

**Administrator**  
**CHAPTER 151: WATERSHED PROTECTION**

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**GENERAL PROVISIONS**

**§ 151.01 DEFINITIONS.**

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

**BALANCE OF WATERSHED (BW).** The area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.

**BEST MANAGEMENT PRACTICES (BMP).** A structural or nonstructural management-based practice used singularly or in combination to reduce non-point 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 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 (does not allow water to infiltrate from surface to subsurface) cover including buildings, pavement, gravel areas (e.g. roads, parking lots, paths), recreation facilities (for example, 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 chapter, planned unit developments and mixed use development are considered as cluster development.

***COMMON PLAN OF DEVELOPMENT.*** Site where multiple separate and distinct development activities may be taking place at different times or different schedules but governed by a single development plan regardless of ownership of parcels.

***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 ridge line 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 ridge line 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 percent 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, etc.

***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 or more persons.

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

(1) Substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the projects, or

(2) Having an outstanding valid building permit as authorized by the General Statutes (160D-102), or

(3) Having an approved site specific or phased development plan as authorized by the General Statutes (160D-102).

***EXISTING LOT (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 adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance.

***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.

***FAMILY SUBDIVISION.*** The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, both as described under G.S. §104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews.

***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 Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this Ordinance 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 the same.

***MAJOR VARIANCE.*** A variance that is not a Minor Variance as defined in this Ordinance.

**MINOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five (5) percent of any buffer, density or built-upon area requirement under the high-density option; or that results in a relaxation, by a factor of up to ten (10) percent, of any management requirement under the low-density option. For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach with the vegetated setback divided by the total area of vegetated setback within the project.

**NON-CONFORMING LOT OF RECORD.** A lot described by a plat or a deed that was recorded prior to the effective date of local watershed protection regulations (or their amendments) 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 miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

**QUALIFIED INDIVIDUAL.** A person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

**RESIDENTIAL DEVELOPMENT.** Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., 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.

**SINGLE-FAMILY RESIDENTIAL.** Any development where:

- (1) No building contains more than one dwelling unit,
- (2) Every dwelling unit is on a separate lot, and
- (3) Where no lot contains more than one dwelling unit.

**STORMWATER CONTROL MEASURE (SCM).** Means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapotranspiration, post-filtration discharge, reuse of stormwater or a combination thereof.

**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 requires location on the land or attachment to something having permanent location on the land.

**SUBDIVIDER.** Any person, or entity 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, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by this chapter:

(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 Ordinance;

(2) The division of land into parcels greater than ten 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 Ordinance;

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

(6) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

**SURFACE WATERS.** All waters of the State as defined in NCGS 143-212 except underground waters.

**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 Ordinance.

**VESTED RIGHT.** The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan or an approved phased development plan as defined in N.C. G.S. 160D-108.

**WATER DEPENDENT STRUCTURE.** Any structure for which the use requires access to, or proximity to, or siting 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 (e.g. the water supply intake.) or alternatively, the geographic region within which water drains to a particular river, stream or body of water.

**WATERSHED ADMINISTRATOR.** An official or designated person of the county responsible for administration and enforcement of this Ordinance. The County designates the Development Service Director as the Watershed Administrator. The Director may delegate his duties under this Ordinance to staff members of the Development Services office.

(Ord. passed 12-16-93: Am. Ord. passed 7-28-97; Am. Ord, passed 03-04-2024)

**§ 151.02 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 natural construction of the wording indicates otherwise.
- (C) The word **PERSON** includes any legal entity such as an association, corporation, trust, or limited liability 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 word *SHALL* is always mandatory and not merely directory.
- (G) The word *WILL* is always mandatory and not merely directory.  
(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

### § 151.03 AUTHORITY AND ENACTMENT.

(A) *Authority and enactment.* Pursuant to the authority of N.C. G.S. 153A-121; 160D-926 and 143-214.5, Haywood County Ordinance hereby enacts the following Water Supply Watershed Protection Ordinance.

(B) *Date of adoption and effective date.* This chapter was originally adopted on December 16, 1993. The present Ordinance supersedes that original and all subsequent amendments, effective the date of enactment.  
(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

### § 151.04 JURISDICTION.

The provisions of this Ordinance shall apply throughout Haywood County within the areas designated as a Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the map entitled, *Watershed Protection Map of Haywood County, North Carolina* (the watershed map), as it may be amended from time to time. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. By joint resolution adopted by the county and any municipality, this Ordinance shall be administered within the jurisdictional limits of that municipality.  
(Ord. passed 12-16-93; Am. Ord, passed 03-04-2024)

### § 151.05 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 Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of the County; however, the adoption of this Ordinance shall and does amend any and all Ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance 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 Ordinance, is not subject to the requirements of this Ordinance.

