECTION

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AUTHORITY AND GENERAL REGULATIONS

151.001 AUTHORITY AND ENACTMENT.

The legislature of the state has, in G.S. 153A-121, general ordinance authority; and in chapter 143, Article 21, watershed protection rules, delegated the responsibility of directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Board of Commissioners does hereby ordain and enact into law this chapter as the Watershed Protection Ordinance of the county.

(Ord. Passed 12-6-93)

151.002 JURISDICTION.

The provisions of this chapter shall apply within the areas designated as a Public Water Supply Watershed by the state Environmental Management Commission and shall be defined and established on the map entitled, "Watershed Protection Map of Alexander County, North Carolina" (the Watershed Areas Map), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter as if fully set forth herein. This chapter shall be permanently kept on file in the office of the County Clerk.

(Ord. Passed 12-6-93)

151.003 EXCEPTIONS TO APPLICABILITY.

(A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of this code of ordinances; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter or to conflict with any of its provisions.

(B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.

(C) Existing development, as defined in this chapter, is not subject to the requirements of this chapter. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the density calculations.

(D) A pre-existing lot owned by an individual prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single family residential purposes without being subject to the restrictions of this chapter. However, this exemption is not applicable to certain multiple contiguous lots under single ownership. See 151.041(B)(2) regarding the recombination of existing lots.
(Ord. Passed 12-6-93)

151.004 DEFINITIONS.

(A) For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

AGRICULTURAL USE. The use of waters for stock watering, irrigation, and other farm purposes.

BEST MANAGEMENT PRACTICES (BMP). A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

BUFFER. An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the top of the bank of each side of streams or rivers.

BUILDING. Any structure having a roof supported by columns or by walls, and intended for shelter, housing, or enclosure of persons, animals, or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport, or other such open structure, with or without a roof, shall not be deemed to make them one building.

BUILT-UPON AREA. Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover, including buildings, pavement, gravel areas (e.g., roads, parking lots, paths), recreation facilities (e.g. tennis courts) and the like. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes non-residential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed use development are considered as cluster development.

CRITICAL AREA. The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the watershed (whichever comes

first); or one-half mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridgeline of the watershed (whichever comes first). Local governments may extend the critical area as needed. Major landmarks such as highways or property lines may be used to delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half mile.

CUSTOMARY HOME OCCUPATIONS. Any use conducted entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, and the like.

DEVELOPMENT. Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on the land area or which otherwise decreases the infiltration of precipitation into the soil.

DWELLING UNIT. A building, or portion thereof, providing complete and permanent living facilities for one family.

EXISTING DEVELOPMENT. Those projects that are built of those projects that at a minimum have established a vested right under state zoning law as of the effective date of this chapter based on at least one of the following criteria:

- (1) Having received a valid local government approval to proceed with the project; or
- (2) Having an outstanding valid building permit as authorized by G.S. 153A-344.1 and 160A-385.1; or
- (3) Having expended substantial resources (time, labor, money) and having an approved site specific or phased development plan as authorized by G.S. 153A-344.1 and G.S. 160A-385.1.

EXISTING LOT or LOT OF RECORD. A lot which is part of a subdivision, a plat of which has been recorded in the office of the Register of Deeds prior to the effective date of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the effective date of this chapter.

FAMILY. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

INDUSTRIAL DEVELOPMENT. Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous

material for the purpose of manufacturing, assembling, finishing, cleaning, or developing any product or commodity.

LANDFILL. A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. Chapter 130A, Article 9. For the purpose of this chapter, this term does not include composting facilities.

LOT. A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to them.

LOT OF RECORD. See **EXISTING LOT.**

MAJOR VARIANCE. A variance from the minimum statewide water supply watershed protection rules that results in any one or more of the following:

(1) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater system;

(2) The relaxation, by a factor greater than 10%, or any management requirement under the low density option;

(3) The relaxation, by a factor greater than five percent (5%), of any buffer, density or built-upon area requirement under the high density option;

MINOR VARIANCE. A variance from the minimum statewide water supply watershed protection rules that results in a relaxation, by a factor of up to five percent (5%) of any buffer, density, or built-upon requirement under the high density option; or that results in a relaxation, by a factor of up to ten percent (10%), of any management requirement under the low density option.

NON-CONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of this section that does not meet the minimum lot size or other development requirements of the statewide watershed protection rules.

NON-RESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture, and silviculture.

PLAT. A map or plan of a parcel of land which is to be or has been subdivided.

PROTECTED AREA. The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five (5) miles upstream of and draining to the normal pool elevation of a water supply reservoir, or to the ridge line of the watershed, whichever comes first; or within ten (10) miles of and draining to a water supply intake located in a stream or river, or to the ridge line of the watershed, whichever comes first.

RESIDENTIAL DEVELOPMENT. Buildings for residence, such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and the

like and their associated outbuildings, such as garages, storage buildings, gazebos, and the like and customary home occupations.

RESIDUALS. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.

ROAD. See **STREET**.

SINGLE FAMILY RESIDENTIAL. Any development where no building contains more than one dwelling unit, every dwelling unit is on a separate lot, and where no lot contains more than one dwelling unit.

STREET or ROAD. A right-of-way for vehicular traffic which affords the principal means of access to abutting properties.

STRUCTURE. Anything constructed or erected, including but not limited to buildings which require location on the land or attachment to something having permanent location on the land.

SUBDIVIDER. Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision as herein defined.

SUBDIVISION. All divisions of a tract or parcel of land into two or more lots, buildings sites, or other divisions for the purpose of sale or building development (whether immediate or future), including all division of land involving the dedication of a new street or a change in existing streets, but not including within this definition nor subject to the regulations authorized by this ordinance the following:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for the widening or opening of streets;

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;

(5) The division of a tract into not more than two lots, where no new street right-of-way is involved and where the resultant lots are equal to or exceed the standards of this chapter;

(6) The division of a tract into plots or lots used as a cemetery.

