

## **TITLE XV: LAND USAGE**

### **Chapter**

#### **150. BUILDING REGULATIONS APPENDIX: INSPECTIONS FEE SCHEDULE**

#### **151. FLOOD DAMAGE PREVENTION**

#### **152. SIGN CONTROL**

#### **153. SOIL EROSION AND SEDIMENTATION CONTROL**

#### **154. TELECOMMUNICATIONS TOWERS**

#### **155. VOLUNTARY FARMLAND PRESERVATION**

#### **156. WATERSHED PROTECTION APPENDIX: HIGHLANDS WATERSHED**



## CHAPTER 150: BUILDING REGULATIONS

### Section

#### *Inspections Department*

- 150.01 Creation of Department; Inspectors
- 150.02 Permits
- 150.03 Inspections
- 150.04 Codes and regulations to be enforced; multiple inspectors
- 150.05 Duties, reports and authority of the Electrical Inspector
- 150.06 Duties, reports and authority of the Plumbing Inspector
- 150.07 Duties, reports and authority of the Mechanical Inspector
- 150.08 Duties, reports and authority of the Insulation Inspector
- 150.09 Duties, reports and authority of the Building Inspector
- 150.10 Registration of contractors
- 150.11 Prohibition against connection to uninspected improvements
- 150.12 Liability for damages

#### *Licensing of Insulation Contractors*

- 150.25 Authority
- 150.26 License required
- 150.27 Applications
- 150.28 Procedure for issuance
- 150.29 Termination and renewal of licenses
- 150.30 Suspension, revocation, appeal
- 150.31 Change of location
- 150.32 Permit required; fee; exemptions
- 150.33 Insulation standards
- 150.34 Liability for damages
- 150.99 Penalty
- Appendix: Inspections Fee Schedule

#### ***INSPECTIONS DEPARTMENT***

#### **§ 150.01 CREATION OF DEPARTMENT; INSPECTORS.**

(A) There is hereby created the Macon County Inspection Department, consisting of one or more County Inspectors as prescribed herein. Each person chosen to fill the office of County Inspector shall have at least a high school education, or the equivalent, shall be of good moral character, shall be certified, where required, by the applicable North Carolina Qualification Board or authority, shall be possessed of such executive ability as is requisite for the efficient performance of his or her duties, and shall have a thorough knowledge of the standard materials and approved methods used in construction and required for the safety of life and property, the applicable Statutes of the State of North Carolina, the North Carolina State Building Code, and the provisions of this subchapter.

(B) All county inspectors shall be appointed by the County Board of Commissioners and shall report to the County Manager and/or the Board of County Commissioners directly when so required.

(C) The salary to be paid to the inspectors shall be determined by the Board of Commissioners.

(D) Before entering upon the discharge of his or her duties, each inspector shall file a bond in the sum of \$2,000, payable to Macon County, the bond to be approved by the Board of County Commissioners and conditioned upon the faithful performance of his or her duties. Each inspector shall also take and subscribe an oath, which together with the certificate of his or her appointment, shall be filed with the County Manager.

(E) Each inspector shall comply with the provisions of G.S. § 153A-352, as the same are applicable to his or her field of designation.

(Ord. passed 3-15-1984)

**§ 150.02 PERMITS.**

(A) No person, firm or corporation may commence or proceed with:

(1) The construction, reconstruction, alteration, repair, removal, or demolition of any building;

(2) The installation, extension, alteration or general repair of any plumbing system;

(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or

(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment;

(5) The installation, alteration, or removal of any insulation; unless or until he or she shall first secure from the Inspection Department of Macon County, each permit required by the State Building Code and a Macon County building permit, if required.

(B) Each permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable state and local laws and regulations.

(C) No permit may be issued unless the plans and specifications (if required) are identified by the name and address of the author thereof; and if the General Statutes of the State of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer.

(D) No permit shall be issued until the applicant shall have paid to the Inspection Department, the appropriate fee therefor, in such amounts as shall be from time to time established by the Macon County Board of Commissioners.

(E) No permit shall be issued to any person, (except to a homeowner as hereinafter provided) to perform electrical, plumbing, mechanical, insulation, or general construction, except in compliance with the provisions of this subchapter, the State Building Code and all other applicable state and local laws. Specifically, but not in limitation of the foregoing, no permit shall be issued to any unlicensed person to perform work in a field for which licensing is required.

(F) Any person may be permitted to perform electrical, insulation, plumbing, mechanical, or general construction installation, repair, replacement, or alteration work upon his or her own property, which he himself occupies, or intends to occupy as a residence (but not property intended for rent, sale or gift), provided, he or she first makes application for and obtains a permit from the Macon County Inspection Department to do the specific work contemplated and described in the application. No such permit shall be issued unless the applicant satisfies the appropriate inspector that he or she is competent to perform the work for which the permit is requested, in a manner which will meet all requirements of the North Carolina State Building Code and of this subchapter. If so satisfied, the inspector shall issue a permit to the applicant personally, to perform the particular work for which application was made. Such permits shall extend to the applicant only, and shall not authorize the applicant to employ the services of any other person to assist him or her, unless such other person is a qualified individual, licensed in the field of work for which the permit was issued. The permit granted the applicant shall automatically expire upon completion of the work for which application was made, and the permit issued. All work done under such permit shall be subject to regular Macon County Inspection requirements and fees, and must satisfy all state and local requirements applicable to such work.

(G) Applications for permits shall be made on forms provided by the Inspection Department designed to obtain all information necessary to identify the work and insure its adequate inspection, and no permit shall be issued until all required information has been submitted.

(H) After a permit has been issued, no change or deviation from the terms of the application, the plans and specifications, or the permit (except as shall be clearly permissible under the State Building Code) may be made until specific written approval of the proposed change or deviation has been obtained from the Inspection Department.

(I) A permit issued by Macon County under the provisions hereof shall expire 12 months after the date of issuance, if the work authorized by the permit has not been commenced. If after commencement, the work is discontinued for a period of 12 consecutive months, the permit therefor shall immediately expire. No work authorized by a permit that has expired may thereafter be performed until a new permit has been secured. Provided, however, that any permit may be renewed without additional charge if application therefor shall be made within 30 days after expiration.

(Ord. passed 3-15-1984)

### **§ 150.03 INSPECTIONS.**

(A) The term “inspection” as referred to in this subchapter shall mean the necessary scrutiny and investigation of an installation to determine whether or not the installation has been made in conformity with state and local laws governing the manner thereof and the materials required to be used therein. An inspector shall have and use the necessary instruments and tools required for testing each installation. No final inspection shall be made until all fixtures, with their appropriate trims and covers are properly installed.

(B) Sufficient preliminary, interim and final inspections shall be scheduled, so as to insure that each inspector in his or her particular field of inspection of an installation, can adequately determine

the compliance thereof with the provisions of this subchapter. A tentative schedule of inspections will be established at the time any person applies for a permit from the inspector.

(C) Upon the completion of any phase of work for which an inspection is required, and upon final completion, it shall be the duty of the person installing the same to notify the Inspection Department, who shall schedule an inspection of the installation, as soon as is reasonably possible.

(D) Additional inspections or inspection trips made necessary through the failure of any contractor, or any person in charge of work, to give specific location of work to be inspected, or failure to install wiring, fixtures or other apparatus in a proper manner, or otherwise creating conditions making additional inspections necessary are hereby designated "extra inspections," for which an additional fee shall be charged by the Department. Nothing herein shall be construed to require additional fees for multiple inspections deemed necessary in the regular order of construction work.

(E) Any Macon County Inspector shall have the right, upon presentation of his or her credentials and proper identification, during reasonable hours, to enter any building in the discharge of his or her official duties, or for the purpose of making any inspection, reinspection, or test of the installation of electric wiring, devices, appliances, equipment, insulation, plumbing and mechanical equipment contained therein.

(F) No inspection shall be made for any installation until all required permits have been obtained and all fees therefor paid.

(G) After each inspection, the Inspector will make a written report of all defects and deficiencies in the work and shall deliver a copy thereof to the responsible person. A subsequent inspection shall be scheduled to insure correction of all deficiencies.

(Ord. passed 3-15-1984)

**§ 150.04 CODES AND REGULATIONS TO BE ENFORCED; MULTIPLE INSPECTORS.**

*(A) Codes to be enforced.*

(1) The State Electrical Code, Volume 4, as incorporated in the North Carolina State Building Code, as adopted and amended by the State Building Code Council, shall be enforced by the Macon County Electrical Inspector.

(2) The Insulation and Energy Utilizations Standards of the North Carolina State Building Code, as amended, shall be enforced by the Macon County Insulation Inspector.

(3) Volume 2, Plumbing, of the North Carolina State Building Code, as amended, shall be enforced by the Macon County Plumbing Inspector.

(4) Volume 3, Heating, Air Conditioning, Refrigeration, and Ventilation, of the North Carolina State Building Code, as amended, shall be enforced by the Macon County Mechanical Inspector.

(5) The provisions governing the construction, re-construction, alteration, repair, removal or demolition of buildings, in general, of the North Carolina State Building Code, as amended, shall be enforced by the Macon County Building Inspector.

*(B) Regulations to be enforced.* The State of North Carolina Regulations for Mobile Homes and Modular Housing, (1979 Edition) shall be enforced by all Macon County Inspectors.

*(C) Implementation of subchapter and multiple inspectors.*

(1) No code shall be enforced and the provisions of this subchapter pertaining thereto, shall be ineffectual, until such time as a fully qualified inspector therefor shall have been appointed and qualified by the Macon County Board of Commissioners.



- (2) One qualified individual may serve as an inspector in multiple fields.

(D) *North Carolina State Fire Prevention Code.*

- (1) The Macon County Fire Marshal is hereby authorized and directed to perform those duties and responsibilities required by G.S. §§ 153A-352 and 153A-364, with respect to the enforcement of the North Carolina State Fire Prevention Code.

- (2) The Macon County Fire Marshal is hereby authorized and directed to perform those duties and responsibilities required by G.S. §§ 153A-352 and 153A-364, with respect to the enforcement of the North Carolina State Fire Prevention Code, within the jurisdictional boundaries of the Town of Franklin and the Town of Highlands, when requested to do so by resolution of the governing bodies of those entities.

- (3) The Macon County Fire Marshal shall become qualified and licensed as may by law be required for the inspection of buildings, structures and premises so as to identify activities and conditions therein that pose dangers of fire, explosion or related hazards and for the enforcement of the State Building Code with respect thereto.

- (4) The Macon County Fire Marshal shall conduct periodic inspections of buildings, structures and premises within Macon County as required by law but, in no event may inspections be conducted less frequently than described in Section 107 of Volume V of the North Carolina Fire Code.

- (5) The Macon County Fire Marshal shall prepare a schedule for periodic inspection of all buildings, structures and premises within the county that pose dangers of fire, explosion or related hazards, as shall be required by law and the North Carolina State Fire Prevention Code, which schedule shall be submitted to and approved by the Board of Commissioners and subsequently submitted to the Division of Engineering of the Department of Insurance for its approval.

(6) The Macon County Fire Marshal shall perform the inspections required hereby at the cost of the owner of the premises being inspected.

(7) The cost or charge to be assessed by the Fire Marshal for each required inspection, whether performed within the jurisdiction of the county or of any town within the county, shall be as set forth on the Exhibit attached to Resolution passed 9-6-1994 entitled "Macon County Fire Inspection Fees."

(Ord. passed 3-15-1984; Am. Res. passed 1-4-1993; Am. Res. passed 9-6-1994)

***Cross-reference:***

*Enforcement of County Fire Prevention*

*Ordinance by Fire Marshal, see § 91.06*

**§ 150.05 DUTIES, REPORTS AND AUTHORITY OF THE ELECTRICAL INSPECTOR.**

(A) It shall be the duty of the Electrical Inspector to enforce all state and local laws governing electrical installations and materials, to issue permits for and to make inspections of all new electrical installations, and to issue such other permits and make such other inspections as may be prescribed by the County Commissioners.

(B) The Electrical Inspector shall have the authority to cut or disconnect any wire in cases of emergency where necessary for safety to life and property. The Electrical Inspector is hereby authorized to disconnect and remove or order the discontinuance of electrical service to any electrical wiring, devices, appliances, or equipment, found to be dangerous to life or property because it is defective or defectively installed until such wiring, devices, appliances, equipment, and insulation and their installation have been made safe and approved by the Electrical Inspector.

(C) No electric wiring, devices, appliance, or equipment shall be installed within or on any building, structure, or premises, nor shall any alteration or addition be made in any such existing wiring, devices,

appliances or equipment without securing a permit, if required, and having an inspection made thereof by the County Electrical Inspector, except as stated in subsections (1) and (2) below.

(1) No permit or inspection shall be required for minor repair work, such as the replacements of lamps, or the connection of portable devices to suitable receptacles which have been permanently installed.

(2) No permit shall be required for the installation, alteration or repair of electric wiring, devices, appliances and equipment installed by or for an electrical public service corporation for the use of such corporation in the generation, transmission, distribution or metering of electrical energy, or for the use of such corporation in the operation of signals or the transmission of intelligence.

(D) If no permit is required, then the inspector's certificate of compliance shall constitute both a permit for and a certificate of compliance.

(E) On a form furnished by the Macon County Inspection Department, the Chief Inspector shall make a monthly report of all inspections made and fees collected, one copy of which report is to be given to the County Manager or some other designated county official, one copy to each County Commissioner, and one copy to be retained on file by the Inspection Department.

(F) In lieu of an individual permit for each installation or alteration, an annual permit shall, upon application therefor, be issued to any person, firm, or corporation regularly employing one or more electricians for the installation and maintenance of electric wiring, devices, appliances, and equipment on premises owned or occupied by the applicant for the permit. The application for such annual permit shall be made in writing to the Electrical Inspector and shall contain a description of the premises within which work is to be done under the permit. The person, firm, or corporation to which an annual permit is issued shall keep a record of all electric wiring,

devices, appliances and equipment installed under the permit, and the Electrical Inspector shall have access to such record. Each annual permit shall expire on December 31 of the year in which it was issued.

(G) No permit, except an annual permit, or personal permit as provided in § 150.02(F) above, for the installation or alteration of any electric wiring, devices, appliances or equipment shall be issued to any person, firm or corporation unless such person, firm or corporation is the holder of an electrical contractor's license issued by the North Carolina State Board of Electrical Contractors.

(H) An advance or preliminary certificate of compliance may be issued by the Electrical Inspector upon proper application and issuance of a permit, whereby a supplier of electric power shall be permitted to connect a temporary service to the work prior to its completion.

(I) When an advance certificate of compliance is issued authorizing the connection and use of temporary work, such certificate shall be issued to expire at a time to be stated therein, and shall be revocable at any time by the Electrical Inspector for cause. A preliminary certificate of compliance may be issued authorizing the connection and use of certain specific portions of an incomplete installation; such certificate shall be revocable at the discretion of the Electrical Inspector.

(J) Where the Electrical Inspector finds an installation to be in conformity with the provisions of the public safety laws of the state governing electrical wiring installations and materials, the State Building Code, and this subchapter, he or she shall issue a certificate of compliance in duplicate, one for the utility furnishing the electrical service and one for the property owner.

(K) The person working in the capacity of electrician, other than a qualified property owner, in charge of any job, shall have in his or her possession and on the premises where work is being performed, a workman's identification card or some other

recognized identification, showing that he or she is in the employ of a qualified and licensed electrical contractor.

(L) A copy of the inspection record shall be attached to a copy of the certificate of compliance issued pursuant thereto, and shall be maintained in a semi-permanent file kept for at least five years in the office of the Inspection Department. When all certificates of compliance have been issued from an inspection pad, the pad with stubs fully completed must be maintained as a semi-permanent record in the office of the Inspection Department.

(Ord. passed 3-15-1984)

#### **§ 150.06 DUTIES, REPORTS AND AUTHORITY OF THE PLUMBING INSPECTOR.**

(A) It shall be the duty of the Plumbing Inspector to enforce all state and local laws governing plumbing installations and materials; to issue permits for and to make inspections of all new plumbing installations, and to issue such other permits and make such other inspections as may be prescribed by the County Commissioners.

(B) No plumbing, fixtures, appliances, or equipment shall be installed within or on any building, structure, or premises, nor shall any alteration or addition be made to fixtures, appliances or equipment, without securing a permit, if required, and having an inspection thereof made by the County Plumbing Inspector, except as stated below:

(1) No plumbing permit shall be required for initial installation of plumbing in mobile homes which carry an approved inspection agency label.

(2) No additional permit shall be required for work costing less than \$5,000, which is simply the replacement of the same size and capacity plumbing materials.

(C) Where the Plumbing Inspector finds an installation to be in conformity with provisions of

State Plumbing Codes, and of this subchapter, he or she shall issue appropriate permits and certificates of compliance.

(D) The person working in the capacity of plumber in charge of any job, other than a qualified property owner shall have in his or her possession, and on the premises where work is being performed, a workman's identification card, or some other recognized identification showing his or her qualifications and license or his or her employment by a qualified and licensed plumbing contractor.

(E) On a form furnished by the Macon County Inspection Department, the Chief Inspector shall make a monthly report of all inspections made and fees collected, one copy of which report is to be given to the County Manager or some other designated county official, one copy to each County Commissioner, and one copy to be retained on file by the inspection Department.

(F) A copy of the inspection record shall be attached to a copy of the certificate of compliance issued pursuant thereto, and shall be maintained in a semi-permanent file kept for at least five years in the office of the Inspection Department. When all certificates of compliance have been issued from an inspection pad, the pad with stubs fully completed must be maintained as a semi-permanent record in the office of the Inspection Department.

(Ord. passed 3-15-1984)

#### **§ 150.07 DUTIES, REPORTS AND AUTHORITY OF THE MECHANICAL INSPECTOR.**

(A) It shall be the duty of the Mechanical Inspector to enforce all state and local laws governing heating, air conditioning, refrigeration, and ventilation installations and materials; to issue permits for and to make inspections of all new mechanical installations, and issue such other permits and make such other inspections as may be prescribed by the County Commissioners.

(B) No heating or cooling equipment shall be installed within or on any building, structure, premises, nor any alteration or extension be made on existing systems without securing a permit, if required, and having an inspection thereof made by the County Mechanical Inspector.

(C) Where the Mechanical Inspector finds an installation to be in conformity with the provisions of the State Mechanical Code, and of this subchapter, he or she shall issue appropriate permits and certificates of compliance.

(D) The person working in the capacity of mechanic in charge of any job, other than a qualified property owner shall have in his or her possession, and on the premises where work is being performed, a workman's identification card, or some other recognized identification showing his or her qualifications and license or his or her employment by a qualified and licensed mechanical contractor.

(E) On a form furnished by the Macon County Inspection Department, the Chief Inspector shall make a monthly report of all inspections made and fees collected, one copy of which report is to be given to the County Manager or some other designated county official, one copy to each County Commissioner, and one copy to be retained on file by the Inspection Department.

(F) A copy of the inspection record shall be attached to a copy of the certificate of compliance issued pursuant thereto, and shall be maintained in a semi-permanent file kept for at least five years in the office of the Inspection Department. When all certificates of compliance have been issued from an inspection pad, the pad with stubs fully completed must be maintained as a semi-permanent record in the office of the Inspection Department.

(Ord. passed 3-15-1984)

#### **§ 150.08 DUTIES, REPORTS AND AUTHORITY OF THE INSULATION INSPECTOR.**

(A) It shall be the duty of the Insulation Inspector to enforce all state and local laws governing insulation and the energy utilization standards of the State Building Code; to issue permits for and to make inspections of all such installed insulation, and to issue such other permits and make such other inspections as may be prescribed by the County Commissioners.

(B) No insulation shall be installed within or on any building, structure, or premises, nor may any previously installed insulation be removed or altered, without securing a permit, if required, and having an inspection thereof made by the County Insulation Inspector.

(C) Where the Insulation Inspector finds an installation to be in conformity with the provisions of State Codes and of this subchapter, he or she shall issue appropriate permits and final certificates.

(D) The person working in the capacity of insulation installer in charge of any job, other than a qualified property owner shall have in his or her possession, and on the premises where work is being performed, a workman's identification card, or some other recognized identification showing his qualifications and license or his or her employment by a qualified and licensed contractor.

(E) On a form furnished by the Macon County Inspection Department, the Chief Inspector shall make a monthly report of all inspections made and fees collected, one copy of which report is to be given to the County Manager or some other designated county official, one copy to each County Commissioner, and one copy to be retained on file by the Inspection Department.

(F) A copy of the inspection record shall be attached to a copy of the certificate of compliance issued pursuant thereto, and shall be maintained in a semi-permanent file kept for at least five years in the office of the Inspection Department. When all



certificates of compliance have been issued from an inspection pad, the pad with stubs fully completed must be maintained as a semi-permanent record in the office of the Inspection Department.  
(Ord. passed 3-15-1984)

#### **§ 150.09 DUTIES, REPORTS AND AUTHORITY OF THE BUILDING INSPECTOR.**

(A) It shall be the duty of the Building Inspector to enforce all state and local laws governing the construction, reconstruction, alteration, repair, removal or demolition of any building; to issue permits for and to make inspections of all work performed, and to issue such other permits and make such other inspections as may be prescribed by the County Commissioners.

(B) No construction, reconstruction, alteration, repair, removal or demolition of any building may be commenced without securing a permit, if required, and having an inspection thereof made by the County Building Inspector, except as stated as follows: No permit shall be required for any work costing \$5,000 or less, in any single-family residence or farm building, unless the work involves:

- (1) The addition, repair, or replacement of load bearing structures;
- (2) The addition (excluding replacements of same size and capacity) or change in the design of plumbing;
- (3) The addition, replacement, or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment;
- (4) The use of materials not permitted by the North Carolina Uniform Residential Building Code; or
- (5) The addition (excluding replacement of like grade of fire resistance) of roofing.

(C) Where the Building Inspector finds the work to be in conformity with provisions of state codes and of this subchapter, he or she shall issue appropriate permits and certificates of compliance.

(D) The person working in the capacity of contractor in charge of any construction project, other than a qualified property owner shall have in his or her possession, and on the premises where work is being performed, an identification card, or some other recognized identification showing he or she is a licensed contractor or that he or she is employed by a qualified and licensed contractor on those jobs requiring licensing.

(E) On a form furnished by the Macon County Inspection Department, the Chief Inspector shall make a monthly report of all inspections made and fees collected, one copy of which report is to be given to the County Manager or some other designated county official, one copy to each County Commissioner, and one copy to be retained on file by the Inspection Department.

(F) A copy of the inspection record shall be attached to a copy of the certificate of compliance issued pursuant thereto, and shall be maintained in a semi-permanent file kept for at least five years in the office of the Inspection Department. When all certificates of compliance have been issued from an inspection pad, the pad with stubs fully completed must be maintained as a semi-permanent record in the office of the Inspection Department.

