

Subpart D. Overlay Districts

§200A-53. Overlay Districts Established

Overlay Zoning Districts are established to provide special additional development standards for specially identified areas such as the *Water Supply Watershed*. Certain Overlay Zoning Districts are also available to allow flexibility in design for certain types of developments. Overlay Zoning Districts combine with the regulatory provisions of the underlying General or Conditional Zoning Districts to provide additional or alternative standards. The districts listed in this Subpart D generally apply a higher degree of regulation to affected properties. In order to become effective, individual overlay districts must be adopted on the *zoning map* as an addendum to the underlying zoning district through a public hearing process. Affected properties will be subject to the standards of both the overlay and underlying districts.

§200A-54. Airport Overlay District (AI) (Reserved)

§200A-55. Corridor Overlay District (Reserved)

§200A-56. Reserved

§200A-57. Reserved

§200A-58. Reserved

§200A-59. Reserved

§200A-60. Reserved

§200A-61. Water Supply Watershed Protection Overlay District (WP)

The purpose of the *Water Supply Watershed* Protection Overlay District (WP) is to define the area of *water supply watersheds* within the County. The intent of the overlay district is to manage the *uses* of land and *structures* encompassed by *water supply watersheds* within the County in order to maintain the high quality of surface water in these *watersheds*; this being accomplished by enforcing standards that limit the impact from existing or potential sources of contamination through the regulation of *lot size* and development intensity.

- A. Scope. Land *use* within the WP overlay district must comply with all the requirements of both the underlying general *use district* and the applicable *Water Supply Watershed* overlay district classification. If a *use* or class of *use* is not specifically indicated as being permitted in a *watershed* area, such *use* or class of *use* is prohibited.
- B. Establishment. This incorporates by reference the “Official Water Supply Watershed Map for Henderson County,” hereinafter “Official Water Supply Watershed Map,” and subsequent amendments thereto, showing all *water supply watershed* areas designated by the North Carolina Environmental Management Commission, hereinafter *NCEMC*. The Official Water Supply Watershed Map shall be maintained by the *Planning Director* and kept in the Planning Department. The water supply watershed map shall also be shown on and become part of the Official Zoning Map for the County. The rules of interpretation for the boundaries of the map (see §200A-213 (Interpretation of Boundaries of the Water Supply Watershed Map)) apply. In addition, where any WP overlay district boundaries lie at a scaled distance of more than 25 feet from any parallel *lot* line, the location of these map boundaries shall be determined by using the scale of the map.

C. Application of Regulations.

(1) General Application. No *structure* or land shall hereafter be used and no development shall take place in the WP overlay district except in conformity with the regulations herein specified for the *watershed* sub-district 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. No area required for the purpose of complying with the provisions of this Article shall be included in the area required for another *building*.

(2) Exceptions.

- a. Existing Development. *Existing development* shall be subject to the regulations contained in §200A-263 (Nonconforming Lots). Expansions to *structures* classified as “*existing development*” must meet the requirements of this subsection; however, the *built-upon area* of the *existing development* is not required to be included in density calculations.
- b. Lots Created as Part of Any Ordinance. Any *lot* or parcel created as part of any *subdivision* that is exempt from the requirements of this Chapter shall be subject to the land *use* requirements (including *impervious surface* requirements) of this subsection, except that such *lot* or parcel must meet the minimum stream *buffer* requirements of §200A-215 (Application of Regulations) (C) (Perennial Stream Buffers) to the maximum extent practicable.
- c. Cemetery Lots. The division of a *tract* into plots or *lots* used as a cemetery.

D. Sub-Districts and Sub-District Regulations.

(1) General. The regulations of this subsection shall apply uniformly to each class or kind of *structure* or land located within any of the enumerated sub-district classifications. Within the sub-districts as established below, the requirements set forth in this subsection shall be complied with in addition to any other applicable general or special requirements of this Chapter.

(2) Impact on Water Quality and Public Health. No activity, situation, *structure* or land *use* shall be allowed within a WP overlay sub-district that poses a threat to water quality and/or 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. 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*.