TOXIC SUBSTANCE. Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

VARIANCE. A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or sitting within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks, and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots, and commercial boat storage areas are not water dependent structures.

WATERSHED. The entire land area contributing surface drainage to a specific point (for example, the water supply intake).

WATERSHED ADMINISTRATOR. An official or designated person of the county responsible for administration and enforcement of this chapter.

(B) *Rules of Interpretation.* For the purpose of this chapter, certain words shall be interpreted as follows:

- (1) Words in the present tense include the future tense.
 - (2) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the natural construction of the wording indicates otherwise.
 - (3) **PERSON** includes a firm, association, corporation, trust, and company as well as an individual.
 - (4) **STRUCTURE** shall include the word **BUILDING**.
 - (5) **LOT** shall include the words **PLOT**, **PARCEL**, or **TRACT**.
 - (6) **SHALL** and **WILL** are always mandatory and not merely directory.
- (Ord. passed 12-6-93; Amended 2-17-97, 2-6-01)

SUBDIVISION REGULATIONS.

151.015 GENERAL PROVISIONS.

(A) No subdivision plat of land within the county shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this subchapter. Likewise,

the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of the plat would be in conflict with this subchapter.

(B) The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility shown on the plat and shall not be construed to do so.

(C) All subdivisions shall conform with the mapping requirements contained in G.S. 47-30.

(D) All subdivision plats must show the staff-approved names of all new streets for 911 addressing.

(E) All subdivisions of land within the jurisdiction of the county after the effective date of this chapter shall require a plat to be prepared, approved and recorded pursuant to this chapter. Penalty, see 151.999.

(Ord. Passed 12-6-93) For statutes authorizing this subchapter, see G.S. Chapter 153A, Article 18, Part 2; Chapter 153A-330; and G.S. 153A-340.

151.016 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated public water supply watersheds of the county. Subdivisions that are not within the designated Watershed Areas of the county shall not be subject to the provisions of this chapter, with the exception of 151.001. Once these provisions have been met, a subdivision may be recorded, provided that the Watershed Administrator initials the vicinity map. Subdivisions within the designated watershed areas shall comply with the provisions of this chapter and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board. (See Appendix A).

(C) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally, or disapprove an application not to exceed a total of three (3) resultant tracts. All divisions in excess of three (3) resultant tracts shall be submitted to the Watershed Review Board for further review and final action. The Watershed Review Board shall either approve, approve conditionally, or disapprove each application by a majority vote of the members present and voting. First consideration of the application shall be at the next regularly scheduled meeting of the Board after the application is submitted. The Watershed Administrator or Board, as applicable, shall take final action within 45 days of submission of the application to the Watershed Administrator or its first consideration to the Watershed Review Board. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their

comments and recommendations shall not delay the Board's action within the prescribed time limit. The public agencies may include but are not limited to the following:

(1) The District Highway Engineer with regard to proposed streets and highways.

(2) The Director of the Health Department with regard to proposed private water systems or sewer systems normally approved by the Health Department.

(3) The State Division of Environmental Management with regard to proposed sewer systems normally approved by the Division, engineered storm water controls, or storm water management in general.

(4) Any other agency or official designated by the Watershed Administrator or Watershed Review Board.

(D) If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator:

“Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds Office.

Date

Watershed Administrator

NOTICE: This property is located within a Public Water Supply Watershed-development restrictions may apply.

If the Watershed Review Board approves the application, the approval shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board:

“Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Review Board for recording in the Register of Deeds Office.

Date

Chairman, Watershed Review Board

NOTICE: This property is located within a Public Water Supply Watershed; development restrictions may apply. Additionally, other development restrictions may apply.”

(E) If the Watershed Review Board or Watershed Administrator disapproves or approves conditionally the application, the reasons for the action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.

(F) All subdivision plats shall comply with the requirements for recording of the county Register of Deeds.

(G) The plat shall be recorded within thirty (30) days of approval. The subdivider shall provide the Watershed Administrator with evidence that the plat has been recorded with the Register of Deeds within five (5) working days.

(H) Divisions of land that are not classified as subdivisions by the definition set forth in 151.004 shall be reviewed by the Watershed Administrator for compliance with these regulations. For this review only a sketch plat drawn to scale need be submitted. The Watershed Administrator shall review the plat and approve, disapprove, or approve it with conditions in the manner set forth herein.

(Ord. passed 12-6-93; Amended 2-17-97, 2-6-01) Penalty, see 151.999

151.017 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.

(A) *Minimum building space.* All lots shall provide adequate building space in accordance with the development standards contained in 151.035 through 151.044. Lots which are smaller than the minimum required shall be identified on the plat and the purpose of all such small lots shall be clearly stated on the plat and approved by the Watershed Review Board.

(B) *Project area calculation.* For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm water drainage facilities.* The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the state Division of Land Quality.

(E) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality.

(F) *Flood zones indicated.* If any area of the development is within a flood zone as shown on the county flood insurance rate maps. The flood zone shall also be indicated on the subdivision plat submitted.

(Ord. passed 12-6-93) Penalty, see 151.999

151.018 CONSTRUCTION PROCEDURES.

(A) No construction or installation of improvements shall commence in a proposed subdivision until a preliminary plat has been approved.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection.

(Ord. passed 12-6-93; Amended 2-6-01) Penalty, see 151.999

151.019 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the county, thereafter subdivides his or her land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter. Failure to comply fully with this subchapter may also result in the activation of 151.999 of this code.

