

CHAPTER 155: WATER SUPPLY WATERSHED PROTECTION REGULATIONS

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*GENERAL PROVISIONS; SCOPE***§ 155.01 AUTHORITY AND ENACTMENT.**

The Legislature of the State of North Carolina has, in G.S. Chapter 160A, Article 19, Planning and Regulation of Development; and in G.S. Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. The town does hereby ordain and enact into law the following chapter as the Watershed Protection Regulations of Sawmills, North Carolina.

(Ord. § 170A, passed 2-19-2008)

§ 155.02 JURISDICTION.

The provisions of this chapter shall apply within the overlay zones designated as a public water supply watershed as defined and established on the Official Zoning Map of the town, the overlay zones being adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the Town Clerk.

(Ord. § 170B, passed 2-19-2008)

§ 155.03 EXCEPTIONS TO APPLICABILITY.

(A) Development activities in the WS IV Watershed that do not require a sedimentation and erosion control plan are exempt from the requirements of this chapter.

(B) 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. *EXISTING DEVELOPMENT* is defined as those projects that are built or 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 expended substantial resources (time, labor, money) based on a good-faith reliance upon having received a valid local government approval to proceed with the project;
- (2) Having an outstanding valid building permit as authorized by G.S. § 160A-385.1; or
- (3) Having an approved site-specific or phased development plan as authorized by G.S. § 160A-385.1.
(Ord. § 170C, passed 2-19-2008)

§ 155.04 EXPANSIONS TO EXISTING STRUCTURES.

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.
(Ord. § 170D, passed 2-19-2008)

§ 155.05 RECONSTRUCTION OF BUILDINGS OR BUILT-UPON AREAS.

Any existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, except that there are no restrictions on single-family residential development, provided:

- (A) Repair or reconstruction is initiated within 12 months and completed within two years of the damage; and/or
- (B) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.
(Ord. § 170E, passed 2-19-2008)

§ 155.06 EXEMPTION OF PRE-EXISTING VACANT LOTS.

A pre-existing vacant 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, provided the property is zoned for this use. However, this exemption is not applicable to multiple contiguous lots under single ownership unless the total impervious surface established on those lots does not exceed the built-upon limits provided herein.

(Ord. § 170F, passed 2-19-2008)

§ 155.07 INTERPRETATION.

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 the code of ordinances of the town; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions and regulations in effect in the town 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.

(Ord. § 170G, passed 2-19-2008)

§ 155.08 CONFLICT OF PROVISIONS.

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.

(Ord. § 170H, passed 2-19-2008)

§ 155.09 GENERAL DEFINITIONS.

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 (BMPs). 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 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 open structure, with or without a roof, shall not be deemed to make them one **BUILDING**.

BUILT-UPON AREA. The portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities and the like, excluding wooden slatted decks and the water area of a swimming pool.

CLUSTER DEVELOPMENT. The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

CRITICAL AREA (CA). The portion of a state designated water supply watershed which is one-half mile and draining to water supplies from the normal pool elevation of reservoirs, or one-half mile and draining to a river intake.

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

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

EXISTING DEVELOPMENT. Those projects that are built or 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 expended substantial of resources (time, labor, money) based on a good-faith reliance upon having received a valid local government approval to proceed with the project;
- (2) Having an outstanding valid building permit as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1; or

(3) 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 (LOT OF RECORD). A lot which is part of a subdivision, a plat of which has been recorded with the County Register of Deeds prior to the adoption of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter.

HAZARDOUS MATERIAL. Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

INDUSTRIAL DEVELOPMENT. Any nonresidential 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.

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 customary accessories and open spaces.

MAJOR VARIANCE. A variance that results in any one or more of the following:

- (1) The complete waiver of a management requirement;
- (2) The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard; or
- (3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.

MINOR VARIANCE. A variance that does not qualify as a major variance.

NONRESIDENTIAL DEVELOPMENT. All development other than residential development, agriculture and silviculture.