(Ord. passed 3-15-1984)

#### **§ 150.10 REGISTRATION OF CONTRACTORS.**

Every person carrying on a business which is regulated hereby within the county, shall register with the office of the Macon County Inspection Department, giving his or her name, place of business, and (if required by the State of North Carolina to be licensed) his or her contractor's license number, and such other reasonable information as the Inspection Department may from time to time require.

Every person so registered shall keep the information on file with the Inspection Department current and correct, and will notify the Inspection Department of any change in his or her licensing status and any complaint filed against him or her with the licensing board.  
(Ord. passed 3-15-1984)

#### **§ 150.11 PROHIBITION AGAINST CONNECTION TO UNINSPECTED IMPROVEMENTS.**

No supplier of electric power within the boundaries of Macon County shall permit either temporary or permanent service to any improvements hereby regulated, until either an advance or preliminary or final certificate of compliance has been issued, pursuant to the terms of this subchapter, and the presentation to the supplier of electric power of a properly executed advance or final certificate of compliance will be the authorization to connect such service.

(Ord. passed 3-15-1984) Penalty, see § 150.99

#### **§ 150.12 LIABILITY FOR DAMAGES.**

This subchapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation, owning, operating, controlling, or installing any electric wiring, devices, appliances, or equipment or installing any plumbing, any insulation, any heating or air conditioning equipment, or constructing, reconstructing, altering, repairing, removing, or demolishing any building, for damages to person or property caused by any defect therein, nor shall the County of Macon be held as assuming any such liability by reason of any inspection authorized herein, or any certificate of approval issued pursuant to the provisions hereof.

(Ord. passed 3-15-1984)

## ***LICENSING OF INSULATION CONTRACTORS***

### **§ 150.25 AUTHORITY.**

This subchapter is adopted pursuant to Chapter 703, North Carolina Session Laws of 1977, and G.S. § 153A-134.  
(Ord. passed 1-13-1978)

### **§ 150.26 LICENSE REQUIRED.**

No person, firm or corporation may for a consideration install, alter or restore, within any unincorporated part of Macon County, and within any city which adopts this subchapter pursuant to the authority granted in G.S. § 153A-122, any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards who is not either:

- (A) Licensed as a contractor to do the proposed work under G.S. §§ 87-1 *et seq.*;
- (B) Working under the supervision of a registered architect or professional engineer;
- (C) An owner working upon his or her own building; or
- (D) Licensed under this subchapter.

(Ord. passed 1-13-1978) Penalty, see § 150.99

### **§ 150.27 APPLICATIONS.**

Every person desiring a license under this subchapter shall submit an application for such license to the Macon County Electrical Inspector, conforming to the following requirements:

- (A) *Form of application.* Each application shall be a written statement upon forms provided by the Electrical Inspector.

(B) *Contents of application.* Each application shall contain the following information:

- (1) Name and home address of the applicant, if an individual, or home office address, if a corporation or partnership;
- (2) Names and home address of the partners, if a partnership;
- (3) Names and home address of the officers and directors, if a corporation;
- (4) Place where the proposed business is to be located;
- (5) Complete record of all convictions of felonies or acts involving dishonesty, fraud, or deceit by the applicant or any employee, partner, officer, or director of the applicant, whether in this or any other state or jurisdiction;
- (6) Complete record of all licenses held by the applicant or any employee, partner, officer, or director of the applicant authorizing activities of the type regulated by this subchapter or other activities involving construction, alteration, or modification of buildings and structures;
- (7) Information as to the circumstances in which any local, state or federal government or agency has refused, suspended, or revoked a license of the type described in subsection (6) to applicant or any employee, partner, officer, or director of the applicant.

(C) *License fees.* Each application shall be accompanied by a license fee in the amount of \$15 for such license, such amount to be for the fiscal year and prorated by quarters to the end of such year.

(D) *False statements.* False statements on any application for a license shall be grounds for immediate revocation or denial of such license.  
(Ord. passed 1-13-1978)

**§ 150.28 PROCEDURE FOR ISSUANCE.**

(A) *Review by County Officers.* Each application received by the Electrical Inspector shall be promptly forwarded to the Tax Supervisor and Sheriff's Department for review. Such officers shall promptly make any comments and recommendations pertaining to the application and forward them to the County Manager.

(B) *Licensing agency.* The application and any comments and recommendations relating thereto shall be considered by the Macon County Manager, who shall then issue or deny the license pursuant to the following standards.

(C) *Standards.* The Macon County Manager shall issue the license unless it shall find that the applicant or any employee, partner, officer, or director of the applicant:

(1) Has been convicted within the last three years of a felony or an act involving dishonesty, fraud, or deceit, whether in this or any other state or jurisdiction;

(2) Has been refused a license to do the type of work authorized herein or has had such a license suspended or revoked by any local, state or federal government or agency and such government or agency has not subsequently granted or restored such license;

(3) Has knowingly made a false statement in the application;

(4) Has failed to post the bond or other security as required.

(D) *Appeal from denial.* Any applicant whose license is denied may appeal the denial to the Macon Board of County Commissioners. After reasonable notice to the applicant, the Board shall afford the applicant an opportunity to show why its license should not be denied.  
(Ord. passed 1-13-1978)

### **§ 150.29 TERMINATION AND RENEWAL OF LICENSES.**

All licenses issued hereunder shall terminate on the last day of the fiscal year for which issued. Renewal of such licenses shall be pursuant to the same procedures and requirements set forth for initial issuance.  
(Ord. passed 1-13-1978)

### **§ 150.30 SUSPENSION, REVOCATION, APPEAL.**

(A) The County Manager may suspend or revoke any license issued hereunder at any time upon a showing that the applicant or any employee, partner, officer, or director of the applicant has:

- (1) Knowingly made a false statement in the application for a license; or
- (2) Violated the State Building Code requirements as to insulation or energy utilization equipment or materials, whether in this or any other jurisdiction, or
- (3) Been convicted of an act involving dishonesty, fraud, or deceit with respect to any contract entered into for work requiring this license.

(B) Any licensee whose license is suspended or revoked may appeal the suspension or revocation to the Macon Board of County Commissioners. After reasonable notice to the licensee, the Board shall afford the licensee an opportunity to show why its license should not be suspended or revoked.  
(Ord. passed 1-13-1978)

### **§ 150.31 CHANGE OF LOCATION.**

The location of any licensed business may be changed, provided ten-days' notice thereof is given to the County Manager and operation at such new location does not violate any applicable state or local law, ordinance, or regulation.  
(Ord. passed 1-13-1978)

### **§ 150.32 PERMIT REQUIRED; FEE; EXEMPTIONS.**

(A) No person, firm or corporation may for a consideration install, alter or restore, within any unincorporated part of Macon County, and within any city which adopts this subchapter pursuant to the authority granted in G.S. § 153A-122, any insulation or other materials or energy utilization equipment designed or intended to meet the State Building Code requirements for insulation and energy utilization standards without first securing a permit for the work to be done. Such permit shall be either:

- (1) A general building permit, secured from the Macon County Inspection Department and evidencing full compliance with all applicable requirements of the State Building Code and other state and local laws; or
- (2) An insulation and energy utilization permit, secured from the Energy and Insulation Inspector and evidencing full compliance with the insulation and energy utilization standards in the State Building Code. For each such insulation and energy utilization permit issued, there shall be a fee of \$5.

(B) The following are exempted from the requirement of obtaining a permit:

- (1) An owner working upon his or her own building; and

(2) Any person working under the supervision of a registered architect or professional engineer.  
(Ord. passed 1-13-1978)

**§ 150.33 INSULATION STANDARDS.**

All installations shall be in conformity with the provisions of the North Carolina State Building Code or as approved by the Building Code Council, as provided in G.S. § 143-138(e).  
(Ord. passed 1-13-1978)



#### **§ 150.34 LIABILITY FOR DAMAGES.**

This subchapter shall not be construed to relieve from, or lessen the responsibility or liability of any party owning, operating, controlling or installing any energy and insulation utilization materials, devises, appliances or equipment, for damages to person or property caused by any defect therein, nor shall the county be held as assuming any such liability by reason of the inspection authorized herein or the certificate of compliance issued as herein provided.

(Ord. passed 1-13-1978)

#### **§ 150.99 PENALTY.**

(A) Any person, firm or corporation who shall violate any of the provisions of §§ 150.01 through 150.12, or who shall fail to correct any defects of which he or she has been given written notice by the County Inspector, within a reasonable time, not exceeding 30 days, after receipt of such written notice, shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided by G.S. § 14-4.

(B) Any person, firm or corporation violating the provisions of §§ 150.25 through 150.34 shall be subject to all the applicable punishment, penalties, and equitable relief provided for by Chapter 703, North Carolina Session Laws of 1977, and G.S. § 153A-123.

(Ord. passed 1-13-1978; Am. Ord. passed 3-15-1984)



## APPENDIX: INSPECTIONS FEE SCHEDULE

Sq. Ft. of Construction	Building	Insulation	Electrical	Plumbing	Mechanical
0-499	\$45	\$30	\$45	\$30	\$25
500-999	\$60	\$45	\$60	\$45	\$35
1000-1499	\$75	\$60	\$75	\$60	\$50
1500-1999	\$90	\$75	\$90	\$75	\$65
2000-2499	\$105	\$90	\$105	\$90	\$80
2500-2999	\$120	\$105	\$120	\$105	\$95
3000-3499	\$135	\$120	\$135	\$120	\$110

For single-family dwellings, business and industrial installations recycle the rate chart for fees.

For motels, multi-family dwellings, town houses and condominiums - charge per unit - each dwelling.

For warehouses, storage buildings, recycle the chart at 50% of the chart value.

Pump service and service changes - \$30

Sign electrical only - \$30

Sign with footings - \$75

Heat pump electrical - \$30

Extra inspections - \$30

Barn service - \$30

Service change and hook up mechanical - \$45

### Mobile Homes

Single Wide \$60 (\$40 Electrical, \$20 Plumbing)

Double Wide \$85 (\$65 Electrical, \$20 Plumbing)

Travel Trailer \$30

Any Size Deck \$25

**Manufacturing Expansion and Construction:** \$4 per thousand of building cost or any building in excess of 25,000 square feet.

**Additions** of a room up to 499 sq. ft.: Building, Electrical, Plumbing, Insulation, and Mechanical - Total fee \$75 plus \$5 for Home Owners Recovery Fund (paid by licensed contractor)

**Storm Damage** or acts of God on a service to a house - All fees waived

\$50 renewal fee on permits

(Ord. passed 10-4-1993)





## **GENERAL PROVISIONS**

### **CHAPTER 151: FLOOD DAMAGE PREVENTION**

#### Section

#### ***General Provisions***

- 151.01 Statutory authorization
- 151.02 Findings of fact
- 151.03 Statement of purpose
- 151.04 Objectives
- 151.05 Definitions
- 151.06 Lands to which this chapter applies
- 151.07 Basis for establishing the areas of special flood hazard
- 151.08 Compliance
- 151.09 Abrogation and greater restrictions
- 151.10 Interpretation
- 151.11 Warning and disclaimer of liability
- 151.12 Effect upon outstanding improvement permits
- 151.13 Remedies and other enforcement

#### ***Provisions for Flood Hazard Reduction***

- 151.25 General standards
- 151.26 Specific standards
- 151.27 Standards for streams without established base flood elevations and/or floodways
- 151.28 Standards for subdivision proposals and major developments

#### ***Administration***

- 151.40 Designation of Administrator; duties and responsibilities
- 151.41 Development permit and certification requirements
- 151.42 Administrative procedures
- 151.43 Variance procedures
- 151.99 Penalty

#### **§ 151.01 STATUTORY AUTHORIZATION.**

The Legislature of the State of North Carolina has in G.S. §§ 143-215.51 *et seq.*; G.S. §§ 153A-340 through 153A-348 and 153A-350 through 153A-375; and G.S. §§ 153A-121 *et seq.*, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the Board of Commissioners of Macon County, North Carolina, does ordain this chapter as follows. (Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.02 FINDINGS OF FACT.**

(A) The flood hazard areas of Macon County are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(B) These flood losses are caused by the cumulative affect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed or otherwise unprotected from flood damages. (Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)



### **§ 151.03 STATEMENT OF PURPOSE.**

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (B) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of flood waters;
- (D) Control filling, grading, dredging and other development which may increase erosion or flood damage; and,
- (E) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

### **§ 151.04 OBJECTIVES.**

The objectives of this chapter are:

- (A) To protect human life and health;
- (B) To minimize expenditure of public money for costly flood control projects;
- (C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) To minimize prolonged business interruptions;



(E) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;

(F) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,

(G) To ensure that potential home buyers are notified that property is in a flood area.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

## **§ 151.05 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCESSORY STRUCTURE.** Structures which are located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

**ADDITION (TO AN EXISTING BUILDING).** An extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements for new construction, unless the addition, renovation or reconstruction to any building was constructed prior to the initial Flood Insurance Study for that area, and the addition, renovation or reconstruction does not equal 50% of the present market value of the structure. Where a fire wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and must comply with the standards for new construction.

**APPEAL.** A request for a review of the administrator's interpretation of any provision of this chapter.

**AREA OF SPECIAL FLOOD HAZARD.** The land in the floodplain within a community subject to a 1% or greater chance of being flooded in any given year.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year.

**BASEMENT.** For floodplain management purposes, any area of the building having its floor subgrade (below ground level) on all sides.

**BUILDING.** Any structure built for support, shelter or enclosure for any occupancy or storage.

**DEVELOPMENT.** For floodplain management purposes, any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

**ELEVATED BUILDING.** For floodplain management purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

**EXISTING CONSTRUCTION.** For the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM. **EXISTING CONSTRUCTION** may also be referred to as "existing structures."

***EXISTING MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION.*** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 8, 2000.

***EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.*** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

***FLOOD or FLOODING.*** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and
- (2) The unusual and rapid accumulation of runoff of surface waters from any source.

***FLOOD HAZARD BOUNDARY MAP (FHBM).*** An official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

***FLOOD INSURANCE RATE MAP (FIRM).*** An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

***FLOOD INSURANCE STUDY.*** The engineering study performed by the Federal Emergency Management Agency to identify flood hazard areas, flood insurance risk zones, and other flood data in a community. The study includes Flood Boundary and Floodway Maps (FBFMs), Flood Hazard Boundary Maps (FHBMs), and/or Flood Insurance Rate Maps (FIRMs).

***FLOODWAY.*** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**FLOOR.** The top surface of an enclosed area in a building (including basement), such as top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

**FUNCTIONALLY DEPENDENT FACILITY.** A facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water.

**HIGHEST ADJACENT GRADE.** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of the structure.

**HISTORIC STRUCTURE.** Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a State inventory of historic places;

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified:

(a) By an approved state program as determined by the Secretary of Interior; or

(b) Directly by the Secretary of Interior in states without approved programs.

**LOWEST FLOOR.** For floodplain management and flood insurance purposes, the lowest floor of the

lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

**MANUFACTURED HOME.** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term **MANUFACTURED HOME** does not include a **RECREATIONAL VEHICLE**.

**MANUFACTURED HOME PARK OR SUBDIVISION.** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MEAN SEA LEVEL.** For the purposes of NFIP, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a FIRM are referenced.

**NEW CONSTRUCTION.** For floodplain management purposes, structures for which the **START OF CONSTRUCTION** commenced on or after the effective date of this chapter and includes any subsequent improvements to such structures.

**NEW MANUFACTURED HOME PARK OR SUBDIVISION.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after (insert the effective date of original flood damage prevention chapter).

**NONCONFORMING BUILDING OR USE.** Any legally existing building or use which fails to comply with the provisions of the chapter.

**RECREATIONAL VEHICLE.** A vehicle which is:

- (1) Built on a single chassis;
- (2) Four-hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

**REMEDY A VIOLATION.** To bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling

units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

**STRUCTURE.** For floodplain management purposes, a walled and roofed building, a manufactured home, a gas or liquid storage tank, or other man-made facility or infrastructure that is principally above ground.

**SUBSTANTIAL DAMAGE.** Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred. (See definition of **SUBSTANTIAL IMPROVEMENT**.)

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of market value of the structure before the **START OF CONSTRUCTION** of the improvement. This term includes structures which have incurred **SUBSTANTIAL DAMAGE**, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project or improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION.** Where the repair, reconstruction, rehabilitation or improvement of the streets, utilities

and pads equals or exceeds 50% of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

**VARIANCE.** A grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

**VIOLATION.** The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §§ 151.25 through 151.43 is presumed to be in violation until such time as that documentation is provided.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.06 LANDS TO WHICH THIS CHAPTER APPLIES.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of Macon County.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.07 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.**

The Areas of Special Flood Hazard are those identified by the Federal Emergency Management Agency (FEMA) in its Flood Hazard Boundary Maps or Flood Insurance Study and Flood Insurance Rate Maps for Macon County dated June 30, 1978 , which with accompanying supporting data, and any revision thereto, including Letters of Map Amendment or Revision, are adopted by reference and declared to be a part of this chapter. The Areas of Special Flood Hazard also include those defined through standard engineering analysis for private developments or by governmental agencies, but which have not yet been incorporated in the FIRM. This includes detailed flood information generated as a requirement of § 151.40(B)(10) of this chapter.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.08 COMPLIANCE.**

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this chapter and other applicable regulations.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)  
Penalty, see § 151.99

#### **§ 151.09 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.10 INTERPRETATION.**

In the interpretation and application of this chapter all provisions shall be:



- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and,
- (C) Deemed neither to limit nor repeal any other powers granted under state statutes.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

**§ 151.11 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall

not create liability on the part of Macon County or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.12 EFFECT UPON OUTSTANDING IMPROVEMENT PERMITS.**

Nothing herein contained shall require any change in the plans, construction, size or designated use of any building, structure, lot or part thereof for which an improvement permit has been granted by an authorized government agent of Macon County, the State of North Carolina, or the United States Government before the time passage of this chapter; provided, however, that when improvement permits were not secured within a period of 60 days subsequent to the passage of this amended chapter on December 3, 2001, construction or use shall be in conformity with the provisions of this chapter.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.13 REMEDIES AND OTHER ENFORCEMENT.**

The provisions of this chapter may be enforced by appropriate equitable remedies consisting of injunction, order of abatement, or other appropriate relief as provided by G.S. § 153A-123(E), (e), (F).  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

### ***PROVISIONS FOR FLOOD HAZARD REDUCTION***

#### **§ 151.25 GENERAL STANDARDS.**

In all areas of special flood hazard the following provisions are required:

- (A) All new construction and substantial improvements shall be anchored to prevent, collapse or lateral movement of the structure;
- (B) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (C) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;
- (D) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (E) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (F) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (G) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and,
- (H) Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this chapter, shall meet the requirements of “new construction” as contained in this chapter.
- (I) Nonconforming buildings or uses may not be enlarged, replaced or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this chapter. Provided, however, nothing in this chapter shall prevent the repair, reconstruction or replacement of a building or structure existing on the effective date of this chapter and located totally or partially within the floodway or stream setback, provided that the bulk of the building

or structure below base flood elevation in the floodway or stream setback is not increased and provided that such repair, reconstruction or replacement meets all of the other requirements of this chapter.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)  
Penalty, see § 151.99

#### **§ 151.26 SPECIFIC STANDARDS.**

In all areas of special flood hazard where base elevation data has been provided, as set forth in § 151.07, or § 151.40(B)(10), the following provisions are required:

(A) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than two feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided.

(B) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure shall have the lowest floor, including basement, elevated no lower than two feet above the level of the base flood elevation. Structures located in A Zones may be floodproofed to the flood protection level in lieu of elevation provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this division are satisfied. Such certification shall be provided to the official as set forth in § 151.41(B)(7).

(C) *Manufactured homes.*

(1) Manufactured homes that are placed or substantially improved on sites outside a manufactured

home park or subdivision; in a new manufactured home park or subdivision; in an expansion to an existing manufactured home park or subdivision; or, in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of division (C)(1) above of this chapter must be elevated on reinforced piers or other structural elements so that the lowest floor of the manufactured home is no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation to resist flotation, collapse and lateral movement.

(3) Manufactured homes shall be anchored to prevent flotation, collapse or lateral movement. For the purpose of this requirement, manufactured homes must be anchored to resist flotation, collapse or lateral movement in accordance with the *State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition*, and any revision thereto adopted by the Commissioner of Insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height an engineering certification is required.

(4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the administrator and the local Emergency Management coordinator.

(D) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas that are useable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(a) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(b) The bottom of all required openings shall be no higher than one foot above grade; and,

(c) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

(3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.

(E) *Temporary structures.* Prior to the issuance of a development permit for a temporary structure the following requirements must be met.

(1) All applicants must submit to the Administrator prior to the issuance of the development

permit a plan for the removal of such structure(s) in the event of a hurricane or flash flood warning notification. The plan must include the following information:

- (a) A specified time period for which the temporary use will be permitted;
- (b) The name, address and phone number of the individual responsible for the removal of the temporary structure;
- (c) The time frame prior to the event at which a structure will be removed (such as minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) A copy of the contract or other suitable instrument with a trucking company to insure the availability of removal equipment when needed; and,
- (e) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

(2) The above information shall be submitted in writing to the Administrator for review and written approval.

(F) *Accessory structure.* When accessory structures (sheds, detached garages, and the like) with a value of \$3,000 or less, are to be placed in the floodplain the following criteria shall be met:

- (1) Accessory structures shall not be used for human habitation (including work, sleeping, living, cooking or restroom areas);
- (2) Accessory structures shall be designed to have low flood damage potential;
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(4) Accessory structures shall be firmly anchored in accordance with § 151.25(A);

(5) Service facilities such as electrical and heating equipment shall be installed in accordance with § 151.25(D); and

(6) Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with division (E) above of this section.

(G) *Floodways*. Located within areas of special flood hazard established in § 151.07 are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the Administrator.

(2) If division (G)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this subchapter.

(3) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and the elevation standards of division (C) above of this section and the encroachment standards of division (G)(1) above of this section are met.

(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

Penalty, see § 151.99

***Cross-reference:***

*Emergency Management, see Chapter 31*

#### **§ 151.27 STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS AND/OR FLOODWAYS.**

(A) Located within the areas of special flood hazard established in § 151.07 are small streams where no base flood data has been provided or where no floodways have been identified.

(B) The following provisions apply within such areas:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of 50 feet each side from top of bank.

(2) If division (A) above of this section is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard chapter provisions of this subchapter and shall be elevated or floodproofed in accordance with elevations established in accordance with § 151.40(B)(10). When base flood data is not available from a federal, state or other source, the lowest floor, flood, including basement, shall be elevated at least two feet above the highest adjacent grade.

(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

Penalty, see § 151.99

#### **§ 151.28 STANDARDS FOR SUBDIVISION PROPOSALS AND MAJOR DEVELOPMENTS.**



(A) Proposals for subdivisions and major developments shall be consistent with the need to minimize flood damage.

(B) Proposals for subdivisions and major developments shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

(C) Proposals for subdivisions and major developments shall have adequate drainage provided to reduce exposure to flood hazards.