(Ord. passed 12-6-93)

151.020 FEES.

Fees to cover the cost of administration of this subchapter shall be as set by the Board of Commissioners and adjusted by them from time to time.

(Ord. passed 12-6-93)

DEVELOPMENT REGULATIONS

151.035 ESTABLISHMENT OF WATERSHED AREAS.

(A) *Purpose.* The purpose of this section is to list and describe the watershed areas adopted by this chapter.

(B) *Designated areas.* For purposes of this chapter, the county is divided into the following areas:

- (1) WS-II-CA (Critical Area)
- (2) WS-II-BW (Balance of Watershed)
- (3) WS-IV-CA (Critical Area)
- (4) WS-IV-PA (Protected Area)

(Ord. passed 12-6-93)

For provisions adopting a hazardous materials containment plan, see Chapter 153 of this code.

151.036 WATERSHED AREAS DESCRIBED.

(A) *WS-II-CA (Critical Area).* In order to maintain a predominately undeveloped land use intensity patter, single family residential uses are allowed at a maximum of one dwelling unit per two acres. All residential and non-residential development shall be allowed to a maximum of 6% built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) *Allowed Uses.* The following uses are allowed in WS-II-CA:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 15 NCAC 11.6101-.0209.

(c) Residential development.

(d) Non-residential development, excluding 1) landfills, and 2) sites for land application of residuals or petroleum contaminated soils.

(2) *Density and built-upon limits.* The following limits exist in WS-II-CA:

(a) *Single family residential development.* Single family residential development shall not exceed 6% built-upon area. No residential lot shall be less than two acres (80,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) *All other residential and non-residential development.* All other residential and non-residential development shall not exceed 6% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall include total acreage in the tract on which the project is to be developed.
(Ord. passed 12-6-93; Amended 2-17-97, 2-6-01)

(B) *WS-II-BW (Balance of Watershed).* In order to maintain a predominantly undeveloped land use intensity, single family detached uses shall develop at a maximum of one dwelling unit per acre. All residential and non-residential development shall be allowed a maximum of 12% built-upon area. In addition, new development and expansions to existing development may occupy 10% of the watershed with a 70% built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this chapter. Projects must minimize built-upon surface area, direct stormwater away from surface waters, and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed.

(1) *Allowed uses.* The following uses are allowed in WS-II-BW:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 15 NCAC 11.6101-.0209.

(c) Residential Development.

(d) Non-residential development excluding discharging landfills and the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(2) *Density and built-upon limits.* The following limits exist in WS-II-BW:

(a) *Single family residential development.* Single family residential development shall not exceed 12% built-upon area. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except with an approved cluster development.

(b) *All other residential and non-residential development.* All other residential and non-residential development shall not exceed 12% built-upon area on a project by project basis except that up to 10% of the balance of the watershed may be developed at up to 70% built-upon

area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
(Ord. passed 12-6-93; Amended 2-17-97)

(C) *WS-IV-CA (Critical Area)*. New developments are required to meet the provisions of this chapter when located in WS-IV watershed. In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) *Allowed uses*. The following uses are allowed in WS-IV-CA:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 15 NCAC 11.6101-.0209.

(c) Residential.

(d) Non-residential development, (1) new landfills and (2) sites for land application of residuals or petroleum contaminated soils.

(2) *Density and built-upon limits*. The following limits exist in WS-IV-CA:

(a) *Single family residential development*. Single family residential development shall not exceed 24% built-upon area. No residential lot shall be less than one-half (½) acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) *All other residential and non-residential development*. All other residential and nonresidential development shall not exceed 24% built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
(Ord. passed 12-6-93; Amended 2-17-97, 2-6-01)

(D) *WS-IV-PA (Protected Area)*. New development activities are required to meet the provisions of this chapter when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single family residential uses shall develop at a maximum of two dwelling units per acre (2 du/ac). All residential and non-residential development shall be allowed at a maximum of twenty-four (24%) built-upon area. A maximum of three (3) dwelling units per acre (3 du/ac) or thirty-six (36%) percent built-upon area is allowed for projects without a curb and gutter street system.

(1) *Uses allowed.* The following uses are allowed in WS-IV-PA:

(a) Agriculture, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation, and Trade Act of 1990.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality, 15 NCAC 11.6101-.0209.

(c) Residential development.

(d) Non-residential development.

(2) *Density and built-upon limits.* The following limits exist in WS-IV-PA:

(a) *Single family residential development.* Single family residential development shall not exceed 24% built-upon area. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), or one-third (1/3) acre for projects without a curb and gutter street system, except within an approved cluster development.

(b) *All other residential and non-residential development.* All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis. A maximum of 36% built-upon area is allowed for projects without a curb and gutter street system. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

(c) In addition to the development allowed under paragraphs (a) and (b) above, new development and expansions to existing development may occupy up to ten percent (10%) of the protected area with up to seventy percent (70%) built-upon on a project by project basis, when approved as a special intensity allocation (SIA). The Watershed Administrator is authorized to approve SIAs consistent with the provisions of this ordinance. Projects must, to the maximum extent practical, minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed. Please note that the high density option is not available in WS-IV. (Ord. passed 12-6-93; Amended 2-17-97, 2-6-01) Penalty, see 151.999

151.037 CLUSTER DEVELOPMENT

Cluster development is allowed in all watershed areas (except WS-I) under the conditions set forth in this section.

(A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in 151.036. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. The title to the open space area shall be conveyed to an incorporated homeowners association for management; to a local government for preservation as a park or open space; or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. passed 12-6-93; Amended 2-17-97, 2-6-01)

151.038 BUFFER AREAS REQUIRED.

(A) A minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted. (Also see 151.077(G))

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, signs and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

(Ord. passed 12-6-93; Amended 2-6-01)

151.039 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

(A) Where area boundaries are indicated as approximately following either street, alley, railroad, or highway lines or centerlines thereof, the lines shall be construed to be the boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, the lot lines shall be construed to be the boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.

