

9

WATERSHED PROTECTION

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CONTENTS

CHAPTER 9 WATERSHED PROTECTION	9-3
9.1 PURPOSE.....	9-3
9.1.1 GENERAL.....	9-3
9.1.2 PURPOSE	9-3
9.2 APPLICABILITY	9-4
9.2.1 GENERAL.....	9-4
9.2.2 EXCEPTIONS.....	9-4
9.3 WATERSHED AREAS	9-5
9.3.1 WATERSHED AREAS CLASSIFICATION	9-5
9.3.2 INTERPRETATION AND AMENDMENT OF WATERSHED AREA BOUNDARIES.....	9-6
9.4 INTENSITY AND USE STANDARDS	9-7
9.4.1 INTENSITY STANDARDS	9-7
9.4.2 USE STANDARDS	9-10
9.4.3 USE REGULATIONS.....	9-11
9.5 DEVELOPMENT STANDARDS	9-12
9.5.1 STORMWATER MANAGEMENT	9-12
9.5.2 CONSERVATION SUBDIVISION.....	9-12
9.5.3 VEGETATED SETBACKS	9-13
9.5.4 PUBLIC HEALTH REGULATIONS	9-14
9.6 ADMINISTRATION	9-15
9.6.1 REVIEW AND DECISION-MAKING BODIES	9-15
9.6.2 PROCEDURES	9-17

CHAPTER 9 WATERSHED PROTECTION¹

9.1 PURPOSE²

9.1.1 GENERAL

This Chapter implements the water supply watershed management and protection program required by [N.C.G.S. § 143-214.5](#) that is administered by the North Carolina Department of Environmental Quality (NCDEQ), including the water supply watershed program rules at [15A NCAC 02B .0620 et. seq.](#) It also implements the County's own watershed management regulations.

9.1.2 PURPOSE

The purpose of this Chapter is to allow development in the water supply watershed while protecting the health of the waterways and the ecosystem by improving water quality, preserving natural features, and protecting aquatic habitats.

¹ See discussion of proposed revisions to the Watershed Protection Ordinance (WPO) in the [Audit Report](#) (pp. 32-35). This Chapter also includes additional direction from staff regarding integration of the watershed standards with the district and use standards. It has been significantly simplified from the current WPO and includes the following key changes: 1) The low-density development option is removed, since the County requires active stormwater management for all development; 2) The allowable built-upon area for high-density development is increased based on staff input; however, it is important to note that the built-upon maximums in this Chapter are set at higher levels than what will be allowed in the base zoning districts.. In addition, all single-family development is assumed to include 100% built-upon area, which will limit development intensity compared to the maximum that would be allowed under state law. 3) Riparian buffer standards will be relocated to [Chapter 10: Stormwater Management](#).

The following sections will be carried forward in other parts of the UDO: Section 308(C)-(E) address nonconforming uses and structures and will be relocated and consolidated with the standards in [Sections 16.6 and 16.7](#). Sections 105 through 108 address enforcement, severability, and the effective date of the ordinance, and will be consolidated with like sections that apply to the entire Ordinance. The definitions in Section 109 will be consolidated with the general definitions in [Chapter 19](#). Article 200, Subdivision Regulations, requires that no plat be filed unless it is approved in accordance with the WPO. However, the WPO provides no affirmative review duties. We recommend, in accordance with the provisions in the [2021 draft Model Water Supply Watershed Protection Ordinance](#), that the subdivision procedures include provisions stating that compliance with the watershed regulations is required, providing for review by the Watershed Administrator, and incorporating any specific subdivision review requirements.

² The authority section in Section 101, Authority and Enactment, of the WPO is replaced by the general authority section in Chapter 1 of the UDO; this incorporates explicit reference to the state statute which establishes the watershed regulation requirements. The purpose statement is new.

9.2 APPLICABILITY

9.2.1 GENERAL³

This Chapter shall apply to all lands in the unincorporated parts of the County. This Chapter shall only apply within any incorporated municipality within the County pursuant to an interlocal agreement between the County and the municipality. Land subject to extraterritorial jurisdiction may be exempted from application of this Chapter pursuant to an interlocal agreement between the County and the municipality within the extraterritorial jurisdiction.