(D) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres.

(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

Penalty, see § 151.99

## ***ADMINISTRATION***

### **§ 151.40 DESIGNATION OF ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.**

(A) The Macon County Planning Director, or his or her designee hereinafter referred to as the “Administrator,” is hereby appointed to administer and implement the provisions of this chapter.

(B) Duties of the Administrator shall include, but not be limited to:

(1) Review all development permits to assure that the requirements of this chapter have been satisfied.

(2) Advise permittee that additional federal and state permits may be required, and if specific federal and state permits are known, require that copies of such permits shall be provided by the applicant before the development permit is issued and maintained on file with the approved development permit.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of §§ 151.25 through 151.28 are met.

(6) Require actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with § 151.41(B)(7).

(7) Require the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with § 151.41(B)(7).

(8) When floodproofing is utilized for a particular structure, require certifications from a registered

professional engineer or architect in accordance with § 151.26(B).

(9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this subchapter.

(10) When base flood elevation data or floodway data has not been provided in accordance with § 151.07, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to § 151.28(D), in order to administer the provisions of this chapter.

(11) When the exact location of boundaries of the area's special flood hazards conflict with the current, natural topography information at the site the property owner may apply and be approved for a Letter of Map Amendment (LOMA) by FEMA. A copy of the Letter of Map Amendment issued from FEMA will be maintained by Administrator in the permit file.

(12) Make on-site inspections of projects in accordance with § 151.42.

(13) Serve notices of violations, issue stop-orders, revoke permits and take corrective actions in accordance with § 151.42.

(14) Maintain all records pertaining to the administration of this chapter and make these records available for public inspection.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.41 DEVELOPMENT PERMIT AND CERTIFICATION REQUIREMENTS.**

(A) A development permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities.

(B) Application for a development permit shall be made to the Administrator on forms furnished by the Administrator prior to any development activities. The development permit shall include, but not be limited to, plans in duplicate drawn to scale showing: the nature, location, dimensions and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas and drainage facilities. Specifically, the following information is required:

(1) A plot plan that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the development permit applicant when the lot is within or appears to be within the floodplain as mapped by the Federal Emergency Management Agency (FEMA) or the floodplain identified pursuant to either § 151.40(B)(10) or §§ 151.27 and 151.28. The plot plan must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same.

(2) The plot plan required by division (B)(1) above of this section must show the floodway as identified by FEMA or pursuant to either

§ 151.40(B)(10) or § 151.27, or the setback required for streams without designated floodways as required by § 151.27(B).

(3) Where base flood elevation data is provided as set forth in § 151.07, or § 151.40(B)(10), the application for a development permit within the flood hazard area shall show:

(a) The elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures, and

(b) If the nonresidential structure will be floodproofed in accordance with § 151.26(B), the elevation (in relation to mean sea level) to which the structure will be floodproofed.

(4) Where the base flood elevation data is not provided, the application for a development permit must show construction of the lowest floor at least two feet above the highest adjacent grade.

(5) Where any watercourse will be altered, restricted or relocated as a result of proposed development, the application for a development permit shall include: a description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation; and must show proof of all applicable, approved permits from U. S. Army Corps of Engineers and all other governing agencies.

(6) When a structure is floodproofed, the applicant shall provide a floodproofing certificate (FEMA Form 81-65) from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 151.26(B).

(7) An elevation certificate (Form 81-31) or a floodproofing certificate (FEMA Form 81-65) is

required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or by floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the Administrator a certification of the elevation of the lowest floor, or floodproofed elevation, whichever is applicable, as built, in relation to mean sea level. The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the same. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Administrator shall review the floor elevation survey. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.42 ADMINISTRATIVE PROCEDURES.**

(A) *Inspections of work in progress.* As the work pursuant to a permit progresses, the Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local chapter and the terms of the permit. In exercising this power, the Administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.

(B) *Stop-work orders.* Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this chapter, the Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work

order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(C) *Revocation of permits.* The Administrator may revoke and require the return of the development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

(D) *Periodic inspections.* The Administrator and each member of his or her Inspections Department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the Department at any reasonable hour for the purposes of inspection or other enforcement action.

(E) *Violations to be corrected.* When the Administrator finds violations of applicable state and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law in the property he or she owns.

(F) *Actions in event of failure to take corrective action.* If the owner of a building or property shall fail to take prompt corrective action, the Administrator shall give him or her written notice, by certified or registered mail to his or her last known address or by personal service:

(1) That the building or property is in violation of the Flood Damage Prevention Chapter;

(2) That a hearing will be held before the Administrator at a designated place and time, not later than ten days after the date of the notice, at which

time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(3) That following the hearing, the Administrator may issue such order to alter, vacate or demolish the building; or to remove fill as appears appropriate.

(G) *Order to take corrective action.* If, upon a hearing held pursuant to the notice prescribed above, the Administrator shall find that the building or development is in violation of this chapter, the Administrator shall make an order in writing to the owner, requiring the owner to remedy the violation within such period, not less than 60 days, the Administrator may prescribe; provided that where the Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(H) *Appeal.* Any owner who has received an order to take corrective action may appeal from the order to the local elected governing body by giving notice of appeal in writing to the Administrator and the Clerk within ten days following issuance of the final order. In the absence of an appeal, the order of the Administrator shall be final. The Macon County Board of Commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(I) *Failure to comply with order.* If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the governing body following an appeal, he or she shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

Penalty, see § 151.99

#### **§ 151.43 VARIANCE PROCEDURES.**

(A) The Macon County Board of Adjustment as established by the Macon County Board of

Commissioners, hereinafter referred to as the appeal board, shall hear and decide requests for variances from the requirements of this chapter.

(B) Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S. §§ 7A-1 *et seq.*

(C) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(D) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management for that area, if applicable;



(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(E) A written report addressing each of above factors shall be submitted with the application for a variance.

(F) Upon consideration of the factors listed above and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(G) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(H) Conditions for variances:

(1) Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or chapters.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) Variances shall only be issued upon:

(a) A showing of good and sufficient cause;

(b) A determination that failure to grant the variance would result in exceptional hardship; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

(4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

(5) The Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)

#### **§ 151.99 PENALTY.**

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, subject the offender to a civil penalty in the amount of \$50 to be recovered by Macon County in a civil action in the nature of debt if the penalty shall not be paid within 30 days after notification of its assessment by the Administrator. Each days continuing violation is a separate and distinct offense punishable as herein provided.  
(Ord. passed 8-7-2000; Am. Ord. passed 12-3-2001)





## **CHAPTER 152: SIGN CONTROL**

### Section

#### ***General Provisions***

- 152.01 Title
- 152.02 Authority and jurisdiction
- 152.03 Purposes
- 152.04 Applicability
- 152.05 Definitions
- 152.06 Conflict with other laws

#### ***Sign Regulations***

- 152.20 Permit required; compliance with state building code
- 152.21 Signs exempted
- 152.22 Signs regulated but not requiring a permit
- 152.23 Signs prohibited
- 152.24 Off-premise advertising sign regulations
- 152.25 On-premise sign regulations
- 152.26 Noncommercial messages

#### ***Sign Maintenance; Care of Trees***

- 152.40 Maintenance
- 152.41 Unlawful cutting of trees or shrubs

#### ***Permits, Fees and Nonconforming Signs***

- 152.55 Permits required
- 152.56 Permit application and fees; transfers
- 152.57 Permit and permit emblem
- 152.58 Plans, specifications and data required for permit
- 152.59 Registering existing signs
- 152.60 Permit revocations
- 152.61 Notice given for refusing to issue permit

- 152.62 Nonconforming signs
- 152.63 Reconstruction of damaged signs or sign structures

#### ***Administration and Enforcement***

- 152.75 Responsibility and authority
- 152.76 Appeals
- 152.77 Variances
  
- 152.99 Penalty

### ***GENERAL PROVISIONS***

#### **§ 152.01 TITLE.**

This chapter shall be known and may be cited as the *Sign Control Ordinance of Macon County, North Carolina*, codified as Chapter 152 of The Macon County Code.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.02 AUTHORITY AND JURISDICTION.**

(A) *Authority.* This chapter is established by the Macon County Board of Commissioners pursuant to the authority conferred in G.S. Chapter 153A-121(a). The Board of Commissioners hereby ordains and enacts into law the following sections.

(B) *Jurisdiction.* The provisions of this chapter shall apply to unincorporated areas of Macon County, lying outside of the corporate limits or extraterritorial

jurisdiction of any incorporated town. Municipalities within Macon County may elect to allow this chapter to be effective within their corporate limits and extraterritorial jurisdiction.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

### **§ 152.03 PURPOSES.**

The purpose of these sign regulations is to guide and regulate the construction and placement of signs in Macon County. It is the intent of this chapter to preserve and maintain the scenic and aesthetic environment of the county in order to protect and promote the tourist industry and the quality of life of the county's residents and visitors; to improve safety for local and visiting motorists and pedestrians in Macon County by reducing the distracting influence of uncontrolled signs; to minimize the possible adverse effect of signs on nearby public and private property; and to enable the fair and consistent enforcement of these sign regulations.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

### **§ 152.04 APPLICABILITY.**

(A) A sign as herein defined may be erected, placed, established, painted, created or maintained in the jurisdiction of Macon County only in conformance with the standards, procedures, exemptions and other requirements of this chapter.

(B) The effect of this chapter as more specifically set forth herein, is:

(1) To establish a permit system to allow a variety of types of signs subject to the standards and the permit procedures of this chapter;

(2) To allow certain signs that are small, unobtrusive and incidental to the principal use of the respective lots on which they are located, subject to the substantive requirements of this chapter, but without a requirement for permits;

- (3) To prohibit all signs not expressly permitted by this chapter; and
  - (4) To provide for the enforcement of the provisions of this chapter.
- (Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.05 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

***BUILDING FRONTAGE.*** The length, in linear feet, of a building's side fronting on a public road.

***COPY.*** The characters, letters or illustrations displayed on a sign face.

***DIRECTIONAL SIGN.*** An off-premise sign providing directions to a business, office or other activity. If a sign contains any additional message or exceeds the maximum area, it shall be construed as an off-premise advertising sign.

***DIRECTLY ILLUMINATED SIGN.*** A sign designed to give forth artificial light directly (or through transparent or translucent material) from a light source within or attached to such sign.

***DWELLING UNIT.*** A house, mobile home, apartment, condominium or a group of dwellings occupied or intended for occupancy as separate living quarters for one or more humans.

***EXEMPT SIGN.*** Any sign which is specifically listed as exempt from this chapter.

***FREESTANDING SIGN.*** The general term for any sign which is supported from the ground and not attached to a building.

***INDIRECTLY ILLUMINATED SIGN.*** A sign designed to have illumination from a detached light



source, shielded so that no direct rays from the light source are visible elsewhere than on the lot where the illumination occurs.

**NONCONFORMING SIGN.** An existing sign that is constructed and in place prior to the adoption of this chapter and which does not conform to the provisions of this chapter, as amended, is declared a nonconforming sign. An illegal sign is not a nonconforming sign.

**OFF-PREMISE ADVERTISING SIGN.** Any sign advertising a product, service, business or activity which is sold, located or conducted elsewhere than on the premises on which the sign is located, or which product, service, business or activity is sold, located or conducted on such premises only incidentally, if at all.

**OFF-PREMISE SIGN.** Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, service, activity or place, including products or services sold or offered for sale on premise other than on the premises where such sign is displayed.

**ON-PREMISE SIGN.** Any sign used for the purpose of displaying, advertising, identifying or directing attention to a business, product, operation, service or activity sold or offered for sale, or to other information offered on the premises where the sign is located.

**PORTABLE SIGN.** A sign with a permanent frame and a display area for changeable copy, designed or intended to be relocated and not permanently affixed to the ground or structure. This shall include signs on wheels, trailers or any other device which is intended to be moved from one location to another.

**PROHIBITED SIGN.** Any sign, or element of a sign, which specifically listed as prohibited in § 152.23, shall not be permitted.

**SETBACK.** The shortest horizontal distance between the edge of the pavement or traveled surface and the closest point of a sign or its supporting member.

**SHOPPING CENTER.** A development having five or more establishments located on the same parcel or on abutting parcels and planned as an integrated development.

**SIGHT DISTANCE TRIANGLE.** The land adjoining a road intersection that is kept clear of obstructions between three and seven feet above ground as measured along the road flow lines above ground to ensure visibility and the safety of motorists and pedestrians. The protected sight distance area is the triangle with legs that are the intersecting flow lines of two roads at an intersection. Where local roads meet, the legs shall extend at least 35 feet each way from the intersection of the edge of the traveled way.

**SIGN.** Any display of letters, words, numbers, figures, devices, emblems, pictures, logos or any other means whereby the same are made visible for the purpose of making anything known, whether such display be made on, or attached to, or as a part of a structure, surface, or any other object whether natural or man made. The term **SIGN** shall include sign structure.

**SIGN AREA (SIGN FACE).** The area of a sign shall be considered to be that of the smallest rectilinear figure (but which shall have a continuous perimeter of not more than eight straight lines) which encompasses all lettering, wording, frame design or symbols, together with any background on which the sign is located and any illuminated part of the sign, if such background or such illuminated part of the sign is designed as an integral part of and related to the sign. Any cutouts or extensions shall be included in the area of the sign, but supports and bracing which are not intended as part of the sign shall be excluded. In the case of a multi-faced sign, the area of the sign shall be considered to include all faces visible from one direction.

***SIGN HEIGHT.*** Sign height shall be measured from the ground directly below the center of the sign or from the road grade of the closest point in the road the sign is located along, whichever is higher, to the sign or sign structure's highest point.

***TEMPORARY SIGN.*** A sign with or without a structural frame, not permanently attached to a building, structure or the ground, and intended for a limited period of display provided, however, a temporary sign does not include a portable sign as herein defined.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.06 CONFLICT WITH OTHER LAWS.**

Whenever the regulations of this chapter conflict with the requirements of another statute, the more restrictive standard shall govern.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

### ***SIGN REGULATIONS***

#### **§ 152.20 PERMIT REQUIRED; COMPLIANCE WITH STATE BUILDING CODE.**

Except as specifically exempted or prohibited in this section, all signs constructed, placed, relocated or maintained shall require a permit in accordance with the provisions of this chapter. All signs permitted by this chapter shall be constructed in accordance with the North Carolina State Building Codes, as amended.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.21 SIGNS EXEMPTED.**

The following signs are exempted from this chapter:

(A) Government signs including, but not limited to, traffic warning or regulatory signs including building identification, directional, information and welcome signs.

(B) Trade names and graphics which are located on newspaper, soft drink, gasoline pumps and similar vending devices.

(C) Flags or insignia of any governmental or non-profit organization when not displayed as an advertising device.

(D) Warning signs posted by utility or construction companies.

(E) Commemorative tablets, markers or monuments constructed by or with the permission of the Macon County Board of Commissioners.

(F) Signs on operational motor vehicles indicating the name of a business, when the vehicle is not intended solely for a display of signs.

(G) Signs required by law, statute or chapter.

(H) Decorations or displays of a temporary nature which are associated with any national, local or religious holiday or celebration.

(I) Political signs, except as prohibited in § 152.23.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

## **§ 152.22 SIGNS REGULATED BUT NOT REQUIRING A PERMIT.**

The following signs are regulated under this chapter but do not require a permit.

(A) *Directional signs.* Such signs shall not exceed 32 square feet in area per directional flow of traffic and ten feet in height. Not more than three directional signs shall contain directions or reference

the same activity or business. A maximum of three directional signs may be placed within 100 feet of any intersection.

(B) *Real estate signs.* Such signs shall not exceed four square feet in area per sign face, and one sign per property per street frontage on lots less than two acres in size. For lots greater than two acres, real estate signs shall not exceed 32 square feet in area per directional flow of traffic, a maximum height of ten feet, and a maximum of one sign per street frontage.

(C) *Temporary signs.* Temporary signs are permitted on-premise for a maximum period of 30 consecutive days, not to exceed a total of 90 days during any one-year period. The total area of all temporary signs shall not exceed 50% of signage permitted on a property.

(D) *Temporary construction signs.* Temporary signs which provide the names of contractors, subcontractors, financing institutions, and the future business or activity proposed on the tract. The signs shall be located on-premise and shall not exceed a maximum sign area of 32 square feet per sign face, and two signs per property. The signs may be erected within 30 days of the start of construction and shall be removed upon issuance of a certificate of occupancy.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

### **§ 152.23 SIGNS PROHIBITED.**

The following signs and sign features or components are prohibited:

(A) Signs obstructing the view of motorists entering or exiting roads or highways, or interfering with the driver's view of approaching, merging or intersecting traffic.

(B) Signs incorporating flashing, blinking or strobe lights and signs with moving parts or parts which simulate movement; provided, however, signs may include changing time and temperature displays

with no other changing messages. Additionally prohibited are signs with direct or indirect illumination which directs or allows a lighting source to direct light on any residential dwelling or at any portion of a roadway with an intensity which may impair a driver's vision.

(C) Portable signs.

(D) Any non-governmental sign resembling a public safety warning or traffic signal.

(E) Signs, whether temporary or permanent, within any road or highway right-of-way, with the exception of governmental signs.

(F) Signs constructed or maintained upon trees and utility poles or painted or drawn upon natural rock formations or other natural features.

(G) Signs containing words or graphics that are obscene, as defined in G.S. Chapter 15.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.24 OFF-PREMISE ADVERTISING SIGN REGULATIONS.**

The following regulations shall be applicable to all off-premise advertising signs as defined in § 152.05. Any not specifically allowed is prohibited.

(A) *Size*. No off-premise advertising sign permitted by this chapter shall exceed the following maximum sign area:

(1) A maximum of 300 square feet per directional flow of traffic on primary highways (four or more lanes).

(2) A maximum of 75 square feet per directional flow of traffic on all other roads.

(3) For both subsections (1) and (2) above, a maximum of two faces per sign structure is allowed,

positioned either back to back or v-shaped, such that only one face is allowed per side. Both sides of a double-faced or v-shaped sign shall be of equal size. In no case shall there be more than one face per directional flow of traffic.

(B) *Height.* No off-premise advertising sign shall exceed 30 feet in height.

(C) *Spacing.* The minimum space between off-premise advertising signs shall be at least 1,000 linear feet as measured along the roadway centerline. Additional spacing is required as follows: 500 feet from any intersection of the centerline of all roads and bridges, and a minimum of 500 feet from the nearest point of any dwelling unit, church or any place of worship and the property boundary of any school, cemetery or public park located within 600 feet of the right-of-way. No off-premise advertising sign shall be located on a parcel or lot with an existing free-standing, on-premise sign or within 100 feet of a free-standing, on-premise sign on the same side of a road.

(D) *Setbacks.* The minimum setback is back of the right-of-way but no closer than 20 feet from the edge of the traveled way of any road. All off-premise advertising signs shall be located at least 20 feet from any abutting property lines and outside of all sight visibility triangles.

(E) *Extensions.* No off-premise advertising sign shall have any extensions that cause the sign to exceed the maximum size, height or setback.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.25 ON-PREMISE SIGN REGULATIONS.**

All on-premise signage, except as herein provided, shall require a permit and shall meet the following requirements:

(A) *Free-standing signs.*

(1) *Size.* Free-standing signs on all roads shall not exceed 75 square feet per directional flow of

traffic. A maximum of two sign faces per directional flow of traffic is permitted per free-standing sign.

(2) *Number of signs.* A maximum of one free-standing sign per property for each street frontage is permitted.

(3) *Height.* No sign shall exceed 30 feet in height.

(4) *Setbacks.* When signs, because of their placement, obstruct the view of motorists entering or exiting roads or highways, those signs shall either be elevated or be set back 20 feet from the edge of the traveled way.

(B) *Attached signs.*

(1) *Size.* Attached signs for an individual building shall not exceed the following maximum sign area: 1½ square feet of signage for each one linear foot of building frontage adjacent to a public road, or for each one linear foot of the longest side of the building, whichever is greater.

(2) *Number of signs.* Attached signs for individual businesses may include multiple signs, provided the total square footage of all signs on a building frontage does not exceed the total maximum area permitted.

(3) *Type of signs.* Except as prohibited and regulated in §§ 152.22 and 152.23, any type of sign may be permanently attached to the primary building.

(4) *Height.* No sign shall exceed 30 feet in height.

(C) *Signs for multiple establishments.* Shopping centers and group developments on a single lot or parcel.

(1) One free-standing sign which identifies the group development and/or the individual tenants is permitted per street frontage, provided such sign conforms with standards in division (A) above of this section.



(2) Attached signs for individual businesses or activities within a group development are permitted to have a maximum sign area of one square foot of signage for each one linear foot of building frontage per business. The number and type of signs permitted shall conform to the standards in division (B) above of this section.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.26 NONCOMMERCIAL MESSAGES.**

Any sign, display or device allowed under this chapter may contain, in lieu of any other copy, any otherwise lawful noncommercial message that does not direct attention to a business operated for profit, or to a commodity or service for sale, and that complies with size, lighting and spacing, or other requirements of this chapter.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

### ***SIGN MAINTENANCE; CARE OF TREES***

#### **§ 152.40 MAINTENANCE.**

(A) All signs and their structures shall be maintained in good repair and safe condition and shall conform to the standards in this section. Maintenance carried out in accordance with this section shall not require a sign permit, provided the sign is not enlarged, moved or altered in any manner which would create or increase a nonconforming condition.

(B) Any sign violating these requirements shall be repaired or removed as required.

(1) No sign shall be allowed to have more than 20% of its total surface area covered with disfigured, cracked, ripped or peeling paint or poster paper, or any combination of these conditions for more than 30 consecutive days.

(2) No sign shall be allowed to stand with bent or broken sign facing, broken supports, loose appendages or struts which cause the sign to stand more than 15 degrees from the perpendicular for more than 30 consecutive days.

(3) No sign or sign structure shall be allowed to have weeds, vines or other vegetation obscuring more than 20% of the sign from the road or highway from which it is intended to be viewed for more than 30 consecutive days.

(4) No illuminated sign shall be allowed to stand with partial illumination for more than 30 consecutive days.

(5) No sign or sign structure shall be allowed if a business no longer exists and the issued permit is not transferred within one year.

(6) If a sign is damaged such that more than 50% of the sign's current assessed tax value is lost, as determined by the Sign Enforcement Officer, any repair or replacement shall be done in conformance with this chapter.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.41 UNLAWFUL CUTTING OF TREES OR SHRUBS.**

No person may, for the purpose of increasing or enhancing the visibility of any sign, damage, trim or remove any trees, shrubs or other vegetation located within any public road or highway right-of-way, except where a legal permit has been obtained from the North Carolina Department of Transportation.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

***PERMITS, FEES AND  
NONCONFORMING SIGNS***

**§ 152.55 PERMITS REQUIRED.**

All signs, except as otherwise provided in §§ 152.20 through 152.25 of this chapter shall require a sign permit prior to being constructed, moved, altered, placed or repaired. Sign permits shall be issued by the Sign Enforcement Officer, who shall be appointed by the Macon County Planner. If a sign permit is denied, the decision may be appealed to the Macon County Planning Board within 30 days of the decision. (Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

**§ 152.56 PERMIT APPLICATION AND FEES; TRANSFERS.**

(A) No permit shall be issued until an application for each separate sign or sign structure is completed, submitted and approved by the Sign Enforcement Officer. The initial permit shall be valid until revoked by the Sign Enforcement Officer.