(E) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Maps as to location of boundaries. This decision may be appealed to the Watershed Review Board.

(Ord. passed 12-6-93)

151.040 APPLICATION OF REGULATIONS.

(A) No building or land shall hereafter be used and no development shall take place except in conformity with the regulations herein specified for the watershed area in which it is located.

(B) No area required for the purpose of complying with the provisions of this Ordinance shall be included in the area required for another building.

(C) If a use or class of use is not specifically indicated as being allowed in a watershed area, the use or class of use is prohibited.

(Ord. passed 12-6-93; Amended 2-17-97) Penalty, see 151.999

151.041 EXISTING DEVELOPMENT.

Existing development as defined in this chapter may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the built-upon area calculations.

(A) *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where the use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

(1) When the use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(2) The use of land shall be changed only to an allowed use.

(3) When the use ceases for a period of at least one year, it shall not be reestablished.

(B) *Reconstruction of buildings or built-upon areas.* Any existing buildings or built-upon areas not in conformance with the restrictions of this chapter that have been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single family residential development, provided that:

(1) Repair or reconstruction is initiated within 12 months and completed within two years of the damage; and

(2) The total amount of space devoted to built-upon area may not be increased in non-single family development.

(Ord. passed 12-6-93; Amended 2-17-97, 2-6-01) Penalty, see 151.999

151.042 WATERSHED PROTECTION PERMIT.

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged, or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form and supporting documentation deemed necessary by the Watershed Administrator. (See Appendix A).

(C) Prior to issuance of a watershed protection permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(D) A watershed protection permit shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. passed 12-6-93) Penalty, see 151.999

151.043 BUILDING PERMIT REQUIRED.

No permit required under the state building code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.

(Ord. passed 12-6-93; Amended 2-6-01)

151.044 WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Watershed Administrator or his or her designee shall issue a watershed protection permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and /or prior to the change of use of any building or land.

(B) A watershed protection occupancy permit, either for the whole or part of a building, shall be applied for coincident with the application for a watershed protection permit and shall be issued or denied within ten days after the completion of the erection or structural alterations of the building.

(C) When only a change in use of land of existing building occurs, the Watershed Administrator shall issue a watershed protection occupancy permit certifying that all requirements of this chapter have been met coincident with the watershed protection permit.

(D) If the watershed protection occupancy permit is denied, the Watershed Administrator or his or her designee shall notify the applicant in writing stating the reasons for denial.

(E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator or his or her designee has approved and issued a watershed protection occupancy permit.

(Ord. passed 12-6-93)

PUBLIC HEALTH REGULATIONS

151.060 GENERAL PUBLIC HEALTH.

No activity, situation, structure, or land use shall be allowed within the watershed which poses a threat to water quality and the public health, safety, and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash, or other refuse within a buffer area; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. passed 12-6-93; Amended 2-6-01)

151.061 ABATEMENT.

(A) The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality.

(B) The Watershed Administrator shall report all findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.

(C) Where the Watershed Review Board finds a threat to water quality and the public health, safety, and welfare, the Board shall institute any appropriate action or proceeding to restrain, correct, or abate the condition and/or violation.

(Ord. passed 12-6-93)

151.075 HIGH DENSITY DEVELOPMENT STANDARDS.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) The Watershed Review Board may approve non-single family residential high density development proposals in the areas listed below consistent with the following standards:

(1) *WS-IV-CA (Critical Area)*. Where new non-single family residential development exceeds 24% built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, and development shall not exceed 50% built-upon area. Regulatory authority: 15A NCAC 2B.0211(f)(3)(B)(ii)(II).

(2) *WS-IV-PA (Protected Area)*. Where new development exceeds 24% built-upon area or 36% built-upon area for non-single family residential projects without curb and gutter street system, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, and development shall not exceed 70% built-upon area. Regulatory authority: 15A NCAC 2B.0211(f)(3)(B)(i)(II).

(B) High density development shall meet the requirements of this chapter and any other applicable state and local requirements.

(Ord. Passed 12-6-93; Amended 2-6-01) Penalty, see 151.999

151.076 HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) A high density development permit shall be required for new development exceeding the requirements of the low density option.

(B) Application for a high density development permit shall be addressed and submitted to the Watershed Review Board through the Watershed Administrator. Application for a high density development permit shall be made on the proper form and shall include the following information:

(1) A completed high density development permit application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;

(2) Two reproducible copies of the development plan within the drainage basin including the applicable information listed in Appendix A: Application Forms, Subdivision Plat Checklist and detailed information concerning built-upon area;

(3) Two reproducible copies of the plans and specifications of the stormwater control structure consistent with 151.077;

(4) When required by law, written verification that a soil erosion and sedimentation control plan has been applied for from the appropriate state agency;

(5) Permit application fees consistent with 151.080;

(C) Prior to taking final action on any application, the Board or the Watershed Administrator may provide an opportunity to public agencies affected by the development proposal to review and make recommendations on the application. However, failure of the agencies to submit their comments and recommendations shall not delay the Board's action within the prescribed time limit.

(D) The Watershed Review Board shall either approve or disapprove each application for a high density development permit based on the applicable criteria contained in this chapter. First consideration of a completed application shall be at the next regularly scheduled meeting of the Board following its receipt. The Board shall take action on the application at its first consideration or within 65 days of its first consideration.