(D) Expansions to existing development must meet the requirements of this Ordinance, except single family residential development unless expansion is part of common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built upon area, only the area of net increase is subject to this Ordinance. Where existing development is being replaced with new built upon area, and there is net increase of built upon area, only areas of net increase shall be subject to this Ordinance.

(E) If a Non-Conforming Lot of Record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this Ordinance if it is developed for single-family residential purposes. Combining contiguous nonconforming lots of record owned by same party may establish a lot or lots that require compliance with the requirements in Section 151.15.

(F) Any lot or parcel created as part of a family subdivision shall be exempt from these rules if it is developed for one single-family detached residence

(G) Any lot or parcel created as part of any other type of subdivision that is exempt from Chapter 152A shall not be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord, passed 03-04-2024 )

***SUBDIVISION REGULATIONS WITHIN A PUBLIC WATER SUPPLY WATERSHED***

**§ 151.15 GENERAL PROVISIONS.**

(A) No subdivision plat of land within a Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Ordinance. 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 Ordinance.

(B) The approval of a plat does not constitute or affect 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 subdivisions of land within a Public Water Supply Watershed shall require a plat to be prepared, approved, and recorded pursuant to this Ordinance. Penalty, see § 151.98.  
(Ord. passed 12-16-93; Am. Ord, passed 03-04-2024)

*Am. Ord. passed 03042024*

**§ 151.16 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

(A) *Proposed subdivisions.* All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator or designee to determine whether or not the property is located within a Public Water Supply Watershed. Subdivisions within the designated watershed area shall comply with the provisions of this Ordinance and all other state and local requirements that may apply.

(B) *Application.* Subdivision applications shall be filed with the Watershed Administrator or designee. The application shall include a completed application form, at least two copies of the plat or an electric, and supporting documentation deemed necessary by the Watershed Administrator or designee. The Watershed Administrator or designee may at any time elect to consult the Watershed Review Board regarding the decision for a subdivision plat.

(C) *Review.*

The Watershed Administrator shall review the completed application and shall either approve, approve conditionally or disapprove each application. The Watershed Administrator shall take final action within forty-five (45) days of submission of the application. The Watershed Administrator 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 action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

(1) The NCDOT district highway engineer with regard to proposed streets and highways.

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

(3) The state Division of Water Resources with regard to proposed sewer systems normally approved by the Division.

(4) The state Division of Energy, Mineral and Land Resources with regard to engineered storm water controls or storm water management in general.

(5) Local government entities responsible for proposed sewer and/or water systems

(6) Any other agency or official designated by the Watershed Administrator.

(D) *Approval.* If the Watershed Administrator approves the application, such approval shall be indicated on all copies of the plat by the following certificate and signed by the 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 Administrator 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."

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

(G) The plat shall be recorded within 90 days of approval. The Subdivider shall provide the Watershed Administrator with evidence the plat has been recorded with the Register of Deeds within five (5) working days.

(H) *Review Board.*

(1) If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review. Appeals from the decision of the Watershed Administrator shall be to the Watershed Review Board by the procedures set out hereafter.

(2) The Watershed Administrator shall inform the Watershed Review Board of action taken regarding subdivision plats and site plans.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

**§ 151.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.**

(A) *Building space.* All lots shall provide adequate building space in accordance with the development standards contained in §§ 151.30 through 151.39. Lots recorded after January 1, 1994 which are smaller than the minimum required for residential lots may be developed using built-upon criteria in accordance with §§ 151.30 through 151.3.

(B) *Built-upon area.* 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.

(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 an adequate drainage system that diverts stormwater runoff away from surface waters and incorporates storm water control measures to minimize water quality impacts, and meets any local requirements.

(D) *Erosion and Sedimentation Control.* The application shall, where required, be accompanied by the Sedimentation and Erosion Control Plan approval by the County Ordinance.

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

#### **§ 151.18 CONSTRUCTION PROCEDURES.**

(A) No construction or installation of improvements shall commence in a proposed subdivision until a subdivision plat has been approved by the Watershed Administrator or designee.