9.2.2 EXCEPTIONS⁴

- A. Existing development, as defined in this Ordinance, is not subject to the requirements of this Chapter.
- B. Expansions to existing development shall comply with the requirements of this Chapter, except for expansion of a single-family residential development that is not part a common plan of development. In an expansion, the built-upon area of the existing development is not required to be included in the density calculations. Where there is a net increase of built-upon area, only the area of net increase is subject to the requirements of this Chapter. Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only areas of net increase shall be subject to the requirements of this Chapter.⁵
- C. A lot or parcel created after [*insert the effective date of this Ordinance*] shall be exempt from these rules if it is developed for one single-family detached residence and was created as part of a family subdivision (see Subsection 13.2.3: Exempt Subdivisions).

³ This generally carries forward and simplifies Section 102, Jurisdiction, of the Watershed Protection Ordinance (WPO).

⁴ Carries forward and revises Section 103, Exceptions to Applicability, of the WPO, with minor revisions to conform to Sec. 203 of the 2021 draft Model Water Supply Watershed Protection Ordinance. Based on discussion with staff, Section 103D (regarding pre-existing lots established before the WPO was enacted) is not carried forward. Section 307 is duplicative and is not carried forward. The phrase that nothing in this Section shall repeal, modify, or amend “any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace” is not carried forward.

⁵ Carries forward Section 104(c) of the WPO, with additional provisions regarding the applicability of the regulations to only the additional built-upon area on expansions of existing development taken from the 2021 draft Model Water Supply Watershed Protection Ordinance.

- D. A nonconforming lot of record that is not contiguous to any other lot owned by the same party may be developed for single-family residential purposes and shall comply with these regulations to the maximum extent practicable.
- E. Nothing contained in this Chapter shall repeal, modify, or amend any federal or state law or regulation.
- F. It is generally not intended that these regulations interfere with any easement, covenants, or other agreements between private 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.

9.3 WATERSHED AREAS⁶

9.3.1 WATERSHED AREAS CLASSIFICATION

Table 9.3-1: *Watershed Areas* identifies the applicable watershed areas that are subject to the requirements of this Chapter, and includes general descriptions of each area. The official boundaries of the watershed areas are identified on the Watershed Map, which is incorporated herein by reference, and maintained in the office of _____. The Watershed Map may be maintained either on paper or as an electronic map layer in the County's Geographic Information System (GIS) database.

Table 9.3-1: Watershed Areas

Name	Description
WS-II-BW (Balance of Watershed)	The portion of Chatham County draining to University Lake. Generally, it is bounded on the east by U.S. 15-501, on the south by S.R. 1532 (Manns Chapel Road), on the west by S.R. 1534, and on the north by the County's border with Orange County.
WS-II-CA (Critical Area)	The land extending beyond the area designated as River Corridor, but within 2,640 feet from the normal pool elevation of approximately 540 feet of the Rocky River Lower Reservoir.
WS-III-BW (Balance of Watershed)	The land draining to the Siler City water system intake on the Rocky River.

⁶ This section carries forward the existing set of watershed areas established in Section 301 of the WPO, except for the Jordan Lake Watershed. The Jordan Lake Watershed regulations (including the riparian buffer standards) are addressed separately in this UDO in [Chapter 10: Stormwater Management](#). As drafted in the WPO, the WS-IV-PA area overlaps the WS-IV-CA area; the definitions have been updated to correct the overlap. Added option of maintaining the watershed map as a digital GIS layer.

Table 9.3-1: Watershed Areas	
Name	Description
WS-IV-CA (Critical Area)	The land within one mile and draining to the water intakes for Pittsboro (Haw River), Sanford (Cape Fear River), and Goldston-Gulf (Deep River), and one-half mile from the normal pool level and draining to Jordan Lake.
WS-IV-PA (Protected Area)	The land between one and ten miles from and draining to the water intakes for Pittsboro (Haw River), Sanford (Cape Fear River), and Goldston-Gulf (Deep River), and the land between one-half mile and five miles from the normal pool level and draining to Jordan Lake.
RC: River Corridor	Land within a line drawn parallel to rivers 2,500 feet from the banks, except for specific excluded areas on the Watershed Map
RCSA: River Corridor Special Area	Land within the river corridor that, due to various existing infrastructure, is given a special designation on the Watershed Map, and in the text.
LW: Local Watershed	All the land area of Chatham County outside the WS-II, WS-II, WS-IV, RC, and RCSA areas, and outside the designated municipal watershed jurisdictions.

