

CUMBERLAND COUNTY WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION ORDINANCE



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CUMBERLAND COUNTY JOINT PLANNING BOARD

CUMBERLAND COUNTY
WATER SUPPLY WATERSHED MANAGEMENT AND PROTECTION
ORDINANCE

January 1, 1994

(Editor's note: Adopted on December 20, 1993; amended on June 24, 1997, April 20, 1998, and February 25, 2002. As of the date of this reprint, the first amendment to the Watershed Protection Map is pending.)

CUMBERLAND COUNTY
WATER SUPPLY WATERSHED MANAGEMENT AND
PROTECTION ORDINANCE

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Disclaimer: The material contained within the appendixes is for general reference, informational and illustrative purposes only and is not to be construed or used in place of the officially adopted regulations, policies or plans, nor does it replace any officially adopted regulations, policies or plans. While the information contained herein is believed to be accurate and current, the County of Cumberland does not assume any responsibility for the information and the users of this manual should contact the County Planning Department to verify the contents prior to relying on this information.

APPENDIX C
CUMBERLAND COUNTY WATERSHED PROTECTION ORDINANCE

CHAPTER 31A
WATER SUPPLY WATERSHED MANAGEMENT AND
PROTECTION ORDINANCE

- Art. I. Authority and General Regulations, §31A-1-31A-9
- Art. II. Subdivision Regulations, §§31A-10-31A-19
- Art. III. Development Regulations, §§31A-20-31A-30
- Art. IV. Public Health Regulations, §§31A-31-31A-39
- Art. V. Administration, Enforcement and Appeals, §§31A-40-31A-49
- Art. VI. Definitions, §§31A-50-31A-59
- Art. VII. High Density Requirements, §§31A-60-31A-68

ARTICLE I
AUTHORITY AND GENERAL REGULATIONS

SECTION 31A-1. AUTHORITY AND ENACTMENT.

Pursuant to the authority provided in the North Carolina General Statutes, Chapter 153A-121, et seq., (General ordinance-making power), and Chapter 143, Article 21, Section 143-214.5 (Water Supply Watershed Protection), whereby the General Assembly of the State of North Carolina delegated the responsibility for or directed local government units to adopt ordinances and regulations designed to promote the public health, safety, and general welfare of their citizenry, the Cumberland County Board of Commissioners, does hereby ordain the enact into law this ordinance as the Water Supply Watershed Management and Protection Ordinance of Cumberland County, North Carolina. The short title of this ordinance for purposes of reference shall be the "Watershed Protection Ordinance."

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-2. JURISDICTION.

The provisions of this ordinance 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 map entitled, "Watershed Protection Map of Cumberland County, North Carolina" ("The Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained hereon incorporated by reference as fully set forth herein. This ordinance shall be permanently kept on file in the office of the Cumberland County Clerk.

(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-3. 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 Cumberland County, North Carolina; however, the adoption of this ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect at the time of 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. 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 density calculations.

(D) A pre-existing lot owned by an individual prior to the effective date of this ordinance, 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 ordinance.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-4. 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.

(Ord. 12-20-93; Amend. of 6-24-97)

SECTION 31A-5. EFFECTIVE DATE.

This ordinance shall take effect and be in force on December 31, 1993.

(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-6. FEES, SUBDIVISION APPROVAL, APPEALS, MINOR VARIANCES, MAJOR VARIANCES.

The Board of Commissioners shall adopt a schedule of fees to be charged for the various approvals, applications, and appeals set forth in this chapter. The schedule shall be kept in the office of the Planning Director.
(Ord. of 12-20-93; Amend. of 6-24-97)

SECTIONS 31A-7 -- 31A-9. RESERVED.

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**ARTICLE II
SUBDIVISION REGULATIONS**

SECTION 31A-10. GENERAL PROVISIONS.

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

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

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

(D) All subdivisions of land within the jurisdiction of County after the effective date of this ordinance shall require a plat to be prepared, approved, and recorded pursuant to this ordinance.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-11. 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 Planning Director to determine whether or not the property is located within the designated Public 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. The Planning Director shall indicate on the plat whether the plat is subject to this ordinance. In addition, subdivisions within a WS-IV watershed are subject to the provisions of this ordinance only when an erosion and sedimentation permit is required under the provisions of State law or approved local program. 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 Planning Director. The application shall include a completed application form, the number of copies of the plat that the County Board of Adjustment requires and supporting documentation deemed necessary by the Planning Director.

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(C) The Planning Director shall review the completed application and either approve, approve conditionally or disapprove each application. The Planning Director shall take final action within thirty (30) days of receiving a completed application. The Planning Director shall 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 Planning Director's action within the prescribed time limit. Said public agencies may include, but are not limited to, the following:

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

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

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

(Ord. of 12-20-93; Amend. of 2-25-02)

(4) Any other agency or official designated by the Planning Director.

(D) If the Planning Director approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Planning Director.

Certificate of Approval for Recording

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

Date

Planning Director

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

(E) If the Planning Director disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant and entered in the minutes. The subdivider may make changes and submit a revised plan. The Planning Director shall take final action within fifteen (15) days of receiving the revised application. Decisions and recommendations of the Planning Director may be appealed to the County Board of Adjustment in accordance with Article V.