(B) No building or other permits shall be issued for erection of a structure on any lot 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 12-16-93; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

#### **§ 151.19 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 a public water supply watershed, thereafter subdivides his land in violation of this Ordinance 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 Ordinance 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. Haywood 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 Ordinance.

(Ord. passed 12-16-1993; Am. Ord passed 03-04-2024)

**DEVELOPMENT REGULATIONS**

**§ 151.30 ESTABLISHMENT OF WATERSHED AREAS.**

(A) The purpose of this subchapter is to list and describe the watershed areas herein adopted.

(B) For purposes of this Ordinance portions of the county are divided into the following areas, as appropriate:

- (1) WS-I.
- (2) WS-II-CA (Critical Area).
- (3) WS-II-BW (Balance of Watershed).
- (4) WS-III-CA (Critical Area).
- (5) WS-III-BW (Balance of Watershed).
- (6) WS-IV-CA (Critical Area)
- (7) WS-IV-PA (Protected Area)

Penalty, see § 151.98

(C) Permitted uses table and explanatory text.

Activity/Use	Water Supply Watershed Classification <sup>1</sup>							
	WS-I	WS-II CA	WS-II BW	WS-III CA	WS-III BW	WS-IV CA	WS-IV PA	WS-V
New landfills	No	No	Yes	No	Yes	No	Yes	Yes
New permitted residual land application	No	No	Yes	No	Yes	No	Yes	Yes
New permitted petroleum contaminated soils sites	No	No	Yes	No	Yes	No	Yes	Yes
NPDES General or Individual Stormwater discharges	Yes <sup>a</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
NPDES General Permit Wastewater Discharges pursuant to 15A NCAC 02H .0127	Yes <sup>a</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes

NPDES Individual Permit trout farm discharges	Yes <sup>a</sup>	Yes						
New NPDES Individual Permit domestic treated wastewater discharge	No	No	No	No	Yes	Yes	Yes	Yes
New NPDES Individual Permit industrial treated wastewater discharge	No	No	No	No <sup>b</sup>	No <sup>b</sup>	Yes	Yes	Yes
Non-process industrial waste	No	No	No	Yes	Yes	Yes	Yes	Yes
New industrial connections and expansions to existing municipal discharge with pretreatment program pursuant to 15A NCAC 02H .0904	No	No	No	No	No	Yes	Yes	Yes
Sewage	No	No <sup>c</sup>	Yes <sup>d</sup>					
Industrial Waste	No	No <sup>c</sup>	Yes <sup>d</sup>					
Other wastes	No	No <sup>c</sup>	Yes <sup>d</sup>					
Groundwater remediation project discharges <sup>e</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Agriculture <sup>f</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Silviculture <sup>g</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Residential Development <sup>h</sup>	No <sup>j</sup>	Yes						
Non-residential Development <sup>hi</sup>	No <sup>j</sup>	Yes						
Nonpoint Source Pollution <sup>k</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Animal Operations <sup>l</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Notes:

<sup>a</sup> Permitted pursuant to 15A NCAC 02B .0104

<sup>b</sup> Except non-process industrial discharges are allowed

<sup>c</sup> Only allowed if specified in 15A NCAC 02B .0104

<sup>d</sup> Not allowed if activity(ies) has/have adverse impact on human health

<sup>e</sup> Where no other practical alternative exists

<sup>f</sup> In WS-I watersheds and Critical Areas of WS-II, WS-III, and WS-IV watersheds, agricultural activities conducted after 1/1/1993 shall maintain a minimum 10 foot vegetated setback or equivalent control as determined by SWCC along all perennial waters indicated on most recent version of USGS 1:24000 scale (7.5 minute) topographic mpas or as determined by local government studies

<sup>g</sup> Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018

<sup>h</sup> See density requirements in 15A NCAC 02B .0624

<sup>i</sup> See different allowed and not allowed in this table

<sup>j</sup> See following WS-I note

<sup>k</sup> NPS pollution shall not have adverse impact, as defined in 15A NCAC 02H .1002, on use as water supply or any other designated use

<sup>l</sup> Deemed permitted, as defined in 15A NCAC 02T .0103 and permitted under 15A NCAC 2H .0217 (Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.31 WATERSHED AREAS DESCRIBED**

(A) *WS-I Watershed Areas - (WS-I)*. The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds in public ownership by allowing only low-intensity uses. No residential or non-residential uses are allowed except those listed below. Impacts from non-point-source pollution shall be minimized.

(1) *Allowed uses:*

- (a) Agriculture.
- (b) Silviculture.
- (c) Water withdrawal, treatment, and distribution facilities.
- (d) Restricted road access.
- (e) Power transmission lines.

