

**Wayne County  
Watershed Protection Ordinance**

Article 100: Authority and General Regulations

Section 101. Authority and Enactment

The Legislature of the State of North Carolina has, in Chapter (153A), Article (6), Section (121), General Ordinance Authority; and in Chapter 143, Article 21, Watershed Protection Rules, delegated the responsibility or directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. The Wayne County Board of Commissioners does hereby ordain and enact into law the following articles as the Watershed Protection Ordinance of Wayne County.

Section 102. 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 Wayne County, North Carolina” (“the Watershed Map”), 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 office of the Wayne County Clerk to the Board of Commissioners and the Planning Department. The areas are WS-IV, Neuse River and Little River watershed in the Neuse Basin.

Section 103. Exceptions to Applicability.

- (A) Nothing contained herein shall repeal, modify, or amend any Federal or State law or regulation, or any ordinance or regulations 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 Wayne County. This shall include but not be limited to the provisions of the Wayne County Subdivision Ordinance and the Wayne County Stormwater Ordinance. However, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this Ordinance, that may be construed to impair or reduce the effectiveness of this Ordinance, or to conflict with any of its provisions.
- (B) It is not intended that these regulations interfere with any easement, covenants or other agreements between parties. However, if the provisions of these regulations impose greater restrictions or higher standards for the use of a building or land, then the provisions of these regulations shall control.
- (C) Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. 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) If a nonconforming lot of record is not contiguous to any other land 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 residential purposes. Any lot or parcel created as part of any exemption to the Wayne County 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.

Section 104. Criminal Penalties.

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 the violation continues shall constitute a separate offense.

Section 105. Remedies.

(A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the Wayne County Board of County Commissioners may, in addition, to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$100.00, action or proceedings to restrain, correct, 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 Planning Director 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, or of additional, alterations or structures 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 Planning Director is questioned, the aggrieved party or parties may appeal such ruling to the Wayne County Board of Adjustment.

Section 106. Severability

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

Section 107. Effective Date

This amended ordinance shall take effect and be in force on October 1, 2001.

Section 108. Subdivision Approval

In addition to the certificates required in the Wayne County Subdivision Ordinance the following certificate shall be included on the face of the plat.

I certify that the plat shown hereon complies with the Wayne County Watershed Protection Ordinance for recording in the Register of Deeds office.

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Date

Property Owner

Article 200 Development Regulations

Section 201. Establishment of Watershed Areas

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

For the purposes of this Ordinance the County is hereby divided into the following areas,

WS – IV CA (Critical Area)

WS – IV PA (Protected Area)

Section 202. Watershed Area 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 uses are allowed at a maximum of two dwellings 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. Where new development exceeds either two dwelling units per acre or 24% built upon area, engineered stormwater controls shall be used to control runoff from the first inch of rainfall, development shall not exceed 50% built upon area and a high density development permit must be obtained.

(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

(d)Non – residential development, excluding: 1) the storage of toxic and hazardous materials unless a spill containment plan is implemented, 2) landfills and 3) sites for land application of sludge / residuals or petroleum contaminated soils.

- (2) Density and Built – upon Limits:
  - (a) Single Family Residential – development shall not exceed two 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 sq. ft. excluding roadway ROW, except within an approved cluster development.
  - (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 Areas (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 address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of 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. A maximum of three (3) dwelling units per acre or thirty-six (36%) percent built upon area is allowed for projects without a curb and gutter street system. Development which exceeds the above requirements shall use engineered stormwater controls to control the first inch of rainfall and development shall not exceed 70% built upon area and a high density permit be obtained.

(1) Allowed Uses

- (a) Agriculture, subject to the provisions of the Food and Security Act of 1985 and the Food, Agricultural, 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.
- (d) Non-residential development, excluding the storage of toxic and hazardous materials unless a spill containment plan is implemented.

(2) Density and Built-upon Limits:

- (a) Single Family Residential development shall not exceed two (2) dwelling units per acre as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre or 20,000 sq. ft. excluding roadway ROW, or one-third (1/3) acre for projects without curb and gutter system, except within an approved cluster development.
- (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 projects without a curb and gutter street system, development shall not exceed thirty-six percent (36%) built upon area on project by project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.

Section 203. Cluster Development.

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

- (A) Minimum lots sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 202. Density or built upon areas or stormwater control requirements 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 designated and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.
- (C) The remainder of the tract shall remain 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.

#### Section 204. 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 fifty (50)-foot vegetative buffer for development activities as described in the Wayne County Stormwater Ordinance is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.
- (B) No new development is allowed in the buffer area except for water dependent structures and 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 stormwater away from the surface waters and maximize the utilization of stormwater Best Management Practices.

#### Section 205. 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 centerlines thereof, such lines shall be construed to be said boundaries.
- (B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.
- (C) Where the watershed area boundaries lie at a scaled distance of more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by the 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 Board of Adjustment.