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

(G) The subdivider shall provide the Planning Director with evidence the plat has been recorded with the Register of Deeds within five (5) working days of its being recorded.

(Ord. of 12-20-93; Amend. 6-24-97)

SECTION 31A-12. SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS.

(A) All lots shall provide adequate building space in accordance with the development standards contained in Article III.

(B) 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) Stormwater 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 and incorporates best management practices where roads and utilities cross a buffer.

(D) Erosion and Sedimentation Control. When required by law, written verification that a soil erosion and sedimentation control plan has been approved by the appropriate State or local agency.

(E) Roads constructed in critical areas and watershed buffer areas. Where possible, roads should be located outside of critical areas and watershed buffer areas. If a road must be constructed within a critical area and/or a buffer area, then a no practical alternative must be shown. Roads constructed within these areas shall be designed and constructed so to minimize their impact on water quality. Adherence to N.C. Department of Transportation Best Management Standards is required.

(Ord. of 12-20-93; Amend. of 2-25-02)

SECTION 31A-13. CONSTRUCTION PROCEDURES.

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

(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 ordinance until all requirements of this ordinance has been met. The subdivider, prior to

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commencing any work within the subdivision, shall make arrangements with the Planning Director to provide for adequate inspection.
(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-14. 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 Cumberland County, North Carolina, 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 recorded in the office of the Register of Deeds, shall be in violation of this ordinance and subject to penalties and remedies outlined in Section 31A-67. 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.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTIONS 31A-15 -- 31A-19. RESERVED.

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**ARTICLE III
DEVELOPMENT REGULATIONS**

SECTION 31A-20. 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 County is hereby divided into the following area(s), as appropriate:

WS-IV-CA (CRITICAL AREA)
WS-IV-PA (PROTECTED AREA)

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-21. WATERSHED AREAS DESCRIBED.

(A) WS-IV Watershed Areas-Critical Area (WS-IV-CA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local program are required to meet the provisions of this ordinance when located in a WS-IV watershed. In order to address a moderate to high land use intensity pattern, single-family residential development must be limited to no more than two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. New residual application sites and landfills are specifically prohibited.

(Ord. of 12-20-93; Amend. of 2-25-02)

High density development using engineered stormwater control devices are permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. (See Article VII)

(Ord. of 12-20-93; Amend. of 2-25-02)

(1) Allowed Uses:

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

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

(c) Residential.

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(d) Non-residential development excluding:

1. Landfills, and
2. Sites for land application of residuals or petroleum contaminated soils.

(Ord. of 12-20-93; Amend. of 2-25-02)

(2) Density and Built-Upon Limits:

(a) Single family residential development shall not exceed two (2) dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 feet, excluding roadway right-of-way), except within an approved cluster development.

(Ord. of 12-20-93; Amend. of 2-25-02)

(b) All other residential and non-residential development shall not exceed twenty-four percent (24%) built-upon area on a project-by-project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(B) WS-IV Watershed Areas-Protected Area (WS-IV-PA). Only new development activities that require an erosion/sedimentation control plan under State law or approved local government program are required to meet the provisions of this ordinance when located in a WS-IV watershed. In order to accommodate moderate to high land use intensity, single-family residential development must be limited to no more than two (2) dwelling units per acre (2 du/ac). All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area.

(Ord. of 12-20-93; Amend. of 2-25-02)

High density developments using engineered stormwater control devices are permitted in this district. Ultimate responsibility for the operation and maintenance of these controls will rest with the local government. Development shall not exceed seventy percent (70%) built-upon area (See Article VII).

(Ord. of 12-20-93; Amend. of 2-25-02)

(1) Uses Allowed:

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

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

(c) Residential development.

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(d) Non-residential development.

(2) Density and Built-Upon Limits:

(a) Single family residential development shall not exceed two (2) dwelling units per acre (2 du/ac), as defined on a project-by-project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way).

(Ord. of 12-20-93; Amend. of 2-25-02)

(b) All other residential and non-residential development shall not exceed twenty-four percent (24%) built-upon area on a project-by-project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(Ord. of 12-20-93; Amend. of 2-25-02)

SECTION 31A-22. CLUSTER DEVELOPMENT.

Cluster development is allowed in all Watershed Areas under the following conditions:

(A) Minimum lot sizes are not applicable to single family cluster development projects. Density or built-upon area of 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; or where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds in the office of the Register of Deeds, Cumberland County.

(Ord. of 12-20-93; Amend. of 6-24-97; Amend. of 2-25-02)

SECTION 31A-23. BUFFER AREAS REQUIRED.

(A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities that exceed the low density option; otherwise, a minimum thirty (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

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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 and security lights which result in only diminutive increases in impervious area and public projects such as road crossings and greenways where no practical alternative exists. These activities should minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of stormwater Best Management Practices.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-24. 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 County as evidence that one (1) 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.

(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 Planning Director shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the County Board of Adjustment.