(2) *Density and built-upon area limits do not apply.*

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

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (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.*

(a) Single-family residential. Development shall not exceed one dwelling unit per two acres on a project-by-project basis. 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) In the alternative, single-family residential development is allowed on lots less than two acres provided that the impervious surface coverage of all structures does not exceed six percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 6 percent 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.

(C) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW).* In order to maintain a predominantly undeveloped land use intensity, single-family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed a maximum of 12 percent built-upon area. In addition, new development may occupy ten percent of the watershed area which is outside the critical area, with a 70 percent 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. Allocation of this development privilege shall be made by the Board of County Commissioners in accordance with rules and procedures to be established. Projects must, to the maximum extent practicable, 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 residuals application sites are allowed.

(1) *Allowed uses.*

(a) Agriculture.

(b) Silviculture.

(c) Residential development.

(d) Non-residential development excluding discharging landfills.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed one dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one acre provided that the impervious surface coverage of all structures does not exceed 12 percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void. Single-family residential development is not eligible for special intensity allocations.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 12 percent built-upon area on a project-by-project basis except that up to 10 percent of the balance of the watershed may be developed for at up to 70 percent 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.

(D) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain a low to moderate land use intensity, single-family residential uses are allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed to a maximum of 12 percent built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (c) Residential.
- (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.*

(a) Single-family residential. Development shall not exceed one dwelling unit per acre on a project-by-project basis. No residential lot shall be less than one acre (or 40,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one acre provided that the impervious surface coverage of all structures does not exceed 12 percent. A note shall be added to the deed to reflect this provision.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 12 percent 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.

(E) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. In order to maintain a low to moderate land use pattern, single-family detached uses shall develop at a maximum of two dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of 24 percent built-upon area. In addition, new development and expansions to existing development may occupy 10 percent of the balance of the watershed area with up to 70 percent built-upon area when approved as a special intensity allocation (SIA). The Watershed Administrator or designee is authorized to approve SIAs consistent with the provisions of this chapter. Allocation of this development privilege shall be made by the Board of County Commissioners in accordance with rules and procedures to be established. Projects must, to the maximum extent practicable, 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 residuals application sites are allowed.

(1) *Allowed uses.*

- (a) Agriculture.
- (b) Silviculture.
- (c) Residential development.
- (d) Non-residential development excluding discharging landfills.

(2) *Density and built-upon limits.*

(a) Single-family residential. Development shall not exceed two dwelling units per acre, as defined on a project-by-project basis. No residential lot shall be less than one-half acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.

(b) In the alternative, single-family residential development is allowed on lots less than one-half acre provided that the impervious surface coverage of all structures does not exceed 24 percent. A note shall be added to the deed to reflect this provision; however, should the Haywood County Watershed Protection Ordinance be repealed, this provision shall be null and void. Single-family residential development is not eligible for special intensity allocations.

(c) All other residential and non-residential, including manufactured/mobile home parks. Development shall not exceed 24 percent built-upon area on a project-by-project basis except that up to 10 percent of the balance of the watershed may be developed with new development and expansions to existing development at up to 70 percent 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 12-16-93; Am. Ord. passed 7-28-97)

§ 151.32 WATERSHED AREAS – DENSITY AND BUILT-UPON LIMITS

(A) PROJECT DENSITY. The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
		Low Density Development		High Density Development
		Single-family detached residential	Non-residential and all other residential	All types
WS-I	Not Applicable: Watershed shall remain undeveloped except for the following uses when they cannot be avoided: power transmission lines, restricted access roads, and structures associated with water withdrawal, treatment, and distribution of the WS-I water. Built-upon area shall be designed and located to minimize stormwater runoff impact to receiving waters.			
WS-II	Critical Area	1 dwelling unit (du) per 2 acres or 1 du per 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-III	Critical Area	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area

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	Balance of Watershed	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
WS-IV	Critical Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dus per acre or 36% built-upon area without curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area
WS-V	Not Applicable			

(B) CALCULATION OF PROJECT DENSITY. The following requirements shall apply to the calculation of project density:

(1) Project density shall be calculated as the total built-upon area divided by the total project area;

(2) A project with "existing development," as that term is defined in 15A NCAC 02B .0621, may use the calculation method in Sub-Item (1) of this Item or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.

(3) Expansions to existing development shall be subject to 15A NCAC 02B .0624 except as excluded in Rule 15A NCAC 02B .0622 (1)(d).