Section 206. 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 of class of use is not specifically indicated as being allowed in a watershed area, such use or class is prohibited

Section 207. Existing Development

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

- (A) Vacant Lots. This category consists of vacant lots for which plats or deeds have been recorded in the office of the Register of Deeds of Wayne 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 or 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.
- (B) Occupied Lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used provided that whenever two or more adjoining lots of record, one of which is occupied, are in single ownership at any time after the adoption of this ordinance, and such lots individually or together have less area than the minimum requirements for residential purposes for the watershed area in which they are located, such lots shall be combined to create lots which meet the minimum size requirements or which minimize the degree of nonconformity.

- (C) Uses of Land. This category consists of uses existing at 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.
  - (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.
  
- (D) 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 not restrictions on single family residential development, provided:
  - (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - (2) The total amount of space devoted to built upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

Section 208. Development Permit.

- (A) 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 Development Permit has been issued by the Planning Department. No Development Permit shall be issued except in conformity with the provisions of this ordinance.
- (B) Development Permit applications shall be filed with the Planning Department. The application shall include a completed application form and supporting documentation deemed necessary by the Planning Director.
- (C) Prior to issuance of a Development Permit, the Planning Director may consult with qualified personnel for assistance to determine if the application meets the requirements of this ordinance.
- (D) A Development Permit shall expire if the applicant does not obtain a Building Permit or Watershed Occupancy Permit for such use within twelve (12) months from the date of issuance.
- (E) The Planning Board shall either approve or disapprove each Development Permit application that uses the High Density option.

Section 209 Occupancy Permit

- (A) The Building Inspector shall issue an Occupancy Permit certifying that all requirements of this ordinance have been met prior to the occupancy of use of a building hereafter erected, altered or moved and prior to the change of use of any building or land.
- (B) An Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Development Permit and shall

be issued or denied within ten (10) days after the erection or structural alterations of the building.

- (C) When only a change in use or land or existing building occurs, the Planning Director shall issue an Occupancy Permit certifying that all requirements of this ordinance have been met coincident with the Development Permit.
- (D) If the Occupancy Permit is denied, the Planning Director or Building Inspector 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 or Building Inspector has approved and issued an Occupancy Permit.
- (F) An Occupancy Permit shall not be issued for a building within the permitted development until the Planning Board has approved any required stormwater structures.

## Article 300: Public Health Regulations

### Section 301. Public Health

No activity, situation, structure or land use shall be allowed within the watershed, which poses a threat to water quality and the public health, safety and welfare. Such conditions may arise from inadequate on-site sewage systems which utilize ground absorption; inadequate sedimentation and erosion control measures; the improper storage or disposal of junk, trash or other refuse within a buffer area; the absence or improper implementation of spill containment plan for toxic and hazardous materials; the improper management of stormwater runoff; or any other situation found to pose a threat to water quality.

### Section 302. Abatement

- (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 Board of Adjustment. The Planning Director may consult with any public agency or official and request recommendations.
- (C) Where the 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.

## Article 400: Administration, Enforcement and Appeals

### Section 401. Planning Director and Duties Thereof

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

- (A) The Planning Director shall issue Development 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 Department.
- (B) The Planning Director shall serve as Clerk to the Board of Adjustment.
- (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 of the Department of N.C. Environmental Management.
- (D) The Planning Director 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 county. The Planning Director, or his duly authorized representative, may enter and 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 to the Division of Water Quality of the N.C. Department of Environment and Natural Resources on an annual basis on or before January 1<sup>st</sup> of the following year and shall provide a description of each project receiving a variance and the reasons for granting the variance.
- (F) All stormwater control structures shall be inspected at least on an annual basis by a representative of the Planning Department to determine whether the controls are performing as designed and intended. Records of inspections shall be maintained on forms approved or supplied by the North Carolina Division of Water Quality. Annual inspections shall begin within one year of filing date of the plat for the stormwater control structure.
- (G) 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 of landscape architect (to the extent that the General Statutes, Chapter 89A, allow) designated by the Watershed Review Board.

Section 402. Appeal from the Planning Director.

Any order requirement, decision or determination made by the Planning Director may be appealed to and decided by the Board of Adjustment. The variance and appeal process shall follow the rules specified in the Wayne County Zoning Ordinance Article XII Sections 122 and 123.

Section 403. Variances

- (A) 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.
  
- (B) The preliminary record shall be sent to the N.C. Environmental Management Commission for its review as follows:
  - (1) If the Commission concludes from the preliminary record that the variance qualified as a major variance and that (a) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (b) the variance, if granted will not result in a serious threat to the water supply, then the Commission shall approve the variance as proposed or approve the proposed variance with conditions and stipulations. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. 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.
  - (2) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (a) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (b) the variance, if granted, will result in a serious threat to the water supply, then the Commission shall deny approval of the variance as proposed. The Commission shall prepare a Commission decision and send it to the Board of Adjustment. The Board shall prepare a final decision denying the variance as proposed.