(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-25. APPLICATION OF REGULATIONS.

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

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

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

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-26. 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.

(Ord. of 12-20-93; Amend. of 2-25-02)

(A) Vacant Lots. This category consists of vacant lots of which plats or deeds have been recorded in the office of the Register of Deeds of Cumberland County. Lots may be used for any of the uses allowed in the watershed area in which it is located, provided the following:

(1) Where the lot area is below the minimum specified in this ordinance the Planning Director is authorized to issue a watershed protection permit.

(2) Notwithstanding the foregoing, whenever two or more contiguous residential vacant lots of record are in single ownership at any time after the adoption of this ordinance and such lots individually have less area than the minimum requirements for residential purposes for the watershed area in which such lots are located such lots shall be combined to create one or more lots that meet the standards of this ordinance, or if this is impossible, reduce to the extent possible the nonconformity of the lots.

(Ord. of 12-20-93; Amend. of 2-25-02)

(B) Uses of Land. This category consists of uses existing at the time of the 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 have been changed to an allowed use, it shall not thereafter revert to any prohibited use.

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- (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 (1) year, it shall not be reestablished.

(C) **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, provided:

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

(2) The total amount of space devoted to built-upon area may not be increased as permitted herein unless stormwater control that equals or exceeds the previous development is provided.

(Ord. of 12-20-93; Amend. of 6-24-97; Amend. of 2-25-02)

SECTION 31A-27. WATERSHED PROTECTION PERMIT.

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, 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 Planning Director. 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 Planning Director. The application shall include a completed application form (see Appendix A) [see *County Zoning Ordinance*] and supporting documentation deemed necessary by the Planning Director.

(C) Prior to issuance of a Watershed Protection Permit, the Planning Director 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.

(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-28. 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.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-29. WATERSHED PROTECTION OCCUPANCY PERMIT.

(A) The Planning Director 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) days after the application is submitted.

(C) When only a change in use or land or existing building occurs, the Planning Director 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 Planning Director shall notify the applicant in writing stating the reasons for denial.

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

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-30. RESERVED.

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**ARTICLE IV
PUBLIC HEALTH REGULATIONS**

SECTION 31A-31. PUBLIC HEALTH, IN GENERAL.

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 absorptions, inadequate sedimentation and erosions control measures, the improper storage or disposal of junk, trash or other refuse within a buffer area, the improper management of stormwater runoff, or any other situation found to pose a threat to water quality.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-32. ABATEMENT [MONITORING THREATS TO WATER QUALITY].

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

(B) The Planning Director shall report all findings to the County Board of Adjustment. The Planning Director may consult with any public agency or official and request recommendations.

(C) Where the County Board of Adjustment 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. of 12-20-93; Amend. of 6-24-97)

SECTIONS 31A-33 THROUGH 31A-39. RESERVED.

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ARTICLE V
ADMINISTRATION, ENFORCEMENT AND APPEALS

SECTION 31A-40. PLANNING DIRECTOR AND DUTIES THEREOF.

It shall be the duty of the Planning Director to administer and enforce the provisions of this ordinance as follows:

(A) The Planning Director 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 Planning Director.

(B) The Planning Director shall serve as clerk to the County Board of Adjustment for purposes of enforcing this ordinance.

(C) The Planning Director 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 Planning Director is granted the authority to administer and enforce the provisions of this ordinance, exercising in the fulfillment of the his responsibility the full police power of the County of Cumberland. The Planning Director, 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.

(E) The Planning Director 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 Division of Water Quality on or before January 1st of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. of 12-20-93; Amend. of 6-24-97; Amend. of 2-25-02)

SECTION 31A-41. COUNTY BOARD OF ADJUSTMENT TO SERVE AS APPEALS BOARD.

(A) The County Board of Adjustment is designated as the agency to hear and consider appeals of the decision of the Planning Director pursuant to this ordinance, as prescribed by G.S. 143-214.5.

(Ord. of 12-20-93; Amend. of 6-24-97)

(B) The Establishment of the County Board of Adjustment can be referred back to the County Zoning Ordinance, Appendix A, Article VI, Board of

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Adjustment, Section 11.1 [*currently Article XVI, Section 1601, Cumberland County Zoning Ordinance*].
(Ord. of 12-20-93; Amend. of 2-25-02)

SECTION 31A-42. APPEAL FROM THE PLANNING DIRECTOR.

(A) Any order, requirement, decision or determination made by the Planning Director may be appealed to and decided by the Board of Adjustment in accordance with this article.

(B) An appeal from a decision of the Planning Director must be submitted to the Board of Adjustment within thirty (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 Planning Director shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

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

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.
(Ord. of 12-20-93; Amend. of 6-24-97)

(E) Changes and Amendments to the Watershed Protection Ordinance.
(Ord. of 12-20-93; Amend. of 2-25-02)

(1) The Cumberland County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
(Ord. of 12-20-93; Amend. of 2-25-02)

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

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(Ord. of 12-20-93; Amend. of 2-25-02)

(3) Under no circumstances shall the Cumberland County Board of Commissioners 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 Water Quality, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(Ord. of 12-20-93; Amend. of 2-25-02)

(F) Public Notice and Hearing Required. Before adopting or amending this ordinance, the Cumberland 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 (10) nor more than twenty-five (25) days before the date for the hearing.