(4) Where there is a net increase of built-upon area, only the area of net increase shall be subject to 15A NCAC 02B.0624.

(5) Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to 15A NCAC 02B .0624;

(6) Total project area shall exclude the following:

(a) areas below the Normal High Water Line (NHWL); and

(b) areas defined as "coastal wetlands" pursuant to 15A NCAC 07H .0205, herein incorporated by reference, including subsequent amendments and editions, and available at no cost at <http://reports.oah.state.nc.us/ncac.asp>, as measured landward from the NHWL; and

(7) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

(a) natural drainage area boundaries;

(b) variations in land use throughout the project; or

(c) construction phasing.

(C) LOW DENSITY PROJECTS. In addition to complying with the project density requirements of Item (A) of this Rule, low density projects shall comply with the following:

(1) VEGETATED CONVEYANCES. Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:

(a) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and

(b) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.

(2) CURB OUTLET SYSTEMS. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

- (a) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
- (b) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
- (c) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
- (d) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
- (e) The minimum length of the swale or vegetated area shall be 100 feet; and

(f) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (a) through (e) of this Sub-Item.

(D) HIGH DENSITY PROJECTS. In addition to complying with the project density requirements of Item (A) of this Rule, high density projects shall comply with the following:

- (1) Stormwater Control Measures (SCMs) shall be designed, constructed, and maintained so that the project achieves either "runoff treatment" or "runoff volume match" as those terms are defined in 15A NCAC 02B .0621;
- (2) For high density projects designed to achieve runoff treatment, the required storm depth shall be one inch. Applicants shall have the option to design projects to achieve runoff volume match in lieu of runoff treatment;
- (3) Stormwater runoff from off-site areas and "existing development," as that term is defined in 15A NCAC 02B .0621, shall not be required to be treated in the SCM. Runoff from off-site areas or existing development that is not bypassed shall be included in sizing of on-site SCMs;
- (4) SCMs shall meet the relevant MDC set forth in 15A NCAC 02H .1050 through .1062; and

- (5) Stormwater outlets shall be designed so that they do not cause erosion downslope of the discharge point during the peak flow from the 10-year storm event as shown by engineering calculations.

(E) OPTIONS FOR IMPLEMENTING PROJECT DENSITY. Local governments shall have the following options in place of or in addition to the requirements of Item (A) above, as appropriate:

- (1) Local governments may allow only low density development in their water supply watershed areas in accordance with this Section.
- (2) Local governments may regulate low density single-family detached residential development using the minimum lot size requirements, dwelling unit per acre requirements, built-upon area percentages, or some combination of these.
- (3) 10/70 OPTION. Outside of WS-I watersheds and the critical areas of WS-II, WS-III, and WS-IV watersheds, local governments may regulate new development under the "10/70 option" in accordance with the following requirements:
  - (a) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within a local government's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.
  - (b) In water supply watersheds classified on or before August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on July 1, 1993. In water supply watersheds classified after August 3, 1992, the beginning amount of acreage available under this option shall be based on a local government's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the critical area shall not be counted towards the allowable 10/70 option acreage;
  - (c) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (C) above unless the local government allows high density development, in which case the local government may require these projects to comply with the high density requirements set forth in Item (D);
  - (d) The maximum built-upon area allowed on any given new development project shall be 70 percent;
  - (e) A local government having jurisdiction within a designated water supply watershed may transfer, in whole or in part, its right to the 10/70 land area to another local government within the same water supply watershed upon submittal of a joint resolution and approval by the Commission; and

(f) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.

- (4) New development shall meet the development requirements on a project-by-project basis except local governments may submit Ordinances that use density or built-upon area criteria averaged throughout the local government's watershed jurisdiction instead of on a project-by-project basis within the watershed.

(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

### § 151.33 DENSITY AVERAGING

- (A) An applicant may average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:
- (1) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
  - (2) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
  - (3) Vegetated setbacks on both properties meet the minimum statewide water supply watershed protection requirements.
  - (4) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
  - (5) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
  - (6) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.

