MEMO TO: Planning Board

FROM: Planning Staff

SUBJECT: ZTA-5-2024 - Zoning Text Amendments to Chapter 153 Unified Development Ordinance

DATE: July 16, 2024

## Background

The Department of Environmental Quality has updated the Water Supply Watershed Ordinance for the State of North Carolina. The adoption of this ordinance will allow our UDO to reflect the most recent version.

**Zoning Amendment**
**Staff's Proposed Statement of Consistency**
**for APPROVAL of Application**

Case No. ZTA-5-2024

Applicant: City of Lincolnton Planning Department

Request: ZTA-5-2024 - Zoning Text Amendments to Chapter 153 Unified Development Ordinance

Proposed Consistency and Reasonableness Statement:

This amendment is consistent because it updates text language to match current state regulations.

The proposed amendment is **consistent** with the adopted Lincolnton Land Use Plan in that it is not contrary to the goals and objectives outlined by the Plan and **approval of the amendment is reasonable and in the public interest**.

## TABLE OF CONTENTS

**Article 100 DEFINITIONS**

**Article 200 AUTHORITY AND GENERAL REGULATIONS**

**ARTICLE 300 SUBDIVISION REGULATIONS**

**ARTICLE 400: DEVELOPMENT REGULATIONS**

**ARTICLE 500: PUBLIC HEALTH REGULATIONS**

**ARTICLE 600 ADMINISTRATION, ENFORCEMENT AND APPEALS**

## ARTICLE 100: DEFINITIONS

### Section 101. General 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 nonpoint source inputs to receiving waters in order to achieve water quality protection goals.

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

**Building.** Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other 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 (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

**Cluster Development.** Cluster development means 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 nonresidential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed use development are considered as cluster development.

**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 twenty-five percent (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, 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 zoning law as of the effective date of this ordinance 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 the General Statutes (160D-102), or

(3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 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**. Family subdivision means a division of a tract of land: (a) to convey the resulting parcels, with the exception of parcels retained by the grantor, to a relative or relatives as a gift or for nominal consideration, but only if no more than one parcel is conveyed by the grantor from the tract to any one relative; or (b) to divide land from a common ancestor among tenants in common, all of whom inherited by intestacy or by will.

**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 foot print of the built-upon area proposed to encroach with the vegetated setback divided by the total area of the vegetated setback within the project.

**Nonconforming 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 he 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 residences 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 is 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, evapo-transpiration, post-filtration discharge, reuse of stormwater, or a combination thereof.

**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 a permanent location on the land.

**Subdivider.** Any person, firm corporation, or official 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 divisions 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 ordinance:

(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 10 acres where no street right-of-way dedication is involved;

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

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the 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 offspring 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. Refer to the North Carolina General Statutes Section 160D- 108 for more information.

**Water Dependent Structure.** Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purposes, 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 City of Lincolnton responsible for administration and enforcement of this ordinance.

**Section 102. Word Interpretation.**

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in the present tense include the 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.

The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building."

The word "lot" shall include the words, "plot," "parcel," or "tract."

The word "shall" is always mandatory and not merely directory.

The word "will" is always mandatory and not merely directory.

## ARTICLE 200: AUTHORITY AND GENERAL REGULATIONS

### Section 201. Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 160A, Article 8, Section 174, General Ordinance Making Power; and in Chapter 143, Article 21, Water and Air Resources, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. In addition, GS 160D-926 refers specifically to water supply watershed management. The Governing Board of City of Lincolnton hereby ordains and enacts into law the following articles as the Water Supply Watershed Protection Ordinance of City of Lincolnton.[1]

### Section 202. Jurisdiction.

The provisions of this Ordinance shall apply within the areas designated as a Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on a water supply watershed protection map of City of Lincolnton, North Carolina which is adopted simultaneously herewith. The watershed map and all explanatory matter contained thereon accompanies and is hereby made a part of this Ordinance. This Ordinance shall be permanently kept on file in the City of Lincolnton.[2]

### Section 203. 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 City of Lincolnton; however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the City of Lincolnton 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 the 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 a net increase of built-upon area, only areas of the 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. Local governments may require the combination of contiguous nonconforming lots of record owned by the same party to establish a lot or lots that meet requirements in Article 300 of this ordinance.
(F) Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. If a local government does not enforce subdivision regulations, then that local government may or may not allow the exemption for family subdivisions.