(Ord. of 12-20-93; Amend. of 2-25-02)

**SECTION 31A-43. RULES OF CONDUCT FOR BOARD OF
ADJUSTMENT MEMBERS.**

(A) No Board member shall take part in the hearing, consideration, or determination of any case in which he is personally or financially interested as defined by Section 2-51 or prohibited by Section 2-53 of this Code of Ordinances.

(B) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case or any other member of the Board, its secretary or clerk prior to the hearing. Members of the Board shall not express individual opinions on the proper judgment or any case prior to its determination on that case.

(C) 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/she has in a particular case before the Board. Failure to give such notice shall result in continuance of said hearing for at least forty-eight (48) hours.

(D) No Board member is eligible to vote shall vote on any matter that decides an application or appeal unless he has attended the hearing on that application or appeal.

(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-44. POWERS AND DUTIES OF THE COUNTY BOARD OF ADJUSTMENT.

(A) Administrative Review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Planning Director in the enforcement of this ordinance.

(Ord. of 12-20-93; Amend. of 6-24-97)

(B) Variances. The County Board of Adjustment shall have the power to authorize, in specific cases, variances from the terms of this ordinance in accordance with this article.

(Ord. of 12-20-93; Amend. of 6-24-97)

(C) Public Health. See Article 400 [Section 31A-31].

(Ord. of 12-20-93; Amend. of 2-25-02)

(D) Approval of All Development Greater than the Low Density Option. See Article 700 [Article VII].

(Ord. of 12-20-93; Amend. of 2-25-02)

SECTION 31A-45. PROCEDURE TO OBTAIN A VARIANCE.

(A) Applications for a variance shall be made on the proper form obtainable from the Planning Director and shall include the following information:

(1) 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 north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

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

(3) 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 [Board of Adjustment]. Such comments shall become a part of the record of proceedings of the Watershed Review Board [Board of Adjustment].

(Ord. of 12-20-93; Amend. of 2-20-02)

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

(1) There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five (5) following conditions exist:

(a) If the applicant 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.

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

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

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

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

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

(3) 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.

(C) 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

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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.

(D) The County Board of Adjustment 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.

(E) 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.

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

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

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

(1) If the EMC concludes from the preliminary record that the variance qualifies as a major variance and (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 EMC may approve the variance as proposed or approve the proposed variance with conditions and stipulations. The EMC shall prepare an EMC decision and send it to the County Board of Adjustment. If the Commission approves the variance as proposed, the Commission shall prepare a final decision granting the proposed variance. If the EMC approves the variance with conditions and

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stipulations, the Commission shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.

(2) If the EMC concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) the variance, if granted, will result in a serious threat to the water supply, then the EMC may deny approval of the variance as proposed. The EMC shall prepare a EMC decision and send it to the County Board of Adjustment. The Commission shall prepare a final decision denying the variance as proposed.

(Ord. of 12-20-97; Amend. of 6-24-97)

SECTION 31A-46. APPEALS FROM THE BOARD OF ADJUSTMENT.

Any decision of the Board of Adjustment pursuant to this article may be appealed in accordance with NCGS 153A-345(e).

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTIONS 31A-47 THROUGH 31A-49. RESERVED.

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**ARTICLE VI
DEFINITIONS**

SECTION 31A-50. GENERAL DEFINITIONS.

Agricultural Use. The use of waters for stock watering, irrigation, and other farm purposes.

(Ord. of 12-20-93; Amend. of 2-25-02)

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 (2) 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, recreation facilities (e.g., tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)

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

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 (1/2) 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 (1/2) 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). Major landmarks such as highways or property lines may be used to

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delineate the outer boundary of the critical area if these landmarks are immediately adjacent to the appropriate outer boundary of one-half (1/2) mile. Cumberland County may extend the critical area as needed.

(Ord. of 12-20-93; Amend. of 2-25-02)

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.

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 ordinance based on at least one (1) 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 N. C. GEN. STAT. 153A-344.1, or

(3) Having an approved site specific or phased development plan as authorized by N. C. GEN. STAT. 153A-344.1, or

(4) An existing development that meets the criteria established in Part (1), (2), or (3) of this section shall be vested for a period of five years from the original effective date of this ordinance.

(Ord. of 12-20-93; Amend. of 4-20-98; Amend. of 2-25-02)

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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 repealed].
(Ord. of 12-20-93; Amend. of 2-25-02)

Industrial Development. Any non-residential development that requires a NPDES [*National Pollutant Discharge Elimination System (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 from the minimum statewide watershed protection rules that results in any one or more of the following:

- (1) The relaxation, by a factor of greater than ten percent (10%), of any management requirement under the low density option;
- (2) The relaxation, by a factor greater than five percent (5%), of any buffer, density or built-upon area requirement under the high density option; and/or
- (3) Any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

(Ord. of 12-20-93; Amend. of 2-25-02)

Minor Variance. A variance from the minimum statewide watershed protection rules that results in a relaxation, by a factor of up to five percent (5%) of any buffer, density or built-upon area requirement under the high

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density option; or that results in a relaxation, by a factor of up to ten percent (10%), of any management requirement under the low density option.
(Ord. of 12-20-93; Amend. of 2-25-02)

Nonconforming Lot of Record. A lot described by a plat or a deed that was recorded prior to the effective date of this ordinance (or its amendments) that does not meet the minimum lot size or other development requirements of this ordinance.