(B) Initial fees are required to be paid for the permitting of all new sign structures. Existing sign structures are exempt from the initial permit fee. A fee schedule shall be determined by the Macon County Board of Commissioners and posted in the Macon County Planning Department.

(C) Valid sign permits may be transferred to new sign owners, provided that the Sign Enforcement Officer is given notice of the transfer of ownership within 30 days of the actual transfer. (Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

**§ 152.57 PERMIT AND PERMIT EMBLEM.**

A permit, along with a permit emblem, shall be issued upon proper application and approval. New

sign structure construction shall not commence until a permit and emblem are issued. The sign structure must be completely constructed and erected, with the permit emblem affixed, within 180 days from the date of the permit issuance. During the 180-day period, newly permitted sign structures shall be considered to be in existence for the purpose of spacing signs. The permit emblem shall be placed on sign structures in such a position as to be visible from the nearest adjacent road.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.58 PLANS, SPECIFICATIONS AND DATA REQUIRED FOR PERMIT.**

The application shall be accompanied by complete information as required on forms provided by the Sign Enforcement Officer and shall include, without being limited to, a site plan and elevation drawings of the proposed sign, indicating the proposed location of the sign, setbacks, height, dimensions and square footage of the proposed sign, and any other data as the Sign Enforcement Officer may determine is necessary for review of the application. The Sign Enforcement Officer shall not issue a sign permit unless the plans, specifications and intended use of such sign conforms in all respects to the applicable provisions of this chapter.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.59 REGISTERING EXISTING SIGNS.**

Sign structures constructed and in place prior to the adoption of this chapter by the Macon County Board of Commissioners which are not exempted and exceed 32 square feet shall be required to obtain a permit. The permit shall be obtained within a period of 180 days beginning with the effective date of this chapter. Existing signs that require a permit that have not been registered within the 180-day period shall be in violation of this chapter. If the existence of a sign prior to the adoption and enforcement of this chapter is questioned, the issue will be determined by the sign

Enforcement Officer with the advice of the Macon County Planner and the sign owner using information compiled during a sign inventory conducted during April/May of 1997.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.60 PERMIT REVOCATIONS.**

Valid sign permits for new signs and permitted nonconforming signs may be revoked for any one of the following reasons:

(A) Misrepresenting material facts by the applicant on the permit.

(B) Failing to construct the sign structure and affix the permanent emblem within 180 days from the permit issue date.

(C) Altering, enlarging or relocating a permitted sign structure, except in conformance with the requirements of this chapter.

(D) Allowing a sign to remain blank for a period of 12 consecutive months or reaching a state of dilapidation or disrepair as determined by the Sign Enforcement Officer.

(E) Any violation of § 152.62.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.61 NOTICE GIVEN FOR REFUSING TO ISSUE PERMIT.**

The Sign Enforcement Officer shall refuse to issue a permit for a proposed sign structure that will not conform to this chapter and shall notify the owner of the proposed sign structure by first class mail as to why the proposed sign does not comply.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

## **§ 152.62 NONCONFORMING SIGNS.**

Any sign legally in existence prior to the effective date of this chapter, or any applicable amendment thereto, which does not satisfy the requirements of this chapter, as amended, is declared nonconforming.

(A) All nonconforming signs in existence prior to the effective date of this chapter shall either be made to conform to all provisions of this chapter or shall be removed within seven years after the enactment of this chapter. All nonconforming signs made nonconforming by an amendment to this chapter shall either be made to conform to all provisions of this chapter or shall be removed within seven years after the date of such amendment. Provided, however, any nonconforming signs, or signs made nonconforming by an amendment to this chapter, which are subject to the provisions of G.S. §§ 136-126 *et seq.* (the *Outdoor Advertising Control Act*) and for which valid Department of Transportation permits have been issued, pursuant to G.S. § 136-133, may be removed only if compensation for the same is made pursuant to the provisions of G.S. § 136-131.1. Provided, further that the provisions of this division shall not be applicable to an off-premise advertising sign which is in violation of only the 1,000 linear foot spacing requirement of § 152.24(C) of this chapter.

(B) All portable and temporary signs which are made nonconforming as a result of the passage of this chapter, or from the passage of an amendment to this chapter, shall be removed within 180 days of the effective date of this chapter.

(C) All legal, nonconforming signs are permitted to continue, provided signs shall conform to the provisions in (A) above and shall not be:

(1) Changed, altered or replaced by another nonconforming sign, except that copy may be changed on an existing sign;

(2) Expanded or modified in any way which increases the sign's nonconformity;

(3) Relocated, except in conformance with the requirements of this chapter;

(4) Re-established after it has been removed or has been abandoned for 365 days or more;

(5) Re-established after damage or destruction if such damage to the sign exceeds 50% of the sign's current assessed tax value. The extent of damage shall be determined by the Sign Enforcement Officer. (Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

## **§ 152.63 RECONSTRUCTION OF DAMAGED SIGNS OR SIGN STRUCTURES.**

(A) Any conforming sign or sign structure which has been damaged may be repaired and used as before, provided all repairs are initiated within 30 working days and completed within 60 working days of such damage. However, if the sign should be declared unsafe by the Sign Enforcement Officer, the owner of the sign, or the owner of record of the real property whereon the sign is located, shall immediately correct all unsafe conditions to the sign Enforcement Officer's satisfaction.

(B) As a courtesy to the sign owner, if the sign Enforcement Officer discovers that a sign is damaged or is in an unsafe condition, the Sign Enforcement Officer will promptly notify either the sign owner or the owner of record of the real property whereon the sign is located. The affirmative duty and liability shall, however, remain with the owner of the sign to keep each sign in a safe and undamaged condition in accordance with the terms of this chapter.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

***ADMINISTRATION AND ENFORCEMENT***

**§ 152.75 RESPONSIBILITY AND AUTHORITY.**

(A) The Macon County Planning Department shall be responsible for the administration and

enforcement of this chapter. The Macon County Planner shall appoint a Sign Enforcement Officer to administer and enforce this chapter.

(B) The Sign Enforcement Officer shall have the following authority:

(1) *To issue a violation notice.* A violation notice shall be delivered by certified mail, return receipt requested, or by such other method as allowed by law, to the owner of the sign in violation of the chapter. Whenever the owner of the sign cannot be located and notified, said notice shall be delivered to the owner of record of the real property whereon the sign is located. The time period provided herein shall commence upon receipt of such violation notice. The violation notice shall identify the sign and shall describe the nature of the violation, refer to the section of the chapter violated, specify in detail what action must be taken to correct the violation, and specify a reasonable time limit of up to 30 working days within which the violation must be corrected.

(2) *To issue a compliance order for any sign or sign structure not corrected within the time allotted under the violation notice, or for a prohibited sign as established by this chapter.* A compliance order shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a violation notice and shall not be effective until received. The compliance order recipient shall be allowed 30 calendar days to remove the subject sign at his or her expense. The compliance order shall identify the sign and refer to the section of the chapter violated.

(3) *To issue an unsafe sign notice.* Should any sign or sign structure become imminently unstable or in danger of falling or otherwise unsafe, an unsafe sign notice shall be delivered to the sign owner or to the owner of record of the real property whereon the sign is located in the same manner as set out for a violation notice, except that the recipient of the notice shall immediately, in the case of imminent danger, secure or remove the sign in a manner to be approved by the Sign Enforcement Officer in conformance with the provisions of this chapter. If the condition



prompting the notice is not corrected within 24 hours after receipt of the notice, the Sign Enforcement Officer shall have the authority to remove the sign at the recipient's expense.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001) Penalty, see § 152.99

#### **§ 152.76 APPEALS.**

Violation notices and compliance orders issued by the Sign Enforcement Officer may be appealed to the Macon County Board of Adjustment within 30 working days of receipt of notice. Pending appeal, the time limits set out in the notice or order shall be suspended. If the Board of Adjustment finds that the action of the Sign Enforcement Officer has been taken for good cause and in accordance with this chapter, it shall so declare and the time period for compliance shall run from the issuance of that Board's findings. If the Board of Adjustment sustains the appeal of the petitioner, no further action will be taken by the Sign Enforcement Officer.  
(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.77 VARIANCES.**

Where strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Macon County Board of Adjustment may authorize a variance, if such variance can be made in accordance with the following provisions. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Board of Adjustment and the reasoning on which the departure was justified set forth.

(A) The Macon County Board of Adjustment shall have the power to hear and act upon applicants for a variance which meet the following requirements.

(1) If the applicant complies strictly with the provisions of this chapter, the applicant can make no reasonable use of the sign allowed; and

(2) The hardship of which the applicant complains is unique, or nearly so, and is suffered by the applicant rather than by owners of surrounding properties or the general public; and

(3) If the hardship relates to the applicant's land (such as terrain of the site) rather than in personal circumstances; and

(4) If the hardship is not the result of the applicant's own actions; and

(5) If the variance is in harmony with the general purpose and intent of this chapter and preserves its spirit and if the variance secures the public safety and welfare and does substantial justice.

(B) In granting a variance, the Board of Adjustment shall make written findings that all of the above listed requirements have been met. If a variance is granted it shall be the least possible deviation from the requirements of this chapter. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of the provisions of the variance granted, including any conditions or safeguards which are a part of the grant of the variance, shall be deemed a violation of this chapter.

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)

#### **§ 152.99 PENALTY.**

After due notice and order as provided above for any violation of the terms of this chapter, the Sign Enforcement Officer may issue a citation imposing a penalty of not more than \$100 on the owner of the sign in question or on the owner of record of the real property whereon the sign is located whenever the owner of the sign cannot be located and notified of said citation. In addition to the above described penalty, Macon County may enforce this chapter by anyone or more of the remedies authorized by G.S. § 153A-123, with the exception of § 153A-123(b).

(Ord. passed 9-5-1995; Am. Ord. passed 5-10-1999; Am. Ord. passed 12-3-2001)



## **CHAPTER 153: SOIL EROSION AND SEDIMENTATION CONTROL**

### Section

#### ***General Provisions***

- 153.01 Title
- 153.02 Requirements
- 153.03 Purpose
- 153.04 Exclusions
- 153.05 Definitions

#### ***Plans and Permits***

- 153.20 Plans
- 153.21 Notification procedures for activity not  
meeting requirements
- 153.22 Permits

#### ***Requirements and Regulations***

- 153.35 General requirements
- 153.36 Objectives
- 153.37 Standards for land-disturbing activity
- 153.38 Design and performance standards
- 153.39 Stormwater provisions
- 153.40 Maintenance
- 153.41 Additional measures
- 153.42 Existing uncovered areas

#### ***Administration and Enforcement***

- 153.55 Appeals
- 153.56 Inspections and investigations
- 153.57 Stop-work orders
- 153.58 Injunctive relief
  
- 153.99 Penalty

## ***GENERAL PROVISIONS***

### **§ 153.01 TITLE.**

This chapter may be cited as the *Macon County Soil Erosion and Sedimentation Control Ordinance*.  
(Ord. passed 11-5-2001)

### **§ 153.02 REQUIREMENTS.**

(A) Under the authority established by G.S. §§ 113A-50 *et seq.* and all amendments thereto, this chapter requires that any individual or entity conducting a land disturbing activity in Macon County, North Carolina, control soil erosion, storm water runoff, and sedimentation effectively, and that all soil and sedimentation be retained on the owner's property at all times, regardless of the size of the activity or project.

(B) Neither the approval of an erosion control plan, nor the absence of a requirement to submit a plan shall relieve the property owner or the operator of the requirement stated in division (A) above.

(C) All individuals or entities desiring to conduct land disturbing activities, except those excluded by § 153.04 or § 153.22(A), are required to obtain a Macon County land disturbance permit prior to beginning any such activity or other construction  
(Ord. passed 11-5-2001)

### **§ 153.03 PURPOSE.**

(A) It is the purpose of this chapter to provide for the creation, administration, and enforcement of a program and for the adoption of mandatory minimum standards which will permit the development of the county, to continue with the least detrimental effects of pollution by sedimentation.

(B) This chapter implements this purpose by:

(1) Regulating certain land-disturbing activity to control accelerated erosion and sedimentation in order to prevent the pollution of water and other damage to lakes, watercourses, and other public and private property by sedimentation;

(2) Requiring that erosion control measures be properly installed and maintained to protect adjacent property and watercourses;

(3) Requiring a land-disturbance permit;

(4) Requiring a plan for land disturbing activities above a certain size and other critical parameters;

(5) Assessing civil penalties for non-compliance; and

(6) Establishing local procedures through which these purposes can be fulfilled with local knowledge and flexibility in the process befitting the specific needs and characteristics of Macon County.  
(Ord. passed 11-5-2001)

### **§ 153.04 EXCLUSIONS.**

This chapter shall not apply to the following land-disturbing activities:

(A) Agricultural activities, including the breeding and grazing of livestock, undertaken on agricultural land for the production of plants and animals useful to man, including, but not limited to:

(1) Forages and sod crops, grains and feed crops, tobacco, cotton, and peanuts;

- (2) Dairy animals and dairy products;
- (3) Poultry and poultry products;
- (4) Livestock, including beef cattle, sheep, swine, horses, ponies, mules, and goats;
- (5) Bees and apiary products;
- (6) Fur-producing animals;
- (7) Ornamental horticulture, including the raising of shrubs, Christmas trees, and other nursery operations;
- (8) Trout production and other aquaculture activities.

(B) Forestry activities undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with best management practices set out in *Forest Practice Guidelines Related to Water Quality*, from time to time in effect, as adopted by the U. S. Department of Agriculture. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with *Forest Practice Guidelines Related to Water Quality*, the provisions of this chapter shall apply to such activity and any related land-disturbing activity on the tract.

(C) Mining activities for which a permit is required under the Mining Act of 1971, G.S. §§ 74-46 *et seq.*

(D) Land-disturbing activity over which the state has exclusive regulatory jurisdiction as provided in G.S. § 113A-56(a).  
(Ord. passed 11-5-2001)

#### **§ 153.05 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ACCELERATED EROSION.** Any increase over the rate of natural erosion as a result of land-disturbing activity.

**ACCESS AND HAUL ROADS.** All roads, either permanent or those to be obliterated after completion of land-disturbing activities, used for private travel, construction vehicles, earth-moving or heavy equipment or other machinery, and constructed and used in conjunction with land-disturbing activities which require a permit under this chapter.

**ACT.** G.S. §§ 113A-50 *et seq.* and all rules and orders adopted pursuant to it.

**ADEQUATE EROSION CONTROL MEASURE STRUCTURE, OR DEVICE.** One which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

**ADMINISTRATOR.** The person appointed by the Macon County Board of Commissioners to assure compliance with the provisions of this chapter and associated administrative processes.

**AFFILIATE.** A person that directly, or in- directly through one or more intermediaries, controls, is controlled by, or is under common control of another person.

**APPLICANT.** Any person, whether the person is financially responsible for the land-disturbing activity or his/her duly appointed agent, who submits a formal application, to the Administrator or duly appointed agent, for a permit to conduct land-disturbing activities controlled by this chapter, or who files with the Commission a motion to appeal a decision by the Administrator or his or her agent as contained in this chapter.

**APPROVED EROSION AND SEDIMENT CONTROL PLAN.** A written course of action including maps, construction schedules, drawings, calculations or assumptions, found by the Administrator or other duly appointed agent to satisfy all requirements of this chapter which details the



timing and proper installation of erosion control measures or devices which have a reasonable probability, if implemented, of restraining accelerated erosion and off site sediment damage associated with a land-disturbing activity.

**APPROVED OPERATOR.** A person who has successfully completed at least six hours of approved training in erosion control and has received approval from the Administrator for land-disturbing activities up to one acre in extent without plan approval. The Administrator shall maintain a public list of approved operators. Any cited violation of this chapter by an approved operator is sufficient cause for removal of his/her name from the approved list for a period of one year. An operator may be re-approved if the operator successfully completes an additional qualifying erosion-control course and the Administrator confirms that no other violations of this chapter by the operator are unresolved.

**BEING CONDUCTED.** A land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.

**BORROW.** Fill material which is required for on-site construction and is obtained from other locations.

**BUFFER ZONE.** The strip of land adjacent to a lake or natural watercourse.

**COMMISSION.** The North Carolina Sedimentation Control Commission.

**COMPLETION OF CONSTRUCTION OR DEVELOPMENT.** No further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.

**CONTINUING VIOLATION.** Those violations of this chapter or an approved erosion and sediment control plan which are occurring after the date for compliance as set forth in a notice of violation served upon the person responsible for a land-disturbing activity covered under this chapter.

**DEPARTMENT.** The North Carolina Department of Environment, and Natural Resources.

**DIRECTOR.** The Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

**DISCHARGE POINT.** That point at which runoff leaves a tract of land.

**DISTRICT.** The Macon Soil and Water Conservation District created pursuant to G.S. §§ 139-1 *et seq.*

**ENERGY DISSIPATER.** A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow.

**EROSION.** The wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.

**FINAL OBJECTIVE.** The type of structure or use resulting from the land-disturbing activity.

**GROUND COVER.** Any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.

**HIGH QUALITY WATER (HQW) ZONES.** Areas in the coastal counties that are within 575 feet of high quality waters and for the remainder of the state areas that are within one mile and drain to HQWs.

**HIGH QUALITY WATERS.** Those classified as such in 15A NCAC 2B.0101(e)(5)-General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. §§ 150B-18 *et seq.*

**LAKE OR NATURAL WATERCOURSE.** Any stream, river, brook, swamp, sound, bay, creek, run, branch, canal, waterway, estuary, and any reservoir, lake or pond, natural or impounded, in which

sediment may be moved or carried in suspension, and which could be damaged by accumulation of sediment.

***LAND-DISTURBING ACTIVITY.*** Any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.

***LOCAL GOVERNMENT.*** Any county, incorporated village, town, or city, or any combination of counties, incorporated villages, towns, and cities, acting through a joint program pursuant to the provisions of the Act.

***NATURAL EROSION.*** The wearing away of the earth's surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.

***OFF-SITE SEDIMENT DAMAGE.*** The transport of sediment across the boundaries of a land-disturbing activity, resulting in deposition of such materials in any lake or natural watercourse or on any land, public or private, not owned by the person responsible for the land-disturbing activity.

***PARENT.*** An affiliate that directly, or indirectly through one or more intermediaries, controls another person.

***PERSON.*** Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

***PERSON CONDUCTING LAND-DISTURBING ACTIVITY.*** Any person who maybe held responsible for a violation unless expressly provided otherwise by this chapter, the Act, or any order adopted pursuant to this chapter or the Act.

***PERSON RESPONSIBLE FOR THE VIOLATION.*** As used in this chapter, and G.S. § 113A-64, means:

(1) The developer or other person who has or holds himself or herself out as having financial or operational control over the land-disturbing activity; or

(2) The landowner or person in possession or control of the land when he or she has directly or indirectly allowed the land-disturbing activity or has benefitted from it or he or she has failed to comply with any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act as imposes a duty upon him or her.

**PHASE OF GRADING.** One of two types of grading, rough or fine.

**PLAN.** An erosion and sedimentation control plan.

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

**SEDIMENTATION.** The process by which sediment resulting from accelerated erosion has been or is being transported off the site of the land-disturbing activity or into a lake or natural watercourse.

**SILTATION.** Sediment resulting from accelerated erosion which is settleable or removable by properly designed, constructed, and maintained control measures; and which has been transported from its point of origin within the site of a land-disturbing activity; and which has been deposited, or is in suspension in water.

**SLOPE.** The description of the angle of the land being disturbed with respect to horizontal. For example, a 2-1 slope would have a vertical rise or fall of 1-foot for each 2-feet of horizontal distance.

**STABILIZE.** To establish groundcover sufficient and adequate to prevent erosion. Temporary stabilization measures are those that are sufficient to prevent erosion until the appropriate time for establishing permanent control measures.

**STORM DRAINAGE FACILITIES.** The system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.

**STORM WATER RUNOFF.** The direct runoff of water resulting from precipitation in any form.

**SUBSIDIARY.** An affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.

**TEN-YEAR STORM.** The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of runoff, for the watershed of interest under average antecedent wetness conditions.  
Tract all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.

**TWENTY-FIVE YEAR STORM.** The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in 25 years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

**UNCOVERED.** The removal of ground cover from, on, or above the soil surface.

**UNDERTAKEN.** The initiating of any activity, or phase of activity, which results or will result in a change in the ground cover or topography of a tract of land.

**VELOCITY.** The average velocity of flow through the cross section of the main channel at the peak flow of the storm of interest. The cross section of the main channel shall be that area defined by the geometry of the channel plus the area of flow below the flood height defined by vertical lines at the main channel banks. Overload flows are not to be included for the purpose of computing velocity of flow.

**WASTE.** Surplus materials resulting from on-site construction and disposed of at other locations.

**WORKING DAYS.** Days, exclusive of Saturday and Sunday, during which weather conditions or soil conditions permit land-disturbing activity to be undertaken.  
(Ord. passed 11-5-2001)

## ***PLANS AND PERMITS***

### **§ 153.20 PLANS.**

#### ***(A) Plan required.***

(1) No person shall initiate any land-disturbing activity which uncovers more than ½ acre without having in effect an erosion and sedimentation control plan approved by the county, unless the person conducting the land-disturbing activity has been certified by the Administrator as an approved operator, in which event an erosion and sedimentation control plan approved by the county shall be required for areas exceeding one acre in size. Provided, however, for those cases where a land disturbance permit is required and where the area to be disturbed has a slope greater than 1 to 1, a plan shall be required for land disturbance associated with any project, regardless of the size of the project or the area being disturbed.

(2) When an erosion and sedimentation control plan is required pursuant to subsection (1) above, three copies of the proposed plan shall be filed with the Administrator and a copy simultaneously submitted to the Macon Soil and Water Conservation District office at least 30 calendar days prior to the commencement of the proposed activity.

(3) The Administrator will review each complete plan submitted and within 30 calendar days of receipt thereof will notify the person submitting the plan that it has been approved, approved with modifications, approved with performance

reservations, or disapproved. Incomplete plans shall be returned for completion. The 30-day review period will not begin until all required items are submitted. The Administrator shall have five business days to check the plans for completeness. The failure to approve, approve with modifications, approve with performance reservations, or disapprove a completed erosion and sedimentation control plan within 30 calendar days after its receipt shall be deemed approval of the plan. Disapproval of a plan must be in writing and shall specifically state the reasons for disapproval. If, following commencement of a land-disturbing activity pursuant to an approved plan, the Administrator determines that the plan is inadequate to meet the requirements of this chapter, the Administrator may require any revision of the plan that is necessary to comply with this chapter. Pending the preparation of a revised plan, work on the project shall cease or shall continue only under conditions outlined by the Administrator. The Administrator must approve, approve with modifications, approve with performance reservations or disapprove a revised plan within 15 calendar days of its receipt, or it is deemed approved.