- (7) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(8) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed Ordinance and that potential owners have record of how the watershed regulations were applied to the properties.  
(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.34 REGULATIONS FOR MANUFACTURED/MOBILE HOME PARKS AND RECREATIONAL VEHICLES.**

For the purposes of this Ordinance, the number of manufactured/mobile homes allowed in a manufactured/mobile home park shall be determined based on the amount of built-upon area. Manufactured/mobile homes shall be considered as part of the built-upon area, as shall "park model" or other recreational vehicles that are permanently anchored to the ground as part of a development or project. Recreational vehicles that are road-ready, with wheels attached and towing apparatus in place, shall not be considered in the built-upon area calculation.  
(Ord. passed 12-16-93)

**§ 151.35 CLUSTER DEVELOPMENT.**

Clustering of development is allowed in all watershed areas [except WS-I] under the following conditions:

(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 § 151.31. Density or built-upon area for the project shall not exceed that allowed for the critical area, balance of watershed or protected area, 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, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

(C) Areas of concentrated density development shall be located in upland area and away, to the maximum extent practicable, from surface waters and drainageways.

(D) 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.

- (E) Cluster developments that meet the applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

### **§ 151.36 VEGETATED SETBACKS REQUIRED**

- (A) A minimum one hundred (100) foot vegetative setback, as measured from the top of the bank, is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (30) foot vegetative setback, as measured from the top of the bank, 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.

(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 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

### **§ 151.37 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, such 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 Map as to location of the boundaries. This decision may be appealed to the Watershed Review Board. (Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.38 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 chapter shall be included in the area required for another building.

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in 151.05.

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

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.98

**§ 151.39 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. See Appendix A for an example of this calculation.

(A) *Uses of land.* This category consists of uses existing at the time of adoption of this chapter where such 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 such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

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

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

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

(1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.

(2) 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. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024) Penalty, see § 151.98

### ***PUBLIC HEALTH REGULATIONS***

#### **§ 151.50 GENERAL PROVISIONS.**

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 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.98

#### **§ 151.51 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 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024)

*PERMITS*

**§ 151.65 WATERSHED PROTECTION PERMIT.**

(A) Except where a single-family residence is constructed on a lot deeded prior to January 1, 1994, 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 or designee. 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.

(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 such use is not obtained by the applicant within 12 months from the date of issuance. (Ord. passed 12-16-93) Penalty, see § 151.98

**§ 151.66 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 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.98

**§ 151.67 WATERSHED PROTECTION OCCUPANCY PERMIT.**

(A) The Watershed Administrator or designee shall issue a watershed protection occupancy 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 in the following circumstances:

1. when there is a perennial stream on the property;
2. when impervious surface coverage is used for a residential watershed permit instead of minimum lot size;
3. when a commercial watershed permit is issued;

4. when stormwater management facilities are used.

When a watershed occupancy permit is required, the following conditions apply:

(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 erection or structural alterations of the building.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator or designee 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 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 designee has approved and issued a watershed protection occupancy permit.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97) Penalty, see § 151.98

### ***ADMINISTRATION, ENFORCEMENT AND APPEALS***

#### **§ 151.80 WATERSHED ADMINISTRATOR.**

The county hereby appoints the Development Services Director as the Watershed Administrator. That Director may delegate staff members to carry out the Director's responsibilities from time to time. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(A) The Watershed Administrator or designee 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 clerk to the Watershed Review Board.

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

(D) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Stormwater Branch of the Division of Energy, Mineral, and Land Resources.

(E) The Watershed Administrator shall keep records of the jurisdiction's use of the provision that a maximum of ten percent (10%) of the non-critical area of WS-II, WS-III, and, WS-IV watersheds may be developed with new development at a maximum of seventy percent (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).

(F) The Watershed Administrator shall keep a record of variances to this Ordinance. This record shall be submitted for each calendar year to the Water Quality Section of the Division of Environmental Management 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.

(G) The Watershed Administrator is responsible for ensuring that Stormwater Control Measures are inspected at least once a year and shall keep a record of SCM inspections.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97; Am. Ord. passed 03-04-2024)

**§ 151.81 CHANGES AND AMENDMENTS TO WATERSHED PROTECTION REGULATIONS.**

(A) The County 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 Chair of the Watershed Review Board, the County Board of Commissioners may proceed as though a favorable report had been received.

(C) Under no circumstances shall the County 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 Energy, Mineral and Land Resources.

(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.82 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this chapter, the County 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 10 nor more than 25 days before the date fixed for the hearing. (Ord. passed 12-16-93)

**§ 151.83 ESTABLISHMENT OF WATERSHED REVIEW BOARD.**

(A) The Watershed Review Board is hereby created. It shall have six (6) members, five of whom shall be appointed by the Board of County Commissioners. A Haywood County Commissioner, appointed by the Chair of the Board of Commissioners, shall act as the sixth member.