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 watershed. 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 ten (10) miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.

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

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

Single Family Residential. Any development where: (1) no building contains more than one dwelling unit, (2) every dwelling unit is on a separate lot, and (3) where no lot contains more than one dwelling unit.

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.

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

Subdivision. All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purposes of sale or building

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

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

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

(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 Planning Director relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.

Water Dependent Structure. Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, 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).
(Ord. of 12-20-93; Amend. of 6-24-97)

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SECTION 31A-51. 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 words "shall" and "will" are always mandatory and not merely directory.

If any tense or word used in this ordinance is in conflict with Appendix A, Article X; or Appendix B, Article H [1] of this Code of Ordinances, the provisions of Appendix A, Article X; and for Appendix B, Article 1 shall prevail. (Ord. of 12-20-93; Amend. of 6-24-97)

[Editor's note: Appendix A, Article X of the County Code of Ordinances was repealed on June 20, 2005 and re-adopted as a standalone technical ordinance, entitled: Cumberland County Zoning Ordinance with an effective date of June 20, 2005. The comparative section of the June 20, 2005 ordinance is Section 203.]

[Editor's note: Appendix B, Article 1 of the County Code of Ordinances was repealed on August 18, 2008 and re-adopted as a standalone technical ordinance, entitled: Cumberland County Subdivision Ordinance with an effective date of August 19, 2008. The comparative section of the August 19, 2008 ordinance is Section 2103.]

SECTIONS 31A-53 [31A-52] THROUGH 31A-59. RESERVED.

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**ARTICLE VII
HIGH DENSITY REQUIREMENTS**

SECTION 31A-60. HIGH DENSITY DEVELOPMENT STANDARDS.

(A) The Board of Adjustment may approve high density development proposals consistent with the following standards:

(1) WS-IV Watershed Areas – Critical Area (WS-IV-CA). Where new development exceeds either two dwellings per acre or twenty-four percent (24%) built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, and development shall not exceed fifty percent (50%) built-upon area.

(2) WS-IV Watershed Areas – Balance of Watershed (WS-IV-BW). Where new development requires a Sedimentation/Erosion Control Plan and exceeds either two dwelling units per acre or twenty-four percent (24%) built-upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, and development shall not exceed seventy percent (70%) built-upon area.

(B) High density development shall meet the requirements of this ordinance.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-61. HIGH DENSITY DEVELOPMENT PERMIT APPLICATION.

(A) High Density Development Permit shall be required for new development exceeding the requirements of the low density option.

(B) Application for a High Density Development Permit shall be addressed and submitted to the Board of Adjustment through the Planning Director. Application for a High Density Development Permit shall be made on the proper form and shall include the following information:

(1) A completed High Density Development Permit Application signed by the owner of the property. The signature of the consulting engineer or other agent will be accepted on the application only if accompanied by a letter of authorization;

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

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(3) Two reproducible copies of the plans and specifications of the stormwater control structure consistent with Section 31A-62;

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

(5) Permit Application Fees consistent with Section 31A-65.

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

(D) The Board of Adjustment shall either approve or disapprove each application for a High Density Development Permit based on the applicable criteria contained in this ordinance. First consideration of a completed application shall be at the next regularly scheduled meeting of the Board following its receipt. The Board shall take action on the application at its first consideration or within sixty-five (65) days of its first consideration.

(1) If the Board approves the application based on its findings, such approval shall be indicated on the permit and both copies of the site plan and both copies of the plans and specifications of the stormwater control structure. A High Density Development Permit shall be issued after the applicant posts a performance bond or other acceptable security as required in Section 31A-63 and executes an Operation and Maintenance Agreement as required in Section 31A-64. A copy of the permit and one copy of each set of plans shall be kept on file at the Planning Director's office. The original permit and one copy of each set of plans shall be delivered to the applicant either by personal service or registered mail, return receipt requested.

(Ord. of 12-20-93; Amend. of 2-25-02)

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

(E) In addition to any other requirements provided by this ordinance, the Board may designate additional permit conditions and requirements to assure that the use will be harmonious with the area which it is proposed to be located and with the spirit of this ordinance. All additional conditions shall be entered in the minutes of the meeting at which the permit is granted, on all

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plans and on the permit certificate. All conditions so imposed shall run with the land and shall be binding upon the applicant and the applicant's heirs, successors or assigns during the continuation of the permitted use.