Section 404. Changes and Amendments to the Watershed Protection Ordinance

- (A) The Wayne County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.
  
- (B) No action shall be taken until the proposal has been submitted to the Planning Board for review and recommendations. If no recommendation had been

received from the Planning Board within forty-five (45) days after submission of the proposal to the Chairman of the Planning Board, the Wayne County Commissioners may proceed as though a favorable report had been received.

- (C) Under no circumstances shall the Wayne County Commissioners adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

#### Section 405. Public Notice and Hearing Required

Before adopting or amending this ordinance, the 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 days before the date fixed for the hearing.

### Article 500 Stormwater Control Structures

#### Section 501. Stormwater Control Structure Design.

- (A) All stormwater control structures shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architect, to the extent that the General Statutes, Chapter 89A allow 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 as a primary treatment system unless alternative stormwater management measures as outlined in Section 501 (C) are used. Wet detention ponds shall be designed for specific pollutant removal 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) Wet detention ponds shall be designed to remove 85% of total suspended solids in the permanent pool and storage runoff from a one inch rainfall from the site above the permanent pool;
  - (2) The designed runoff storage volume shall be above the permanent pool;
  - (3) The discharge rate from these systems following the one inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two (2) days and that the pond is drawn down to the permanent pool level within at least five (5) days.
  - (4) The mean permanent pool depth shall be a minimum of three (3) feet;
  - (5) The inlet structure shall be designed to minimize turbulence using baffles or other appropriate design features;
  - (6) Vegetative filters shall be constructed for the overflow and discharge of all stormwater wet detention ponds and shall be at least thirty 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 10 year, 24 hour storm with a 10 year 1 hour intensity with a slope of five percent 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 85 percent average annual removal of Total Suspended Solids. Also, the discharge rate shall meet one of the following criteria:
  - (1) the discharge rate following the 1 inch design storm shall be such that the runoff draws down to the pre-storm design within five days, but not less than two days; or
  - (2) the post development peak discharge rate shall equal the predevelopment rate for the 1 year, 24 hour storm.
- (D) In addition to the vegetative filters required in Section 501 (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 502 (C).
- (E) A description of the area containing the stormwater control structure shall be prepared and filed consistent with Section 505 (A and B) as a separate plat with the Wayne County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The plat 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 total built upon area. However, if the structure is used to compute the percentage built upon area for one site, it shall not be used to compute the built upon area for any other site or area.

#### Section 502. 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 either a performance bond from a surety bonding company authorized to do business in North Carolina, an irrevocable letter of credit or other instrument readily convertible into cash at face value payable to Wayne County or placed in escrow with a financial institution designated as an official depository of Wayne County. The bond or other instrument shall be in an amount equal to 1.25 times the total cost of the stormwater control structure, as estimated by the applicant and approved by the Wayne County Planning Board. 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.

(2) Cash of Equivalent Security Deposited after the Release of the Performance Bond. Consistent with Section 505 (C)(1), the permit applicant shall deposit with Wayne County either cash or other instrument approved by the Planning Board that is readily convertible into cash at face value. The cash or security shall be in an amount equal to fifteen percent (15%) of the total cost of the stormwater control structure or the cost of maintaining the stormwater control structure over a ten (10%) year period, whichever is greater. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided by the developer under Section 503 (A). The amount shall be computed by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two fifths of 0.4.

(C) Consistent with Section 208, the permit applicant shall enter into a binding Operation and Maintenance Agreement between the Planning Board 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 signed by the County Manager and filed with the Wayne County Register of Deeds by the Planning Board.

(D) Default under the performance bond or other 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.

(E) Default under the cash security. Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Board shall obtain and use all or any portion of the cash security to make 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 Operation and Maintenance Agreement. The Board shall not return any of the deposited cash funds.

#### Section 503. Maintenance and Upkeep

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

(B) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the

extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.

- (C) Except for general landscaping and grounds management, the owning entity shall notify the Planning Department 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 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 or landscape architect (to the extent that the General Statutes, Chapter 89A, allow) designated by the Planning Board.
- (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 Planning Board. Proposed changes shall be prepared by a North Carolina registered professional engineer or landscape architect (to the extent that the General Statutes, Chapter 89A, allow) and submitted to and reviewed by the Planning Department prior to consideration by the Planning Board.
  - (1) If the Planning Board approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Planning Department.
  - (2) If the Planning Board disapproves the changes, the proposal may be revised and resubmitted to the Planning Board as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (E) If the Planning Board finds that the operation and maintenance plan or manual is inadequate for any reason, the Board shall notify the owning entity of any required changes and shall prepare and file copies of the revised agreement with the Wayne County Register of Deeds, the Planning Department and the owning entity.