PROTECTED AREA (PA). The portion of a state designated water supply watershed which is five miles and draining to water supplies from the normal pool elevation of reservoirs, or ten miles upstream of and draining to a river intake.

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.

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

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 citing within surface waters to fulfill its basic purpose, such as boat ramps, boathouses, 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 (that is the water supply intake).

WATERSHED ADMINISTRATOR. An official designated by the town responsible for administration and enforcement of this chapter. The duties of the **WATERSHED ADMINISTRATOR** may also be performed by the Zoning Enforcement Officer or other designated personnel. (Ord. § 170X, passed 2-19-2008)

§ 155.10 WORD INTERPRETATION.

For the purpose of this chapter, certain words shall be interpreted as follows.

(A) Words in the present tense include the future tense.

(B) Words used in the singular number include the plural, and words used in the plural number include the singular, unless the construction of the wording indicates otherwise.

(C) The word **PERSON** includes a firm, association, corporation, trust and company as well as an individual.

(D) The word **STRUCTURE** shall include the word **BUILDING**.

(E) The word **LOT** shall include the words **PLOT, PARCEL** or **TRACT**.

(F) The words “shall” and “will” are always mandatory and not merely directory.

(G) The word **WATERSHED ADMINISTRATOR** shall include the word **ZONING ENFORCEMENT OFFICER**.

(Ord. § 170Y, passed 2-19-2008)

§ 155.11 PROCEDURE FOR AMENDMENTS.

(A) A petition for an amendment to this chapter and to the Official Zoning Map may be initiated by the town, the Planning Board, any department or agency of the town, the owner of any property within the town, or any interested citizen who can show just cause for an amendment.

(B) Applications submitted by individual property owners or interested citizens who are not acting in an official capacity for the town shall comply with the following procedural requirements.

(1) *Application submission.* Any person for an amendment to this chapter shall be filed with the Town Clerk at least 20 days prior to the date on which it is to be introduced to the Planning Board. Each petition for an amendment shall be accompanied by a fee of \$35 to help defray the costs of advertising the public hearing required by G.S. § 160A-364.

(2) *Change to Zoning Map.* Each application involving a change to the Official Zoning Map shall be signed, be in duplicate, and shall contain at least the following information:

(a) The applicant’s name in full, applicant’s address, address or description of the property to be rezoned, including the tax map number;

(b) The applicant’s interest in the property and the type of rezoning requested;

(c) If the proposed change would require a change in the Zoning Map, an accurate diagram of the property proposed for rezoning, showing:

1. All property lines with dimensions, including north arrow;

2. Adjoining streets with rights-of-way and paving widths;

3. The location of all structures, existing and proposed, and the use of the land;

4. Zoning classification of all abutting property owners; and
5. Names and addresses of all adjoining property owners.

(d) A statement regarding the changing conditions, if any, in the area of in the town generally that make the proposed amendment reasonably necessary to the promotion of the public health, safety and general welfare.

(3) *Planning Board consideration.* All proposed amendments to this chapter shall be submitted to the Planning Board for review and recommendation. At the discretion of the Planning Board, a public hearing may be conducted to consider the proposed amendment. The Planning Board shall have 31 days from the time the proposed amendment was first considered by the Planning Board to submit its report. If the Planning Board fails to submit its report within the above period, it shall be deemed to have approved the proposed amendment.

(4) *Town Council consideration.* Before adopting or amending this chapter, the Town Council shall hold a public hearing on it. A notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten days nor more than 25 days before the date fixed for this hearing (G.S. § 160A-364). Any petition for an amendment to this chapter may be withdrawn at any time by written notice to the Town Clerk.

(5) *Protest petition.*

(a) A protest petition may be presented against any proposed amendment signed by the owners of 20% or more either of the area of the lots included in the proposed changes, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage on the opposite lots. In this case the amendment shall not become effective except by favorable vote of three-fourths of all members of the Town Council.

