

CHAPTER 156: WATERSHED PROTECTION

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GENERAL PROVISIONS

§ 156.01 AUTHORITY AND ENACTMENT.

The Legislature of the State of North Carolina has, in G.S. §§ 153A-121 *et seq.*, General Ordinance Authority; and in G.S. § 143-214.5, Water Supply Watershed Protection, 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 Board of Commissioners does hereby ordain and enact into law the following sections as the *Watershed Protection Ordinance of Macon County*.
(Ord. passed 11-15-1993)

§ 156.02 JURISDICTION.

The provisions of this chapter shall apply within the areas designated as a public water supply watershed by the N.C. Environmental Management Commission and shall be defined and established on the maps entitled, watershed protection maps of Macon County, North Carolina (the watershed maps), which are adopted simultaneously herewith. The watershed maps and all explanatory matter contained thereon accompany and are hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the County Manager.
(Ord. passed 11-15-1993)

§ 156.03 EXCEPTIONS TO APPLICABILITY.

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

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

(C) Existing development, as defined in this chapter, is regulated under the provisions as stated in § 156.36.

(D) A pre-existing lot established 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.

(Ord. passed 11-15-1993)

§ 156.04 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words in the present tense include future tense. 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.

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

ANIMAL UNIT. A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

BEST MANAGEMENT PRACTICES (BMPS). 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 cover including buildings, pavement, gravel areas (such as roads, parking lots, paths), recreation facilities (such as 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. This term includes non-residential development as well as singlefamily residential subdivisions and multi-family developments that do not involve the subdivision of land.

COMPOSTING FACILITY. A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

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 ½ 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 ½ 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). Since WS-K watersheds are essentially undeveloped, establishment of a critical area is not required. 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 earned on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof. Provided further that no mechanical equipment is installed or used except as is normally used for domestic or professional purposes, and that not over 25% of the total floor space of any structure is used for the occupation. No home occupation shall be conducted in any accessory building except for the storage and service of a vehicle that is driven off site, such as a service repair truck, delivery truck, and the like.

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

DISCHARGING LANDFILL. A landfill which discharges treated leachate and which requires a National Pollution Discharge Elimination System (NPDES) permit.

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 North Carolina zoning 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 project, or
- (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 in the Office of the Register of Deeds prior to the implementation of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the implementation of this chapter.

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

as a family or families.

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 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.

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

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

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

The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard.

MINOR VARIANCE. A variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor of up to 10%, of any management requirement under the low density option.

NONCONFORMING LOT OF RECORD. A lot described by a plat or a deed that was recorded prior to the effective date of this chapter (or its amendments) that does not meet the minimum size or other development requirements of this chapter.

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

PERSON. Includes a firm, association, corporation; trust, and company as well as an individual.

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

RECREATIONAL VEHICLE. A vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

RECREATIONAL VEHICLE PARK OR SUBDIVISION. A tract or parcel (or contiguous parcels) of land divided into two or more lots or RV parking sites for rent or sale for occupancy by recreational vehicles used as temporary living quarters or for storage of a recreational vehicle.

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

SHALL. Is always mandatory and not merely directory.

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.

STREET (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.

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

SUBDIVISION. All divisions of a tract or parcel of land into two or more lots, 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 chapter;
- (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 chapter;
- (5) The division of a tract into plots or lots used as a cemetery.

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

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

WATER DEPENDENT STRUCTURE. Any structure for which the use requires access to or proximity to or 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 (such as the water supply intake.)

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

WILL. Is always mandatory and not merely directory.

(Ord. passed 11-15-1993)

SUBDIVISION REGULATIONS

§ 156.15 GENERAL PROVISIONS.

(A) No subdivision plat of land within a public water supply watershed shall be filed or recorded by the Macon County Register of Deeds until it has been approved in accordance with the provisions of this chapter. Likewise, the Macon County Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this chapter.