9.3.2 INTERPRETATION AND AMENDMENT OF WATERSHED AREA BOUNDARIES

A. **Interpretation.** The following rules of interpretation shall govern the boundaries of the Watershed Areas:⁷

1. If a watershed area boundary is shown as approximately following a street, alley, railroad or highway, the boundary shall be deemed to be the center line of the feature.
2. If a watershed area boundary is shown as approximately following lot lines, the boundary shall be construed as following such lot lines. However, a surveyed plat prepared by a registered land surveyor may be submitted to as evidence that one or more properties along these boundaries do not lie within the watershed area.
3. If a watershed area boundary is shown on the Official Zoning Map as being more than 25 feet from any parallel lot line, the boundary shall not be impacted. If a watershed area boundary is 25 feet or less from

⁷ This updates and simplifies the rules governing interpretation of watershed district boundaries in Section 306 of the current WPO. This Section may be relocated to Chapter 18: *Rules of Interpretation & Measurement*.

any parallel lot line, the boundary shall be construed to follow the lot line.

B. Amendment.⁸

1. A landowner may apply to the Planning Director for a determination as to whether a property or portion of a property that is shown on the Watershed Map as lying within a particular watershed area actually lies within a different watershed area. The Planning Director shall review and refer the application to the Planning Board, which shall evaluate the request. The Planning Board shall review the application and may require the landowner to produce relevant expert testimony and exhibits regarding the appropriate delineation of the watershed area boundaries.
2. The Planning Board shall transmit its determination to the Planning Director. If the Planning Board determines that all or a portion of a property lies outside the drainage area of the applicable watershed area, the Planning Director shall initiate an amendment of the watershed area boundaries on the Watershed Map in accordance with the Planning Board's determination. All proposed modifications to the WS-II-BW, WS-II-CA, WS-III-BW, WS-IV-CA, and WS-IV-PA boundaries shall be approved by the [North Carolina Environmental Management Commission](#) (EMC), or its designee, prior to approval of the amended boundary by the County Board of Commissioners.

9.4 INTENSITY AND USE STANDARDS

The standards of this Section apply to development in all watershed areas.

9.4.1 INTENSITY STANDARDS

- A. **Intensity Standards.⁹** Table 9.4.1-1: *Maximum Development Intensity*, establishes the maximum development intensity permitted within each watershed area. Maximum built-upon area shall be calculated in accordance with 9.4.1B, *Built-Upon Area*, below. Zoning districts may include maximum built-upon area standards that are lower than the maximums included in

⁸ This new provision allows landowners an opportunity to justify a change in the watershed boundaries. The application is referred to the Planning Board, and could also be referred to the Watershed Review Board. It also includes the state requirement that the Environmental Management Commission sign off on any modification.

⁹ Intensity standards are drafts established by staff and are subject to change.

Table 9.4.1-1. In the event of conflict between the maximum built-upon area allowed in this Subsection or in a zoning district, the maximum built-upon area that is lower shall control.

Table 9.4.1-1: Maximum Development Intensity	
Watershed	Maximum Built-Upon Area (Percent)
WS-II-BW	50
WS-III-CA	50
WS-III-BW	50
WS-IV-CA	50
WS-IV-PA	70
RC	12
RCSA	12
LW	70

B. Built-Upon Area.¹⁰

1. Development shall be limited to the maximum built-upon area listed in Table 9.4.1-1 for the applicable watershed area or the maximum built-upon area allowed in a zoning district, whichever is lower.
2. A project’s built-upon area shall be calculated as the total built-upon area divided by the total project area. If development is located on land included in two or more watershed areas, the maximum built-upon area shall be calculated separately for the portion of land within each watershed area. For purposes of this Subsection, the built-upon area of a lot containing a single-family (detached) dwelling shall be calculated as 100% of the lot’s area.¹¹

¹⁰ This is a new provision that integrates standards from the watershed protection program regulations at 15A NCAC 02B .0624(4). Rules for single-family development is not required by the state regulations. However, they are included to facilitate calculation of built-upon areas for staff, and to facilitate modifications of residential dwelling units without the requirement of tracking built-upon area.

¹¹ This is a new provision that simplifies calculation of built-upon area by assuming that 100% of the land on a lot with a single-family (detached) dwelling consists of built-upon area. This reduces the workload of staff, who does need to track the built-upon area of every single single-family development; it also makes redevelopment easier for single-family homeowners, who do not need to track built-upon area as part of expansion or addition of accessory uses; and allows the County to implement accessory dwelling unit regulations without requiring conditions based on built-upon area. The maximum built-upon areas and the density and dimensional standards in the zoning