(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.84 RULES OF CONDUCT FOR WATERSHED REVIEW BOARD MEMBERS.**

Prior to assuming the duties of the office, members of the Board shall take an oath as provided by N.C. G.S. 160D-309. Members of the Board may be removed by the County Board of Commissioners for cause, including violation of the rules stated in divisions (B) through (G) of this section.

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

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested. A Board member shall have a **FINANCIAL INTEREST** in a case when a decision in the case will:

(1) Cause the Board member or the Board member's spouse to experience a direct financial benefit or loss, or

(2) Will cause a business in which the Board member or the Board member's spouse owns a 10 percent or greater interest, or in which the Board member or the Board member's spouse is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a **PERSONAL INTEREST** in a case when it involves a member of his or her immediate family (for example, parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case

*Am. Ord. passed 03042024*

from the Watershed Administrator or any other member of the Board, its secretary, or clerk prior to the hearing.

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

(E) Members of the Board shall give notice of any potential conflict of interest which they have in a particular case to the Chair at least 48 hours prior to the hearing.

(F) No Board member shall vote on any matter that decides an application or appeal unless they have attended the public hearing of that application or appeal.  
(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

**§ 151.85 POWERS AND DUTIES OF WATERSHED REVIEW BOARD.**

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in accordance with Section 151.86.

(B) *Variances.* Major variances may be granted for certain projects; however, the major variance must be reviewed by and receive approval from the Environmental Management Commission prior to the county issuing the watershed protection permit. The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in practical difficulties or unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done.

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

(a) A site plan, drawn to a 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; surface water drainage. The site plan shall be neatly drawn and indicate North arrow point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) 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.

(c) The Watershed Administrator shall notify in writing each municipality having jurisdiction in the watershed and the entity using the water supply for consumption. Such 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. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

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

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

1. If the applicant complies with the provisions of this chapter, the applicant can secure no reasonable return from, nor make reasonable use of, their 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 a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of this chapter that will make possible the reasonable use of the property.

2. The hardship results from the application of the provisions of this chapter to the property rather than from other factors such as deed restrictions or other hardship.

3. 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.

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

5. 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.

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

(c) In the 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.

(3) 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, such construction, alteration or use shall be in accordance with the approved site plan.

(4) 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.

(5) 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 such use is not obtained by the applicant within six months from the date of the decision.

(6) 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. 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;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

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 (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) 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 (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) 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.

(C) *Subdivision approval.* For subdivision approval see §§ 151.15 through 151.18.

(D) *Public health.* For public health provisions see §§ 151.50 and 151.51.

(E) Approval of all development greater than the low density option.

(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

### **§ 151.86 APPEAL FROM THE WATERSHED ADMINISTRATOR.**

Any order, requirement, decision, or determination made by the Watershed Administrator or designee may be appealed to, and decided by, the Watershed Review Board. The action of the Watershed Administrator shall be an Administrative Decision under the provisions of N.C. G.S. 160D-405.

An appeal from a decision of the Watershed Administrator or designee must be submitted to the Watershed Review Board within 30 calendar days from the date the order, interpretation, decision, or determination is made. The appeal will be dealt with in accordance with N.C. G.S. 160D-405 and 406 as a quasi-judicial matter. 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.

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 of approval for recording, 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 issued by the Board or by a court of record on application of the officer from whom the appeal is taken and upon due cause shown.

(Ord. passed 12-16-93; Am. Ord. passed 03-04-2024)

### **§ 151.87 APPEALS FROM THE WATERSHED REVIEW BOARD.**

Appeals from the Watershed Review Board must be filed with the Haywood County Superior Court within 30 days from the date of the decision in accordance with N.C. G.S. 160D-406(h) and determined as a matter in the nature of certiorari.

(Ord. passed 12-16-93)

**§ 151.98 VIOLATIONS and PENALTIES.**

(A) *Administrative Remedies.* 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. The Watershed Administrator 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. The enforcement actions of the Watershed Administrator may be appealed to the Watershed Review Board in accordance with the provisions of Section 151.86.