(B) The approval of a plat does not constitute or effect the acceptance by the county or the public of the dedication of any street or other ground, easement, right-of-way, public utility line, or other public facility show 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 the public water supply watershed jurisdiction of the county after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter.

(Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.16 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.

(A) All proposed subdivisions within the county's jurisdiction shall be reviewed prior to recording with the Macon County Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within a designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided the Watershed Administrator initials the vicinity map. Subdivisions within the designated watershed area shall comply with the provisions of this chapter and all other state and local requirements that may apply.

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

(C) The Watershed Administrator shall review the completed application and either approve, approve conditionally or disapprove the application. The Watershed Administrator shall take final action within 45 days of his/her receipt 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 the Watershed Administrator's action within the prescribed time limit. The public agencies may include, but are not limited to the following:

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

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

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

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

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

Certificate of Approval for Recording

I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed 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 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.

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

(Ord. passed 11-15-1993)

§ 156.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS WITHIN THE PUBLIC WATER SUPPLY WATERSHED.

(A) *Adequate building space.* All lots shall provide adequate building space in accordance with the development standards contained in §§ 156.30 through 156.38. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as, "NOT FOR RESIDENTIAL PURPOSES."

(B) *Total project area.* For the propose 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 a drainage system that diverts storm water run-off away from surface waters and incorporates best management practices to minimize water quality impacts.

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

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

(Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.18 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.

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the

time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection. (Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.19 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 Macon County, thereafter subdivides his or her land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter. (Ord. passed 11-15-1993)

DEVELOPMENT REGULATIONS

§ 156.30 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 subchapter, the county is hereby 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).
- (Ord. passed 11-15-1993)

§ 156.31 WATERSHED AREAS DESCRIBED.

- (A) *WS-I Watershed Areas*. The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds by allowing only low intensity uses. No residential or nonresidential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.
- (1) Allowed uses.
 - (a) Agriculture subject to the provisions of the *Food Security Act of 1985*, being 16 USC 3862, and the *Food, Agriculture, Conservation and Trade Act of 1990*. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten-foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations greater than 100 animal units shall by July 1, 1994, employ Best Management Practices as recommended by the Soil and Water Conservation Commission.
 - (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.6101-.0209).
 - (c) Water withdrawal, treatment and distribution facilities.
 - (d) Restricted road access.
 - (e) Power transmission lines.
 - (2) Density and built-upon 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% built-upon area. New residuals application sites and landfills are specifically prohibited.
- (1) Allowed uses.
 - (a) Agriculture as in WS-I.
 - (b) Silviculture as in WS-I.
 - (c) Residential development, including both single-family and all other residential.

(d) Non-residential development. Institutional, educational, religious, commercial, office or recreational.

(2) Prohibited uses.

(a) Sites for land application of residuals or petroleum contaminated soils.

(b) Landfills, incinerators and waste processors.

(c) Commercial use which sells, stores, or distributes motor fuel or other hazardous materials.

(d) Airports.

(e) New industry.

(f) Metal salvage facilities, including junkyards.

(g) Manufacturing, use or storage of any hazardous or toxic materials waste as listed on the federal Environmental Protection Agency (EPA) hazardous materials list.

(h) Package treatment plants, solid waste facilities or community sewage facilities, except for subsurface septic tanks.

(i) Underground fuel or chemical storage tanks.

(3) 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, except within an approved cluster development.

(b) All other residential and non-residential development shall not exceed 6% built-upon area on a project by project basis.

(c) 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 pattern, 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% built-upon area. In addition, non-residential uses may occupy 10% of the balance of the watershed, which is outside the critical area, with a 70% built-upon area when approved as a special nonresidential intensity allocation (SNIA). The Watershed Review Board is authorized to approve SNIAs consistent with the provisions of this chapter, and such approved projects shall be awarded on a first come, first served basis. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals applications sites are allowed. Recreational Vehicle Parks shall not be eligible for a SNIA.

(1) Allowed uses.

(a) Agriculture as in WS-I.

(b) Silviculture as in WS-I.