(1) If the Board approves the application based on its findings, the approval shall be indicated on the permit, both copies of the site plan, and both copies of the plans and specifications of the stormwater control structure. A high density development permit shall be issued after the application meets the requirements of 151.078(B)(1) and (C). A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

(2) If the Board disapproves the application based on its findings, the reasons for the action shall be stated in the minutes of the Board and presented to the applicant in writing either by personal service or registered mail, return receipt requested. The applicant may make changes and submit a revised plan. All revisions shall be submitted, reviewed, and acted upon by the Board pursuant to the procedures of this section.

(E) The Watershed Review Board shall issue a high density development permit within 65 days of its first consideration upon finding that the proposal is consistent with the applicable standards set forth in this watershed protection chapter and the following conditions are met. If the Watershed Review Board finds that any one of the following conditions is not met, the Board shall deny the application:

(1) The use will not endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved;

(2) The use minimizes impacts to water quality through the use of best management practices, clustered development, and maximum setbacks from perennial waters;

(3) The use is vital to the continued growth and economic development of the county. The Board shall find a development as vital if one or more of the following are met:

(a) The development when completed and fully occupied will increase the tax base of the county;

(b) The development will create additional full-time employment positions not including construction and development of the use; or

(c) The development is an expansion or affiliate of an existing development located within the watershed and requires a location in close proximity to the existing facility;

(4) The use is consistent with the officially adopted land use plan for the county.

(F) In addition to any other requirements provided by this chapter, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area in which it is proposed to be located and with the spirit of this chapter. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors, or assigns during the continuation of the permitted use. The permit, with the conditions thereon, shall be recorded at the Register of Deeds office and shall reference the deed book and page indicating the current property owner.

(G) (1) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator.

(2) If the Board approves the application based on its findings, the approval shall be indicated on the permit, both copies of the site plan, and both copies of the plans and specifications of the stormwater control structure(s). A high density development permit shall be issued after the applicant meets the requirements of 151.078(B)(1) and (C).

(3) A copy of the permit and one copy of each set of plans shall be kept on file at the Watershed Administrator's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested. (Ord. passed 12-6-93)

151.077 STORMWATER CONTROL STRUCTURES.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) All stormwater control structures shall be designed by either a state registered professional engineer or a landscape architect, to the extent that G.S. Chapter 89A allows. Other stormwater systems shall be designed by a state registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architects, to the extent that the G.S. Chapter 89A allows, and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. 89C-3(7).

(B) All stormwater controls shall use wet detention ponds as a primary treatment system. Wet detention ponds shall be designed for specific pollutant removal according to modeling

techniques approved by the state Division of Environmental Management. Specific requirements for these systems shall be in accordance with the following design criteria:

(1) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one inch rainfall from the site above the permanent pool;

(2) The designed runoff storage volume shall be above the permanent pool;

(3) The discharge rate from these systems following the one inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;

(4) The mean permanent pool depth shall be a minimum of three feet;

(5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;

(6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow-through the filter for a 1- year, 24 hour storm with a 10 year, one hour intensity with a slope of 5% or less. Vegetation in the filter shall be natural vegetation, grasses, or artificially planted wetland vegetation appropriate for the site characteristics;

(D) In addition to the vegetative filters required in 151.078(B)(6), all land area outside of the pond shall be provided with a ground cover sufficient to restrain erosion within 30 days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the requirements of 151.078(C).

(E) A description of the area containing the stormwater control structure shall be prepared and filed consistent with 151.078(A) and (B) as a separate instrument with the county Register of Deeds along with any easements necessary for general access to the stormwater control structure. The described area shall include the detention pond, vegetative filters, all pipes and water control structures, berms, dikes, and the like, and sufficient area to perform inspections, maintenance, repairs, and reconstruction.

(F) Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one site, it shall not be used to compute the built-upon area for any other site or area.

(G) All high density development properties shall provide a minimum 100 feet buffer for development activities along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies.

(Ord. passed 12-6-93) Penalty, see 151.999

151.078 FINANCIAL SECURITY REQUIRED.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) All new stormwater control structures for high density development shall be conditioned on the availability of financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control structures.

(B) Financial security shall be in the form of the following:

(1) The permit applicant and the county shall enter an agreement which shall be binding to both parties and will allow the county to place liens on the property of the applicant to enforce the provisions of this chapter and the agreement. The agreement shall be filed at the county Register of Deeds office, shall reference the applicant's property, and shall be permanently attached to and run with the land regardless of ownership changes in the future.

(2) The agreement shall require that the applicant shall contract with a qualified third party, acceptable to the county, to perform annual inspections of the stormwater control structures and file a written report certifying that the structures are being maintained and are in compliance with this chapter. Failure of the applicant and property owner to submit the report within 90 days of notice by the county will allow the county to obtain a third party inspection and place a lien on the property for the cost thereof. The county may also pursue all other remedies against the property owner that are available under state law.

(3) In the event the stormwater control structures are found not to be adequately maintained and/or not in compliance with this chapter, the property owner shall immediately contract with a third party, acceptable to the county, to perform the work necessary to bring the structures into compliance with this chapter. Failure of the property owner to comply with this paragraph by completing necessary repairs within 120 days after receiving notice of non-compliance from the county will allow the county to obtain a third party contractor to complete repairs and place a lien on the property for the cost thereof. This lien shall be collectable annually in the same manner as property taxes. The county may also pursue all other remedies against the property owner that are available under state law.

(4) The agreement shall specifically state that the County and its third party contractors shall have the right to enter upon the property owners property at any reasonable time to perform the duties described herein upon written notice to be delivered or posted at the time of entrance.

(5) Attached to the agreement and being a part thereof shall be the operation and maintenance plan as required by 151.079.