(4) The plan required by this section may contain architectural and engineering drawings, construction schedules, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the planned necessary measures to comply with the requirements of this chapter. Plan content may vary to meet the needs of specific site requirements.

(5) When deemed necessary by the approving authority, a pre-construction conference may be required.

(6) No person may initiate a land-disturbing activity before notifying the agency that issued the plan approval of the date that land-disturbing activity will begin.

(B) *Financial responsibility statement.* Erosion control plans shall be disapproved unless accompanied by an authorized statement of financial responsibility

and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his or her attorney-in-fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents. If the person financially responsible is not a resident of North Carolina, a North Carolina agent must be designated in the statement for the purpose of receiving notice of compliance or non-compliance with the plan, the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter.

(C) *Soil and Water Conservation District Review.* The Administrator may request that the Macon Soil and Water Conservation District review the plan and submit any comments and recommendations to the county within 20 calendar days after the soil and water conservation district received the erosion control plan, or within any shorter period of time as may be agreed upon by the soil and water conservation district and the county. Failure of the Soil and Water Conservation District to submit its comments and recommendations within 20 calendar days or within any agreed-upon shorter period of time shall not delay final action on the plan.

(D) *Coordination with the NC Environmental Policy Act.* Any plan submitted for a land-disturbing activity for which an environmental document is required by the *North Carolina Environmental Policy Act* (G.S. §§ 113A-1, *et seq.*) shall be deemed incomplete until a complete environmental document is available for review. The county shall promptly notify the person submitting the plan that the 30 calendar day time limit for review of the plan pursuant to division (A)(3) above of this section shall not begin until a complete environmental document is available for review.

(E) *Plan disapproval.* An erosion control plan may be disapproved upon a finding that an applicant, or a corporate parent, subsidiary, or other affiliate of the applicant:



(1) Is conducting or has conducted land-disturbing activity without an approved plan, or has received notice of violation of a plan previously approved by the Commission or a local government pursuant to the Act and has not complied with the notice within the time specified in the notice;

(2) Has failed to pay a civil penalty assessed pursuant to the Act or a local chapter adopted pursuant to the Act by the time the payment is due.

(3) Has been convicted of a misdemeanor pursuant to G.S. § 113A-64(b) or any criminal provision of a local chapter adopted pursuant to the Act or;

(4) Has failed to substantially comply with state rules or local chapters and regulations adopted pursuant to the Act.

(5) For purposes of this division (E) an applicant's record may be considered for only the two years prior to the application date.

(F) *Plan amendment.* Applications for amendment of an erosion control plan in written and/or graphic form may be made at any time under the same conditions as the original application. Until such time as said amendment is approved by the Administrator, the land-disturbing activity shall not proceed except in accordance with the erosion control plan as originally approved.

(G) *Failure to file a plan.* Any person engaged in land-disturbing activity who fails to file a plan in accordance with this chapter, or who conducts a land-disturbing activity except in accordance with provisions of an approved plan shall be deemed in violation of this chapter.

(H) *Compliance with water quality laws.* The approval of an erosion control plan is conditioned on the applicant's compliance with federal and state water quality laws, regulations, and rules.

(I) *Plans involving ditches to lower the water table.* A copy of the erosion control plan for any land-

disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table must be forwarded to the Director of the Division of Water Quality and the Army Corps of Engineers.

(J) *Plan approval.* If the submitted plan is approved by the Administrator, a permit to conduct land-disturbing activities shall be issued in the name of the applicant.  
(Ord. passed 11-5-2001) Penalty, see § 153.99

#### **§ 153.21 NOTIFICATION PROCEDURES FOR ACTIVITY NOT MEETING REQUIREMENTS.**

(A) In cases where less than ½ acre will be disturbed, applicants for building permits for any construction will be required to complete a form that explains how erosion control will be managed during construction and to obtain a land-disturbing permit. The form will provide an opportunity to choose among simple approaches to keep mud and sediment from leaving the property. The information provided on the form will serve as an erosion control plan for the new construction. Applicants will need to know the downhill slope of the lot to complete the form.

(B) Should the applicant fail to fill out the notification form and obtain a land-disturbing permit in advance of clearing land, give false or misleading information on the form, or fail to install the procedures as called for on the form, a penalty will be assessed as outlined in § 153.99.  
(Ord. passed 11-5-2001)

#### **§ 153.22 PERMITS.**

(A) *Permit required.* No person shall undertake any land-disturbing activity subject to this chapter without first obtaining a permit therefor from the county, except that no permit shall be required for any land-disturbing activity:

- (1) For the purpose of fighting fires; or

(2) For the stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that sediment control measures have been utilized to protect against off-site damage; or

(3) That is activity for which a building permit is not required and that does not exceed 21,780 square feet in disturbed surface area. In determining the surface area, lands under single or diverse ownership being developed as a unit will be aggregated.

(B) *Permit applications.*

(1) Clear lines of communication among the Administrator, the person financially responsible, and the person conducting the land-disturbing activities are essential, not only for the success of the program outlined in this chapter, but to avoid costly delays and re-submittal of applications by the developer as well. It is recommended that prior to submitting a formal application for a permit, persons conducting land-disturbing activities notify the Administrator and briefly describe the planned activity, persons responsible for design of sediment control measures, a tentative schedule of activities and request application forms. A pre-application conference may be required by the Administrator. A permit will not be issued based upon a notification of intent.

(2) Forms, application requirements, and plan assistance are available upon request from the Administrator's office. All requests for information, submission of plans and applications, and requests for assistance will be handled through the office of the Administrator.

(3) The Administrator shall review the application and accompanying plan for completeness and compliance with this chapter. If the submitted plan is approved by the Administrator, a permit to conduct land-disturbing activities shall be issued in the name of the applicant. Construction shall begin within the approved time period or the permit shall expire and a new permit shall be required.

(4) Permits shall be prominently displayed on the site until the project is certified complete by the Administrator. In addition, a copy of the approved Erosion and Sedimentation Control plan shall be kept on hand at the job site at all times for inspection.

(C) *Surety*. Application for a permit to disturb five or more acres shall require the posting of a security bond, with the Administrator, in the form of an escrow account, an account guaranteed by an established surety company or other instruments satisfactory to the County Attorney, in an amount of not less than \$500 nor more than \$5,000 per acre of disturbed area as set forth in the approved erosion and sedimentation control plan to cover the costs of installation of sufficient erosion and sediment control measures and devices on the site in accordance with this chapter. The Administrator, with the review and approval of his or her supervisor, shall define the amount per acre required based on the specific project merits and complexity. Such security shall remain valid until the land-disturbing activity is completed in accordance with the approved erosion and sedimentation control plan and released by the Administrator as discussed in the following subsections.

(1) Land-disturbing activities not brought into compliance with this chapter and the approved erosion and sedimentation control plan for 30 calendar days after notice of violation is given the responsible party by registered or certified mail or other means detailing specific items of violation, shall be subject to forfeiture of all applicable security.

(2) Forfeiture of applicable security shall in no way relieve responsible parties from penalties, fines or other requirements of this chapter.

(3) Forfeited security shall be used to establish erosion control structures or ground cover in accordance with an approved sediment control plan. Any monies in excess of cost of establishing protective measures shall be refunded to the person who posted the bond.

(4) Upon completion of improvements as required by this chapter, written notice shall be given by the applicant, through registered or certified mail, to the Administrator who shall perform an inspection of the improvements. If the conditions of this chapter are met, within 30 calendar days of the date of notification of completion the county shall authorize in writing the release of applicable security.  
(Ord. passed 11-5-2001) Penalty, see § 153.99

## ***REQUIREMENTS AND REGULATIONS***

### **§ 153.35 GENERAL REQUIREMENTS.**

#### ***(A) Responsibilities of persons conducting land-disturbing activities.***

(1) Persons conducting land-disturbing activities shall take all reasonable measures to prevent damage to public and private property resulting from those activities. In addition, they will be held responsible for knowing and following the requirements of this chapter.

(2) It is the responsibility of the person conducting the land-disturbing activity to apply to the Administrator or his or her agent for any permit required and receive said permit contingent upon an approved erosion and sediment control plan, before beginning any land-disturbing activity which is governed hereby.

(3) If any land-disturbing activity requires a permit as defined in this chapter, a building permit shall not be issued, until a plan has been approved by the Administrator or the proper notification form filled out. The building permit may be applied for at the same time as the permit. or notification form required by this chapter.

***(B) Protection of property.*** Persons conducting land-disturbing activity shall take all reasonable measures to protect all public and private property from damage caused by such activity.

(C) *More restrictive rules shall apply.* Whenever conflict exists between federal, state, or local laws, chapter, or rules, the more restrictive provision shall apply.

(D) *Access and haul roads.* Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a part of such activity.

(E) *Operations in Lakes or Natural Watercourses.* Land-disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall be planned and conducted in such a manner as to minimize the extent and duration of disturbance of the stream channel. The relocation of a stream, where relocation is an essential part of the proposed activity, shall be planned and executed so as to minimize changes in the stream flow characteristics, except when justification for significant alteration to flow characteristic is provided. The applicant shall consult with the Army Corps of Engineers and the State Department of Environment and Natural Resources to determine if a permit is required before undertaking any land-disturbing activity in or near a watercourse, wetlands or swamp.

(F) *Borrow and waste areas.* When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the provisions of the *Mining Act of 1971*, and waste areas for surplus materials other than landfills regulated by the Department's Division of Solid Waste Management shall be considered as part of the land-disturbing activity where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

(G) *Restoration of Areas Affected by Failure to Comply.* The county may require a person who engaged in a land-disturbing activity and failed to

retain sediment generated by the activity, as required by G.S. § 113A-57(3), to restore the waters and land affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This includes damage to properties adjacent to, nearby or downstream of the permitted property that are not owned by the person engaging in the land-disturbing activity. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

(Ord. passed 11-5-2001) Penalty, see § 153.99

### **§ 153.36 OBJECTIVES.**

An erosion and sedimentation control plan may be disapproved pursuant to § 153.35 of this chapter if the plan fails to address the following control objectives:

(A) *Identify critical areas.* On-site areas which are subject to severe erosion, and off-site areas which are especially vulnerable to damage from erosion and/or sedimentation, are to be identified and receive special attention.

(B) *Limit time of exposure.* All land-disturbing activity is to be planned and conducted to limit exposure to the shortest feasible time.

(C) *Limit exposed areas.* All land-disturbing activity is to be planned and conducted to minimize the size of the area to be exposed at any one time.

(D) *Control surface water.* Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(E) *Control sedimentation.* All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

(F) *Manage stormwater runoff.* When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause

accelerated erosion of the receiving watercourse, plans shall include measures to control the velocity to the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.  
(Ord. passed 11-5-2001)

#### **§ 153.37 STANDARDS FOR LAND-DISTURBING ACTIVITY.**

No land-disturbing activity subject to the control of this chapter shall be undertaken except in accordance with the following mandatory standards:

*(A) Buffer zone.*

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the 25% of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Administrator may approve plans which include land-disturbing activity along trout waters when the duration of the disturbance would be temporary and the extent of the disturbance would be minimal.

(2) Unless otherwise provided, the width of a buffer zone is measured from the edge of the water to the nearest edge of the disturbed area, with the 25% of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.

(3) The 25-foot minimum width for an undisturbed buffer zone adjacent to trout waters shall be measured horizontally from the top of the bank.



(4) Where a temporary and minimal disturbance is permitted as an exception by division (A)(1) above of this section, land-disturbing activities in the buffer zone adjacent to waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be disturbed such that there is not more than 100 linear feet of disturbance in each 1,000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Administrator.

(5) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15 NCAC 2B.0211 *Fresh Surface Water Classification and Standards*, in these waters.

(B) *Graded slopes and fills access and haul roads.*

(1) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(2) Generally, unless the following conditions can be met, an approved plan for erosion control and stabilization of the soil is required.

(a) All cut slopes will have a minimum finished grade of 1.5:1.

(b) All fill slopes will have a minimum finished grade of 2:1.

(3) (a) Maximum sustained grades for roads should not exceed:

1. Six percent for natural soil and grass;

2. Ten percent for gravel or crushed stone;
3. Sixteen percent for paving (asphalt or concrete);
4. (These grades may be increased up to 15% for crushed stone and 20% for pavement for reaches of 200 feet or less where no other alternative exists.)

(b) Culverts are required in natural drains on all roads. Culverts should be placed every 130 to 200 feet on all in-sloped roads.

(C) *Ground cover.* Whenever land-disturbing activity is undertaken on a tract comprising more than one half acre, if more than one half acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development. Except as provided in § 153.38(B)(5) of this chapter, provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days following completion of construction or development, whichever period is shorter.

(D) *Prior plan approval.* No person shall initiate any land-disturbing activity on land in Macon County if more than ½ acre is to be uncovered unless, prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by the county, and the required permit obtained. If an approved operator is doing the work, the acreage requirement is increased to one acre.

(E) *Fill material.* Unless a permit from the N.C. Department of Environment and Natural Resources Division of Solid Waste Management to operate a landfill is on file for the official site,

acceptable fill material shall be free of organic or other degradable materials, masonry, concrete and brick in sizes exceeding 12 inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina. Fill materials must be free of any toxic material.

(F) *Prevention of material deposited on public roadways.* Soil material shall be prevented from being deposited on public roadways by the use of mud mats, gravel traps, washing methods, and the like. (Ord. passed 11-5-2001) Penalty, see § 153.99

#### **§ 153.38 DESIGN AND PERFORMANCE STANDARDS.**

(A) Except as provided in division (B)(2) below of this section, erosion and sedimentation control measures, structures, and devices shall be so planned, designed, and constructed as to provide protection from the calculated maximum peak rate of runoff from the 10-year storm. Runoff rates shall be calculated using the procedures in the USDA, Natural Resources Conservation Service's *National Engineering Field Manual for Conservation Practices*, or other acceptable calculation procedures.

(B) In high quality water (HQW) zones the following design standards shall apply:

(1) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this section. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Administrator.

(2) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the run off of the 25-year storm which produces the maximum peak rate of run off as calculated according to procedures in the United States Department of Agriculture Natural Resources

Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(3) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70% for the 40 micron (0.04 mm) size soil particle transported into the basin by the runoff of that 2-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Natural Resources Conservation Service's *National Engineering Field Manual for Conservation Practices* or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(4) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than 2 horizontal to 1 vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(5) Ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing activity in a HQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.  
(Ord. passed 11-5-2001) Penalty, see § 153.99

#### **§ 153.39 STORMWATER PROVISIONS.**

(A) Persons shall conduct land-disturbing activity so that the post construction velocity of the 10-year storm runoff in the receiving watercourse to the discharge point does not exceed the greater of:

- (1) The velocity established by the table in division (D) of this section; or
- (2) The velocity of the 10-year storm runoff in the receiving watercourse prior to development.

(3) If subsections (1) or (2) of this division cannot be met, then the receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the prior to development velocity by 10%.

(B) Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The Commission recognizes that the management of stormwater runoff to minimize or control downstream channel and bank erosion is a developing technology. Innovative techniques and ideas will be considered and may be used when shown to have the potential to produce successful results. Some alternatives are to:

- (1) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (2) Avoid increases in stormwater discharge velocities by using vegetated or roughened swales and waterways in lieu of closed drains and high velocity paved sections;
- (3) Provide energy dissipaters at outlets of storm drainage facilities to reduce flow velocities to the point of discharge. These may range from simple rip-rapped sections to complex structures;

(4) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining.

(C) This rule shall not apply where it can be demonstrated that stormwater discharge velocities will not create an erosion problem in the receiving watercourse.

(D) The following is a table for maximum permissible velocity for stormwater discharges:

<i>Maximum permissible velocities</i>		
<i>Material</i>	<i>F.P.S.</i>	<i>M.P.S.</i>
Alluvial silts (colloidal)	5.0	1.5
Alluvial silts (noncolloidal)	3.5	1.1
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Fine gravel	5.0	1.5
Fine sand (noncolloidal)	2.5	.8
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Ordinary firm loam	3.5	1.1
Sandy loam (noncolloidal)	2.5	.8
Shales and hard pans	6.0	1.8
Silt loam (noncolloidal)	3.0	.9
Stiff clay (very colloidal)	5.0	1.5
Source - Adapted from recommendations by Special Committee on Irrigation Research, American Society of Civil Engineers, 1926, for channels with straight alignment. For sinuous channels, multiply allowable velocity by 0.95 for slightly sinuous, by 0.9 for moderately sinuous channels, and by 0.8 for highly sinuous channels.		

(Ord. passed 11-5-2001) Penalty, see § 153.99

#### **§ 153.40 MAINTENANCE.**

During the development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the

approved plan or any provision of this chapter, the Act, or any order adopted pursuant to this chapter or the Act. After site development, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sediment control measures, except those measures installed within a road or street right-of-way or easement accepted for maintenance by a governmental agency, as necessary to cure the problem.

(Ord. passed 11-5-2001) Penalty, see § 153.99

#### **§ 153.41 ADDITIONAL MEASURES.**

Whenever the Administrator determines that significant sedimentation is occurring as a result of land-disturbing activity, despite application and maintenance of protective practices, the person conducting the land-disturbing activity will be required to and shall take additional protective action.

(Ord. passed 11-5-2001)

#### **§ 153.42 EXISTING UNCOVERED AREAS.**

(A) *Uncovered areas.* All uncovered areas existing on the effective date of this chapter, which resulted from land-disturbing activity that are subject to continued erosion, and are causing of site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off site sedimentation.

(B) *Notice.* The Administrator will serve upon the landowner or other person in possession or control of the land a written notice of violation by registered or certified mail, return receipt requested, or other means sufficient to give personal notice. The notice will set forth the measures needed to comply and will state the time within which such measures must be completed. In determining the measures required and the time allowed for compliance, the authority serving notice shall take into consideration the economic feasibility, technology, and quantity of work required, and shall set reasonable and attainable time limits of compliance.

(C) *Required plan.* The Administrator has the right to require preparation and approval of an erosion control plan in any instance where extensive control measures are required.

(D) *Reservoirs.* This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

(Ord. passed 11-5-2001) Penalty, see § 153.99

## ***ADMINISTRATION AND ENFORCEMENT***

### **§ 153.55 APPEALS.**

(A) Except as provided in division (B) of this section, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

(1) The disapproval or modification of any proposed erosion control plan by the Administrator shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 calendar days after receipt of written notice of disapproval or modifications.

(2) Hearings held pursuant to this section shall be conducted by the Macon County Board of Adjustments within 30 calendar days after the date of the appeal or request for a hearing.

(3) If the Board of Adjustments upholds the disapproval or modification of a proposed soil erosion and sedimentation control plan following the hearing, the person submitting the plan shall then be entitled to appeal the Board of Adjustments decision to the North Carolina Sedimentation Control Commission as provided in G.S. § 113A-61(c) and Title 15A NCAC 4B18(d).

(B) In the event that an erosion control plan is disapproved pursuant to § 153.20(E) of this chapter, the Administrator shall notify the Director of the Division of Land Resources of such disapproval within ten calendar days. The Administrator shall

advise the applicant and the Director in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the disapproval of the plan pursuant to § 153.20(E) of this chapter directly to the Commission.

(Ord. passed 11-5-2001)

#### **§ 153.56 INSPECTIONS AND INVESTIGATIONS.**

(A) The Administrator, agents, officials, or other qualified persons authorized by the county may periodically inspect land-disturbing activities to ensure compliance with the Act, this chapter, or rules or orders adopted or issued pursuant to this chapter, and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each erosion control plan.

(B) No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the county while that person is inspecting or attempting to inspect a land-disturbing activity under this section.

(C) If it is determined that a person engaged in land-disturbing activity has failed to comply with the Act, this chapter, or rules, or orders adopted or issued pursuant to this chapter, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. § 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this chapter, or rules, or orders adopted pursuant to this chapter, and inform the person of the actions that need to be taken to comply with the Act, this chapter, or rules or orders adopted pursuant to this chapter. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his or her official duties. Any person who fails to comply within the time specified is subject to the civil and criminal penalties provided in this chapter.

(D) The Administrator shall have the power to conduct such investigation as it may reasonably deem necessary to carry out its duties as prescribed in this chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating and inspecting the sites of any land-disturbing activity.

(E) The Administrator shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activity.

(Ord. passed 11-5-2001)

#### **§ 153.57 STOP-WORK ORDERS.**

(A) The Administrator may issue a stop-work order if he or she finds that a land-disturbing activity is being conducted in violation of this subchapter or of any rule adopted or order issued pursuant to this subchapter, and that either:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent;

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent; or

(3) The land-disturbing activity is being conducted without an approved plan.



(B) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by the Administrator pursuant to division (A) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

(C) The stop-work order shall be served by the Macon County Sheriff or by some other person duly authorized by law to serve process as provided by G.S. § 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity; the Administrator shall forward a copy of the order to the person financially responsible. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The Administrator shall also deliver a copy of the stop-work order to any person that the Administrator has reason to believe may be responsible for the violation.

(D) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in § 153.99 of this chapter. A stop-work order issued pursuant to this section may be effective for a period not to exceed three working days.

(E) The Administrator shall designate an employee of the county to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Administrator, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Administrator shall rescind a stop-work order that is issued in error.

(F) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an appeal of a penalty in accordance with § 153.55 of this chapter. The petition for judicial review shall be filed in the superior court of Macon County.

(G) As used in this section, days are computed as provided in G.S. § 1A-1, Rule 6. Except as otherwise provided, the Board of County

Commissioners may delegate any power or duty under this section to the Administrator or to any person who has supervisory authority over the Administrator. The Administrator may delegate any power or duty so delegated only to a person who is designated as acting Administrator.

(H) The County Attorney shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order after service of the stop-work order. The cause of action shall include a motion for an ex parte temporary restraining order to abate the violation and to effect necessary remedial measures. The Resident Superior Court Judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion. The Clerk of Superior Court shall accept complaints filed pursuant to this section without the pre-payment of filing fees. Filing fees shall be paid to the Clerk of Superior Court within 30 days of the filing of the complaint.

(Ord. passed 11-5-2001)

### **§ 153.58 INJUNCTIVE RELIEF.**

(A) Whenever the Administrator has reasonable cause to believe that any person is violating or threatening to violate this chapter or any rule or order adopted or issued pursuant to this chapter, or any term, condition, or provision of an approved erosion control plan, it may, either before or after the institution of any other action or proceeding authorized by this chapter, institute a civil action in the name of the county, for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Macon County.

(B) Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this chapter.