(Ord. of 12-20-93; Amend. of 6-24-97)

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

(Ord. of 12-20-93; Amend. of 2-25-02)

**SECTION 31A-62. ENGINEERED STORMWATER CONTROLS:
SPECIFIC REQUIREMENTS TO EXERCISE THE
HIGH DENSITY OPTION.**

(A) All stormwater control structures shall be designed by a North Carolina Registered professional engineer. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications for the type of system required; these registered professionals are defined as professional engineers and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in General Statutes 89(C)-3(7).

(B) All stormwater controls shall use wet detention ponds as a primary treatment system unless alternative stormwater management measures, as outlined in Section 31A-62(C) are used. Approved stormwater control devices shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Division of Water Quality. Specific requirements for these systems shall be in accordance with the following design criteria:

(1) Permanent pool storage designed for total suspended solid removal of eighty-five percent (85%) and storage runoff from a one (1) inch rainfall from the area above the permanent pool;

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

(3) The discharge rate from these systems following the one (1) inch rainfall shall be such that the runoff does not draw down to the permanent pool level in less than two (2) days, and that the pond is drawn down to the permanent pool level within at least five (5) days;

(4) Permanent pool with a mean depth of three (3) feet;

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

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(6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty (3) feet in length. The slope and width of the vegetative filter shall be determined so as to provide a non-erosive velocity of flow-through the filter for a ten (10) year, twenty-four (24) hour storm with a ten (10) year, one (1) hour intensity with a slope of five percent (5%) or less. Vegetation in the filter shall be natural vegetation, grasses or artificially planted wetland vegetation appropriate for the site characteristics.

(C) Alternative stormwater management systems, consisting of one treatment option or a combination of treatment options, may be used. The design criteria for approval shall be eighty-five percent (85%) average annual removal of total suspended solids. Also, the discharge rate shall meet one (1) of the following criteria:

- (1) The discharge rate following the one (1) inch design storm shall be such that the runoff draws down to the pre-storm design stage within five (5) days but not less than two (2) days; or
- (2) The post development peak discharge rate shall equal the predevelopment rate for the one (1) year, twenty-four (24) hour storm.

(D) In addition to the vegetative filters required in Section 31A-62(B)6, all land areas outside of the pond shall be provided with a ground cover sufficient to restrain erosion within thirty (30) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance agreement described in Section 31A-63(C).

(E) A description of the area containing the stormwater control structure shall be prepared and filed consistent with Section 31A-66 (A) and (B), as a separate deed with the Cumberland County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include the stormwater control structure, vegetative filters, all pipes and water control structures, berms, dikes, etc., and sufficient area to perform inspections, maintenance, repairs and reconstruction.

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

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SECTION 31A-63. POSTING OF FINANCIAL SECURITY REQUIRED.

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

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

(1) Security Performance Bond or other security. The permit applicant shall obtain adequate security as set forth herein in the form of: (1) a performance bond from a surety bonding company authorized to do business in North Carolina; (2) an irrevocable letter of credit; or (3) other instrument readily convertible into cash at face value payable to Cumberland County or placed in escrow with a financial institution designated as an official depository of Cumberland County. Adequate security shall mean a bond or other instrument in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Board of Adjustment. The total cost of the stormwater control structure shall include the value of all materials such as piping and other structures; seeding and soil stabilization; design and engineering; and grading, excavation, fill, etc. The costs shall not be prorated as part of a larger project, but rather under the assumption of an independent mobilization; or

(2) Operation and maintenance financial security deposit equal to eighty percent (80%) of total construction cost.

(C) Consistent with Section 31A-61, the permit applicant shall enter into a binding Operation and Maintenance Agreement between Cumberland County and all interests in the development. Said Agreement shall require the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the developer. The Operation and Maintenance Agreement shall be filed with the Cumberland County Register of Deeds by the applicant within five (5) working days of approval.

(D) Default/failure to complete. Upon default of the permit applicant to complete and/or maintain the stormwater control structure as spelled out in the performance bond or other security, the Board may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Board shall return any funds not spent in completing the improvements to the owning entity.

(E) Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operations and Maintenance Agreement, the Board shall obtain and use all or any portion of the cash security to make the

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necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operations and Maintenance Agreement. The Board shall not return any of the deposited cash funds.

(F) Default under the performance bond or security. Upon default of the permit applicant to complete the stormwater control structure as spelled out in the performance bond or other security, the Board may obtain and use all or any portion of the funds necessary to complete the improvements based on an engineering estimate. The Board shall return any funds not spent in completing the improvements to the owning entity.

SECTION 31A-64. MAINTENANCE AND UPKEEP.

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

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

(C) Except for general landscaping and grounds management, the owning entity shall notify the Planning Director prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Planning Director shall inspect the completed improvements and shall inform the owning entity of any required additions, changes or modifications and of the time period to complete said improvements. The Planning Director may consult with an engineer designated by the Watershed Review Board [*County Board of Adjustment*].

(D) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the County Board of Adjustment. Proposed changes shall be prepared by a North Carolina registered professional engineer and submitted

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to and reviewed by the Planning Director prior to consideration by the County Board of Adjustment.

(1) If the County Board of Adjustment approves the changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Planning Director.