(C) All applicants for a high density allowance shall have a state approved erosion and sedimentation plan prior to issuance of any approvals under this chapter. Upon completion of

construction and full compliance with the state grading permit, the property owner shall submit the first certification by a qualified third party as required in 151.078(B)(2).
(Ord. passed 12-6-93) Penalty, see 151.999

151.079 MAINTENANCE AND UPKEEP.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) An operations and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken, and consistent with the operation and maintenance agreement, who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.

(B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.

(C) Except for general landscaping and grounds management, the owning entity shall notify the Watershed Administrator prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Watershed Administrator shall inspect the completed improvements and shall inform the owning entity of any required additions, changes, or modifications and of the time period to complete the improvements. The Watershed Administrator may consult with an engineer or landscape architect, to the extent that G.S. Chapter 89A allows, designated by the Watershed Review Board.

(D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Watershed Review Board. Proposed changes shall be prepared by a state registered professional engineer or landscape architect, to the extent that G.S. Chapter 89A allows, and submitted to and reviewed by the Watershed Administrator prior to consideration by the Watershed Review Board.

(1) If the Watershed Review Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed (certified) copies of the revisions with the office of the Watershed Administrator.

(2) If the Watershed Review Board disapproves the changes, the proposal may be revised and resubmitted to the Watershed Review Board as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.

(E) If the Watershed Review Board finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes

and shall prepare and file copies of the revised agreement with the county Register of Deeds, the office of the Watershed Administrator, and the owning entity.
(Ord. passed 12-6-93) Penalty, see 151.999

151.080 PROCESSING AND INSPECTION FEES.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

(A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to the county. Applications shall be returned if not accompanied by the required fee.

(B) A permit and inspection fee schedule, as approved by the Board of Commissioners, shall be posted in the office of the Watershed Administrator.

(C) Inspection fees shall be valid for 60 days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with 151.079(C), except in the case when a similar fee has been paid within the last 60 days.
(Ord. passed 12-6-93)

151.081 INSPECTIONS.

Note: The high density option is not available at this time. Please refer to: 151.036(D)(2)(c).

The Watershed Administrator, or his or her designee, shall have the right to make inspections at any reasonable time for the purpose of verifying a third party's report of inspection. Any discrepancy found will be noted and reported to the property owner who shall make any corrections/repairs to the structures within 90 days. The owner may appeal the Administrators decision to the Watershed Review Board whose decision shall be final.

151.082 SANCTIONS.

In addition to the remedies described in 151.999 and consistent with G.S. 153A-123, the Watershed Review Board may seek enforcement of this chapter through the Board of Commissioners by assessing a civil penalty to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the chapter. The violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt, and the county may execute the order of abatement. The county shall have a lien on the property for the cost of executing an order of abatement which shall be collectable as property taxes. The

defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this chapter may be by any one, all, or a combination of the remedies available to the county under state law. Each day's continuing violation shall be a separate and distinct offense.

(Ord. passed 12-6-93)

FEES

151.095 ESTABLISHMENT OF FEES.

The purpose of this section is to establish a fee schedule that will be in the best interest of the applicant and also assure that the costs of the administration of the state Water Supply Watershed Protection Act are not paid by the property taxes of the citizens of the county.

(Ord. passed 12-6-93)

151.096 SINGLE FAMILY RESIDENTIAL FEE.

It is not the intention of the county to place an undue hardship upon its citizens in their endeavors to obtain safe affordable housing. Therefore, there is no fee for the issuance of a watershed protection permit for a single family residence.

(Ord. passed 12-6-93)

151.097 NON-SINGLE FAMILY RESIDENTIAL FEE.

(A) It is not the intent of the county to encourage the development of commercial, industrial, and other non-single family property but not to place financial burdens on the county's existing businesses and residences. Therefore, the base fee for a watershed protection permit for a non-single family residential use is initially set at \$50, which may be adjusted annually by the Board of Commissioners, plus any costs incurred such as advertising, mailing notices, and the like. The base fee shall be paid when the application is submitted, and the additional costs must be paid in full prior to the issuance of the permit.

(B) The base fee shall be placed in the county general fund, and the fund will pay for costs incurred by the county for administering this chapter and inspecting development in the future to insure that the requirements of this chapter and the state Water Supply Watershed Protection Act are met.

(Ord. passed 12-6-93)

151.098 APPEAL AND VARIANCE FEES.

The base for filing an appeal or variance as set forth herein is initially set at \$50, which may be adjusted annually by the Board of Commissioners, plus any costs incurred such as advertising, mailing notices, and the like. The base fee shall be paid when the appeal or request for a variance is filed, and the additional costs must be paid at the time of settlement of the appeal or prior to the issuance of a variance, in full. No refunds of fees will be paid regardless of the decision of the Board. Funds received and dispersed shall be as stated in 151.097.
(Ord. passed 12-6-93)

ADMINISTRATION, ENFORCEMENT, AND APPEALS

151.110 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.

(A) The county shall appoint a Watershed Administrator, who shall be duly sworn in.

(B) It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(1) The Watershed Administrator or his or her designee shall issue watershed protection permits and watershed protection occupancy permits as prescribed by this chapter. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(2) The Watershed Administrator shall serve as clerk to the Watershed Review Board.

(3) The Watershed Administrator shall keep records of all amendments to this chapter and shall provide copies of all amendments upon adoption to the supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management.

(4) The Watershed Administrator shall keep records of the county's utilization of the provision that a maximum of 10% of the non-critical area of WS-II-BW watersheds may be developed with non-residential development to a maximum of 70% built-upon surface area. Records for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, number of developed acres, type of land use, and stormwater management plan (if applicable).

(5) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility and full police power of the county. The Watershed Administrator, or his or her duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him by this chapter.