(Ord. passed 11-5-2001)

### **§ 153.99 PENALTY.**

(A) *Civil penalties.*

(1) Any person who violates any of the provisions of this chapter, or rules or orders adopted or issued pursuant to this chapter, or who initiates or continues a land-disturbing activity for which an erosion and sedimentation control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to the assessment of a civil penalty by the Administrator in accordance with the following procedures:

(a) *Issuance of citations.* The maximum civil penalty for a violation is \$5,000. The maximum civil penalty for a violation of a stop-work order issued under G.S. § 113A-65.1 is \$5,000. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation as provided in § 153.56(C) of this chapter. If the violator has not completed corrective action before the allotted time period has expired, a civil penalty shall be imposed in the form of a citation and may be assessed from the date the violation is detected. However, no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his or her official duties. Notice of such citation shall be given as provided in § 153.56(C); shall state the civil penalty to be imposed upon the violator; and shall direct the violator to pay the civil penalty within ten business days of the date of the violation. The following language shall be placed on any citation issued and served pursuant to this chapter: "Failure to pay the civil penalty stated hereinabove, in addition to other remedies against you, shall subject you to the payment of reasonable attorney's fees, not to exceed 15% of the outstanding balance, including the principal amount of the penalty and interest accruing thereon. Each day of continuing

violation shall constitute a separate violation.

(b) *Payment of civil penalties.* The penalty fee schedule for civil penalties shall be set forth in the fee schedule established by the Board of

County Commissioners and maintained in the office of the County Manager. For each day the violation is not corrected, the violator shall be guilty of an additional and separate offense and subject to additional civil penalty. If the offender fails to pay the civil penalties within thirty days after having been cited, Macon County shall recover the penalties in a civil action in the nature of debt. In determining the amount of the penalty fee schedule the Board of County Commissioners shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage, the amount of money the violator saved by noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this chapter.

(c) *Appeal of civil penalties.* The Administrator shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under § 153.56(C) of this chapter, and shall direct the violator to either pay the assessment or contest the assessment, within five calendar days after receipt of the notice of assessment, by written demand for a hearing. A hearing on a civil penalty shall be conducted by the Board of Adjustments within 30 calendar days after the date of the written demand for the hearing. Appeal from the final decision of the governing body shall be to the Superior Court of Macon County.

(2) Civil penalties collected pursuant to this chapter shall be credited to the general fund of Macon County as nontax revenue and may be used to fund watershed protection activities, public education programs, flood plain identification and protection, or silt removal from Macon County lakes and natural watercourses.

(B) *Criminal penalties.* Any person who knowingly or willfully violates any provision of this chapter, or rule or order adopted or issued pursuant to this chapter, or who knowingly or willfully initiates or continues a land-disturbing activity for which an

erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be guilty of a Class 2 misdemeanor which may include a fine not to exceed \$5,000.  
(Ord. passed 11-5-2001)



## **CHAPTER 154: TELECOMMUNICATIONS TOWERS**

### **Section**

154.01	Title
154.02	Authority and jurisdiction
154.03	Purpose
154.04	Applicability
154.05	Definitions
154.06	Permit required
154.07	Application submission and review process
154.08	Criteria for issuance of permit
154.09	Public hearing required
154.10	Co-location encouraged
154.11	Electric transmission towers
154.12	Installations utilizing existing structures
154.13	Other provisions
154.14	Variances
154.15	Continued compliance required
154.16	Maintenance/removal agreement
154.17	Appeals
154.99	Penalty

### **§ 154.01 TITLE.**

This chapter shall be known and may be cited as the *Telecommunications Tower Ordinance of Macon County, North Carolina*, codified as Chapter 154 of The Macon County Code.  
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

### **§ 154.02 AUTHORITY AND JURISDICTION.**

(A) This chapter is established by the Macon County Board of Commissioners pursuant to the authority conferred in G.S. § 153A-121(a). The Board of Commissioners hereby ordains and enacts into law

the following articles and sections.

(B) The provisions of this chapter shall apply to all unincorporated areas of Macon County, but shall not be applicable to and shall not be enforced within the corporate limits or the extraterritorial jurisdiction of any municipality in the county. The following types of installations are excluded from the scope of this chapter:

(1) Amateur radio facilities with antennas mounted on supporting structures less than 100 feet in height;

(2) AM radio and FM radio broadcast transmitting antennas and towers;

(3) Residential antennas for receiving television, AM radio or FM radio broadcast signals;

(4) Customer premise antennas for receiving microwave or satellite signals, provided such antennas are less than one meter (39.4 inches) in height or diameter and are mounted on a support structure less than 12 feet in height.  
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

### **§ 154.03 PURPOSE.**

(A) The Board of Commissioners finds the following facts and circumstances justify and warrant the exercise of those powers with respect to wireless telecommunications facilities in order to protect the health, safety and welfare of its citizens;

(1) Macon County is blessed with a distinctive mountain topography and natural beauty that defines its cultural identity and provides a special sense of place; and

(2) The protection of the mountains of Western North Carolina was officially recognized as an important public policy by Executive Order 74 signed on March 27, 1995 by the Governor of the State of North Carolina creating the Year of the Mountains Commission; and

(3) The Chairperson of the Year of the Mountains Commission challenged local governments in Western North Carolina to protect



and improve the beauty, charm and advantages of the mountains and to guide the region's long-term growth, development and destiny through sound planning; and

(4) On February 8, 1996 the President of the United States signed the *Telecommunications Act of 1996* into law and Section 704 of that Act (42 USC 332(c)(7)), with limited exceptions, expressly preserves the authority of state and local governments and instrumentalities thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities, and

(5) The Presidential Memorandum signed by the President of the United States on August 10, 1995 and the General Services Administration Guidelines implementing Section 704(c) of the *Telecommunications Act of 1996* published on March 29, 1996 specifically mandate that antenna siting on federal properties shall comply with all state and local laws and regulations.

(B) In order to accommodate the wireless communication needs of residents, businesses and visitors while protecting the health, safety and welfare of its citizens, the Macon County Board of Commissioners finds that enactment of this chapter is necessary and advisable in order to:

(1) Facilitate the provision of wireless telecommunications services to residents, businesses and visitors in Macon County;

(2) Regulate in an orderly manner the placement, construction, modification, maintenance and removal of wireless telecommunications facilities;

(3) Provide a uniform and comprehensive framework for evaluating proposals for wireless telecommunication facilities;

(4) Preserve the scenic and visual character of Macon County by encouraging the location, design and architectural treatment of wireless telecommunication facilities to minimize their visibility from public places, to avoid intrusion into public vistas, to avoid disruption of the natural and built environment;

(5) Encourage the use of existing and approved structures to accommodate wireless telecommunications infrastructure prior to approving additional structures; and

(6) Avoid potential injury to persons and properties from tower failure through structural standards and setback requirements.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.04 APPLICABILITY.**

A telecommunications tower as herein defined may be placed, erected and/or maintained in the jurisdiction of Macon County only in conformance with the standards, procedures and other requirements of this chapter.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

#### **§ 154.05 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. All other words, terms and phrases shall have their ordinary meaning of common usage in the English language.

***ALTERNATIVE STRUCTURE.*** A structure which is not primarily constructed for the purpose of holding antennas but on which one or more antennas may be mounted. Alternative structures, include, but

are not limited to, buildings, silos, water tanks, pole signs, lighting standards, steeples, billboards and electric transmission towers.

**ANTENNA.** Any exterior transmitting or receiving device which radiates or captures electromagnetic waves (excluding radar signals).

**ANTENNA, CONCEALED.** An antenna that is designed and erected on or in a building in such a way that it blends in with the existing facade and/or is located such that it is not readily visible to an individual at adjacent road level.

**CO-LOCATION.** The placement of additional antennas or antenna arrays on an existing or approved telecommunications tower (or alternative structure), the sharing of an antenna or antenna array, or otherwise sharing a common location by two or more FCC-licensed providers of personal wireless services. **CO-LOCATION** includes antennas, transmitters, receivers and related electronic equipment, cabling, wiring, equipment enclosures and other support equipment or improvements located on the tower site.

**COMMERCIAL WIRELESS SERVICE PROVIDER.** Persons who operate radio systems requiring an FCC license and who employ those facilities to provide fixed wireless (including microwave) or mobile wireless communication services to third parties for compensation. Commercial wireless service providers include, but are not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), paging, and competitive local exchange carriers (CLEC) utilizing point-to-multipoint microwave.

**CREST.** The uppermost line of a mountain or a chain of mountains from which the land falls away on at least two sides to a lower elevation or elevations.

**DISCERNIBLE.** Capable of being distinguished with the eye or mind from its surroundings as a telecommunications tower.

***ELECTRIC DISTRIBUTION TOWERS.*** Metal or wooden towers and poles used to suspend wires transporting electricity between substations at the terminus of transmission lines and individual customer premises.

***ELECTRIC TRANSMISSION TOWERS.*** Metal or wooden towers and poles used to suspend wires transporting electricity between generating plants and substations supplying electricity to distribution and feeder lines.

***EQUIPMENT ENCLOSURE.*** A building, cabinet or shelter used to house transmitters, receivers and other electronic equipment and accessories at a wireless telecommunication facility.

***FALL ZONE.*** An area around the base of a telecommunications tower required to be kept clear of buildings, other than equipment enclosures associated with the wireless telecommunications facility, to contain debris in the event of a tower structural failure.

***GOVERNMENTAL USER.*** Federal, state or local governments, or agencies or instrumentalities thereof, volunteer fire departments or rescue squads which operate radio systems (including microwave) requiring an FCC license and which employ those facilities exclusively for intra-governmental or inter-governmental public service, public safety or administrative purposes.

***MAXIMUM CREDIBLE EARTHQUAKE.*** The maximum earthquake predicted to affect a given location based on the known lengths of the active faults in the vicinity.

***ORDINANCE ADMINISTRATOR.*** The Macon County employee assigned by the Board of Commissioners to enforce this chapter.

***PRIVATE BUSINESS USER.*** Persons who operate radio facilities (including microwave) requiring the FCC license solely for intra-company communications and who do not employ those

facilities to offer fixed or mobile wireless communication services to third parties for compensation.

***PROTECTED MOUNTAIN RIDGE.*** A ridge at or above 3,000 feet with an elevation of 500 feet or more above the elevation of an adjacent valley floor.

***REPLACEMENT TOWER.*** A telecommunication tower intended to replace an existing approved tower where such replacement tower is at or within 50 feet of the existing tower base, and no higher than the existing tower.

***RIDGE.*** The elongated crest or series of crests at the apex or uppermost point of the intersection between two opposite slopes or sides of a mountain, including all land within 100 feet below the elevation of any portion of such line or surface along the crest.

***SUBSTANTIAL INCREASE IN HEIGHT OF AN ALTERNATIVE STRUCTURE.*** The increase in height of an alternative structure greater than 30% or 25 feet.

***TELECOMMUNICATIONS.*** The transmittal or reception of signals over the airways as a commercial or public service, including, without limitation, telephonic, television, radio, cable television or microwave signals.

***TELECOMMUNICATIONS TOWER.*** Any tower, pole or similar structure exceeding 20 feet in height erected for the purpose of supporting one or more antennas designed to transmit or receive signals, including but not limited to telephonic, television, radio, digital, microwave, cellular or similar forms of electronic communication.

***TOWER HEIGHT.*** The vertical distance measured from the ground to the uppermost point of the telecommunications tower and any antenna affixed thereto, but excluding any lightning protection rods extending above the tower and attached equipment.

***TOWER SITE.*** The real property which an applicant is required to have ownership of, leasehold

interest in, or easement over, pursuant to § 154.08(B) of this chapter.

**VEGETATIVE CANOPY.** Trees which create a roof-like layer of spreading branches.

**WIRELESS TELECOMMUNICATION FACILITY.** Equipment at a single location used by a private business user, governmental user or commercial wireless service provider to transmit, receive or relay electromagnetic signals (including microwave). Such facility includes antennas or antenna arrays, telecommunications towers, support structures, transmitters, receivers, base stations, combiners, amplifiers, repeaters, filters or other electronic equipment; together with all associated cabling, wiring, equipment enclosures and other improvements.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.06 PERMIT REQUIRED.**

It shall be unlawful for any person, corporation, partnership or other entity to erect within the jurisdiction of this chapter any telecommunications tower without first obtaining a permit from the Ordinance Administrator. However, a permit shall not be required for the erection of a replacement tower of no greater height, located at the same site and within 50 feet of the tower being replaced, provided the replacement tower shall not be closer to existing residences or property lines within a radius equal to the height of the tower. The tower being replaced shall be removed within 90 days of activation of replacement tower and falls under the requirements of § 154.16.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

#### **§ 154.07 APPLICATION SUBMISSION AND REVIEW PROCESS.**

(A) *Application requirements.* Anyone desiring to construct or install a telecommunications tower shall submit an application for a permit and shall pay

a fee. The site development plan and preliminary design plan shall contain the following information and be part of the tower permit application:

(1) *Site development plan.* A site development plan shall be prepared by a North Carolina registered land surveyor, registered landscape architect or registered professional engineer, and shall contain the following:

(a) The name of the telecommunications tower owner and/or property owner, tax parcel identification number, scale, north arrow, a copy of the section of the 1:24,000 USGS quadrangle showing the proposed site, and latitude/longitude coordinates;

(b) The name, address, signature and seal of the professional preparing the plan;

(c) All identifiable structures located on the parcel, all private and public roads, highways and underground and overhead utilities;

(d) Surveyed boundary lines of the parcel containing the proposed telecommunications tower construction area and its fall area;

(e) All existing towers on the property or any towers whose fall area encroaches onto the property;

(f) Descriptions of adjacent land uses and all property owners names, tax parcel numbers, and mailing addresses;

(g) The ground elevation of the proposed tower's base, all proposed support structures, property corners and a permanent site bench mark. All elevations shall be determined using the National Geodetic Vertical Datum of 1927.

(2) *Preliminary tower design plan.* A preliminary tower design plan prepared by a North Carolina registered professional engineer containing the following:

(a) The tower permit applicant's name and address, scale, north arrow, vicinity map and tax parcel identification number;

(b) The name, address, signature and seal of the engineer preparing the preliminary tower design plan;

(c) A plan showing the base of the tower and the foundations for all guy line anchors and support structures, all proposed buildings, and any other proposed improvements, including access roads and utility connections within and to the proposed site;

(d) A tower elevation drawing showing the proposed lighting, height of the tower and all proposed antennas;

(e) The proposed tower design loads.

(3) *Search Area.* A propagation study or similar documentation showing the search areas for the proposed tower's antenna(s).

(4) *Proof of regulatory compliance.* Written statements from the Federal Aviation Administration (FAA) and the Federal Communications Commission (FCC) showing that the proposed tower complies with all permit regulations administered by that agency, or evidence that the proposed tower is exempt from those regulations.

(5) *Co-location alternatives.* Identification of all other possible alternatives considered within the service area for the proposed tower's antennas and an explanation why the proposed tower is necessary and why existing towers and structures (such as electric transmission towers, outdoor advertising signs) cannot accommodate the proposed antenna(s). No permit shall be issued for a new telecommunication tower unless the applicant proves that there is no feasible alternative in order to meet the applicant's minimal service level as required by the FCC.

(6) *Variances.* Identification of any variances to the chapter, the reasons for seeking the



variances, and any measures that are proposed to mitigate possible adverse effects of the proposed variances.

(B) *Approval and recordation.* The Ordinance Administrator shall either approve or disapprove the permit based upon the criteria set forth in § 154.08, Criteria for Issuance of Permit. The owner or his or her agent shall record the site development plan in the Macon County Register of Deeds' office following issuance of a permit for the subject tower.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

#### **§ 154.08 CRITERIA FOR ISSUANCE OF PERMIT.**

Applications for telecommunications towers, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter), shall be submitted in writing to the Ordinance Administrator and shall contain all information required by this chapter as well as any additional information the Ordinance Administrator deems necessary and appropriate, including the following:

(A) The applicant shall be required to provide documentation, satisfactory to the ordinance administrator, of compliance with all applicable federal and state regulations.

(B) The applicant must present to the Ordinance Administrator proof of fee simple ownership, a recorded leasehold interest or an easement from the record owner of all property within a radius of one time the height of the tower. The required area may include Department of Transportation right-of-way if the applicant provides written consent to that effect by the Division Engineer.

(C) Co-location encouraged. It is the policy of Macon County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which

do not require the placement or construction of a telecommunications tower, an increase in tower height, or an increase in the height of alternative structures, and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process.

(D) Towers shall be light gray or another earth tone (such as environmental green). Unpainted towers are encouraged.

(E) The applicant shall identify all other possible alternatives considered within the service area for the proposed towers' antennas and explain why the proposed tower is necessary and why existing towers and structures cannot accommodate the proposed antennas. If the antenna to be attached to the proposed tower cannot be accommodated on an existing tower, the applicant shall assess, as to each existing tower, whether such tower could be structurally strengthened or whether the antennas, transmitters and related equipment could be protected from electromagnetic interference. No permit shall be issued for a telecommunications tower unless the applicant proves that there is no feasible alternative in order to meet the applicant's minimal service level as required by the Federal Communications Commission.

(F) Tower permit approval is conditional upon the owner providing written authorization that the tower may be shared by other telecommunication facilities at customary and usual charges. The owner shall record in the Macon County Register of Deeds office a letter of intent prior to the issuance of a permit. The letter of intent shall bind all subsequent owners of the approved telecommunications tower.

(G) The proposed tower shall be designed and constructed to permit the capability for co-location of at least two other equal telecommunication uses, unless the tower is located on a protected ridge in which case one co-location provision is required.

(H) The applicant shall allow public entities use of a telecommunications tower at fair market value on a non-interfering basis if a request is made for such

use within 30 days of the filing of the permit application. If it is determined that the proposed tower is situated in a location that will benefit the telecommunication system of the county, a municipality within the county, a volunteer fire department serving the county, or other public entity, the tower shall be engineered and constructed to accommodate the additional telecommunication equipment beneficial to the public system.

(I) The owner of a telecommunications tower shall provide the county with a certificate of insurance showing evidence that it has general liability coverage of at least \$1,000,000, and the certificate shall contain a requirement that the insurance company notify the county 30 days prior to cancellation, modification or failure to renew the insurance coverage required.

(J) If the tower, or the equipment on the site, is of a type that will emit a continuous or frequent noise, the applicant must prove to the satisfaction of the Ordinance Administrator that sufficient actions are being taken to prevent such noise from being audible to surrounding residents and businesses. The tower shall be designed in such a manner that it is not reasonably likely that wind noise associated with the tower would be audible on adjoining properties.

(K) The base of the telecommunications tower shall be enclosed by a commercial-grade chain link fence (or some other fence of equal or greater quality) a minimum of eight feet in height, which can include no more than two feet of barbed wire.

(L) No tower shall exceed 175 feet in height. No tower located on any protected mountain ridge shall have at its highest point an elevation greater than 40 feet higher than the vegetative canopy immediately surrounding the base of the tower. If no vegetative canopy exists at the protected ridge, then the maximum tower height allowed shall be 100 feet.

(M) A single sign listing the name of the wireless telecommunication service provider operating the site, the site name or number and an emergency telephone number shall be posted at or near the entrance to the site so as to be readily visible to persons outside the

site's security fencing. Equipment hazard warning and informational signs are permitted. The posting of any other signs or advertising is prohibited at any wireless telecommunication facility or upon any telecommunication tower.

(N) The application must be accompanied by payment of a nonrefundable processing fee in the amount of \$2,500. The county may elect to retain outside consultants or professional services to review the application and make determinations and recommendations on relevant issues including, but not limited to, verification of the applicant's due diligence, analysis of co-location and other alternatives, and compliance with state and federal rules and regulations. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(O) The applicant shall identify any variances to the ordinance, the reasons for seeking the variances and any measures that are proposed to mitigate possible adverse effects of the proposed variance(s).

(P) Applicants shall first be encouraged to consider properties owned by Macon County, instrumentalities thereof, and municipalities before considering private properties as locations for wireless telecommunication facilities. Public properties shall be subject to the same restrictions and standards of appropriateness as private properties.

(Q) If construction is not begun within 12 months after the tower permit is issued, the tower permit shall expire. Prior to the expiration of the 12- month period, the applicant may request an extension of the permit for an additional 12 months from the Ordinance Administrator. The extension shall be granted upon proof that the delay was caused primarily by reasons beyond the applicant's control. There shall be no limit to the number of extensions granted so long as the request is submitted in a timely manner and supported by adequate proof that the delay was not caused by the applicant.

(R) All antennas placed on structures other than towers shall be concealed antennas, with the exception

of those placed on electric transmission or distribution towers. Antennas located on top of buildings or other structures shall not exceed 30% of the building height. Unless a permit is issued for a new telecommunications facility, an antenna shall not extend beyond the structure in any direction greater than 25 feet.

(S) No antenna shall be constructed on the property on which a National Register or other locally designated historic landmark is located.

(T) An annual wireless telecommunication facility permit shall be required for each wireless telecommunication facility within the jurisdiction of this chapter. The holder of the permit for a telecommunications tower shall file an annual permit report, on forms provided by the planning department, which shall demonstrate continuing compliance with the requirements of this article. Payment of a \$150 fee for each site shall be required before an annual permit shall be issued for calendar years, and shall not be pro-rated. The Ordinance Administrator shall make an on-site inspection of each site as part of the permit renewal to certify that the required signs are installed, fences are in good repair, no unauthorized towers are present, and the like. Failure to obtain an annual permit for a wireless telecommunication facility within 60 days after the commencement of the annual permit period shall result in the wireless telecommunication facility being deemed abandoned and subject to removal as specified in § 154.16.

(U) Fall zones and setbacks. Towers shall conform with each of the following minimum setback requirements:

(1) A fall zone clear of any buildings on the parcel containing the tower site (other than equipment enclosures associated with the wireless telecommunications facility) equal to one-half the height of the tower shall be required. The fall zone shall have a minimum 25-foot setback from all lot lines. If buildings (other than equipment enclosures associated with the wireless telecommunication facility) are located on an abutting property within a

distance equal to the tower height, a combined fall zone and setback equal to the tower height shall be required.

(2) A tower's setback may be reduced or its location in relation to a public street varied, at the sole discretion of the Board of Commissioners, to allow the integration of a tower into an existing or proposed structure such as a church steeple, light standard, electric transmission tower, or similar structure.

(V) Property located within the tower's fall zone shall not be subdivided as long as the tower is standing.

(W) The applicant shall certify that all equipment to be installed will be installed and maintained to conform with the applicable standards of the FCC regarding radio frequency/electromagnetic emissions. (Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.09 PUBLIC HEARING REQUIRED.**

Applications for new telecommunications towers, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter) shall require a quasi-judicial public hearing to be held before the Macon County Board of Commissioners before any decision is made to grant or deny an application.