(G) Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall 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.[3]

**Section 204. Repeal of Existing Watershed Ordinance.** (Optional)

This ordinance in part carries forward by re-enactment, some of the **Watershed Ordinance of the City of Lincolnton, North Carolina** (adopted by the Lincolnton City Council on August 1, 2024), and it is not the intention to repeal but rather to re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Watershed Ordinance which are not re-enacted herein are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of any ordinance provisions heretofore in effect, which are now pending in any court of this state or of the United States, shall not be abated or abandoned by reason of the adoption of this ordinance, but shall be prosecuted to their finality the same as if this ordinance had not been adopted; and any and all violations of the existing Watershed Protection Ordinance, prosecutions for which have not yet been instituted, may be hereafter filed and prosecuted; and nothing in this ordinance shall be so construed as to abandon, abate or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

**Section 205. Criminal Penalties. .** [4]

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offense shall not exceed $500.00. Each day that the violation continues

shall constitute a separate offense.

**Section 206. Remedies.**

(A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the City of Lincolnton Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of $100.00 per day, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to correct it. He 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 ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Watershed Review Board.

**Section 207. Severability.**

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

**Section 208. Effective Date.**

This Ordinance shall take effect on August 1, 2024.[4]

## ARTICLE 300: SUBDIVISION REGULATIONS.

### Section 301. General Provisions.

(A) No subdivision plat of land within the 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 Article. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would conflict with this Article.

(B) The approval of a plat does not constitute or effect the acceptance by the City of Lincolnton 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 the jurisdiction of the City of Lincolnton] after the effective date of this ordinance shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.[5]

### Section 302. Subdivision Application and Review Procedures.

(A) All proposed subdivisions shall be reviewed prior to recording with the Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within the designated Water Supply Watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this ordinance and may be recorded provided the Watershed Administrator initials the vicinity map. Subdivisions within a WS-IV watershed are subject to the provisions of this ordinance only when an erosion and sedimentation plan is required under the provisions of State law or an approved local program unless another stormwater program applies. Local government should always be aware that other post-construction requirements may apply even when water supply watershed protection requirements do not. Subdivisions within the designated watershed area shall comply with the provisions of this Article and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator. The application shall include a completed application form, two (2) copies of the plat, a description of the proposed method of providing storm water drainage, and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board (see appendix A).

(C) The Watershed Administrator shall review the completed application and shall either approve, approve conditionally, or disapprove each application. The Watershed

Administrator shall take final action within forty-five (45) days of submission of the application. The Watershed Administrator or the Board may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay 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 the proposed private water systems 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 stormwater controls or storm water management in general.

(5) The county for subdivisions located in the Extraterritorial Jurisdiction (ETJ) of a municipality.

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

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

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

**Certificate of Approval for Recording**

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

_____ _____

Date Watershed Administrator

**NOTICE: This property is located within a 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 and may be entered in the minutes. The subdivider may make changes and submit a revised plan which shall constitute a separate request for the purpose of review.

(F) As a condition for approval, all subdivision plats shall comply with the requirements for recording of the County Register of Deeds.

(G) The plat shall be recorded within 21 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.

**Section 303. Subdivision Standards and Required Improvements**.

(A) All lots shall provide adequate building space in accordance with the development standards contained in Article 400. Lots smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Article 400.

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

(C) Storm Water Drainage Facilities: The application shall be accompanied by a description of the proposed method of providing stormwater drainage. The subdivider shall provide a drainage system that diverts stormwater runoff away from surface waters, incorporates Stormwater 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 Lincoln County Natural Resources Division or the North Carolina Division of Energy, Mineral, and Land Resources (Where Applicable)

(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.

**Section 304. Construction Procedures.**

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

(B) No building or other permits shall be issued for the erection of a structure on any lot not on record at the time of adoption of this Ordinance until all requirements of this Ordinance 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.