3. Total project area shall exclude any areas below the Normal High Water Line.
 4. A project with existing development may calculate project density by excluding the built-upon area of existing development from both the total built-upon area and the total project area.
- C. **Density Averaging.** Two noncontiguous lots may be paired and their permitted development intensity averaged together for compliance with the maximum development intensity of Table 9.4.1-1: *Maximum Development Intensity*, provided a Density Averaging Certificate (DAC) is issued in accordance with Section 9.6.2D: *Density Averaging Certificate*, and all of the following standards are met:¹²
1. The paired lots are within the same watershed area.
 2. Land that is being used to meet vegetative buffer requirements, protected by conservation easements, or protected from development for other reasons is not used for density averaging.
 3. The maximum development intensity of the paired lots does not exceed the development intensity that would be permitted if the lots were developed separately. If only one of the paired lots is within the Critical Area of the watershed, the lot within the Critical Area shall not be developed beyond the intensities allowed for land in the watershed area in accordance with Table 9.4.1-1.
 4. The lots or portions of the lots that are not being developed remain in a vegetated or natural state. They may be managed by a homeowners' association as common area, conveyed to the County as a park or greenway, or placed under a permanent conservation or farmland preservation easement.
 5. A metes and bounds description of the areas to remain vegetated and limits on use is recorded on the subdivision plat, in homeowners' covenants, and on individual deeds, and is irrevocable. The Density Averaging Certificate (DAC) is recorded on the deed for each lot involved in the density averaging.

districts will be calibrated such that most single-family development and other development will be controlled by density and intensity maximums in the base zoning districts, not by the regulations in this Chapter.

¹² This is a new provision that implements the density averaging provisions in N.C.G.S. § 143-214.5(d2) and 15A NCAC 02B .0624(9).

6. Vegetated buffers comply with the standards of this Chapter.
7. Built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas. Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainageways.
8. Development using density-averaging that complies with the low-density option development requirements transports stormwater runoff from the development by vegetated conveyances, to the maximum extent practicable.¹³

9.4.2 USE STANDARDS

All uses listed as allowed in Section 4.2: **Principal Use Tables** for the zoning district in which the development is located are allowed on land within the watershed areas, except as provided in Table 9.3-2: *Uses Prohibited in Watershed Areas*.¹⁴

Table 9.3-2 Uses Prohibited in Watershed Areas								
Uses	WS-II-BW	WS-III-CA	WS-III-BW	WS-IV-CA	WS-IV-PA	RC	RCSA	LW
Sewage	X ¹	X ¹	X ¹	X ¹	X ¹			
Industrial waste	X ¹	X ¹	X ¹	X ¹	X ¹			
Other wastes	X ¹	X ¹	X ¹	X ¹	X ¹			
New NPDES Individual Permit domestic treated wastewater discharge	X	X						
New NPDES Individual Permit industrial treated wastewater discharge	X	X ²	X ²					
Non-process industrial waste	X							

¹³ Included in the state regulations but, if low-density development is no longer an option, this provision can be removed.

¹⁴ This generally carries forward the list of prohibited uses from the current WPO, and adds new prohibited uses identified in the latest draft of the state model water supply watershed ordinance. The WPO includes two lists of permitted uses in the watershed areas—Attachment A and Attachment B. These lists of uses are not carried forward; instead, use permissions will be established for zoning districts in the permitted use table in **Chapter 4: Use Regulations**.

Table 9.3-2 Uses Prohibited in Watershed Areas

Uses	WS-II-BW	WS-III-CA	WS-III-BW	WS-IV-CA	WS-IV-PA	RC	RCSA	LW
New industrial connections and expansions to existing municipal discharge with pretreatment program pursuant to 15A NCAC 02H .0904 ¹⁵	X	X						
New sludge application site	X	X	X	X		X	X	
New landfill	X	X	X	X		X	X	
New permitted residual land application ¹⁵		X		X				
New permitted petroleum contaminated soil sites ¹⁵		X		X				
Petroleum contaminated soil remediation	X	X	X	X		X	X	
Toxic or hazardous materials, unless specifically in relation to a permitted use with an approved and implemented spill containment plan	X	X	X	X		X		
Storage of toxic or hazardous materials unless a spill containment plan is approved and implemented					X		X	X

Key: X = Use prohibited | blank cell = Use allowed if allowed in underlying base zoning district

¹ Only allowed if specified in 15A NCAC 02B .0104.

² Non-process industrial discharges are allowed.

9.4.3 USE REGULATIONS

The following standards apply to specific uses:

- A. **Agriculture.** In all watershed areas, Agricultural uses conducted after January 1, 1993, shall maintain a minimum 10-foot vegetated setback or equivalent control as determined by SWCC along all perennial waters indicated on the most recent version of USGS 1:24000 scale (7.5 minute) topographic maps, or as determined by local government studies.¹⁶ Animal operations greater than

¹⁵ This is a new prohibited use that is integrated from the 2021 draft Model Water Supply Watershed Protection Ordinance.

