

## **§200A-205. Legal Status**

205.1 Reserved.

205.2 Effect on Outstanding Building Permits:

Nothing herein contained shall require any change in the plans, construction, size or designated *use* of any development or any part thereof for which a Building Permit has been granted by the Building Codes Administrator or his authorized agents before the time of passage of this subpart (July 5, 2005); provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to passage of this subpart or any revision thereto, construction or *use* shall be in conformity with the provisions of this subpart.

205.3 Effective Date:

This Subpart A originally became effective 30 July 2005.

## **Subpart B. Water Supply Watershed Protection**

### **§200A-206. Statutory Authorization**

This subpart is adopted pursuant to the authority vested by the North Carolina General Statutes, particularly Chapter 153A, Article 6, Section 121 and Chapter 143, Article 21 (Watershed and Air Resources).

### **§200A-207. Effect on Other Laws and Agreements**

This subpart shall not be construed to repeal or modify applicable local, state and federal laws, except that to the extent that the provisions of this subpart conflict with any applicable local, state or federal laws, the most stringent of all applicable laws shall govern. 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  *structure* or land, then the provisions of these regulations shall control.

### **§200A-208. Purpose**

The provisions established in this subpart are designed to manage the  *uses* of land and  *structures* encompassed by  *watersheds* within the County in order to maintain the high quality of surface water in these  *watersheds* by enforcing standards which shall limit the impact from existing or potential sources of contamination through the regulation of  *lot sizes* and development intensity.

### **§200A-209. Lands to Which This Subpart Applies**

The provisions of this subpart shall apply within (1) the unincorporated areas of Henderson County lying outside the extraterritorial jurisdiction of any municipality and (2) the incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Commissioners, which have been designated as a public  *water supply watershed* by the North Carolina Environmental Management Commission and delineated on the map titled "Henderson County Water Supply Watershed Protection Map," herein referred to as the " *Watershed Map*," as amended. (In making such a request, the city or town must comply with the requirements of  *NCGS §153A-122.*) The  *Watershed Map* and all explanatory matter contained thereon accompany and are hereby made a part of this Chapter. This Chapter shall be

permanently kept, along with subsequent amendments thereto, on file in the office of the Clerk to the Board of Commissioners.

In cases where a municipality extends its extraterritorial jurisdiction into a *watershed* herein defined, the restrictions applicable to development in that *watershed* shall remain in effect until they are amended or repealed or until the County and such municipality, by mutual consent, transfer authority to administer and enforce *watershed* regulations not inconsistent with state rules.

**§200A-210. Designation of Watershed Administrator**

The “*Watershed Administrator*” (*Zoning Administrator* or his/her designee) hereby appointed and authorized to administer and enforce the water supply and *watershed* regulations under the terms and conditions of this subpart.

**§200A-211. Water Supply Watershed Map**

For purposes of this subpart, all *watershed* areas designated by the North Carolina Environmental Management Commission which are within the County's jurisdiction pursuant to Article II of this Chapter are shown on the Official Water Supply Watershed Map which is maintained by the *Watershed Administrator*.

**§200A-212. Establishment of Watershed Protection Overlay District**

The Watershed Protection Overlay District (and the subdistricts thereof) is/are outlined in Article II of this Chapter. The Watershed Protection Overlay District, and all regulations outlined therein, is included by reference in this subpart.

**§200A-213. Interpretation of Boundaries of the Water Supply Watershed Map**

Where uncertainty exists as to the boundaries of the *watershed* areas, as shown on the *Watershed Map*, the following rules shall apply. Where:

- A. Area boundaries are indicated as approximately following either *road*, *alley*, railroad or highway lines or center lines thereof, such lines shall be construed to be said boundaries;
- B. 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 professional land surveyor may be submitted to Henderson County as evidence that one or more properties along these boundaries do not lie within the *watershed* area;
- C. Area boundaries lie at a scaled distance more than 25 feet from any parallel *lot* line, the location of *watershed* area boundaries shall be determined by *use* of the scale appearing on the *Watershed Map*;
- D. Area boundaries lie at a scaled distance of 25 feet or less from any parallel *lot* line, the location of *watershed* area boundaries shall be construed to be the *lot* line; and
- E. Other uncertainty exists, the *Watershed Administrator* shall interpret the *Watershed Map* as to the location of such boundaries. This decision may be *appealed* to the Watershed Review Board.