- (3) Water Supply Watershed Protection Sub-Districts. The sub-districts include:
- a. WP-WS-I North Fork of Mills river and Bradley Creek Watershed Overlay Sub-District;
 - b. WP-WS-II-CA Mills River Critical Area Watershed Overlay Sub-District;
 - c. WP-WS-II-BW Colt Creek and Mills River Balance of the Watershed Overlay Sub-Districts;
 - d. WP-WS-III-CA Lower Mills River Critical Area Watershed Overlay Sub-District;
 - e. WP-WS-III-BW Lower Mills River Balance of Watershed Overlay Sub-District; and
 - f. WP-WS-IV-PA Upper French Broad River Protected Area Watershed Overlay Sub-District.
 - g. WP-WS-IV-CA Upper French Broad River Critical Area Watershed Overlay Sub-District.

Table 2.14 provides general information regarding sub-district *lot size* and *built-upon area* limitations.

Table 2.14. Water Supply Watershed Protection Sub-District Regulations on Lot Size and Built-Upon Area					
Sub-District	Minimum Lot Size (Square Feet)¹	Percent Built Upon Limits		Special Intensity Allocation	Natural Drainage and Filtering Bonus
	Single-Family Residential Limits	Multifamily Residential Development	Nonresidential Development		
WP-WS-I	NA	NA	NA	NA	NA
WP-WS-II-CA	80,000	6	6	NA	NA
WP-WS-II-BW	40,000	12	12	Yes	NA
WP-WS-III-CA	40,000	12	12	NA	NA
WP-WS-III-BW	20,000	24	24	Yes	NA
WP-WS-IV-CA	20,000	24	24	NA	NA
WP-WS-IV-PA (Drainage & Filtering Bonus)	20,000 (14,250)	24 (36)	24 (36)	Yes	Yes

¹ Calculated excluding *road right-of-way*, except in an approved *cluster development*

- (4) WP-WS-I North Fork of Mills River and Bradley Creek *Watershed* Overlay Sub-District.
- a. Purpose. The intent of the WP-WS-I North Fork/Mills River and Bradley Creek *watershed* overlay sub-district is to provide maximum protection for water supplies within essentially natural and undeveloped *watersheds* in public ownership by allowing only low-intensity *uses*. No residential or

nonresidential *uses* are allowed except those listed below. Impacts from nonpoint source pollution shall be minimized.

- b. Permitted Uses. The following *uses* are permitted in the WP-*WS-I* North Fork/Mills River and Bradley Creek *watershed* overlay sub-districts:
 - 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
 - 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.
 - 3. Water Withdrawal, Treatment and Distribution Facilities.
 - 4. Restricted Road Access.
 - 5. Power Transmission Lines.
- c. Density and Built-Up Limits. Additional density and *built-upon area* limits do not apply.

(5) WP-*WS-II-CA* Mills River *Critical Area Watershed* Overlay Sub-District.

- a. Purpose. The intent of the WP-*WS-II-CA* Mills River *watershed* overlay sub-district is to maintain a predominately undeveloped land *use* intensity pattern allowing only very low-density developments.
- b. Permitted Uses. The following *uses* are permitted in the WP-*WS-II-CA* Mills River *watershed* overlay sub-district:
 - 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
 - 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.
 - 3. Residential Development.
 - 4. Nonresidential Development. *Nonresidential development*, excluding *landfills* and sites for land application of *residuals* or petroleum-contaminated soils.
- c. Density and Built-Up Limits.
 - 1. Single-Family Residential Development. Single-family residential development shall not exceed one (1) *dwelling unit* per 80,000 square feet of *lot size* on a project-by-project basis. No residential *lot* shall be less than 80,000 square feet, excluding *road right-of-way*, except within an approved *cluster development*.
 - 2. Multifamily Residential Development. All multifamily residential development shall not exceed six (6) percent *built-upon area* on a

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

3. Nonresidential Development. All *nonresidential development* shall not exceed six (6) percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.

(6) WP-WS-II-BW Colt Creek and Mills River Balance of *Watershed* Overlay Sub-Districts.