¹⁶ This carries forward the standards that apply everywhere in the WPO.

100 animal units shall employ Best Management Practices as recommended by the Soil and Water Conservation Commission.

- B. **Silviculture.** In all watershed areas, silviculture activities shall comply with the provisions of the Forest Practices Guidelines Related to Water Quality, 02 NCAC 60C, and other applicable forestry water quality standards, as determined by the North Carolina Forest Service.¹⁷
- C. In the RC and RCSA watershed areas, buildings, equipment, or material storage shall not be located within the 100-year flood hazard area as designated on the most recent “Flood Hazard Boundary Map Chatham County Unincorporated Areas.”¹⁸

9.5 DEVELOPMENT STANDARDS

Development in the watershed areas is subject to the following standards, in addition to any other applicable standards in this Ordinance.

9.5.1 STORMWATER MANAGEMENT¹⁹

All development shall comply with the stormwater management standards of [Chapter 10: Stormwater Management](#). At a minimum, all development in the watershed areas shall include stormwater control measures (SCMs) that comply with the standards in [15A NCAC 02B .0624\(6\)](#) and include SCM operation and maintenance agreements and plans in accordance with [15A NCAC 02B .0624\(10\)](#).

9.5.2 CONSERVATION SUBDIVISION²⁰

Land in the watershed areas may be developed as a conservation subdivision in accordance with [Subsection 13.3.5: Conservation Subdivision](#), provided that all the standards of this Chapter are met, as well as the following:

- A. Built-upon areas shall be designed and located to minimize stormwater runoff impact to receiving waters, minimize concentrated stormwater flow,

¹⁷ This updates the current standards in the WPO to reflect the location of the current regulations. It also includes a reference to the North Carolina Forest Service as noted in [15A NCAC 02B .0622](#).

¹⁸ This carries forward existing standards in the WPO.

¹⁹ For purposes of brevity and to refrain from including standards that are duplicative of or less stringent than the standards in Chapter 10, the specific stormwater management standards from the state regulations (which are also included in the model watershed ordinance) are not copied in the Ordinance but only referenced.

²⁰ This incorporates the cluster development standards in [15A NCAC 02B .0264\(8\)](#), excluding certain standards that are incorporated in the conservation subdivision standards.

maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.

- B. Areas of concentrated development shall be located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways, considering site-specific factors such as topography and site layout as well as protection of water quality.

9.5.3 VEGETATED SETBACKS²¹

Vegetated setbacks are required as follows:

- A. **Applicability.** Vegetated setbacks are required along perennial waterbodies and perennial streams indicated on the most recent versions of the United States Geological Survey (USGS) 1:24,000 scale (7.5 minute) quadrangle topographic maps. Where the USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site determination shall be performed by a Qualified Individual in accordance with [15A NCAC 02B .0624\(11\)](#). Artificial streambank and shoreline stabilization shall not be subject to the requirements of this Subsection.
- B. **Width.** The vegetated setback shall be at least 100 feet in width, measured horizontally from the normal pool elevation of impounded structures, from the top of the bank of each side of streams or rivers, and from the mean high waterline of tidal waters, perpendicular to the shoreline.
- C. **Vegetation Required.** Vegetated setbacks may be cleared or graded but shall be replanted and maintained in grass or other vegetation.²²
- D. **Built-Up Area.** No new built-upon area shall be allowed in the vegetated setback except for the following uses, but only if it is not practical to locate the built-upon area elsewhere:
1. Publicly funded linear projects such as roads, greenways, and sidewalks;
 2. Water dependent structures such as docks; and

²¹ Includes requirements from 15A NCAC 02B .0624(11). Superseding requirements may be included as part of the riparian buffer regulations, for areas both within and outside the Jordan Lake watershed; those have not yet been drafted.

²² The County may choose to include additional standards regarding required vegetation.

3. Minimal footprint uses such as poles, signs, utility appurtenances, and security lights.

E. Additional Standards.

1. For minor variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of the built-upon area proposed to encroach within the vegetated setback, divided by the total area of vegetated setback within the project.
2. Non-family subdivisions that are exempt from the subdivision requirements in accordance with **Subsection 13.2.3: Exempt Subdivisions** shall maintain the vegetated setbacks required in this Subsection to the maximum extent practicable.