(b) No protest against any change in or amendment to this chapter or to the Zoning Map shall be valid or effective unless it be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed change or amendment, unless it shall have been received by the Town Clerk in sufficient time to allow the town at least two normal working days, excluding Saturdays, Sundays and legal holidays, before the date established for a public hearing on the proposed change or amendment to determine the sufficiency and accuracy of the petition.

(6) The proposed amendments shall follow the requirements of G.S. Chapter 160A, Article 19, Planning and Regulation of Development and will in no way undermine or diminish the purpose and

intent of G.S. Chapter 143, Article 21, Watershed Protection Rules, which have been designed to promote the public health, safety and general welfare of the state's citizenry. All proposed amendments will be sent to the following state agencies prior to adoption: the Department of Commerce - Division of Community Assistance, the Department of Environment, Health and Natural Resources - Division of Environmental Management and the Environmental Management Commission.

(Ord. § 170BB, passed 2-19-2008)

Statutory reference:

Planning Board, see G.S. § 160A-387

Protest petition, see G.S. § 160A-386

GENERAL REGULATIONS; ADMINISTRATION

§ 155.25 BUFFER AREAS REQUIRED.

(A) A minimum 100-foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum 30-foot vegetative buffer for development activities is required along all perennial waters indicated in the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Artificial stream bank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures and public projects such as road crossings and greenways and their appurtenances 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, defined as a structural or nonstructural management based practice used singularly or in combination to reduce nonpoint source inputs receiving waters in order to achieve water quality goals.

(Ord. § 170I, passed 2-19-2008)

§ 155.26 RULES GOVERNING THE INTERPRETATION OF WATERSHED AREA BOUNDARIES.

(A) Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply.

(1) 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.

(2) 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 Watershed Administrator as evidence that one or more properties along these boundaries do not lie within the watershed area.

(3) 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.

(4) 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.

(5) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of the boundaries.

(B) This decision may be appealed to the Watershed Review Board.
(Ord. § 170J, passed 2-19-2008)

§ 155.27 WATERSHED ADMINISTRATOR AND DUTIES THEREOF.

The Town Council shall appoint a Watershed Administrator. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows.

(A) The Watershed Administrator shall issue watershed protection permits and watershed protection occupancy permits as prescribed herein. A record of all permits shall be kept on file and shall be available for public inspection during regular office hours of the Administrator.

(B) The Watershed Administrator shall serve as staff to the Watershed Review Board.

(C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Regulations (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.

(D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full zoning and police power of the town. 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 or her by this chapter.

(E) The Watershed Administrator shall keep a record of variances to this chapter. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management on an annual basis and shall provide a description of each project receiving a variance and the reasons for granting the variance.
(Ord. § 170K, passed 2-19-2008)

§ 155.28 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 Board of Adjustment.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment 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 or her, 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 that 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. § 170L, passed 2-19-2008)

§ 155.29 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

There shall be and hereby is created the Watershed Review Board consisting of the same membership as the Town Council. Terms for members of the Watershed Review Board shall coincide with the membership terms for Town Council.
(Ord. § 170M, passed 2-19-2008)

§ 155.30 POWERS AND DUTIES OF THE WATERSHED REVIEW BOARD AND BOARD OF ADJUSTMENT.

(A) The Board of Adjustment shall be responsible for reviewing and hearing all major and minor variance cases, and shall follow the standards procedures of this chapter for variance applications.

(B) If the application calls for the granting of a major variance, and if the Board of Adjustment decides in favor of granting the variance, the Board shall prepare a preliminary record of the hearing with all deliberate speed. The preliminary record of the hearing shall include:

- (1) The variance applications;
- (2) The hearing notices;
- (3) The evidence presented;
- (4) Motions, offers of proof, objections to evidence and rulings on them;
- (5) Proposed findings and exceptions; and
- (6) The proposed decision, including all conditions proposed to be added to the permit.

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

(1) 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 Board of Adjustment.

(a) If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance.

(b) If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including the conditions and stipulations, granting the proposed variance.