**Section 305. Penalties for Transferring Lots in Unapproved Subdivisions.**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the City of Lincolnton, 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. The City of Lincolnton may bring an action for an 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.

## ARTICLE 400: DEVELOPMENT REGULATIONS

**Section 401. Establishment of Watershed Areas.**

The purpose of this Article is to list and describe the watershed areas herein adopted.

For purposes of this ordinance the City of Lincolnton and its one-mile extraterritorial jurisdiction are hereby divided into the following area[s], as appropriate:

WS-IV-CA (Critical Area)
WS-IV-PA (Protected Area)

**Section 402. Watershed Areas - Allowed and Not Allowed Uses**

| Activity/Use | Water Supply Watershed Classification[1] |
|---|---|

| | 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 [a] | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| NPDES General Permit Wastewater Discharges pursuant to 15A NCAC 02H .0127 | Yes [a] | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| NPDES Individual Permit trout farm discharges | Yes [a] | Yes | Yes | Yes | Yes | Yes | Yes | 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[b] | No[b] | 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[c] | No[c] | No[c] | No[c] | No[c] | No[c] | Yes [d] |
| Industrial Waste | No | No[c] | No[c] | No[c] | No[c] | No[c] | No[c] | Yes [d] |
| Other wastes | No | No[c] | No[c] | No[c] | No[c] | No[c] | No[c] | Yes [d] |
| Groundwater remediation project discharges[e] | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Agriculture[f] | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Silviculture[g] | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Residential Development[h] | No[j] | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Non-residential Development[hi] | No[j] | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Nonpoint Source Pollution[k] | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |
| Animal Operations[l] | Yes | Yes | Yes | Yes | Yes | Yes | Yes | Yes |

Notes:
[a] Permitted pursuant to 15A NCAC 02B .0104
[b] Except non-process industrial discharges are allowed
[c] Only allowed if specified in 15A NCAC 02B .0104

[d] Not allowed if activity(ies) has/have an adverse impact on human health
[e] Where no other practical alternative exists
[f] 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 the most recent version of USGS 1:24000 scale (7.5 minute) topographic maps or as determined by local government studies
[g] Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018
[h] See density requirements in 15A NCAC 02B .0624
[i] See different allowed and not allowed in this table
[j] See the following WS-I note
[k] NPS pollution shall not have an adverse impact, as defined in 15A NCAC 02H .1002, on use as water supply or any other designated use
[l] Deemed permitted, as defined in 15A NCAC 02T .0103 and permitted under 15A NCAC 2H .0217

**Section 403. 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 (a) | | High Density Development (a) |
| | | 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 |
| | 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 | 24% built-upon area; or 36% built-upon area | 24 to 70% built-upon area |

| | | | | |
|---|---|---|---|---|
| | | roadway right-of-way or 24% built-upon; or 3 dus per acre or 36% built-upon area without curb and gutter street system | without curb and gutter street system | |
| WS-V | Not Applicable | | | |

(a) 2021-House Bill 218 – NCGS 143-214.5 (d3)
Local government must allow applicant to exceed allowable density if all of the following apply:

(1) The property was developed prior to the effective date of the local water supply watershed program.
(2) The property has not been combined with additional lots after January 1, 2021.
(3) The property has not been a participant in a density averaging transaction under subsection (d2) of this section.
(4) The current use of the property is nonresidential.
(5) In the sole discretion, and at the voluntary election, of the property owner, the stormwater from all of the existing and new built-upon area on the property is treated in accordance with all applicable local government, State, and federal laws and regulations.
(6) The remaining vegetated buffers on the property are preserved in accordance with the local water supply watershed protection program requirements

(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 the 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. Prior to approval of the ordinance, the local government shall demonstrate to the Commission that the provisions as averaged meet or exceed the

statewide minimum requirements and that a mechanism exists to ensure the planned distribution of development potential throughout the local government's jurisdiction within the watershed.

(5) Local governments may administer oversight of future development activities in single-family detached residential developments that exceed the applicable low density requirements by tracking dwelling units rather than percentage built-upon area, as long as the SCM is sized to capture and treat runoff from 1) all pervious and built-upon surfaces shown on the development plan and 2) any off-site drainage from pervious and built-upon surfaces, and when an additional safety factor of 15 percent of built-upon area of the project site is figured in.