- a. Purpose. The purpose of the WP-WS-II-BW Colt Creek and Mills River *watershed* overlay sub-district is to maintain a predominately undeveloped land *use* intensity. Projects in this sub-district must, to the maximum extent practicable, minimize built-upon surface area; direct stormwater away from surface waters; and incorporate *best management practices* to minimize water quality impacts.
- b. Permitted Uses. (NOTE: Approved *uses* requiring a state *NPDES* permit for point-source discharges should consult the NCDEM regarding the restrictions applicable in the *watershed*).
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 *NCAC* 11.6101-0209).
 3. Residential Development.
 4. Nonresidential Development. *Nonresidential development* excluding discharging *landfills*.
 5. Other. *Nondischarging landfills*, *residuals* application sites and sludge application sites.
- c. Density and Built-Upon Limits.
 1. Single-Family Residential Development. Single-family development shall not exceed one (1) *dwelling unit* per 40,000 square feet excluding *road right-of-way*, except within an approved *cluster development*.
 2. Multifamily Residential Development. All multifamily residential development shall not exceed 12 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.

3. Nonresidential Development. All *nonresidential development* shall not exceed 12 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.
4. All Other Residential and Nonresidential Development. All other residential and *nonresidential development* shall not exceed 12 percent *built-upon area* on a project by project by project basis, except that up to 10 percent of the balance of the *watershed* may be developed at up to 70 percent *built-upon area* on a project by project basis as a Special Intensity Allocation (*SIA*) (see §200A-324 (Special Intensity Allocation (*SIA*))). The *Watershed Administrator* is authorized to approve *SIA*'s consistent with the provisions of this Chapter. For the purpose of calculating *built-upon area*, the total project area shall include total acreage in the *tract* on which the project is to be developed.

(7) WP-WS-III-CA Lower Mills River *Critical Area Watershed* Overlay Sub-District.

- a. Purpose. The purpose of the WP-WS-III-CA Lower Mills River *watershed* overlay sub-district is to maintain a predominantly undeveloped land *use* intensity pattern. New *residuals* application sites and *landfills* are specifically prohibited.
- b. Permitted Uses. The following *uses* are permitted in the WP-WS-III-CA Lower Mills River *watershed* overlay sub-district:
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
 2. Silviculture. *Silviculture*, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.
 3. Residential Development.
 4. Nonresidential Development. *Nonresidential development*, excluding *landfills* and sites for land application of *residuals* or petroleum-contaminated soils.
- c. Density and Built-Upon Limits.
 1. Single-Family Residential Development. Single-family residential development shall not exceed one (1) *dwelling unit* per 40,000 square feet of *lot size* on a project-by-project basis. No residential *lot* shall be less than 40,000 square feet, excluding *road right-of-way*.
 2. Multifamily Residential Development. All multifamily residential development shall not exceed 12 percent *built-upon area* on a project-by-project basis. For the purposes of calculating *built-upon*

area, total project area shall include total acreage in the *tract* on which the project is to be developed.

3. Nonresidential Development. All *nonresidential development* shall not exceed 12 percent *built-upon area* on a project-by-project basis. For the purposes of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.

(8) WP-WS-III-BW Lower Mills River Balance of *Watershed* Overlay Sub-District.

- a. Purpose. The intent of the WP-WS-III-BW Lower Mills River *watershed* overlay sub-district is to maintain a predominantly underdeveloped land *use* intensity. Projects in this sub-district must, to the maximum extent practicable, minimize built-upon surface area; direct stormwater away from surface waters; and incorporate *best management practices* to minimize water quality impacts. *Nondischarging landfills* and *residuals* application sites are allowed.
- b. Permitted Uses. (NOTE: Approved *uses* requiring a state *NPDES* permit for point-source discharges should consult the NCDEM, regarding the restrictions applicable in the *watershed*).
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 2. Silviculture. *Silviculture*, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 *NCAC* 11.6101-0209).
 3. Residential Development.
 4. Nonresidential Development. *Nonresidential development* excluding leachate-discharging *landfills*.
- c. Density and Built-Upon Limits.
 1. Single-Family Residential Development. Single-family development shall not exceed one (1) *dwelling unit* per 20,000 square feet of *lot size* on a project-by-project basis. No residential *lot* shall be less than 20,000 square feet, excluding *road right-of-way*, except within an approved *cluster development*.
 2. Multifamily Residential Development. All multifamily residential development shall not exceed 24 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.
 3. Nonresidential Development. All *nonresidential development* shall not exceed 24 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project

area shall include total acreage in the *tract* on which the project is to be developed.