(2) 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 Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

(D) Approval of all development greater than the low density option shall be the authority of the Watershed Review Board.
(Ord. § 170N, passed 2-19-2008)

§ 155.31 APPEALS FROM THE BOARD OF ADJUSTMENT.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.
(Ord. § 170O, passed 2-19-2008)

STANDARDS

§ 155.45 HIGH DENSITY DEVELOPMENT STANDARDS.

The Watershed Review Board may approve high density development proposals consistent with the following standards.

(A) *WS-IV-CA Watershed Areas.* Where new development exceeds either two dwelling units per acre or 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.

(B) *WS-IV-PA Watershed Areas.* Where new development requires a Sedimentation/Erosion Control Plan (see § 153.02) and exceeds either two dwelling units per acre, 24% built-upon area or 36% built-upon area without curb and gutter, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, and development shall not exceed 70% built-upon area.
(Ord. § 170P, passed 2-19-2008)

§ 155.46 HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.

(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) Ten reproducible copies of the development plan within the drainage basin including the applicable information listed in Appendix A: Application Forms, Subdivision Plat Checklist, which appendix as attached to the ordinance comprising this chapter is hereby adopted by reference as if set out in full herein, and detailed information concerning built-upon area;

(3) Ten reproducible copies of the plans and specifications of the stormwater control;

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

(5) Permit application fees.

(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) *Public hearing.* Upon receipt of a completed application, the Watershed Review Board shall hold a public hearing. Notice of the hearing shall be published in a newspaper of general circulation at least seven days prior to the date of the hearing. The notice shall state the location of the building, lot or tract in question, the intended use of the property, the need for engineered stormwater controls and the time and place of the hearing. At the hearing, the applicant or designated representative thereof shall appear for the purposes of offering testimony and recommendations concerning the application. The Board shall also allot reasonable time for the expression of views by any member of the public attending the meeting in person or represented by an attorney, provided the testimony bears on the findings the Board must make.

(E) (1) 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 chapter and the following conditions are met.

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

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- (b) The use minimizes impacts to water quality through the best management practices, cluster development and/or maximum setbacks from perennial waters;
- (c) The use is vital to the continued growth and economic development of the town; and
- (d) The use is consistent with the officially adopted land development plans for the town.

(2) If the Watershed Review Board finds that any one of the above conditions is not met, the Board shall deny the application.

(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.

(G) The Board shall issue a written ruling and make copies available at the office of the Watershed Administrator and the Town Clerk. If the Board approves the application based on its findings, that approval shall be indicated on the permit and all copies of the site plan and all copies of the plans and specifications of the stormwater control structure(s). A high density development permit shall be issued after the applicant posts a performance bond or other acceptable security and executes an operation and maintenance agreement. 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. § 170Q, passed 2-19-2008)

§ 155.47 STORMWATER CONTROL STRUCTURES.

(A) All stormwater control structures shall be designed by either a North Carolina registered professional engineer or 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 or landscape architects, to the extent that the General Statutes, G.S. Chapter 89A allow, 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 30 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 ten-year, 24-hour storm with a ten-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.

(C) In addition to the vegetative filters, all land areas 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 maintenance agreement.

(D) A description of the area containing the stormwater control structure shall be prepared and filed as a separate deed with the County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded 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.

(E) 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. (Ord. § 170R, passed 2-19-2008)

MAINTENANCE; INSPECTIONS AND ENFORCEMENT**§ 155.60 POSTING OF FINANCIAL SECURITY REQUIRED.**

(A) *Required.* All new stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs or reconstruction necessary for adequate performance of the stormwater control structures.

(B) *Financial assistance types.* Financial assurance shall be in the form of the following.

(1) *Security performance bond or other security.* The permit applicant shall obtain either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to the town or placed in escrow with a financial institution designated as an official depository of the town. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the town. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation, fill and the like. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization.

(2) *Cash or equivalent security deposited after the release of the performance bond.* The permit applicant shall deposit with the town either cash or other instrument approved by the Town Attorney that is readily convertible into cash at face value. The cash or security shall be in an amount equal to 15% of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten-year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual. The amount shall be computed by estimating the maintenance cost for 25 years and multiplying this amount by two-fifths or 0.4.