(B) *Civil penalties.*

- (1) Civil Penalty for a Violation. Any Person who violates any of the provisions of this Ordinance, or order issued pursuant to this Ordinance, or who initiates or continues an activity for which a Permit is required is subject to a civil penalty. The maximum civil penalty amount that the County may assess per violation is five hundred dollars (\$500.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the Person has not been assessed any civil penalty under this subsection for any previous violation, and that Person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with activity for which a permit is required is twenty-five thousand dollars (\$25,000).
- (2) Civil Penalty Assessment Factors. The Ordinance Administrator shall determine the amount of the civil penalty based upon the following factors:
  - (i) the degree and extent of harm caused by the violation,
  - (ii) the cost of rectifying the damage,
  - (iii) the amount of money the violator saved by noncompliance,
  - (iv) whether the violation was committed willfully, and
  - (v) the prior record of the violator in complying of failing to comply with this ordinance.
- (3) Notice of Civil Penalty Assessment. The Ordinance Administrator shall provide notice of the civil penalty amount and basis for assessment to the Person assessed. The notice of assessment shall be served by any means authorized under N.C.G.S. 1A-1, Rule 4. A notice of assessment shall direct the violator to 1) pay the assessment, 2) contest the assessment within 30 days by filing an appeal with the Watershed Review Board, or 3) file a request for remission of the assessment within 30 days of receipt of the notice of assessment.
- (4) Final Decision: The final decision on contested assessments shall be made by Watershed Review Board acting as a quasi-judicial body in accordance with

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- (5) Appeal of Final Decision. Appeal of the final decision of Watershed Review Board shall be to the Superior Court of Haywood County in accordance with the procedures of N.C.G.S. 160D-406(h). Notice of appeal shall be filed by the aggrieved party within 30 days of the final decision of Watershed Review Board.
- (6) Remission of Civil Penalties. A request for remission of a civil penalty imposed by this Ordinance may be filed with the Ordinance Administrator within 30 days of receipt of the notice of assessment. The following factors shall be considered in determining whether a civil penalty remission request will be approved by the Ordinance Administrator:
  - (i) Whether one or more of the civil penalty assessment factors of this Ordinance were wrongly applied to the detriment of the petitioner.
  - (ii) Whether the petitioner promptly abated the activities.
  - (iii) Whether the violation was inadvertent or a result of an accident.
  - (iv) Whether the petitioner had been assessed civil penalties for any previous violations.
  - (v) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.
  - (vi) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.
- (7) Collection. If payment is not received within 30 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Haywood County Superior Court, or the violator's residence or where their principal place of business is located, at the option of the County. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested and a remission that is not requested is due when the violator is served with a notice of assessment. An assessment that is contested or a remission that is requested is due at the conclusion of the administrative and judicial review of the assessment.
- (8) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with N.C.G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by the County for the

prior fiscal year.

- (b) Criminal Penalties. Any Person who knowingly or willfully violates any provision of this Ordinance, or who knowingly or willfully initiates or continues an activity for which a permit is required except in accordance with the terms, conditions, and provisions of that permit shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000 as provided in N.C.G.S. 153A-123.

Injunctive Relief

- (a) Violation of Ordinance Whenever the Ordinance Administrator has reasonable cause to believe that any Person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County, or any term, condition, or provision of a Permit, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the County, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Haywood County.
- (b) Abatement of Violation. Upon determination by a court that a violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

(Ord. passed 12-16-93; Am. Ord. passed 1-3-22; Am. Ord. passed 03-04-2024)

**§ 151.99 EFFECTIVE DATE AND REVISION OF ORIGINAL ORDINANCE**

This revised ordinance revises and supplants the ordinance in Chapter 151 originally adopted on December 16, 1993, and all subsequent amendments, and shall be effective on and after March 4, 2024.

**APPENDIX: EXISTING DEVELOPMENT**

It is possible to expand an existing business in a water supply watershed. **EXISTING DEVELOPMENT** is not required to be included in the density calculations. For example, in the balance of WS-III watersheds, you may expand your business to cover up to 24 percent of the lot area not already covered by impervious surfaces. In the critical area, the limit is 12 percent. In the balance of a WS-III watershed, assume you have a lot of 15,000 square feet, with an existing business and associated parking lot of 5,000 square feet. You want to find out how much of an addition is allowed under the rules. Subtract the 5,000 of **EXISTING DEVELOPMENT** from the lot, which leaves 10,000. Multiply 10,000 by 24 percent, which gives 2,400 square feet. Your addition can be 2,400 square feet of building, parking area, driveways, and the like. If this lot were in the critical area, your addition could be 1,200 square feet. New businesses can only cover a total of 24 percent of its property if it is in the balance of the watershed, and 12 percent if it is in the critical area. The buffer requirement must be met with both expansions and new developments.

(Ord. passed 12-16-93; Am. Ord. passed 7-28-97)