4. Additional New Development and Expansions to Existing Development. All other residential and *nonresidential development* shall not exceed 24 percent *built-upon area* on a project by project basis, except that up to 10 percent of the balance of the *watershed* may be developed at up to 70 percent *built-upon area* on a project by project basis as a Special Intensity Allocation (SIA) (see §200A-324 (Special Intensity Allocation (SIA))). The *Watershed Administrator* is authorized to approve SIA's consistent with the provisions of this Chapter. For the purpose of calculating *built-upon area*, the total project area shall include total acreage in the *tract* on which the project is to be developed.

(9) WP-WS-IV-CA Upper French Broad River *Critical Area Watershed* Overlay Sub-District.

- a. Purpose. Only new development activities that are required by this Chapter to submit a soil erosion and sedimentation control plan are required to meet the provisions of this Chapter related to *water supply watershed* 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 (2) *dwelling units* per acre. All other residential and *nonresidential development* shall be allowed at a maximum of 24 percent *built-upon area*. New residuals application sites and *landfills* are specifically prohibited.
- b. Permitted Uses. The following *uses* are permitted in the WP-WS-II-CA Mills River *watershed* overlay sub-district:
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and all rules and regulations of the Soil and Water Conservation Commission.
 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality.
 3. Residential Development.
 4. Nonresidential Development. *Nonresidential development*, excluding *landfills* and sites for land application of *residuals* or petroleum-contaminated soils.
- c. Density and Built-Upon Limits.
 1. Single-Family Residential Development. 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 (½) acre (or 20,000 square feet excluding *road right-of-way*), except within an approved *cluster development*.

2. Multifamily Residential Development. All multifamily residential development shall not exceed 24 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.
 3. Nonresidential Development. All *nonresidential development* shall not exceed 24 percent *built-upon area* on a project-by-project basis. For the purpose of calculating *built-upon area*, total project area shall include total acreage in the *tract* on which the project is to be developed.
- (10) WP-WS-IV-PA Upper French Broad River *Protected Area Watershed* Overlay Sub-District.
- a. Purpose. The intent of the WP-WS-IV-PA Upper French Broad River *watershed* overlay sub-district is to provide protection for water quality while accommodating moderate to high land *use* intensity.
 - b. Permitted Uses. The following *uses* are permitted in the WP-WS-IV-PA Upper French Broad River *watershed* overlay sub-district:
 1. Agriculture. *Agriculture*, subject to the provisions of the Food Security Act of 1985 and the Food, Agricultural, Conservation and Trade Act of 1990.
 2. Silviculture. Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 116101-0209).
 3. Residential Development.
 4. Nonresidential Development.
 - c. Density and Built-Upon Limits. Unless qualifying for a bonus or subject to a *sedimentation* and *erosion* control exemption, permitted development in the WP-WS-IV-PA Upper French Broad River *watershed* overlay sub-district shall be subject to the following density and built-upon limits:
 1. Single-Family Residential Development. Single-family residential development shall not exceed one (1) *dwelling unit* per 20,000 square feet of *lot size*, as defined on a project-by-project basis, unless such development qualifies for a *natural drainage and filtering system* bonus (see d.1 below). No residential *lot* shall be less than 20,000 square feet, excluding *road right-of-way*, except within an approved *cluster development*, unless such *lot* qualifies for a *natural drainage and filtering system* bonus, in which case the *lot* shall not be less than one-third (1/3) acre (14,520 square feet).
 2. Multifamily Residential Development. All multifamily residential development shall not exceed 24 percent *built-upon area* on a project-by-project basis unless such development qualifies for a