(6) The Watershed Administrator shall keep a record of variances to this chapter. This record shall be submitted each calendar year to the Local Government Assistance Unit, of the Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance. (Ord. passed 12-6-93; Amended 2-17-97, 2-6-01)

151.111 APPEAL FROM THE WATERSHED ADMINISTRATOR.

(A) Any order, requirement, decision, or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator may be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision, or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his or her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application of notice of the officer from whom the appeal is taken and upon due cause shown.

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent, or by attorney. (Ord. passed 12-6-93)

151.112 CHANGES AND AMENDMENTS TO CHAPTER.

(A) The Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

(B) No action shall be taken until the proposal has been submitted to the Watershed Review Board for review and recommendations. If no recommendation has been received from the Watershed Review Board within 45 days after submission of the proposal to the Chairman of the Watershed Review Board, the Board of Commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the Board of Commissioners adopt such amendments, supplements or changes that would cause this chapter to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed

with the N.C. Division of Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.
(Ord. passed 12-6-93; Amended 2-17-97)

151.113 PUBLIC NOTICE AND HEARING REQUIRED.

Before adopting or amending this chapter, the Board of Commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date fixed for the hearing.

(Ord. passed 12-6-93)

151.114 WATERSHED REVIEW BOARD ESTABLISHED; RULES OF CONDUCT.

(A) There shall be and hereby is created the Watershed Review Board consisting of five members appointed by the Board of Commissioners. Three residents of the county shall be appointed for three year terms. Two residents of the county shall be appointed for two year terms. Thereafter all new terms shall be for three years, and members may be reappointed.

(B) Two alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three year terms. While attending in the capacity of a regular member, alternates shall have and exercise all the powers and duties of the absent regular member.

(C) Member of the Watershed Review Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below:

(1) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered prerequisite to continuing membership on the Board.

(2) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested.

(a) A Board member shall have a financial interest in a case when a decision in the case will:

1. Cause him or his spouse to experience a direct financial benefit or loss; or
2. Will cause a business in which Board member of his or her spouse owns a 10% or greater interest or is involved in a decision-making role to experience a direct financial benefit; or

(b) A Board member shall have a personal interest in a case when it involves a member of his or her immediate family, that is, parent, spouse or child.

(3) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case, provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary, or its clerk prior to the hearing.

(4) Members of the Board shall not express individual opinions on the proper judgement of any case prior to its determination on that case.

(5) Members of the Board shall give notice to the Chairman and the Watershed Administrator at least 48 hours prior to the hearing of any potential conflict of interest which he or she has in a particular case before the Board.

(6) No Board member shall vote on any matter that decides an application or appeal unless he or she has attended the public hearing on that application or appeal.
(Ord. passed 12-6-93)

151.115 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD; VARIANCES.

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all local governments having jurisdiction in the designated watershed where the variance is being considered.

(C) *Watershed applications.* Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(1) A site plan, drawn to scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed, any existing or proposed structures, parking areas and other built-upon areas, and surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(2) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Watershed Review Board in considering the application.

(3) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. Notice shall include a description of the variance being requested.

Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Comments shall become a part of the record of proceedings of the Watershed Review Board.

(D) *Required findings for variance.* Before the Watershed Review Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

(a) If he or she complies with the provisions of the chapter, the applicant can secure no reasonable return from nor make reasonable use of the property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the chapter that will make possible the reasonable use of the property.

(b) The hardship results from the application of the chapter to the property rather than from other factors such as deed restrictions or other hardship.

(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

(d) The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the chapter or who purchases the property after the effective date of the chapter and then comes to the Board for relief.

(e) The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others and would not promote equal justice.

(2) The variance is in harmony with the general purpose and intent of the chapter and preserves its spirit.

(3) In granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety or general welfare.

(E) *Permissible conditions on variances.* In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, alteration or use of property is granted the construction, alteration or use shall be in accordance with the approved site plan.

(F) *Refusal to hear appeal.* The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(G) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for the use is not obtained by the applicant within six months from the date of the decision.

(H) *Hearings for major variances.* If the application calls for the granting of a major variance, and if the Watershed Review Board decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed.

(1) The preliminary record of the hearing shall include:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions; and
- (f) The proposed decision, including all conditions proposed to be added to the permit.

(2) The preliminary record shall be sent to the Environmental Management Commission for its review as follows:

(a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted and the variance, if granted will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as

proposed. The Commission shall prepare a Commission decision and send it to the Watershed Review Board. The Board shall prepare a final decision denying the variance as proposed.
(Ord. passed 12-6-93)

Cross-reference: Subdivision approval, see 151.015 through 151.020; Public health, see 151.060 and 151.061.

151.116 APPEALS FROM THE WATERSHED REVIEW BOARD.

Appeals from the Watershed Review Board must be filed with the Superior Court within 30 days from the date of the decision. Decisions by the Superior Court will be in the manner of certiorari.

(Ord. passed 12-6-93)

BY-LAWS OF THE WATERSHED REVIEW BOARD.

151.130 GENERAL PROCEEDINGS OF THE WATERSHED REVIEW BOARD.

The Board shall annually elect a chairman and a vice-chairman from among its members. The chairman in turn shall appoint a secretary, who may be an employee of the county, county officer, or a member of the Watershed Review Board. The chairman, or in his absence the vice-chairman, may administer oaths and request the attendance of witnesses. The Board shall keep minutes of its proceedings, including the names of members present and absent, a record of the vote on every question or abstention from voting, if any, together with records of its examinations and other official actions.

(Ord. passed 12-6-93)

151.131 MEETINGS.

(A) *Board meetings.* The Board shall hold regular monthly meetings at a specified time and place. Special meetings of the Board may be called at any time by the chairman or by request of three or more members of the Board. At least 48 hours written notice of the time and place of meetings shall be given, by the chairman, to each member of the Board. All Board meetings are to be held in accordance with G.S. Ch. 143, Article 33B, commonly referred to as the Open meetings Law.