9.5.4 PUBLIC HEALTH REGULATIONS²³

- A. No activity, situation, structure, or land use shall be allowed within the watershed area that 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 a 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.
- B. The Watershed Administrator shall monitor land use activities within the watershed areas to identify situations that may pose a threat to water quality and report all findings to the Watershed Review Board. The Watershed Administrator shall also report all other findings to the Watershed Review Board. The Watershed Administrator may consult with any public agency or official and request recommendations.
- C. Where the Watershed Review Board finds a threat to water quality and the public health, safety, and welfare, the Watershed Review Board shall institute any appropriate action or proceeding to restrain, correct, or abate the condition or violation.

²³ This carries forward Article 400 of the WPO, with minor revisions.

9.6 ADMINISTRATION²⁴

9.6.1 REVIEW AND DECISION-MAKING BODIES

- A. **Watershed Administrator.** The Watershed Administrator is hereby established. The County Commission shall appoint the Watershed Administrator, who shall have the following powers and duties:²⁵
1. To review applications for and issue Watershed Protection Permits and Watershed Protection Occupancy Permits in accordance with this Section, and to maintain a record of all Watershed Protection Permits and Watershed Protection Occupancy Permits that are issued, and make them available for public inspection;
 2. To serve as a clerk for the Watershed Review Board;
 3. To maintain a record of all development projects that receive Special Non-Residential Intensity Allocations or that are developed under the 10/70 development option and make them available for public inspection, and for each watershed area maintain the following information:²⁶
 - (a) Total acres of non-critical watershed area;
 - (b) Total acres eligible to be developed under this option;
 - (c) Total acres approved for this development option; and
 - (d) Individual records for each project with the following information: location, acres, site plan, use, stormwater management plan as applicable and inventory of hazardous materials, as applicable;
 4. To maintain a record of all requests for variances from the watershed protection standards including any findings of facts, and on an annual basis submit a report to the state Division of Water Resources which identifies each project that received a variance and the reasons for granting the variance; and

²⁴ The administration section may be relocated to [Chapter 13: Review and Decision Making Bodies](#), and [Chapter 14: Procedures](#). The section builds on the provisions in the WPO with revisions based on state regulations and the [2021 draft Model Water Supply Watershed Protection Ordinance](#).

²⁵ This builds on Section 501 of the WPO.

²⁶ If there has not been development using the 10/70 option, this section can be removed.

5. To maintain a record of all amendments to the watershed protection standards and to provide copies of all amendments to the state Division of Water Resources.

B. Watershed Review Board.²⁷

1. *Membership.* The Environmental Review Advisory Committee shall serve as the Watershed Review Board. Members of the Watershed Review Board are subject to the following requirements:
 - (a) Each member shall faithfully attend meetings and conscientiously perform their duties.
 - (b) No member shall participate in or vote on any quasi-judicial matter, such as an administrative appeal or a request for a variance, in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include but are not limited to a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed *ex parte* communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter.²⁸ Members shall notify the Board chair of a conflict of interest at least 48 hours prior to the hearing on a case.
2. *Powers and Duties.* The Watershed Review Board shall have the following powers and duties:²⁹

²⁷ Section 506(F) states: "No Board member shall vote on any matter that decides an application or appeal unless he had attended the public hearing on that application or appeal." That standard is unusual and has not been carried forward.

²⁸ This incorporates the new conflict of interest provisions in N.C.G.S. § 160D-109(d) and replaces the existing conflict-of-interest standards in Section 506(B) of the WPO, the *ex parte* communication restrictions in Section 506(C), and the expression of opinion restrictions in Section 506(D).

²⁹ Section 507(C) states that the Board has powers and duties with respect to subdivision approval and references Article 200. Article 200 states only that "No subdivision plat of land within the jurisdiction of this Ordinance shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Ordinance. 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 Ordinance." Because there are no affirmative duties assigned to the Board, this provision has not been carried forward.

- (a) To hear and decide appeals from any decision or determination made by the Watershed Administrator, in accordance with [Section 14.11: Appeals of Administrative Decisions](#); and
- (b) To authorize variances from the requirements in this Chapter, in accordance with 9.6.2C: *Watershed Regulation Variance Procedure*, below.

9.6.2 PROCEDURES

A. Watershed Protection Permit Procedure.³⁰

1. *Purpose.* The purpose of this Paragraph 9.6.2A is to establish the procedures and standards for issuance of a Watershed Protection Permit.
2. *Applicability.* No building or built-upon area shall be erected, moved, enlarged, or structurally altered; no building permit shall be approved; and no change in the use of any building or land shall be made until a Watershed Protection Permit is approved in accordance with this Paragraph.³¹
3. *Procedure.*
 - (a) Applications shall be submitted in accordance with the requirements in [Chapter 20: Submittal Requirements](#).
 - (b) The Watershed Administrator shall review the application and may consult with other County staff.
 - (c) The Watershed Administrator shall approve the application if the proposal complies with all applicable standards of this Chapter, or if the application fails to comply with the applicable standards of this Chapter, the application shall be denied. The applicant shall be notified of the decision, and if the application is denied, be provided the reasons for denial in writing.
 - (d) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within 12 months from the date of issuance of the Watershed Protection Permit.