**Section 404. 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 a 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 deeds 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 a record of how the watershed regulations were applied to the properties.

**Section 405. Cluster Development**

Cluster development is allowed in all Watershed Areas [except WS-I] under the following conditions:

(A) Minimum lot sizes do not apply 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 Section 303. 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.

**Section 406. Vegetated Setbacks Required**

(A) A minimum one hundred (100) foot vegetative setback is required for all new development activities that exceed the low-density option; otherwise, a minimum thirty (30) foot vegetative setback 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) Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations.

(C) 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.

**Section 407. Application of Regulations.**

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

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

(C) 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 Section 306

(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.

**Section 408. 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, 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 City of Lincolnton 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 twenty-five (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. The Environmental Management Commission adopted this provision with intention of locating built-upon surface area in the least environmentally sensitive area of the project.

(D) Where the watershed area boundaries lie at a scaled distance of twenty-five (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 such boundaries. This decision may be appealed to the Watershed Review Board.

**Section 409. Existing Development**

Existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this ordinance, however, the built-upon area of the existing development is not required to be included in the built-upon area calculations. Please see Section 303 (B) Calculation of Project Density. This section deals with all existing developments as defined in the EMC rules. All existing development, whether or not it meets the statewide minimum standards, is exempt from the provisions of this ordinance.

(A) Uses of Land. This category consists of uses existing at the time of adoption of this ordinance 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. 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 the built-upon area may not be

increased unless stormwater control that equals or exceeds the previous development is provided.

## Section 410. Watershed Protection Permit

(A) Except where single family residence is constructed on a lot deeded prior to effective date of this ordinance (from 1995 ordinance) or for single family residential redevelopment, (even if there is net increase in built-upon area or if stormwater controls are not equal to that of previous single family residential development), 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 ordinance.

(B) Watershed Protection Permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form (see Appendix A) 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 ordinance.

(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 twelve (12) months from the date of issuance.

## Section 411. Building Permit Required

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.

## Section 412. Watershed Protection Occupancy Permit

(A) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered, or moved and/or prior to the change of use of any building or land.

(B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) business days after the erection or structural alterations of the building. The applicant should notify the Watershed Administrator and request the issued WSPOP when building is complete.

(C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Watershed Protection Permit.

(D) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for the denial.

(E) No building or structure that has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

## ARTICLE 500: PUBLIC HEALTH REGULATIONS

### Section 501. Public Health, in general.

No activity, situation, structure, or land use shall be allowed within the watershed that poses a threat to water quality and the public health, safety, and welfare.

### Section 502. Abatement.

(C) 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.

© 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.

## ARTICLE 600: ADMINISTRATION, ENFORCEMENT AND APPEALS[7]

### Section 601. Watershed Administrator and Duties thereof.

The City of Lincolnton 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 ordinance as follows:

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

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

(C) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, exercising in the fulfillment of his responsibility the full police power of the City of Lincolnton. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him 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. For additional information, refer to commentary under Article 300

(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 the local Water Supply Watershed Protection 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.

## Section 602. Appeal from the Watershed Administrator

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

An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within thirty 30 calendar 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.

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

The Board shall set 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.

## Section 603. Changes and Amendments to the Watershed Protection Ordinance.

(A) The City of Lincolnton City Council may, on its own motion or own 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 forty-five (45) days after submission of the proposal to the Chairman of the Watershed Review Board, the City of Lincolnton City Council may proceed as though a favorable report had been received.

(C) Under no circumstances shall the City of Lincolnton City Council adopt such amendments, supplements, or changes that would cause this ordinance 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.

**Section 604. Public Notice and Hearing Required.**

Before adopting or amending this ordinance, the City of Lincolnton City Council 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 (10) nor more than twenty-five (25) days before the date for the hearing.

**Section 605. Establishment of Watershed Review Board.**

(A) There shall be and hereby is created the Watershed Review Board (City of Lincolnton Board of Adjustment) consisting of five (5) members appointed by the City of Lincolnton City Council.