(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, except within an approved cluster development.

(b) All other residential and Non-residential development shall not exceed 12% built-upon area on a project by project basis except that up to 5% of the balance of the watershed may be developed for nonresidential

uses to 70% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

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

(1) Allowed uses.

- (a) Agriculture as in WS-I.
 - (b) Silviculture as in WS-I.
 - (c) Residential development.
 - (d) Non-residential development. Institutional, educational, religious, commercial, office or recreational.
 - (2) Prohibited uses.
 - (a) Sites for land application of residuals or petroleum contaminated soils.
 - (b) Landfills, incinerators and waste processors.
 - (c) Commercial use, which sells, stores, or distributes motor fuel or other hazardous materials.
 - (d) Airports.
 - (e) New industry.
 - (f) Metal salvage facilities, including junkyards.
 - (g) Manufacturing, use or storage of any hazardous or toxic materials waste as listed on the federal Environmental Protection Agency (EPA) hazardous materials list.
 - (h) Package treatment plants, solid waste facilities or community sewage facilities, except for subsurface septic tanks.
 - (i) Underground fuel or chemical storage tanks.
 - (3) 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, except within an approved cluster development.
 - (b) All other residential and non-residential development shall not exceed 12% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall not 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 intensity 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 a maximum of 24% built-upon area. In addition, non-residential uses may occupy 10% of the watershed with a 70% built-upon area when approved as a special non-residential intensity allocation (SNIA). The Watershed Review Board is authorized to approve SNIAs consistent with the provisions of this chapter, and such approved projects shall be awarded on a first come, first served basis. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed. Recreational Vehicle Parks shall not be eligible for a SNIA.
 - (1) Allowed uses.
 - (a) Agriculture as in WS-I.
 - (b) Silviculture as in WS-I.
 - (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, except within an approved cluster development.
 - (b) All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis except that up to 5% of fine balance of the watershed may be developed for nonresidential uses to 70% built-upon area on a project by project basis. For the purpose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.
- (Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.32 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 nor recreational vehicle parks; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in § 156.31. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

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

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

(Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.33 BUFFER AREAS REQUIRED.

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

(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 Practice.

(Ord. passed 11-15-1993)

§ 156.34 RULES GOVERNING INTERPRETATION OF WATERSHED AREA BOUNDARIES.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed maps, the following rules shall apply.

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

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said 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 or less from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

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

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

(Ord. passed 11-15-1993)

§ 156.35 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 to make another building comply with the requirements hereof.

(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 § 156.36.

(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 11-15-1993) Penalty, see § 156.99

§ 156.36 EXISTING DEVELOPMENT.

Any existing development, as defined in this chapter, may be continued and maintained subject to the

provisions provided herein.

(A) *Expansion of existing development.*

(1) Expansions of single-family residential development may be undertaken without restrictions.

(2) Expansions to all other residential development and all non-residential development may be made without including the built-upon area of the existing development in the density calculations, but including in those calculations the total acreage of the tract being developed. However, the total built-upon area added to a lot after the effective date of this chapter may not exceed the built-upon requirements of the water supply watershed critical area or the balance of the watershed, as appropriate.

(B) *Reconstruction of buildings or built-upon areas.* Single-family residential development may be repaired and/or reconstructed without restriction. Any other 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, provided:

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

(2) The total amount of space devoted to built-upon area may not be increased unless the additional built-upon area meets the expansion requirements of division (A) above of this section.

(C) *Uses of land.* This category consists of uses existing at the time of implementation 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 as a non-permitted use shall be changed only to an allowed use.

(3) When such a non-permitted use ceases for a period of at least 12 consecutive months, it shall not be re-established.

(D) *Vacant lots.* This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Macon County. A lot may be used for any of the uses allowed in the watershed area in which it is located.

(Ord. passed 11-15-1993)

§ 156.37 WATERSHED PROTECTION PERMIT.