³⁰ This carries forward and reorganizes Section 309 of the WPO.

³¹ Section 310 of the WPO is duplicative of this provision, so it is not carried forward.

B. Watershed Protection Occupancy Permit Procedure.³²

1. *Purpose.* The purpose of this Paragraph 9.6.2B is to establish the procedures and standards for issuance of a Watershed Protection Occupancy Permit.
2. *Applicability.* No building or structure that is erected, moved, or structurally altered may be occupied and no change in the use of any building or land shall be made until a Watershed Protection Occupancy Permit is approved in accordance with this Paragraph.
3. *Procedure.*
 - (a) Applications shall be submitted in accordance with the requirements in **Chapter 20: Submittal Requirements**. A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for at the same time as an application for a Watershed Protection Permit and shall be approved or denied within 10 days after the erection or structural alteration of the building.
 - (b) The Watershed Administrator shall review the application and may consult with other County staff.
 - (c) The Watershed Administrator shall approve the application if the proposal complies with the standards of this Chapter and, if only a change in use of land or an existing building is proposed, the Watershed Protection Occupancy Permit shall be issued at the same time as the Watershed Protection Permit. Otherwise, the Watershed Administrator shall deny the application and notify the applicant stating the reasons for denial in writing.³³

C. Watershed Variance Procedure.³⁴

1. *Purpose.* The purpose of this Paragraph 9.6.2C is to establish the procedures and standards for variances from the requirements in this Chapter, and to provide other local governments having jurisdiction in

³² This carries forward and reorganizes Section 311 of the WPO.

³³ This has been reorganized to make clear that the fact that the application involves only a change in use of land or an existing building does not exempt the applicant from the requirement to comply with the provisions of this chapter.

³⁴ This carries forward the variance procedures at Section 507(B) of the WPO with changes as noted below. Application requirements have been taken out of the regulations (Section 507(B)(1)) and will be maintained in accordance with **Chapter 20: Submittal Requirements**.

- the designated watershed an opportunity to comment on any applications for a variance.
2. *Applicability.* This Paragraph may be used to vary the requirements in this Chapter.
 3. *Types of Variances.*³⁵
 - (a) A Minor Watershed Variance is a request for a modification of up to 10% of any vegetated setback, maximum density allowed, or minimum lot size requirement applicable to low-density development; or a modification of up to 5% of any vegetated setback, maximum density allowed, or minimum lot size requirement applicable to high density development.³⁶ For variances to a vegetated setback requirement, the percent variation shall be calculated using the footprint of built-upon area proposed to encroach within the vegetated setback divided by the total area of vegetated setback within the project.
 - (b) A Major Watershed Variance is a request for a modification that exceeds the numerical limits of a Minor Watershed Variance, or that requests the complete waiver of a management requirement. If approval of a Major Watershed Variance is recommended by the Watershed Review Board, the recommendation is required to be transmitted to the [North Carolina Environmental Management Commission](#) (EMC) for its review and decision-making.
 4. *Procedure.*³⁷
 - (a) Applications shall be submitted in accordance with the requirements in [Chapter 20: Submittal Requirements](#). The Watershed Review Board shall refuse to hear an application for a variance previously denied if it finds that there have been no

³⁵ This updates the current definitions of major variance and minor variance in Section 109 of the WPO for consistency with the definition at 15 NCAC 02B .0621. In accordance with state law, variations of the high-density requirement of five percent or less are minor variances; under the WPO, any variation to high-density development is a major variance. As high-density development is now the default, keeping the current variance distinction would eliminate any minor variances.

³⁶ This can be simplified if low-density development is not an option.

³⁷ This generally carries forward the procedure in Section 507(B)(3)-(6) of the current WPO, with the changes noted below. In addition, the sections of the WPO that establish criteria for the EMC in making its decision are removed, as local ordinances do not regulate the EMC's actions.

substantial changes in conditions or circumstances bearing on the application.