- natural drainage and filtering system* bonus (see d.1 below). 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.
3. Nonresidential Development. All *nonresidential development* shall not exceed 24 percent *built-upon area* on a project-by-project basis unless such development qualifies for a *natural drainage and filtering system* bonus (see d.1 below). 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.
 4. Additional New Development and Expansions to Existing Development. In addition to the development allowed in 1 and 2 above, new development and expansions to *existing development* may occupy up to 10 percent of the *protected area* with up to 70 percent *built-upon area* when approved as a special intensity allocation (*SIA*) (see §200A-324 (Special Intensity Allocation (*SIA*))). The *Watershed Administrator* is authorized to approve *SIA*'s consistent with the provisions of this Chapter. Projects must, to the maximum extent practicable, minimize built-upon surface area; direct stormwater away from surface waters; and incorporate *best management practices* to minimize water quality impacts.
- d. Natural Drainage and Filtering System Bonus. For projects implementing a *natural drainage and filtering system*, the project may be developed in accordance with the following density and built-upon limitations without the utilization of engineered stormwater controls.
1. Single-Family Residential Development. Single-family residential development shall not exceed three (3) *dwelling units* per acre (or one (1) *dwelling unit* per 14,250 square feet of *lot size*).
 2. Other Residential and Nonresidential Development. All other residential and *nonresidential development* shall not exceed 36 percent *built-upon area*.
 3. Regulation Limitations. If *stormwater runoff* is filtered naturally and is not passed by gutters, drains, pipes, paved swales or other similar conduits, qualification for a *natural drainage and filtering system* bonus shall not impose a more stringent requirement than the provisions of this Chapter regulating the subdivision of land, or the North Carolina *erosion and sedimentation* control permit requirements.
- e. Sedimentation and Erosion Control Exemption.
1. Qualifying Criteria. Development projects undertaken within a WP-*WS-IV-PA* Upper French Broad River *watershed* overlay sub-district may qualify for an exemption from the density and built-

upon limits as set out in this section if the project meets all of the following criteria:

- (a) Requirement for Sedimentation and Erosion Control Plan. The development project does not require a *sedimentation* and *erosion* control plan and permit under the rules and regulations promulgated by the North Carolina *Sedimentation* Control Commission.
 - (b) Nonresidential. The development is nonresidential.
 - (c) Initial Development Activity. The development is the initial development activity on the project site or *tract* and is not an expansion of any improvements already existing on the project site or *tract* having a *built-upon area* as defined in this subsection.
2. Evaluation of Criteria. In evaluating whether the development project meets the criteria listed above for the *sedimentation* and *erosion* control exemption, the following rules shall apply:
- (a) Exemption Limitations. The exemption shall not be available to nonresidential *subdivisions*, nonresidential *cluster development(s)* or *nonresidential development* projects being developed in *phases*.
 - (b) Residential Developments. The exemption shall not be available for single-family or any other *residential development* projects, including *general home occupations*.
 - (c) Discontinuance of Construction. If construction of the development project is discontinued for a period of time in excess of 180 consecutive calendar days, any further construction shall be considered an expansion to improvements already existing on the project site or *tract*. Any such further construction shall meet the requirements of this subsection. However, only the *built-upon area* of said further construction and the remainder of the project site or *tract* shall be used in the density calculations.
 - (d) Damage and Destruction. Any exempted development project may be repaired/reconstructed if damaged or destroyed. Any such reconstruction or repair shall not be considered an expansion of an improvement already existing, provided that the repair/reconstruction restores the *building* or *built-upon area* to substantially the same condition and *built-upon area* as before any such damage or destruction. To the extent that any such repair/reconstruction enlarges the *impervious surface* associated with the *building* or *built-upon area* being repaired/reconstructed, the repair/reconstruction shall be

considered an expansion to an exempted development project and shall be required to meet the density and built-upon limits contained in this subsection in accordance with subsection 3.