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

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

(C) For those watershed protection permit applications which require use of the built-upon option instead of the lot-size option, the application shall include the following information:

(1) A site sketch, drawn to a scale of at least one inch to 40 feet, of the parcel of property showing its actual dimensions and size, and showing the dimensions and size of all buildings, pavement, gravel roads, recreation facilities, or any other portion of a development that is impervious or partially impervious;

(2) The use to which the completed project shall be devoted, and;

(3) Any other information reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this chapter.

(D) 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.

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

(Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.38 BUILDING PERMIT REQUIRED.

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under the North Carolina 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 11-15-1993)

PUBLIC HEALTH REGULATIONS

§ 156.50 NO THREAT TO PUBLIC HEALTH PERMITTED.

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 absence or improper implementation of a spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

(Ord. passed 11-15-1993) Penalty, see § 156.99

§ 156.51 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 11-15-1993)

ADMINISTRATION, ENFORCEMENT AND APPEALS

§ 156.65 WATERSHED ADMINISTRATOR.

Macon County shall appoint a Watershed Administrator, who shall be duly sworn in. 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 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 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 Division of Water Quality.

(D) The Watershed Administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of 5% of the non-critical area of WSII-BW and WS-III-BW watersheds may be developed with nonresidential

development to a maximum of 70% built-upon surface area. Records

for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials as applicable.

(E) 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 police power of Macon County, except that no civil or criminal action can be taken without the expressed permission of the County Manager. 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.

(F) The Watershed Administrator shall keep a record of variances to the local water supply watershed protection ordinance and shall submit this record for each calendar year to the Division of Water Quality on or before January 1 of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. passed 11-15-1993)

§ 156.66 APPEAL FROM ADMINISTRATOR.

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

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

(C) An appeal stays all proceedings in furtherance of the action appealed, unless the officer from whom the appeal is taken certifies to the Board after the notice of appeal has been filed with him 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 such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or by a court of record on application and notice to the officer from whom the appeal is taken and upon good cause shown.

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

(Ord. passed 11-15-1993)

§ 156.67 CHANGES AND AMENDMENTS TO CHAPTER.

(A) The Macon County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend the watershed protection chapter as described herein.

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

(Ord. passed 11-15-1993)

§ 156.68 PUBLIC NOTICE AND HEARING REQUIRED.

Before adopting or amending this chapter, the Macon 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 ten nor more than 25 days before the date fixed for the hearing.

(Ord. passed 11-15-1993)

§ 156.69 ESTABLISHMENT OF WATERSHED REVIEW BOARD.

(A) There shall be and hereby is created the Watershed Review Board consisting of five members appointed by the Board of Commissioners. One member shall be a resident of the Cartoogechaye Creek public water supply watershed. One member shall be a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed. One member shall be a resident of the Big Creek public water supply watershed. Two members shall be selected on an at-large basis. Members from the public water supply watersheds shall be appointed for three year terms, and at-large members shall be appointed for two year terms. Thereafter, all new terms shall be for three years, and members may be re-appointed.

(B) Three alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member. The county shall appoint one alternate member who is a resident of the Cartoogechaye Creek public water supply watershed, one alternate member who is a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed, and one alternate member who is a resident of the Big Creek public water supply watershed.

(C) Compensation for board members shall be determined and established, in an amount from time to time, by the Board of Commissioners by resolution duly enacted.

(Ord. passed 11-15-1993)

§ 156.70 RULES OF CONDUCT FOR MEMBERS.

Members of the Watershed Review Board may be removed by the Board of Commissioners for cause,

including violation of the rules stated below:

(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: cause the member or the member's spouse to experience a direct financial benefit or loss or, will cause a business in which the member or the member's spouse owns a 10% or greater interest, or 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 (such as, parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or 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 to the chairperson at least 48 hours prior to the hearing of any potential conflict of the interest which he or she has in a particular case before the Board.

(F) No Board member shall vote on any matter that decides an application or appeal unless he or she had participated in the public hearing on that application or appeal.