- (b) After receipt of an application for a Watershed Variance, the Planning Director shall provide public notice in accordance with [Section 14.1.7: Notice Provisions](#) and schedule a public hearing on the application. In addition, notice by first class mail shall be provided to each local government having jurisdiction in the watershed area where the variance is requested. The notice to local governments shall include a description of the variance being requested and indicate the date by which the local government may submit comments regarding the variance request to be included in the materials reviewed by the Watershed Review Board.
- (c) The Watershed Review Board shall hold a quasi-judicial public hearing on the application and, after its review, make a decision on the application.
- (d) If the application is for a Minor Watershed Variance, the Watershed Review Board shall make a decision based on the standards in 9.6.2C.5: *Watershed Variance Review Standards*, below. The Watershed Review Board's decision shall be to approve the application as submitted; approve the application subject to conditions of approval; or deny the application.
- (e) If the application is for a Major Watershed Variance, the Watershed Review Board shall make a recommended decision based on the standards in 9.6.2C.5: *Watershed Variance Review Standards*, below. If the Watershed Review Board's recommendation is to deny the application, the application shall be deemed denied. If the Watershed Review Board's recommendation is to approve the application as submitted or approve the application subject to conditions of approval, then the application and a preliminary record of the hearing shall be transmitted to the EMC, as follows:
 - (i) The preliminary record of the hearing shall include:
 - (ii) The variance application;
 - (iii) The hearing notices;
 - (iv) The evidence presented;

- (v) Motions, offers of proof, objections to evidence, and rulings on them;
 - (vi) Proposed findings and exceptions; and
 - (vii) The proposed decision, including all proposed conditions of approval.
- (2) If the EMC approves the Major Watershed Variance or approves the Major Watershed Variance with conditions or stipulations added, the EMC will prepare a decision to be sent to the Watershed Review Board that authorizes the Watershed Review Board to issue a final decision that includes any conditions or stipulations added by the EMC. Following receipt of the EMC's decision, the Watershed Review Board shall issue a decision including any such conditions or stipulations. If the EMC denies the Major Watershed Variance, the EMC will prepare a decision to be sent to the Watershed Review Board denying the application. Following receipt of the EMC's decision denying the application, the Watershed Review Board shall issue a decision denying the application.
- (f) A Minor or Major Watershed Variance shall be considered a Watershed Protection Permit and shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within six months from the date of the decision.
5. *Watershed Variance Review Standards.* The Watershed Review Board shall approve a Minor Watershed Variance, or decide in favor of granting a Major Watershed Variance, on finding that the applicant demonstrates all of the following:³⁸
- (a) <The standards that apply to a standard request for a variance.>
 - (b) The variance is in accordance with the general purpose and intent of this Chapter; and

³⁸ This revises the current decision standards at Section 507(B)(2) of the WPO for consistency with state regulations. Instead of duplicating the hardship findings that are used in the standard variance procedure, this section incorporates those decision standards by reference.

- (c) In granting the variance, the project will ensure equal or better protection of waters of the state than state and local regulations, and that the stormwater controls will function in-perpetuity.

D. Density Averaging Certificate.

1. *Purpose.* The purpose of this Paragraph 9.6.2D is to establish the procedures and standards for issuance of a Density Averaging Certificate (DAC).
2. *Applicability.* This Paragraph may be used to implement the density averaging option in 9.4.1C: *Density Averaging*.
3. *Procedure.*
 - (a) An application for density averaging shall be submitted by the owner(s) of the paired lots in accordance with the requirements in **Chapter 20: Submittal Requirements**. The application shall include a site plan that includes the information required by the Planning Director to demonstrate that the paired lots will comply with the density averaging provisions of 9.4.1C: *Density Averaging*, and shall clearly identify the built-upon area and the protected area.
 - (b) The Watershed Review Board shall review the application for a DAC and shall approve, approve with conditions, or deny the application based on the standards in 9.4.1C: *Density Averaging*. The Watershed Review Board shall issue written findings regarding the application's compliance with the standards of this Subsection.
 - (c) If the application is approved, the development shall be consistent with the site plan. No change in the approved plan shall be made unless the Watershed Review Board approves an amendment to the DAC.
4. *Post-Decision Provisions.*
 - (a) The Planning Director shall maintain an index of lots for which DACs are awarded and shall track density averaging among parcels in the County.
 - (b) Violation of the conditions of a DAC shall be a violation of this Ordinance and may be enforced in accordance with **Chapter 17: Enforcement**.

- E. **Appeals from Decision of Watershed Review Board.**³⁹ A decision by the Watershed Review Board may be appealed in accordance with [N.C.G.S. § 160D-1402](#).

³⁹ Updates the existing appeal regulations in Section 508 of the WPO with reference to state law.