#### Section 504. Application and Inspection Fees

- (A) Processing and inspection fees shall be submitted in the form of a check or money order made payable to Wayne County. Applications shall be returned if not accompanied by the required fee.
- (B) A permit and inspection fee schedule, as approved by the Wayne County Board of Commissioners, shall be posted in the Office of the Planning Department.
- (C) Inspection fees shall be valid for one year. An inspection fee shall be required when improvements are made to the stormwater control structure consistent with Section 503 (C), except in the case when a similar fee has been paid within the past year.

## Section 505. Inspections and Release of the Performance Bond

- (A) The stormwater control structure shall be inspected by the Planning Department, after the owning entity notifies the Planning Department that all work has been completed. At this inspection, the owning entity shall provide:
  - (1) The signed plat, related easements for the stormwater control structure ready for filing with the Wayne County Register of Deeds;
  - (2) A certification sealed by an engineer or landscape architect (to the extent that the General Statutes, Chapter 89A, allow) 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 Planning Board at its next regularly scheduled meeting.
  - (1) If the Board approved the inspection report and accepts the certification, plat and easements, the Board shall file the plat and easements with the Wayne 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 for the stormwater control structure, consistent with Section 210.
  - (2) If deficiencies are found, the Board shall direct that improvements and inspections be made and/or documents corrected and resubmitted to the Board.
  
- (C) No sooner than one year after the filing date of the plat, easements and maintenance agreement, the developer may petition the Planning Board to release the remaining value of the performance bond or other security. Upon receipt of said petition, the Planning Department 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 recommendation to the Planning Board.
  - (1) If the Board approves the report and accepts the petition, the developer shall deposit with the Planning Board a cash amount equal to that described in Section 502(b)(2) after which, the Board 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 instructions to correct any deficiencies and all steps necessary for the release of the performance bond or other security.

## Section 506. Sanctions

In addition to the remedies described in Article 100 of this Ordinance and consistent with G.S. 153A-123, the Planning Board may seek enforcement of this Ordinance through the Wayne County Board of Commissioners by assessing a civil penalty to be recovered by the County in a civil action in the nature of debt if the offender does not pay the penalty in a prescribed period of time after being cited for violation of the ordinance. Said violation may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. The court may issue an injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the Rules of Civil Procedure in general and

Rule 65 in particular. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, the defendant may be cited for contempt and the County may execute the order of abatement. The County shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith. Enforcement of this ordinance may be by any one, all or a combination of the remedies authorized in this ordinance. Each day's continuing violation shall be a separate and distinct offense.

## Article 600. Definitions

### Section 601. General Definitions

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

**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 structure, with or without a roof, shall not be deemed to make them one building.

**Built-upon area** – Built-upon area shall include that portion of a development project that is covered by impervious or partially impervious 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** – The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project including minimizing stormwater runoff impacts. This term includes non-residential development as well as single-family residential and multi-family developments. For the purpose of this ordinance, planned unit developments and mixed-use development are considered as cluster development.

**Critical Area** – The area adjacent to a water supply intake extending one-half mile upstream from the intake located directly in the river or the ridge line of the watershed (whichever comes first). 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 or precipitation into the soil.

Dwelling Unit – A building, or portion thereof, providing complete and permanent living facilities for one family.

Existing Development – Those projects that are built or those projects that at a minimum have established a vested right under 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 (G.S. 153A-344.1), or
- (3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1).

Existing Lot (Lot of Record) – A lot, which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the 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.

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

Industrial Development – Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use of storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product of 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 space 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 greater than five (5) percent, of any buffer, density or built upon area requirement under the high density option;
- (2) the relaxation, by a factor greater than ten (10) percent, of any management requirement under the low density option;
- (3) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system.

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.

Non-conforming 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 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 for the Neuse River and Little River watersheds. The boundaries of the protected area are defined as within ten miles upstream and draining to the intake located directly in the river or to the ridgeline of the watershed. Major landmarks may be used to delineate the outer boundary if these landmarks are immediately adjacent to the appropriate outer boundary.

Residential Development – Buildings for residence such as attached and detached single family dwellings, apartment complexes, condominiums, cottages, etc. and their associated outbuildings such as garages, storage buildings gazebo, 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.

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 springs or other adverse health effects.

Variance – A permission to develop or use property granted by the Board of Adjustment relaxing or waiving a water supply watershed management requirement adopted by the N.C. 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).

#### Section 602. Word Interpretation

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

Words in the present tense include future tense.

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

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 merely directory.

The word “will” is always mandatory and merely directory.

Adopted this 21st day of August 2001.

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Atlas Price Jr.  
Chairman

Attest:

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Marica R. Wilson,  
Clerk to the Board