(A) *Public notice required.* Notice of an application for a proposed telecommunication tower shall comply with the provisions of G.S. §§ 153A-323 and 153A-343 as amended and, at a minimum, shall comply with the following:

(1) *Newspaper notice.* The Ordinance Administrator shall cause a notice of any public hearing to be published as a legal advertisement in a newspaper of general circulation in Macon County once a week for two consecutive weeks, the first publication of which shall not appear less than ten days or more than 25 days prior to the date set for public hearing. The notice shall include the date, time,

and place of the hearing as well as information about the proposed telecommunication tower including its type, height, location and any other information the Ordinance Administrator shall deems necessary or appropriate.

(2) *Notice to affected property owners.* The applicant shall mail notice to affected property owners in accordance with the following provisions, and shall provide the Ordinance Administrator with a signed certification of compliance listing the names, addresses, and means of notification before any public hearing shall be conducted:

(a) Adjacent or abutting property owners. Notice of any public hearing shall be sent by certified mail (return receipt requested) to the owners of all parcels of land adjacent to or abutting the site of the proposed telecommunication tower at the last address listed for such owners in the county property tax records.

(b) Notice to other affected property owners. Notice to all other owners of properties within a ¼-mile radius shall be sent by first-class mail with proper postage affixed at the last address listed for such owners in the county property tax records.

(c) Timeliness of notice. Any notices required under the above subsections shall be mailed at least 10 but not more than 25 days prior to the date of the public hearing.

(3) *Posted notice.* A sign advertising the application for a proposed telecommunication tower, and any scheduled public hearing, shall be posted by the Ordinance Administrator in a prominent location on or rear the parcel containing the proposed telecommunication tower, or on a nearby public road. Such signs shall be posted at least ten days prior to any public hearings.

(4) Additional notice regarding material changes. In the event the applicant shall seek to increase the height of a proposed telecommunication tower, or move its location more than 50 feet laterally, from that stated in the original notices

required above, additional notice shall be required to be given in accordance with the above provisions and all required time periods shall run from the date of supplemental notification.

(B) *Presumption favoring existing structures.* A proposal for a new or additional telecommunication towers shall not be approved unless the Board of Commissioners finds that the equipment planned for the proposed tower cannot be accommodated on existing or approved towers, buildings or alternative structures more than 30 feet in height (after first considering electric transmission towers) within a ¼- mile search radius (1,320 feet) of the proposed telecommunication tower site due to one or more of the following reasons:

(1) The planned equipment would exceed the structural capacity of the existing or approved tower, building or structures, as documented by a qualified and licensed North Carolina professional engineer, and the existing or approved tower, building or structure cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment at a reasonable cost.

(2) The planned equipment would cause interference materially impacting the usability of other existing or planned equipment at the tower, building or other structure as documented by a qualified and licensed North Carolina engineer and the interference cannot be prevented at a reasonable cost.

(3) Existing or approved towers, buildings or other structures within the search radius, or combinations thereof, cannot accommodate the planned equipment at a height necessary to function reasonably as documented by a qualified and licensed North Carolina professional engineer.

(4) Other unforeseen reasons that make it infeasible to locate the planned telecommunications equipment upon an existing or approved tower, building or other structure.

(C) *Special conditions.* During the public hearing, the Board of Commissioners shall have the



authority to require special conditions in order to make the tower more compatible with surrounding properties, including one or more of the following but not limited to:

(1) The portion of the tower extending above the vegetative canopy shall be camouflaged to appear like the top of a coniferous tree with all antennas concealed within simulated foliage;

(2) Appropriate landscaping or other means shall be used to screen the facility as much as possible from neighboring properties;

(3) Eliminating the provision of co-location in order to reduce the height of the tower.  
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.10 CO-LOCATION ENCOURAGED.**

In order to encourage co-location and to avoid delays in the tower permitting process, the following will apply:

(A) On or before November 15 of each year, or the following Monday should November 15 fall on a weekend, every person, corporation, partnership or other entity who intends to erect telecommunications towers within the jurisdiction of this chapter shall submit to the Ordinance Administrator a preliminary plan which shall contain information as to the height, size, type, purpose, general location and reason for erection of every telecommunications tower anticipated to be erected during the following calendar year.

(B) Also, there shall be provided the name, address and telephone number of an individual designated as the point of contact with the Ordinance Administrator for discussion and resolution of telecommunications towers issues.

(C) Upon receipt of such plans, the Ordinance Administrator shall promptly review them and proceed to communicate with the designated points of contact

in an effort to maximize co-location and avoidance of possible tower placements in highly objectionable areas.

(D) If the Ordinance Administrator determines it to be appropriate, he or she is empowered by this chapter to convene a mandatory meeting conference to which all parties who have submitted plans will be required to send a representative, subject to the requirement that a minimum of five working days notice be given as the specific time and place of such conference.

(E) The purpose of such conference will be to discuss co-location of towers and any other issues pertaining to telecommunications towers which the Ordinance Administrator determines to be pertinent.

(F) The conference shall be open to the public. However, the Ordinance Administrator shall have the authority to limit public comment as he or she deems necessary to assure an orderly consideration of the agenda.

(G) In considering applications for individual telecommunications tower permits, the Ordinance Administrator shall require any applicant who has failed to include a proposed tower in its preliminary plan or has failed to have a representative present at a mandatory conference to submit in writing a satisfactory explanation for such failure prior to issuance of a permit. The Ordinance Administrator shall render a written decision which sets forth, with particularity, such findings of fact as necessary to show whether the applicant's explanation is or is not satisfactory.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.11 ELECTRIC TRANSMISSION TOWERS.**

(A) It is the policy of Macon County to encourage the use of electric transmission towers to deploy wireless infrastructure. In furtherance of that policy objective:

(1) No telecommunication tower shall be approved if an electric transmission tower is located above or no less than 25 feet below the ground elevation of and within a ¼-mile radius (1,320 feet) laterally of the proposed telecommunications tower site and if road access and necessary utilities can be obtained within a ¼-mile radius (1,320 feet) of the existing electric transmission tower, unless the applicant can demonstrate that sufficient easements or other interests in real property cannot be obtained to accommodate the wireless telecommunication facility, or that the electric utility owning the electric transmission tower is unwilling to allow its use for wireless facilities.

(2) Electric transmission towers less than 100 feet in height may be replaced by pressure-treated wooden or metal electric transmission towers up to 100 feet in height. Such replacement shall be at the discretion of the electric utility which owns or operates the electric transmission tower, taking into account safety, service disruptions, structural capacity and structure life or duty cycle. For purposes of this chapter, such replacement electric transmission towers shall be deemed to be existing structures.

(B) Antennas that are placed on electric transmission or distribution towers are not required to be concealed.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.12 INSTALLATIONS UTILIZING EXISTING STRUCTURES.**

(A) *Generally.* It is the policy of Macon County to encourage use of existing structures and co-location. In furtherance of these policy objectives, wireless telecommunication facilities which do not require the placement or construction of a telecommunications tower, increases in tower height, or substantial increases in height of alternative structures (as defined by this chapter), and which otherwise meet the requirements of this chapter, shall enjoy a streamlined approval process. For purposes of this chapter, existing telecommunication towers requiring substantial increases in the height of

alternative structures (as defined in this chapter) shall be treated the same as applications for a new or additional telecommunication tower(s).

(B) *Approval process.* Applications for wireless telecommunication facilities which do not require a new or additional telecommunications tower, increases in tower height, or substantial increases in height of alternative structures (as defined in this chapter) may be approved by the Ordinance Administrator without public hearing. Applications shall be in a form and shall contain such information as required by this chapter, and, in addition, such other information as the Ordinance Administrator shall deem necessary and appropriate. An application shall not be deemed complete until the application fee and maintenance/removal bond have been received by the county.

(C) *Application fee.* Payment of a \$500 nonrefundable application fee shall be required. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the application fee.

(D) *Maintenance/Removal bond.* An applicant for a wireless telecommunication facility that does not include a new or additional telecommunication tower, or require an increase in tower height or heights of alternative structures, shall be required to post a \$5,000 cash bond, or other security satisfactory to the county, to secure the costs of maintaining the exterior appearance of the facility if the wireless provider fails to do so continually, or removing such facility in the event the applicant shall fail to do so within 90 days of abandonment or cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as all above-ground portions of the facility (not including any part of the foundation) have been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the maintenance/removal bond.  
(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

### **§ 154.13 OTHER PROVISIONS.**

(A) *Natural disasters.* To the greatest extent possible, wireless telecommunication facilities shall be designed to survive a natural disaster without interruption in operation. Toward this end, the following measures shall be implemented:

(1) Non-flammable exterior wall and roof covering shall be used in the construction of equipment enclosures.

(2) Openings in all equipment enclosures shall be protected against penetration by fire and windblown embers.

(3) The telecommunication tower when fully loaded with antennas and other equipment and camouflaging shall be designed to withstand the forces expected during the maximum credible earthquake. All equipment mounting racks and equipment shall be anchored in such a manner that such a quake will not tip them over, throw equipment off shelves, or otherwise act to damage equipment.

(4) Reasonable measures shall be taken to keep the facility operational in the event of a natural disaster or other catastrophe. Back-up generators are required at all wireless telecommunication facilities.

(B) *Temporary facilities.* Temporary wireless telecommunication facilities shall be permitted as follow:

(1) Temporary facilities may be placed at or near the location of an existing proposed or approved

wireless telecommunication facility for periods of up to 72 hours for equipment testing purposes or where the existing facility is unavailable due to scheduled or unscheduled maintenance.

(2) In the event of a natural disaster, catastrophic event or public emergency that either renders an existing wireless telecommunication facility unusable, or creates an urgent need for supplemental capacity to manage the emergency, temporary facilities may be placed for periods of up to one week.

Permits for the temporary facilities may be extended for successive one week periods for the duration of the emergency as determined by the Ordinance Administrator.

(3) Permits may be issued for up to one week for temporary facilities needed in conjunction with scheduled special events at specific locales that are likely to generate a need for additional capacity at the event which is expected to exceed existing installed capacity.

(4) Permits for temporary facilities shall be issued by the Ordinance Administrator upon proof of eligibility and payment of a \$50 permit fee.

(C) *Nonconforming uses.* Any wireless telecommunication facility in existence on the date of enactment of this chapter which does not comply in all respects with the provisions of this chapter shall be deemed a nonconforming use. Such pre-existing facilities may not be increased in height without complying with the provisions of this chapter. In the event such facility shall be destroyed, or suffer damage in excess of 50% of the tax value of the facility's improvements, such facility shall not be repaired or replaced and shall be removed unless any replacement facility complies in all respects with the provisions of this chapter. Except in the case of destruction or damage in excess of 50% of the tax value of the facility's improvements, technological upgrades of electronics and antennas are permitted.

(D) *Amateur radio operator towers.* Antennas or antenna arrays employed as part of a wireless telecommunication facility operated by a private business user, governmental user or commercial wireless service provider may not be co-located on a tower or other support structure used by an amateur radio operator.

(E) *Tower lighting.*

(1) No tower shall be of a type or height, or placed in a location, that the Federal Aviation Administration would require the tower to be lighted or painted.

(2) Towers shall not be illuminated by artificial means and shall not display strobe lights or other warning lighting unless, in a particular instance, the Board of Commissioners requires a tower to be lit. The applicant shall be required to certify that the proposed telecommunication tower is not required to be painted or illuminated by any FAA rule or regulation.

(3) When incorporated into the approved design of a tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.

(4) A wireless telecommunication facility may utilize a security light controlled by a motion-detection sensor at or near the entrance to the facility.

(F) *Macon County Airport restrictions.* No new telecommunications tower shall interfere with or protrude into the glide path of any runway in any direction of the Macon County Airport. (Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.14 VARIANCES.**

(A) *Procedure.* A request for a variance must be submitted by the applicant in writing to the Board of Adjustment within 15 days of receipt of notice of an adverse decision by the Ordinance Administrator. The Planning Board may grant such variance upon findings that the following conditions exist:

(1) Extraordinary and exceptional conditions pertaining to the particular place or property in question because of its size, shape, topography or requirement for a microwave link that are not applicable to other telecommunication tower sites governed by this chapter.

(2) The variance will not confer upon the applicant any special privileges that are denied to other operators of telecommunications towers governed by this chapter.

(3) A literal application of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other operators of telecommunications towers governed by this chapter.

(4) The variance will be in harmony with the purpose and intent of this chapter and will not be injurious to the neighborhood or the general welfare.

(5) The variance is necessary for the applicant to achieve operational objectives, including co-location of antennas.

(B) *Board of Adjustment findings.* The Board of Adjustment shall make written findings to support its decision either granting or denying the variance, and a copy shall be provided to the applicant. The Board of Adjustment may attach to any variance such conditions as it deems necessary and appropriate. A request for a variance under this section shall not constitute an admission by the applicant of any findings of fact made by the Ordinance Administrator or a waiver of appeal rights provided by § 154.17.

(C) *Issuance of a permit.* Should the Board of Adjustment grant the requested variance, the Ordinance Administrator shall issue a tower permit. The permit applicant shall acknowledge and agree in writing to the permit conditions, if applicable, imposed by the Board of Adjustment. If construction is not begun within a 12-month period after the tower permit is issued, the tower permit shall expire, subject to the renewal option stated in § 154.08(T).

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.15 CONTINUED COMPLIANCE REQUIRED.**

All permits for the erection of a telecommunications tower are issued in reliance upon a presumption that the tower will in fact conform to the plans which are submitted as the basis for the permit, and once erected the tower must continue to be at all times maintained in compliance with the provisions of §§ 154.08 through 154.12.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

Penalty, see § 154.99

#### **§ 154.16 MAINTENANCE/REMOVAL AGREEMENT.**

(A) A permit application for a new telecommunications tower shall be accompanied by those portions of an executed copy of a lease requiring the applicant to remove all above-ground portions of wireless telecommunication facilities (not including any part of the foundation) no later than 90 days after cessation of operations. In addition, each applicant for a new telecommunications tower shall execute a standard facility maintenance/removal agreement prior to issuance of the permit. Said agreement shall bind the applicant and the applicant's successors-in-interest to properly maintain the exterior appearance of and ultimately remove the facility in compliance with the provisions of this chapter and any conditions of approval. It shall further bind them to pay all costs for monitoring compliance with, and enforcement of, the agreement and to reimburse the county for all costs incurred to perform any work required of the applicant by the agreement that the applicant fails to perform. Such costs shall include, but not be limited to, administrative and job supervision costs. It shall also specifically authorize the county and/or its agents to enter onto the property and undertake the work so long as the Ordinance Administrator has first provided the applicant the following written notices at the applicant's last known address:

(1) An initial compliance request identifying the work needed to comply with the agreement and providing the applicant at least 30 days to complete the work; and

(2) A follow-up notice of default specifying the applicant's failure to comply with the work within



the time period specified and indicating the county's intent to commence the required work within ten days.

(B) The permit applicant for a new telecommunications tower shall be required to post a \$10,000 cash bond, or other security satisfactory to the county, to secure the costs of removing all above-ground portions of a wireless telecommunication facility (not including any part of the foundation) in

the event the applicant shall fail to do so within 90 days of cessation of operation of the facility. The applicant shall be required to continue such bond or other security until such time as the facility has been removed and all other requirements of its maintenance/removal agreement have been satisfied. Private business users operating a single wireless telecommunication facility at their principal place of business and governmental users are exempt from the bond requirement.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.17 APPEALS.**

The denial of a variance by the Board of Adjustment, or the imposition of any conditions precedent to the issuance of a telecommunications tower permit, may be appealed to the Superior Court of Macon County within 30 days from the date of the decision.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

#### **§ 154.99 PENALTY.**

A violation of this chapter shall be a misdemeanor subject to the penalties and enforcement provisions of G.S. § 153A-123, specifically including injunctions and abatement orders as provided by said statute.

(Ord. passed 5-5-1998; Am. Ord. passed 12-3-2001)

of Macon County, North Carolina, does enact this chapter, which shall be known as the *Voluntary Farmland Preservation Chapter of Macon County, North Carolina*.  
(Ord. passed 2-4-1997)

## **CHAPTER 155: VOLUNTARY FARMLAND PRESERVATION**

### **Section**

- 155.01 Title
- 155.02 Purpose
- 155.03 Enactment
- 155.04 Definitions
- 155.05 Agricultural Advisory Board
- 155.06 Application for certification of qualifying farmland and voluntary agricultural districts
- 155.07 Revocation of preservation agreement
- 155.08 Public hearings
- 155.09 Waiver of water and sewer assessment
- 155.10 Land use incentives to voluntary agricultural district formation
- 155.11 North Carolina agency notification

### **§ 155.01 TITLE.**

This chapter shall be known and may be cited as the *Voluntary Farmland Preservation Chapter of Macon County, North Carolina*, codified as Chapter 155 of The Macon County Code.  
(Ord. passed 2-4-1997)

### **§ 155.02 PURPOSE.**

The purpose of this chapter is to encourage the voluntary preservation and protection of farmland from non-farm development, recognizing the importance of agriculture to the economic and cultural life of this county.  
(Ord. passed 2-4-1997)

### **§ 155.03 ENACTMENT.**

Pursuant to authority conferred by G.S. §§ 106-735 through 106-743, and for the purpose of promoting the health, safety, morals, and general welfare of the County, the Board of Commissioners

### **§ 155.04 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**BOARD.** Macon County Agricultural Advisory Board.

**CHAIRMAN.** Chairman of the Agricultural Advisory Board.

**DISTRICT.** Voluntary Agricultural District.  
(Ord. passed 2-4-1997)

### **§ 155.05 AGRICULTURAL ADVISORY BOARD.**

(A) *Creation.* The Macon County Agricultural Advisory Board, consisting of five members to be appointed by the Board of County Commissioners, is hereby established.

(B) *Membership.*

(1) *Requirements.*

(a) Each board member shall be a resident of Macon County.



(b) Three of the five members shall be actively engaged in farming.

(c) The three members actively engaged in farming shall be selected for appointment by the Board of County Commissioners from the names of individuals submitted to the Board of County Commissioners by the Soil and Water Conservation District, the North Carolina Cooperative Extension Service and the Farm Services Agency Committee, so as to provide the broadest geographical representation possible.

(2) *Tenure*. Each member's term of office shall be for three years, except that the initial board is to consist of one appointee for a term of one year; two appointees for terms of two years; and two appointees for terms of three years. Reappointments shall be permitted.

(3) *Vacancies*. Any vacancy on the Agricultural Advisory Board is to be filled by the Board of County Commissioners for the remainder of the unexpired term.

(4) *Removal for cause*. Any member of the Agricultural Advisory Board may be removed for cause by the Board of County Commissioners upon written charges and after a public hearing.

(C) *Funding*.

(1) The per diem compensation of the members of the Board while on official business outside the county shall be fixed by the Board of County Commissioners.

(2) Funds shall be appropriated to the Board to perform its duties.

(D) *Procedure*.

(1) *Chairman*. The Board shall elect a Chairman and Vice-Chairman each year at its first meeting of the fiscal year. The Chairman shall preside over all regular or special meetings of the Board. In the absence or disability of the Chairman, the Vice-

Chairman shall preside and shall have and exercise all the powers of the Chairman so absent or disabled. Additional officers may be elected as needed.

(2) *Jurisdiction.* The jurisdiction and procedures of the Board are set out herein, except that as the Board may adopt supplementary rules of procedure not inconsistent with this chapter or with other provisions of law.

(3) *Board year.* The fiscal year of the Board shall be the county fiscal year.

(4) *Meetings.* Meetings of the Board, following such notice as required by this chapter, shall be held at the call of the chairman and at such other times as the Board in its rules of procedure may specify. A called meeting shall be held at least every two months.

(5) *Majority Vote.* The concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or agency, to decide in favor of an applicant, or to pass upon any other matter on which it is required to act under this chapter.

(6) *Records.* The Board shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record.

(7) *Administrative.* The Macon County Agricultural Advisory Board may contract with the Natural Resources Conservation Services District Office to serve the Board for record keeping, correspondence, application procedures under this chapter, and whatever other services the Board needs to complete its duties.

(E) *Duties.* The Agricultural Advisory Board shall:

(1) Review and approve applications for qualified farmland and voluntary agricultural districts and make recommendations concerning the establishment and modification of agricultural districts.

(2) Hold public hearings pursuant to § 155.08 of this chapter.

(3) Advise the Board of County Commissioners on projects, programs or issues affecting the agricultural economy or activities within the county that will affect agricultural districts.

(4) Perform other related tasks or duties assigned by the Board of County Commissioners.

(5) Each district shall be assigned to a member of the Board who will monitor compliance and represent that district in all business conducted by the Board.  
(Ord. passed 2-4-1997)

#### **§ 155.06 APPLICATION FOR CERTIFICATION OF QUALIFYING FARMLAND AND VOLUNTARY AGRICULTURAL DISTRICTS.**

*(A) Requirements.*

(1) To secure county certification as qualifying farmland, a farm must:

(a) Be participating in the farm present-use-value taxation program established by G.S. §§ 105-277.2 through 105-277.7 or is otherwise determined by the Macon County Agricultural Advisory Board to meet all the qualifications of this program set forth in G.S. § 105-277.3.

(b) Be certified by the Natural Resources Conservation Service of the United States Department of Agriculture as being a farm on which at least two-thirds of the land is composed of soils that:

1. Are best suited for providing food, seed, fiber, forage, timber and oil seed crops,
  2. Have good soil qualities,
  3. Are favorable for all major crops common to the county where the land is located,
  4. Have a favorable growing season, and
  5. a. Receive the available moisture needed to produce high yields for an average of eight out of ten years; or  
b. Have been actively used in agricultural, horticultural or forestry operations as defined in G.S. § 105-277.2 (1,2, and 3) during each of the five previous years, measured from the date on which the determination must be made as to whether the land in question qualifies;
- (c) Be managed, if highly erodible land exists on the farm, in accordance with the Farm Services Agency committee defined erosion-control practices that are addressed to said highly-erodible land;
- (d) Be the subject of a conservation agreement, as defined in G.S. § 121-35 , between the county and the owner of such land that prohibits non-farm use or development of such land for a period of at least ten years, except for the creation of not more than three lots that meet applicable county zoning and subdivision regulations within that period.
- (2) To form or be included in a voluntary agricultural district, a landowner may apply to the chairman for such inclusion at the same time he or she applies for qualifying farmland certification, or at any time subsequent to receiving qualifying farmland certification.
- (a) The purpose of voluntary agricultural districts formed by landowners shall be to encourage the economic and financial health of



farming areas, to increase protection from nuisance suits, undesired non-farm development, and other negative impacts on participating farms and to increase the identity and pride in the agricultural community and its way of life.

(b) Requirements to participate:

1. a. An agricultural district shall consist of at least 30 contiguous acres or more of qualifying farmland; or

b. Two or more qualifying farms consisting of a total of at least 50 acres and lying within one mile of each other.

2. An agreement to sustain, encourage and promote agriculture must be executed by the landowners in the district with the county and recorded therein.