(2) If the County Board of Adjustment disapproves the changes, the proposal may be revised and resubmitted to the Board of Adjustment as a new proposal. If the proposal has not been already reviewed, it shall be returned to the applicant.

(E) If the County Board of Adjustment finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Cumberland County Register of Deeds, the Office of the Planning Director and the owning entity.

SECTION 31A-65. APPLICATION AND INSPECTION FEES.

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

(B) A permit and inspection fee schedule, as approved by the Board of County Commissioners shall be posted in the Office of the Planning Director.

(C) Inspection fees shall be valid for sixty (60) days. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 31A-64(C), except in the case when a similar fee has been paid within the last sixty (60) days.

SECTION 31A-66. INSPECTIONS AND RELEASE OF THE PERFORMANCE BOND.

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

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

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(2) A certification sealed by an engineer stating that the stormwater control structure is complete and consistent with the approved plans and specifications.

(B) The Planning Director shall present the materials submitted by the developer and the inspection report and recommendations to the Board of Adjustment at its next regularly scheduled meeting.

(1) If the Board approves the inspection report and accepts the certification, deed and easements, the Board shall file the deed and easements with the Cumberland County Register of Deeds, release up to seventy-five percent (75%) of the value of the performance bond or other security and issue a Watershed Protection Occupancy Permit for the stormwater control structure, consistent with Section 31A-29.

(2) If deficiencies are found, the Board shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the Commission [Board of Adjustment].

(C) No sooner than one (1) year after the filing date of the deed, easements and maintenance agreement, the developer may petition the Board of Adjustment to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Planning Director shall inspect the stormwater control structure to determine whether the controls are performing as designed and intended. The Planning Director shall present the petition, inspection report and recommendations to the Board of Adjustment.

(1) If the Board approves the report and accepts the petition, the developer shall deposit with the Planning Director a cash amount equal to that described in Section 31A-63(B)(2) after which the Board of Adjustment shall release the performance bond or other security.

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

(D) A Watershed Protection Occupancy Permit shall not be issued for any building within the permitted development until the Board of Adjustment has approved the stormwater control structure, as provided in Section 31A-66(B).

(E) All stormwater control structures shall be inspected at least on an annual basis to determine whether the controls are performing as designed and intended. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Water Quality. Annual

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inspections shall begin within one year of filing date of the deed for the stormwater control structure.

(F) In the event the Planning Director discovers the need for corrective action or improvements, the Planning Director shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After notification by the owning entity, the Planning Director shall inspect and approve the completed improvements. The Planning Director may consult with an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A, allow) designated by the Board of Adjustment.

(G) Appeals of any order, requirement, decision or determination made by the Planning Director may be made to and decided by the Board of Adjustment consistent with Section 31A-41.

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-67. ENFORCEMENT OF VIOLATIONS.

(A) If any subdivision, development, and/or land use is found to be in violation of this ordinance, the Planning Director may, in addition to all other remedies available at law or in equity, issue a civil citation to the offender that: (1) a violation has occurred, that the penalty for said violation is five hundred dollars (\$500) per day for each and every day that the violation continues; and (2) that if the penalty is not paid within seventy-two (72) hours of the notice, that a civil proceeding in the nature of a debt will be initiated in a court of the appropriate jurisdiction against the offender. Each and every day's violation shall constitute a separate offense.

(B) The Planning Director shall be authorized to institute any action at law as provided by General Statutes 160A-175(c), (d), and (e), 160A-389 [N. C. GEN. STAT. 153A-123], and/or 7A-245 [and N. C. GEN. STAT. 14-4].

(Ord. of 12-20-93; Amend. of 6-24-97)

SECTION 31A-68. DELEGATION OF AUTHORITY TO PLANNING DIRECTOR.

The County Board of Adjustment may authorize the Planning Director to act on behalf of the Board. The requirements may be applied to the County Board of Adjustment.

ADOPTED this the 20th day of December 1993.

APPENDIX A
APPLICATION FORMS

Appendix A: Application Forms

PART I. WATERSHED SUBDIVISIONS

APPLICATION FOR A WATERSHED SUBDIVISION APPROVAL
PARCEL IDENTIFICATION NUMBER _____

DATE OF APPLICATION _____ APPLICATION NUMBER _____

On a separate sheet of paper, list the Deed Book and Page Number, the parcel size and the tax map and lot number for each parcel of land (if one parcel, list here).

Watershed, Cross Creek, Little Cross Creek, Cape Fear River, Little River

Critical area: Y/N

Name of Owner/Applicant: _____

Mailing Address: _____

Street Address: _____

Telephone Number: _____

Name of Engineer/Surveyor: _____

Street Address: _____ City, State, Zip: _____

Telephone Number: (____) _____ Alternate: (____) _____

.....
General description of work under, this application:

Name of Proposed Subdivision: _____

Type of Subdivision: Residential _____ Commercial _____ Industrial _____ Other _____

Total Area: _____

Number of Parcels/Lots: _____ (Smallest Lot: _____ acres Largest Lot: _____ acres)

.....
I certify that the information shown above is true and accurate, and is in compliance with the conditions for a subdivision of land as defined in the Watershed Protection Ordinance.