3. Exempted Expansions. Expansions to development projects which were exempted under the terms listed above shall not be exempted from the terms of this section. All such expansions shall be required to meet the requirements of this section. However, only the *built-upon area* of the expansion and the undeveloped area of the project site or *tract* shall be used in the density calculations.
- E. Mixed-Use Development. In cases where both residential and nonresidential *uses* are proposed for one (1) *lot* in single ownership, such mixed-use developments may be permitted without further *subdivision* of the lot. However, each *use* must adhere to its respective density/*built-upon area* requirements. For purposes of this subsection, *home occupations* shall, be considered as residential *uses*. Where the mixed-use development contains any clustering, such clustering shall adhere to the standards outlined in subsection F below.
- F. Cluster Development. *Cluster developments* are allowed in WP-WS-II-BW Colt Creek and Mills River, WP-WS-III-BW Lower Mills River, WP-WS-IV-CA Upper French Broad River and WP-WS-IV-PA Upper French Broad River sub-districts under the following conditions:
- (1) Subdivisions with Lot Sizes Smaller Than Minimums. Where *cluster development* is proposed for *use* in *subdivision* design and where actual *lot sizes* do not meet the minimum provided for in this subsection, a developer may meet the requirements of the *watershed* district in one (1) of the following ways:
 - a. The average *lot size* of all *building lots* in the proposed *subdivision* is not less than the minimum required herein, and the total number of *lots* does not exceed the number of *lots* allowed for *single-family detached* development under the terms of this Chapter; or
 - b. The average *lot size* of all *building lots* in the proposed *subdivision* is less than the minimum required herein but sufficient land is otherwise designated in accordance with subsection (3) below, to offset any such deficiency. Additionally, the total number of *lots* must not exceed the number of *lots* allowed for *single-family detached* developments under the terms of this subsection.
 - (2) Phased Development Subdivisions. Where *subdivisions* are proposed for *phased* development, no approval may be given where a deficiency in *lot size* has not been offset, in accordance with subsection (3) below, on the recorded *plat* or by a previously recorded *plat*.
 - (3) Land Used to Offset Deficiencies. All land which is used to offset deficiencies in *lot sizes* or is used to offset *built-upon areas* which exceed the minimums allowed by this subsection for *cluster developments* shall meet the following requirements:
 - a. The land must remain in a natural or vegetated state;

- b. The land must be located within the same *watershed* district as the development and must be on the same *lot* or project site;
- c. The land must be identified on a *plat* with the following language: "Natural Area - Not Subject To Development" (such *plat* shall be recorded in the office of the Register of Deeds of Henderson County); and
- d. The remainder of the *tract* shall remain in a vegetated or natural state. The title to the *open space* area shall be conveyed to a property owners' 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*. A maintenance agreement shall be filed with the property deeds and a copy submitted to the North Carolina Division of Environmental Management.

- (4) Land Not to Be Used to Offset Deficiencies. *Road rights-of-way*, utility station sites or common recreation areas may not be used to offset *lot size* deficiencies or *built-upon areas* that exceed the minimum built-upon limits.
- (5) Design of Built-upon area. All *built-upon area* shall be designed and located to minimize *stormwater runoff* impact to the receiving waters and to minimize concentrated stormwater flow.
- (6) Other Terms. All *cluster development* shall be subject to the terms, conditions and procedures of applicable local, state and federal laws, including but not limited to the other portions of this Chapter.

G. Buffer Areas Required. See §200A-219 (Perennial and Intermittent Surface Water Buffers).

H. Existing Development.

- (1) Existing Development. *Existing development* may be continued and maintained subject to the provisions provided herein. Expansions to *structures* classified as "*existing development*" must meet the requirements of this section; however, only the *built-upon area* of the expansion and the undeveloped area of the *lot* are used in the built-upon calculations.
- (2) Existing Vacant Lots. Existing vacant *lots* are *lots* for which *plats* or deeds have been recorded as of May 23, 1994 in the office of the Register of Deeds of Henderson County. An *existing lot* may be used for any of the *uses* allowed in the *watershed* area in which it is located provided that where the *lot size* is less than the minimum specified in this subsection; the *Watershed Administrator* is authorized to issue a permit.
- (3) Use of Land. *Uses* of land existing at the time of the initial adoption of *watershed* regulations for a particular area and where such *use* of the land is not permitted to be established hereafter in the *watershed* area in which it is located may be continued in accordance with this Chapter (see Article VIII Subpart B (Water Supply Watershed Protection)).
- (4) Reconstruction of Buildings or Built-upon Areas. Any existing *building* or *built-upon area* not in conformance with the restrictions of this subsection that has

been damaged or removed may be repaired and/or reconstructed, provided that the following are complied with:

- a. Repair or reconstruction is initiated within 12 months and completed within two (2) years of such damage.
- b. 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.