(C) *Binding agreement.* The permit applicant shall enter into a binding operation and maintenance agreement between the town and all interests in the development. This agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The operation and maintenance agreement shall be filed with the County Register of Deeds by the Watershed Administrator.

(D) *Default under the performance bond or other security.* Upon default of the permit applicant to complete and/or maintain the stormwater control structure as specifically provided in the performance bond or other security, the town may obtain and use all or any portion of the funds necessary to complete

the improvements based on an engineering estimate. The town shall return any funds not spent in completing the improvements to the owning entity.

(E) *Default under the cash security.* Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and maintenance agreement, the town shall obtain and use all or any portion of the cash security to make necessary improvements based on an engineering estimate. This expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the operation and maintenance agreement. The town shall not return any of the deposited cash funds.

(Ord. § 170S, passed 2-19-2008)

§ 155.61 MAINTENANCE AND UPKEEP.

(A) An operation 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 Town Engineer 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.

(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 North Carolina registered professional engineer or landscape architect (to the extent that the G.S. Chapter 89A allows) and submitted to and reviewed by the Watershed Administrator prior to consideration by the Watershed Review Board.

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(1) If the Watershed Review Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed 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. § 170T, passed 2-19-2008)

§ 155.62 APPLICATION AND INSPECTION FEES.

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

(B) A permit and inspection fee schedule, as approved by the town, 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 this chapter, except in the case when a similar fee has been paid within the last 60 days.

(Ord. § 170U, passed 2-19-2008)

§ 155.63 INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND.

(A) The stormwater control structure shall be inspected by the town, after the owning entity notifies the Watershed Administrator that all work has been completed. At this inspection, the owning entity shall provide:

(1) The signed deed, related easements and survey plat for the stormwater control structure ready for filing with the County Register of Deeds; and

(2) A certification sealed by an engineer or landscape architect (to the extent that statutes allow) stating that the stormwater control structure is complete and consistent with the approved plans and specifications.

(B) The Watershed Administrator shall present the materials submitted by the developer and the inspection report and recommendations to the Town Council at its next regularly scheduled meeting.

(1) If the Town Council approves the inspection report and accepts the certification, deed and easements, the town shall file the deed and easements with the County Register of Deeds, release up to 75% of the value of the performance bond or other security and issue the appropriate permit.

(2) If deficiencies are found, the town shall direct that improvements and inspections be made and documents corrected and submitted to the town.

(C) No sooner than one year after the filing date of the deed, easements and maintenance agreement, the developer may petition the town to release the remaining value of the performance bond or other security. Upon receipt of the petition, the town shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Watershed Administrator shall present the petition and findings to the Town Council.

(1) If the Town Council approves the report and accepts the petition, the developer shall deposit with the town a cash amount equal to that described in this chapter, after which the Town Council shall release the performance bond or other security.

(2) If the Town Council does not accept the report and rejects the petition, the town shall provide the developer with instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

(D) A watershed protection occupancy permit shall not be issued for any building within the permitted development until the Town Council has approved the stormwater control structure.

(E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the State Division of Environmental Management. Annual inspections shall begin within one year of filing date of the deed for the stormwater control structure.

(F) In the event the Watershed Administrator discovers the need for corrective action or improvements, the Watershed Administrator shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the town shall inspect and approve the completed improvements.

(Ord. § 170V, passed 2-19-2008)

§ 155.64 SANCTIONS.

In addition to the remedies described herein and consistent with G.S. § 160A-175, the Town Council may seek enforcement of this chapter by assessing a civil penalty to be recovered by the town 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 town may execute the order of abatement. The town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. 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 authorized in this chapter. Each day's continuing violation shall be a separate and distinct offense.

(Ord. § 170W, passed 2-19-2008) Penalty, see § 155.99

§ 155.99 PENALTY.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the town may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$50, institute actions or proceedings to restrain, correct or abate the violations; 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.

(B) 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, or of 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. § 170Z, passed 2-19-2008)