(Seal)

Owner/Attorney in Fact

.....
OFFICIAL USE

Date received: _____ Date referred to Board: _____

Notes:

Subdivision Plat Checklist

The plat shall be clearly and legibly drawn at a scale of not less than one inch to one hundred feet (1" = 100') (1" = 200' in extreme cases). The plat shall be prepared by a registered surveyor and shall include the following information prior to consideration by the Watershed Review Board:

Name of Subdivision: _____
Date Submitted: _____
Location: _____
Owner: _____
Address: _____ Tele: _____
Surveyor: _____
Address: _____ Tele: _____
Engineer: _____
Address: _____ Tele: _____

Checklist:

(a) Title Block:

_____ Subdivision name, subdivider's name, North Arrow, scale (denoted graphically and numerically), date of plat preparation, location of subdivision (township, county and state), name of seal of registered surveyor preparing plat, deed book reference.

(b) Vicinity Map:

_____ A sketch vicinity map showing the location of the subdivision in relation to the surrounding area. If the subdivision is a portion of a larger tract, the map is to show the relation of the subdivision to the larger tract.

© Tract Boundaries:

_____ The boundaries of the tract or portion thereof to be subdivided, with all bearings and distances shown.

(d) Property Lines:

_____ Property lines and owners' names of abutting properties and/or abutting subdivisions of record.

(e) Natural Features:

_____ Significant natural features including marshes, lakes or streams, or other natural features affecting the site.

(f) Existing Features:

_____ Existing features including structures and built-upon area and Cumberland County limit lines both on or adjacent to the land to be subdivided.

(g) Topographic Lines (if required by Watershed Administrator or Watershed Review Board):

_____ Topographic contour lines not to exceed ten (10) foot intervals when the area to be subdivided exceeds four (4) acres.

(h) Lot and Street Lines:

_____ All proposed lot and street right-of-way lines with approximate area and dimensions, lot numbers and proposed use of land.

(i) Drainage System:

_____ Proposed drainage facilities, including approximate location and dimensions of open drainage ways, storm sewers, culverts, retaining ponds, or areas where water is to be diverted through grading.

(j) Site Date:

_____ Total acreage in tract to be subdivided, smallest lot size (square feet) and total number of lots.

(k) The following documentation is to accompany the application:

_____ Written evidence acknowledging the submission and approval of the required soil erosion and sedimentation control plan.

PART II: WATERSHED PROTECTION PERMIT

APPLICATION FOR A WATERSHED PROTECTION PERMIT
PARCEL IDENTIFICATION NUMBER _____

DATE OF APPLICATION _____ APPLICATION NUMBER _____

On a separate sheet of paper, list the Deed Book and Page Number, the parcel size and the tax map and lot number for each parcel of land (if one parcel, list here).

Watershed, Cross Creek, Little Cross Creek, Cape Fear River, Little River

Critical area: Y/N

Name of Owner/Applicant: _____

Mailing Address: _____

Street Address: _____

Telephone Number: _____

Name of Engineer/Surveyor: _____

Street Address: _____ City, State, Zip: _____

Telephone Number: () _____ Alternate: () _____

.....
General description of work under, this application:

.....
I certify that the information shown above is true and accurate, and is in compliance with the conditions for a subdivision of land as defined in the Watershed Protection Ordinance.

_____(Seal)
Owner/Attorney in Fact

.....
OFFICIAL USE

Date received: _____ Date referred to Board: _____

Notes:

WATERSHED PROTECTION PERMIT PLAN CHECKLIST

Applications for Watershed Protection Permits shall be accompanied by plans in duplicate and drawn to scale showing the following:

(a) Lot Dimensions.

_____ Actual dimensions and acreage of the lot to be built upon and the location of any right of ways that may affect development on the lot.

_____ Average lot size (in square feet).

(b) Built Upon Area.

_____ The accurate location and use of all existing and proposed buildings and other structures, and for non-residential developments the location and size, in square feet, of all built upon areas including parking and loading facilities.

_____ The percent of the project that will be covered with an impervious surface.

_____ The area, in acres, to be left natural.

(c) Dwelling Units.

_____ The total number of dwelling units proposed on the lot or tract.

(d) Streams/Rivers.

_____ The accurate location of all perennial streams and natural drainage areas on the property.

(e) Adjacent Property Owners.

_____ The names of adjoining property owners.

(f) Buffers.

_____ The location of all required buffer areas.

(g) *Storm water Control Devices (i.e., wet detention basins).

_____ When local governments provide for a high density option, the location of any storm water control devices shall be shown and shall be designed, constructed and maintained according to the requirements as established by the Division of Environmental Management.

_____ Storm Water Controls are used.

_____ If Storm Water Controls are used, the name of the certifying engineer is provided.

(h) *Private Water and Sewer Systems.

_____ Individual water supply systems and/or ground absorption sewage disposal systems may be permitted, subject to preliminary approval by the County Health Department that there is sufficient space left on the lot for such systems.

*Include if applicable

APPENDIX B

MAPS