(B) *Cancellation of Meetings.* Whenever there are no appeals or other business for the Board, or whenever so many members so notify the secretary of inability to attend that a quorum will not be available, the chairman may dispense with a meeting by giving written or oral notice to all members.

C *Quorum.* A quorum shall consist of three members of the Board, but the Board shall not pass upon any questions relating to an appeal from a decision or determination of the Watershed Administrator when there are fewer than 4/5 of the members present.

(D) *Voting.* All regular members may vote on any issue unless they have disqualified themselves for one or more of the reasons listed in this chapter. The required vote to decide

applications for appeals and variances shall not be reduced by any disqualification. In all other matters, the vote of a majority of the members present and voting shall decide issues before the Board.

(Ord. passed 12-6-93)

151.132 APPEALS.

The Board shall hear and decide all appeals from any decision or determination made by the Watershed Administrator.

(Ord. passed 12-6-93)

151.133 VARIANCES.

All applications for variances shall first be presented to the Watershed Administrator, who in turn shall refer the applications to the Watershed Review Board for review and decision in accordance with the procedures outlined in 151.115.

(Ord. passed 12-6-93)

151.134 PROCEDURE FOR FILING APPLICATIONS FOR APPEALS AND VARIANCES.

No hearing shall be held by the Board unless notice thereof is filed within 30 days after the interested party or parties receive the decision or determination by the Watershed Administrator or the aggrieved party or parties receive constructive notice of the decision. Applications shall be filed with the Watershed Administrator, who shall act as clerk for the Board in receiving this notice. All applications shall be made upon the form specified for that purpose and all information required on the form shall be complete before an application shall be considered as having been filed. Once applications have been filed, the Watershed Administrator shall immediately notify the chairman of the Board that the applications have been received.

(Ord. passed 12-6-93)

151.135 HEARINGS.

(A) *Time.* After receipt of an application for an appeal or variance, the Board chairman shall schedule a time for a hearing which shall be within 45 days form the filing of the notice of the application.

(B) *Notice of hearing.* For all applications, notice of the hearing shall be mailed to all the adjoining property owners and to such other persons as the Watershed Administrator shall direct at least five days prior to the hearing. Notice shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

(C) *Conduct of hearing.* The hearing shall be a quasi-judicial proceeding. Any party may appear in person or by agent or by attorney at the hearing. The order of business for the hearing shall be as follows:

(1) The Chairman, or such person as he or she shall direct, shall give a preliminary statement of the case;

(2) The applicant shall present the argument in support of the application;

(3) Persons opposed to granting the application shall present their argument against the application;

(4) Both sides will be permitted to present rebuttals to opposing testimony; and

(5) The chairman shall summarize the evidence which has been presented, giving the parties opportunity to make objections or corrections.

(D) *Decision criteria.* Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to consideration of only such evidence as would be admissible in a court of law. The Board may view the premises before arriving at a decision. All witnesses before the Board shall be placed under oath, and the opposing party may cross-examine them.

151.135 DECISIONS.

(A) *Time.* A decision by the Board shall be made within 35 days from the time of hearing.

(B) *Form.* Written notice by certified or registered mail of the decision in a case shall be given to the applicant or appellant by the secretary as soon as practical after the case is decided. Also, written notice shall be given to owners of the subject property and to persons who have made a written request for such notice. The final decision of the Board shall be shown in the record of the case as entered in the approved minutes. The record shall show the reasons for the determination, with a summary of the evidence introduced and the findings of fact made.

(C) *Content.* The decision on an application for an appeal may reverse or affirm, wholly or partly, or modify the decision or determination of the Watershed Administrator.

(D) *Major variances reviewed by state.* With an application for a major variance, the Watershed Review Board shall provide a recommendation to the state Environmental Management Commission. The state Environmental Management Commission shall have the authority to approve or deny the issuance of a variance. If the state Environmental Management Commission approves the variance, the Watershed Review Board may direct the Watershed Administrator to issue a Watershed Protection Permit.

(E) *Expiration of permits.* Unless otherwise specified, any order or decision of the Board in granting a watershed protection permit shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within 12 months from the date of the decision.

(F) *Voting.* The concurring vote of 4/5 of the members of the Board shall be necessary to reverse any decision or determination of the Watershed Administrator. A majority vote of the

members present and voting is required to provide a recommendation to the state Environmental management Commission on an application for a major variance.

(G) *Public record of decisions.* The decisions of the Board, as filed in its minutes, shall be a public record and available for inspection at all reasonable times. Every decision of the Watershed Review Board shall be filed in the office of the Watershed Administrator, and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(H) *Decisions and appeals.* Every decision by the Board regarding appeals from decisions of the Watershed Administrator shall be subject to review by superior court. All appeals shall be taken to superior court within 30 days after the decision of the Board is filed in the office of the Watershed Administrator, or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

151.999 PENALTY.

(A) Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(B) If any subdivision, development, and/or land use is found to be in violation of this chapter, the Board of Commissioners may, in addition to all other remedies available either in law or equity, institute a civil penalty in the amount of \$500, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the state Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6A. Each day that the violation continues shall constitute a separate offense.

(C) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for the violation, indicating the nature of the violation and ordering the action necessary to correct it. He or she shall order discontinuance of the illegal use of land, buildings, or structures; removal of illegal buildings or structures, of or additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal the ruling to the Watershed Review Board.

(Ord. Passed 12-6-93)

Cross-reference:

Transferring lots in unapproved subdivisions, see 151.019

Civil actions in the nature of debt, see 151.082