**§200A-214. Establishment of Water Supply Watershed Permits**

A Water Supply Watershed Use Permit, Watershed Protection Compliance Permit and Special Intensity Allocation (see Article XI) shall be required in conformance with the provisions of this Chapter for development activities within the *water supply watershed*.

**§200A-215. Application of Regulations**

- A. Minimizing Impact on Water Quality. 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. All development must minimize built-upon surface area; direct stormwater away from surface waters; and incorporate *best management practices* to minimize water quality impacts.
- B. Prevention Impact on Water Quality and 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 improper management of *stormwater runoff*; or any other situation found to pose a threat to water quality.
- C. Perennial Stream Buffers. A minimum 30 foot vegetative *buffer* for development activities is required along all *perennial streams* indicated on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps or as determined by the *Watershed Administrator*. (This *buffer* shall be increased to a one 100 foot vegetative *buffer* for any development using the special intensity allocation (*SIA*)). Desirable artificial stream bank or shoreline stabilization is permitted. No new development is allowed in the *buffer* except for *water dependent structures*, other *structures* such as flag poles, *signs* and security lights which result in only minimal increases in *impervious surface* area and public projects, such as *road* crossings and *greenways* where no practical alternative exists. These activities should minimize *built-upon area*; direct runoff away from the surface waters; and maximize the utilization of stormwater *best management practices*.
- D. Permitted Uses. If a *use* or class of *use* is not specifically indicated as being allowed in a *watershed* area (§200A-61, Watershed Protection Overlay District (WP)), such *use* or class of *use* is prohibited.
- E. Nontransferable Area. No area required for the purpose of complying with the provisions of this subpart shall be included in the area required for another *building*.

**§200A-216. Subdivisions within the Water Supply Watershed**

*Subdivisions* of land within defined *watershed* areas shall require a *plat* to be prepared, approved and recorded pursuant to this subpart. No *subdivision plat* within a *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 Chapter and certified as being in compliance with the terms of this subpart by the *Watershed Administrator*. 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 subpart.

*Subdivisions* within a designated *watershed* area shall adhere to the following additional processes:

- A. Upon receipt of an application for the *subdivision* of property as set forth in Article III, such application shall be reviewed by the *Watershed Administrator* to determine if such property lies wholly or in part within a *water supply watershed* area.
- B. If a parcel is determined to be in a *watershed*, the *Watershed Administrator* shall determine if such application complies with the requirements of this Chapter and shall certify to such on any application forms, on preliminary development drawings and on any *plat* proposed for recordation. The certification shall state:

I certify that property shown on this plat is located in a watershed area classified \_\_\_\_\_ . The plat shown hereon complies with the Henderson County Water Supply Watershed Protection Requirements and is approved for recordation in the Register of Deeds office.

\_\_\_\_\_  
Watershed Administrator
Date

This certification shall constitute *water supply watershed* development approval and shall not operate so as to amend, repeal or replace any other approvals or certifications required on such *plat* by other applicable local, state or federal laws.

**§200A-217. Exceptions**

Existing Development. *Existing development* is not subject to the requirements of this subpart. Expansions to *structures* classified as *existing development* must meet the requirements of this subpart; however, the *built-upon area* of the *existing development* is not required to be included in the density calculations.

**§200A-218. Monitoring Land Use Activities**

The *Watershed Administrator* shall monitor *land use* activities within the *watershed* areas to identify situations that may pose a threat to water quality. Where such activities are found, the *Watershed Administrator* shall take any appropriate action or proceeding to restrain, correct or abate the condition and/or *violation*.

**Subpart C. Perennial and Intermittent Surface Water Buffers**

**§200A-219. Perennial and Intermittent Surface Water Buffers**

All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey (*USGS*). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A *NCAC* 2B .0233 (3)(a).