(Ord. passed 11-15-1993)

§ 156.71 POWERS AND DUTIES OF BOARD.

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

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

(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 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 local government 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, 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 chapter. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

1. If he or she complies with the provisions of the chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his or her 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 the chapter that will make possible the reasonable use of his or her property.

2. The hardship results from the application of the 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 chapter, or who purchases the property after the effective date of the chapter, 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 the 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, 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. Once a variance has been issued for a particular parcel, it shall remain in effect for the six-month period, regardless of a transfer in ownership.

(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.

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

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

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

(C) *Subdivision approval*. See §§ 156.15 through 156.19.

(D) *Public health*. See §§ 156.50 and 156.51.

(Ord. passed 11-15-1993)

§ 156.72 APPEALS FROM WATERSHED REVIEW BOARD.

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

(Ord. passed 11-15-1993)

§ 156.73 REMEDIES.

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the Macon County Board of Commissioners may, in addition to all other remedies available either in law or in equity, impose a civil penalty in the amount of \$100, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. The penalties and remedies herein provided shall be in addition to and not in substitution of other penalties now or hereafter provided by law. 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 such violation, indicating the nature of the violation, and ordering the action necessary to

correct it. The 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 aggrieved party or parties may appeal the ruling of the Watershed Administrator to the Watershed Review Board.

(Ord. passed 11-15-1993)

DRAINAGE OF IMPOUNDMENTS WITHIN THE WATERSHED AREA OF THE TOWN OF HIGHLANDS

§ 156.85 AUTHORITY.

This subchapter is adopted pursuant to G.S. § 153A-121, and other provisions of Article 6 of Chapter 153A.

(Ord. passed 7-1-2002)

§ 156.86 PURPOSE AND SCOPE.

The draining of impoundments without taking adequate precautions to prevent the release of accumulated sediment into the stream below the impoundment shall be considered a threat to the public health, safety and welfare. This subchapter is adopted for the purposes of regulating the draining of impoundments.

(Ord. passed 7-1-2002)

§ 156.87 JURISDICTION.

The provisions of this subchapter shall apply within that portion of the watershed area of the Town of Highlands which is located within the County of Macon and not within the boundaries of the Town of Highlands, as the same is described in the Appendix of this subchapter.

(Ord. passed 7-1-2002)

§ 156.88 DEFINITIONS.

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DAM. A structure and appurtenant works erected by human effort and direction to impound or divert water.

DRAINING. Any act in furtherance of the release of water from an impoundment at a rate greater than the rate by which the impoundment is normally replenished by its usual groundwater and subsurface sources.

IMPOUNDMENT. The body of water impounded by a dam.

SEDIMENT. Solid particulate matter, both mineral and organic, that has been or is being transported by water from its site of origin.

TEN-YEAR STORM. The surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of run-off for the watershed of interest under average antecedent wetness conditions.

(Ord. passed 7-1-2002)

§ 156.89 PERMIT REQUIRED BEFORE DRAINING IMPOUNDMENT.

(A) Before the owner of any impoundment drains an impoundment, he or she shall first notify the Town of Highlands Watershed Administrator in writing not less than 30 days prior to doing so, specifying the name of the impoundment, if any, the location of the impoundment, the surface area of the impoundment, and the size of the contributing drainage area. The owner or his or her agent shall not proceed with the draining without issuance of an Impoundment Draining Permit from the Watershed Administrator.