- Board members shall be appointed for three year terms and may be reappointed.

(B) Two (2) 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 (3) 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 town shall appoint two (2) alternate members.

**Section 606. Rules of Conduct for Watershed Review Board Members.**

Members of the Board may be removed by the City of Lincolnton City Council 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 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 him or his spouse to experience a direct financial benefit or loss, or 2) will cause a business in which he or his spouse owns a 10 percent 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 immediate family (i.e., parent, spouse, or child). The intent is to prohibit members of the Board from acting in situations where they have a conflict of interest in a manner similar to the prohibition in NCGS 14-234(c)(1).

(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, or its secretary 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 chairman at least forty-eight (48) hours prior to the hearing of any potential conflict of interest which he 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 has attended the public hearing on that application or appeal.

**Section 607. Powers and Duties of the 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 the enforcement of this ordinance.

(B) Variances. This section outlines the procedures for local governments to use in approving minor 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 local government issuing the watershed protection permit. Procedures for local government review of major variance requests and submission of a recommendation to the Commission are also included. 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. In addition, the [county][town] 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 (1) inch to forty (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 the north point, name, and address of the person who prepared the plan, the 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 Ordinance. 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 complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his 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 Ordinance that will make possible the reasonable use of his property.

(2) The hardship results from the application of the

Ordinance to the property rather than from other factors such as deed restrictions or other hardships.

(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 by 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 Ordinance and preserves its spirit.

(c) By 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 ordinance. 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 (6) 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 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. See Article 200.

(D) Public Health. See Article 400.

(E) Approval of all development greater than the low-density option. See Appendix C.

**Section 608. Appeals from the Watershed Review Board.**

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

FOOTNOTES PAGE

House Bill 124, enacted in 1991, provides that watershed regulations may be adopted by a local government pursuant to its "general police power," to its power to adopt a land subdivision ordinance, to its zoning power, or to some combination of these powers. The model ordinance, since it has been established as a free-standing ordinance, cites the general police power statutes as its authority along with the watershed statutes. Local governments must choose which authority they wish to use and should not cite all legislative authorities because each authority has its own corresponding jurisdictional implications. Local governments should decide whether or not they intend to adopt a free-standing ordinance, or as an alternative, separate (or amendments to) zoning and subdivision ordinances. Whichever method is chosen, the appropriate authorities should be cited in this section and elsewhere in the ordinance whenever needed.

Coordination between the jurisdictions is very important. A county may enforce the watershed protection regulations for a municipality within that county if a resolution is passed by both the county and municipal governing boards.

[2] Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5.

[3] This section states the watershed protection ordinance will not affect existing ordinances or agreements between parties unless those ordinances or agreements are less restrictive than the watershed protection ordinance. In those situations, the watershed protection ordinance will take precedence.

[4] Please note that the prohibition on criminal penalties for certain ordinance violations in SL 2021 -138, Part XIII is not clear regarding ordinances that may have multiple sources of authority. Water quality protection rules are primarily drawn from Chapter 143, so one could interpret this rule to allow criminal penalties for violations of water supply watershed regulations. Again, however, it is unclear exactly how and whether SL 2021 -138 applies to water supply watershed protection ordinances.

[4] The latest date on which an ordinance shall become effective is as follows:

- by July 1, 1993: Affected municipalities with a population of 5,000 or greater
- by October 1, 1993: Affected municipalities with a population of less than 5,000
- by January 1, 1994: Affected counties.

[5] Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5

[6] Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5. This article contains development regulations for each of the watershed classifications. Watersheds designated WS-V require no local government regulatory program. Local governments will only need to include the regulations corresponding to the classifications assigned to watersheds in their jurisdiction. For WS-II, WS-III and WS-IV watershed areas, the EMC rules provide for single family residential development to be controlled either by limiting built-upon area or by limiting density (dwelling units per acre). Those involved in drafting the model ordinance felt that most local units of government would find it easier to enforce single family residential requirements through density controls rather than limiting built-upon area. All other residential and non-residential development is controlled by regulating the amount of built-upon area as required by the EMC rules.