(B) Submittal of the following information shall be required:

(1) *Impoundments either less than or equal to ½ acre in surface area or naturally receiving the surface water runoff of less than or equal to 75 acres.* For impoundments either less than or equal to ½ acre in surface area at full pool, or receiving the surface water runoff from less than or equal to 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Plans showing the specific measures to be taken to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(2) *Impoundments either more than ½ acre in surface area or naturally receiving the surface water runoff of more than 75 acres.* For impoundments either more than ½ acre in surface area at full pool, or receiving the surface water runoff from more than 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan prepared by a N. C. Professional Engineer, indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Detailed plans and specifications sealed by a N.C. Professional Engineer showing temporary erosion control measures, diversion measures, or other channel protection measures designed to protect against erosion and the loss of sedimentation at all times up to and including a ten-year storm, and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(3) The Watershed Administrator may submit any plans received under the foregoing divisions (A) and (B) to the town Engineer, to a consulting engineer having expertise in this field, or to the North Carolina Department of Environment and Natural Resources (DENR) for review and comment at the expense of the Town of Highlands. The Watershed Administrator shall issue the Impoundment Draining Permit only upon a determination that the plan is adequate to prevent the release of sediment from the impoundment and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(4) Such permit shall not relieve the applicant of the obligation to obtain whatever state or federal permits are required under the law.

(5) The applicant shall comply in all respects with the time schedules and approved plans.

(6) The Watershed Administrator may also request the Town Engineer, qualified officials from the North Carolina Department of Environment and Natural Resources, or other qualified consultants or employees of the Town of Highlands, to conduct turbidity monitoring downstream from the impoundment to ensure compliance with the plan submitted and approved. "Turbidity monitoring," as used herein, shall mean all testing, sampling, or other procedures or activities related to the determination of turbidity levels both upstream and downstream from impoundments. The Watershed Administrator may assess the costs of all turbidity monitoring to the applicant. The applicant shall allow access to all portions of the applicant's land necessary to accomplish any of the purposes of this subchapter.

(Ord. passed 7-1-2002)

§ 156.90 PENALTIES AND REMEDIES.

(A) Any person who willfully or negligently violates any provision of this subchapter shall be guilty of a Class A1 misdemeanor, or the highest misdemeanor class as may be possible under existing sentencing statutes. The maximum fine authorized under G.S. § 15A-1340.23 (or similar amended or replacement section) shall be \$5,000.

(B) Violation of this subchapter shall subject the offender to a civil penalty of \$5,000 to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after he or she has been cited for violation of the subchapter.

(C) This subchapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.

(D) This subchapter may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful uses 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. In addition to an injunction, the court may enter an order of abatement as apart of the judgment in the cause. An order of abatement may direct that action be taken that is necessary to place the body of water downstream from the dam in its former condition and otherwise bring the property into compliance with this subchapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she may be cited for contempt, and the county may execute the order of abatement. The county shall have a lien on the property for the cost of executing an order of abatement 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.

(E) This subchapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(F) Each day's continuing violation of this subchapter shall be a separate and distinct offense.

(Ord. passed 7-1-2002)

§ 156.91 APPEALS.

(A) Any person aggrieved by the action of the Town of Highlands Watershed Administrator with regard to enforcement of the provisions of this subchapter, shall be given the opportunity of a conference with the County Manager who may affirm or reverse the original decision of the Administrator.

(B) Further appeal from the decision of the Town Watershed Administrator shall be by civil action filed in the General Court of Justice for the County of Macon, State of North Carolina. Trial shall be de novo.

(Ord. passed 7-1-2002)

§ 156.92 CONFLICT WITH OTHER LAWS.

Nothing in this subchapter shall be construed to conflict with existing provisions of the General Statutes of the State of North Carolina, as the same are now enacted and as they may be amended from time to time, or other similar statutes, rules or similar statutes, rules or regulations which are in force by authorities other than Macon County.

(Ord. passed 7-1-2002)

§ 156.93 NO IMPLIED WARRANTY OR GUARANTY.

The adoption, enforcement, or other action taken pursuant to the provisions of this subchapter shall not constitute a warranty, guaranty, or certification that any stream located within the area affected by this

subchapter shall not be affected by accumulations of sediment or other pollution, nor that they are safe for any purpose.

(Ord. passed 7-1-2002)

§ 156.99 PENALTY.

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

(Ord. passed 11-15-1993)

Effective upon adoption this 11th day of February, 2008.

C. Jack Horton, County Manager
Clerk to the Board of Commissioners