(c) Landowners may apply to participate in existing districts and are encouraged to do so.

(B) *Application procedure.*

(1) To secure county certification as a qualifying farm, and if so desired by the applicant, as an agricultural district, a landowner for such certification will apply to the chairperson of the Agricultural Advisory Board. Application forms may be obtained from the chairperson.

(2) Upon receipt of an application, the chairman will forward copies immediately to:

(a) County tax assessors office

(b) Macon County Natural Resources Conservation Service District Offices and the Farm Services Agency. The said offices shall evaluate, complete and return their comments to the chairperson within 30 days of receipt. The evaluation by the Soil and Water Conservation District and the MRCS may be made jointly.

(3) Within 30 days of receipt of the evaluations, the Board shall meet and render a decision regarding the application. The Chairperson shall notify the applicant by mail if the real property for which certification is sought satisfies the criteria established in division (A) above of this section and if the land has been certified as qualifying farmland, and also as a voluntary agricultural district, if application was so sought.

(4) If the application is denied by the Agriculture Advisory Board, the petitioner has 30 days to appeal the decision to the Macon County Board of Commissioners. Such appeal shall be presented in writing. The decision of the Board of Commissioners is final.

(C) *District maps.* Voluntary agricultural districts shall be marked on county maps which shall be available for public inspection in the following county offices:

- (1) Register of Deeds;
- (2) Building Inspections Department;
- (3) Natural Resources Conservation Service;
- (4) Cooperative Extension Center;
- (5) Land Records Divisions of the Tax Assessors's office;
- (6) Any other office deemed necessary by the Board.

(D) *Action to inform.* The county may take such action as it deems appropriate through the Agricultural Advisory Board or other body or individual to encourage the formation of voluntary agricultural districts and to further their purposes and objectives, including at a minimum a public information program to reasonably inform landowners of the Farmland Preservation Program.  
(Ord. passed 2-4-1997)

#### **§ 155.07 REVOCATION OF PRESERVATION AGREEMENT.**

By written notice to the Board, a landowner of qualifying farmland may revoke the preservation agreement formulated pursuant to § 155.06, or the Board may revoke same preservation agreement based on noncompliance by the landowner.  
(Ord. passed 2-4-1997)

#### **§ 155.08 PUBLIC HEARINGS.**

(A) *Purpose.* Pursuant to G.S. § 106-740, which states that the county in enacting a Farmland Preservation Chapter may provide that no state or local public agency or governmental unit may formally initiate any action to condemn any interest in qualifying farmland within a voluntary agricultural district until such agency or unit has requested the local Agricultural Advisory Board to hold a public hearing on the proposed condemnation, this section provides for such hearings.

(B) *Procedure.*

(1) Upon receiving a request, the Agricultural Advisory Board shall publish notice describing the proposed action in the appropriate newspapers of the area within five working days of the request, and will in the same notice notify the public of the time, date, and place of a public hearing on the proposed condemnation, to be held within 30 days of receipt of the request.

(2) The Board shall meet to review:

(a) If the need for the project has been satisfactorily established by the agency or unit of government involved, including a review of any fiscal impact analysis conducted by the agency involved;

(b) Alternatives to the proposed action that are less impactive and disruptive to the agricultural activities and farm land base of the voluntary agricultural district within which the proposed action is to take place.

(3) The Board shall consult with the county Agricultural Extension Agent, U.S.D.A. Natural Resource Conservation Service District conservationist, and may consult with any other individuals, agencies or organizations, public or private, necessary to the Board's review of the proposed action. Land value will not be a factor in the selection between properties under consideration for the proposed condemnation.

(4) Within ten days after the public hearing, the Board shall make a report containing its findings and recommendations regarding the proposed action. The report shall be made available to the public for comment prior to its being conveyed to the decision-making body of the agency proposing acquisition.

(5) Pursuant to G.S. § 106-740, the county shall not permit any formal initiation of condemnation by any state or local agency while the proposed condemnation is properly before the advisory board within these time limitations.

(Ord. passed 2-4-1997)

#### **§ 155.09 WAIVER OF WATER AND SEWER ASSESSMENT.**

(A) *Purpose.* The purpose of this section is to help mitigate the financial impacts on farmers of some local and state capital investments unused by said farmers.

(B) *Procedure.*

(1) Landowner(s) belonging to voluntary agricultural districts shall not be assessed for, or required to connect to water and/or sewer systems.

(2) Water and sewer assessments shall be held in abeyance, without interest or penalty, for farms inside a voluntary agricultural district, until improvements on such property are connected to the water or sewer system for which the assessment was made.

(3) When the period of abeyance ends, the assessment is payable in accordance with the terms set out in the assessment resolution.

(4) Statutes of limitations are suspended during the time that any assessment is held in abeyance without interest and/or penalty.

(5) Assessment procedures followed under G.S. §§ 153A-185 *et seq.* shall conform to the terms of this chapter with respect to qualifying farms that entered into preservation agreements while such chapter was in effect.

(6) Nothing in this section is intended to diminish the authority of the county to hold assessments in abeyance under G.S. § 153A-201.

(Ord. passed 2-4-1997)

***Statutory reference:***

*Authority to make assessments, see G.S.*

*§§ 153A-185 et seq.*

*Authority to hold assessments in abeyance, see*

*G.S. § 153A-201*

**§ 155.10 LAND USE INCENTIVES TO VOLUNTARY AGRICULTURAL DISTRICT FORMATION.**

(A) *Purpose.* The purpose of this section is to help meet the needs of agriculture as an industry and prevent conflicts between voluntary agricultural district participants and non-farm landowners in proximity to districts.

(B) *Procedure.*

(1) The Agricultural Advisory Board, in cooperation with the county, shall provide notification to property owners, residents and other interested persons in and adjacent to any designated agricultural district. The purpose of such notification is to inform all current and potential residents and property owners in and adjacent to an agricultural district that farming and agricultural activities may take place in this district any time during the day or night. These activities may include, but are not limited to the

following: pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities.

(2) Provisions of this chapter do not provide any exemptions to best management practices or to guidelines and standards for control of point source and non-point source pollution that may otherwise apply to lands and activities on those lands in an agricultural district.

(C) *Types of notification.*

(1) Signs identifying approved agricultural districts shall be placed along the rights-of-way of major roads.

(2) Maps identifying approved districts shall be provided to the Register of Deeds, Building Inspections Department, the Natural Resources Conservation Services Office, The Cooperative Extension Office, and the Land Records Office.

(3) The following notice shall be available for public inspections in the Register of Deeds Office:

**“NOTICE TO REAL ESTATE PURCHASERS  
IN MACON COUNTY OF THE EXISTENCE  
OF VOLUNTARY AGRICULTURAL  
DISTRICTS FOR FARMLAND  
PRESERVATION**

Macon County has established voluntary agricultural districts for farmland preservation to protect and preserve agricultural lands and activities. These districts have been developed and mapped by the county to inform all purchasers of real property that certain agricultural activities, including, but not limited to, pesticide spraying, manure spreading, machinery operations, livestock operations, sawing, and similar activities may take place in these districts any time during the day or night. Maps and information on the location and establishment of these districts can be obtained from the Macon County Planning Office.”

(D) *Limitations.* Voluntary agricultural districts will not be permitted in designated county growth areas, if such areas are delineated on an official county planning map as of the date this chapter is adopted. (Ord. passed 2-4-1997)

#### **§ 155.11 NORTH CAROLINA AGENCY NOTIFICATION.**

(A) The Board shall consult as much as possible with the North Carolina Department of Agriculture, the North Carolina Division of Natural Resources and any other entity the Board deems necessary to the proper conduct of its business.

(B) A record of this chapter shall be recorded with the North Carolina Commissioner of Agriculture's office after adoption. At least once a year the county shall submit a written report to the Commissioner of Agriculture, including the status, progress and activities of the county's Farmland Preservation Program, including voluntary agricultural districting information regarding:

- (1) Number of landowners enrolled;
- (2) Number of acres applied;
- (3) Number of acres certified;
- (4) Number of acres denied;
- (5) Date certified.

(C) Copies of the reports cited in division (B) above of this section will be sent to:

- (1) N.C. Department of Transportation;
- (2) Secretary, N.C. Department of Commerce;
- (3) Franklin Area Chamber of Commerce;

(4) Any other entities the Board deems appropriate.  
(Ord. passed 2-4-1997)



## **CHAPTER 156: WATERSHED PROTECTION**

### **Section**

#### ***General Provisions***

- 156.01 Authority and enactment
- 156.02 Jurisdiction
- 156.03 Exceptions to applicability
- 156.04 Definitions

#### ***Subdivision Regulations***

- 156.15 General provisions
- 156.16 Subdivision application and review procedures
- 156.17 Subdivision standards and required improvements within the public water supply watershed
- 156.18 Construction procedures
- 156.19 Penalties for transferring lots in unapproved subdivisions

#### ***Development Regulations***

- 156.30 Establishment of watershed areas
- 156.31 Watershed areas described
- 156.32 Cluster development
- 156.33 Buffer areas required
- 156.34 Rules governing interpretation of watershed area boundaries
- 156.35 Application of regulations
- 156.36 Existing development
- 156.37 Watershed protection permit
- 156.38 Building permit required

#### ***Public Health Regulations***

- 156.50 No threat to public health permitted
- 156.51 Abatement

162

#### ***Administration, Enforcement and Appeals***

- 156.65 Watershed Administrator
- 156.66 Appeal from Administrator
- 156.67 Changes and amendments to chapter
- 156.68 Public notice and hearing required
- 156.69 Establishment of Watershed Review Board
- 156.70 Rules of conduct for members
- 156.71 Powers and duties of Board
- 156.72 Appeals from Watershed Review Board
- 156.73 Remedies

#### ***Drainage of Impoundments Within the Watershed Area of the Town of Highlands***

- 156.85 Authority
- 156.86 Purpose and scope
- 156.87 Jurisdiction
- 156.88 Definitions
- 156.89 Permit required before draining impoundment
- 156.90 Penalties and remedies
- 156.91 Appeals
- 156.92 Conflict with other laws

156.93 No implied warranty or guaranty  
Appendix: Highlands Watershed  
156.99 Penalty  
163

### **GENERAL PROVISIONS**

#### **§ 156.01 AUTHORITY AND ENACTMENT.**

The Legislature of the State of North Carolina has, in G.S. §§ 153A-121 *et seq.*, General Ordinance Authority; and in G.S. § 143-214.5, Water Supply Watershed Protection, 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 Board of Commissioners does hereby ordain and enact into law the following sections as the *Watershed Protection Ordinance of Macon County*.

(Ord. passed 11-15-1993)

#### **§ 156.02 JURISDICTION.**

The provisions of this chapter 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 maps entitled, watershed protection maps of Macon County, North Carolina (the watershed maps), which are adopted simultaneously herewith. The watershed maps and all explanatory matter contained thereon accompany and are hereby made a part of this chapter. This chapter shall be permanently kept on file in the office of the County Manager.

(Ord. passed 11-15-1993)

#### **§ 156.03 EXCEPTIONS TO APPLICABILITY.**

(A) Nothing contained herein shall repeal, modify, or amend any federal or state law or regulation, or any ordinance or regulation pertaining thereto except any ordinance which these regulations specifically replace; nor shall any provision of this chapter amend, modify, or restrict any provisions of the Code of Ordinances of Macon County; however, the adoption of this chapter shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this chapter that may be construed to impair or reduce the effectiveness of this chapter 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 chapter, is regulated under the provisions as stated in § 156.36.

(D) A pre-existing lot established prior to the effective date of this chapter, regardless of whether or not a vested right has been established, may be developed for single-family residential purposes without being subject to the restrictions of this chapter.

(Ord. passed 11-15-1993)

#### **§ 156.04 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning. 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.

**AGRICULTURAL USE.** The use of waters for stock watering, irrigation, and other farm purposes.

**ANIMAL UNIT.** A unit of measurement developed by the U.S. Environmental Protection Agency that is used to compare different types of animal operations.

**BEST MANAGEMENT PRACTICES (BMPS).** A structural or nonstructural management-based practice used singularly or in combination to reduce non-point 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 open structure, with or without a roof, shall not be deemed to make them one building.

**BUILT-UPON AREA.** Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (such as roads, parking lots, paths), recreation facilities (such as tennis courts), and the like. (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. This term includes non-residential development as well as singlefamily residential subdivisions and multi-family developments that do not involve the subdivision of land.

**COMPOSTING FACILITY.** A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**CRITICAL AREA.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either ½ mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or ½ mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first). Since WS-K watersheds are essentially undeveloped, establishment of a critical area is not required. Local governments may extend the critical area as needed. 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 earned 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 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, and the like.

**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 infiltrating of precipitation into the soil.

**DISCHARGING LANDFILL.** A landfill which discharges treated leachate and which requires a National Pollution Discharge Elimination System (NPDES) permit.

**DWELLING UNIT.** A building, or portion thereof, providing complete and permanent living facilities for one family.

**EXISTING DEVELOPMENT.** Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this chapter 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 G.S. § 153A-344.1 and G.S. § 160A-385.1), or
- (3) Having an approved site specific or phased development plan as authorized by G.S. § 153A-344.1 and G.S. § 160A-385.1).

**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 implementation of this chapter, or a lot described by metes and bounds, the description of which has been so recorded prior to the implementation of this chapter.

**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 or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

**LANDFALL.** A facility for the disposal of solid waste on land in a sanitary manner in accordance with G.S. Chapter 130A, Article 9. For the purpose of this chapter this term does not include composting facilities.

**LOT.** A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same. Includes the words, "plot," "parcel," or "tract."

**MAJOR VARIANCE.** A variance from the minimum statewide water supply watershed protection rules that results in any one or more of the following:

The relaxation, by a factor of more than 10%, of any management requirement that takes the form of a numerical standard.

**MINOR VARIANCE.** A variance from the minimum statewide watershed protection rules that results in the relaxation, by a factor of up to 10%, of any management requirement under the low density option.

**NONCONFORMING LOT OF RECORD.** A lot described by a plat or a deed that was recorded prior to the effective date of this chapter (or its amendments) that does not meet the minimum size or other development requirements of this chapter.

**NON-RESIDENTIAL DEVELOPMENT.** All development other than residential development, agriculture and silviculture.

**PERSON.** Includes a firm, association, corporation; trust, and company as well as an individual.

**PLAT.** A map or plan of a parcel of land which is to be, or has been subdivided.

**RECREATIONAL VEHICLE.** A vehicle, which is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**RECREATIONAL VEHICLE PARK OR SUBDIVISION.** A tract or parcel (or contiguous parcels) of land divided into two or more lots or RV parking sites for rent or sale for occupancy by recreational vehicles used as temporary living quarters or for storage of a recreational vehicle.

**RESIDENTIAL DEVELOPMENT.** Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, and the like, and their associated outbuildings such as garages, storage buildings, gazebos, and the like and customary home occupations.

**SHALL.** Is always mandatory and not merely directory.

**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.

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

**SUBDIVISION.** All divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street or a change in existing streets; but the following shall

not be included within this definition nor be subject to the regulations authorized by this chapter:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this chapter;
- (2) The division of land into parcels greater than ten acres where no street right-of-way dedication is involved;
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets;
- (4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of this chapter;
- (5) The division of a tract into plots or lots used as a cemetery.

**TOXIC SUBSTANCE.** Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

**VARIANCE.** A permission to develop or use property granted by the Watershed Review Board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this chapter.

**WATER DEPENDENT STRUCTURE.** Any structure for which the use requires access to or proximity to or siting 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 (such as the water supply intake.)

**WATERSHED ADMINISTRATOR.** An official or designated person of Macon County responsible for administration and enforcement of this chapter.

**WILL.** Is always mandatory and not merely directory.

(Ord. passed 11-15-1993)

### **SUBDIVISION REGULATIONS**

#### **§ 156.15 GENERAL PROVISIONS.**

(A) No subdivision plat of land within a public water supply watershed shall be filed or recorded by the Macon County Register of Deeds until it has been approved in accordance with the provisions of this chapter. Likewise, the Macon County 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 chapter.

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

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

(D) All subdivisions of land within the public water supply watershed jurisdiction of the county after the effective date of this chapter shall require a plat to be prepared, approved, and recorded pursuant to this chapter.

(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.16 SUBDIVISION APPLICATION AND REVIEW PROCEDURES.**

(A) All proposed subdivisions within the county's jurisdiction shall be reviewed prior to recording with the Macon County Register of Deeds by submitting a vicinity map to the Watershed Administrator to determine whether or not the property is located within a designated public water supply watershed. Subdivisions that are not within the designated watershed area shall not be subject to the provisions of this chapter and may be recorded provided the Watershed Administrator initials the vicinity map. Subdivisions within the designated watershed area shall comply with the provisions of this chapter and all other state and local requirements that may apply.

(B) Subdivision applications shall be filed with the Watershed Administrator on forms provided by the Administrator. The application shall include a completed application form, two copies of the plat and supporting documentation deemed necessary by the Watershed Administrator or the Watershed Review Board.

(C) The Watershed Administrator shall review the completed application and either approve, approve conditionally or disapprove the application. The Watershed Administrator shall take final action within 45 days of his/her receipt of the application. The Watershed Administrator may provide public agencies an opportunity to review and make recommendations. However, failure of the agencies to submit their comments and recommendations shall not delay the Watershed Administrator's action within the prescribed time limit. The public agencies may include, but are not limited to the following:

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

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

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

(4) Any other agency or official designated by the Watershed Administrator.

(D) If the Watershed Administrator approves the application, such approval shall be indicated on both copies of the plat by the following certificate and signed by the Watershed Administrator:

**Certificate of Approval for Recording**

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

Date Watershed Administrator

**Notice:** this property is located within a public water supply watershed - development restrictions may apply.

(E) If the Watershed Administrator disapproves or approves conditionally the application, the reasons for such action shall be stated in writing for the applicant. The subdivider may make changes and submit a revised plan, which shall constitute a separate request for the purpose of review.

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

(Ord. passed 11-15-1993)

**§ 156.17 SUBDIVISION STANDARDS AND REQUIRED IMPROVEMENTS WITHIN THE PUBLIC WATER SUPPLY WATERSHED.**

(A) *Adequate building space.* All lots shall provide adequate building space in accordance with the development standards contained in §§ 156.30 through 156.38. Lots which are smaller than the minimum required for residential lots shall be identified on the plat as, "NOT FOR RESIDENTIAL PURPOSES."

(B) *Total project area.* For the propose of calculating built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

(C) *Storm water drainage facilities.* The application shall be accompanied by a description of the proposed method of providing storm water drainage. The subdivider shall provide a drainage system that diverts storm water run-off away from surface waters and incorporates best management practices to minimize water quality impacts.

(D) *Erosion and sedimentation control.* The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan has been submitted to and approved by the State Division of Land Quality.

(E) *Roads constructed in critical areas and watershed buffer areas.* Where possible, roads should be located outside of critical areas and watershed buffer areas. Roads constructed within these areas shall be designed and constructed so as to minimize their impact on water quality.

(Ord. passed 11-15-1993) Penalty, see § 156.99

**§ 156.18 CONSTRUCTION PROCEDURES.**

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

(B) No building or other permits shall be issued for erection of a structure on any lot not of record at the

time of adoption of this chapter until all requirements of this chapter have been met. The subdivider, prior to commencing any work within the subdivision, shall make arrangements with the Watershed Administrator to provide for adequate inspection. (Ord. passed 11-15-1993) Penalty, see § 156.99

**§ 156.19 PENALTIES FOR TRANSFERRING LOTS IN UNAPPROVED SUBDIVISIONS.**

Any person who, being the owner or agent of the owner of any land located within the jurisdiction of Macon County, thereafter subdivides his or her land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this chapter and recorded in the office of the Register of Deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The county may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with this chapter. (Ord. passed 11-15-1993)

***DEVELOPMENT REGULATIONS***

**§ 156.30 ESTABLISHMENT OF WATERSHED AREAS.**

- (A) The purpose of this subchapter is to list and describe the watershed areas herein adopted.  
(B) For purposes of this subchapter, the county is hereby divided into the following areas, as appropriate:
- (1) WS-I;
  - (2) WS-II-CA (Critical Area);
  - (3) WS-II-BW (Balance of Watershed);
  - (4) WS-III-CA (Critical Area);
  - (5) WS-III-BW (Balance of Watershed).
- (Ord. passed 11-15-1993)

**§ 156.31 WATERSHED AREAS DESCRIBED.**

- (A) *WS-I Watershed Areas*. The intent is to provide maximum protection for water supplies within essentially natural and undeveloped watersheds by allowing only low intensity uses. No residential or nonresidential uses are allowed except those listed below. Impacts from non-point source pollution shall be minimized.
- (1) Allowed uses.
- (a) Agriculture subject to the provisions of the *Food Security Act of 1985*, being 16 USC 3862, and the *Food, Agriculture, Conservation and Trade Act of 1990*. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten-foot vegetative buffer, or equivalent control as determined by the Soil and Water Conservation Commission, 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. Animal operations greater than 100 animal units shall by July 1, 1994, employ Best Management Practices as recommended by 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) Water withdrawal, treatment and distribution facilities.
  - (d) Restricted road access.
  - (e) Power transmission lines.
- (2) Density and built-upon limits do not apply.
- (B) *WS-II Watershed Areas - Critical Area (WS-II-CA)*. In order to maintain a predominately undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of one dwelling unit per two acres. All other residential and non-residential development shall be allowed at a maximum 6% built-upon area. New residuals application sites and landfills are specifically prohibited.
- (1) Allowed uses.
- (a) Agriculture as in WS-I.
  - (b) Silviculture as in WS-I.
  - (c) Residential development, including both single-family and all other residential.

(d) Non-residential development. Institutional, educational, religious, commercial, office or recreational.

(2) Prohibited uses.

(a) Sites for land application of residuals or petroleum contaminated soils.

(b) Landfills, incinerators and waste processors.

(c) Commercial use which sells, stores, or distributes motor fuel or other hazardous materials.

(d) Airports.

(e) New industry.

(f) Metal salvage facilities, including junkyards.

(g) Manufacturing, use or storage of any hazardous or toxic materials waste as listed on the federal Environmental Protection Agency (EPA) hazardous materials list.

(h) Package treatment plants, solid waste facilities or community sewage facilities, except for subsurface septic tanks.

(i) Underground fuel or chemical storage tanks.

(3) Density and built-upon limits.

(a) Single-family residential development shall not exceed one dwelling unit per two acres on a project by project basis. No residential lot shall be less than two acres, except within an approved cluster development.

(b) All other residential and non-residential development shall not exceed 6% built-upon area on a project by project basis.

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

(C) *WS-II Watershed Areas - Balance of Watershed (WS-II-BW)*. In order to maintain a predominantly undeveloped land use intensity pattern, single-family residential uses shall be allowed at a maximum of one dwelling unit per acre. All other residential and non-residential development shall be allowed a maximum of 12% built-upon area. In addition, non-residential uses may occupy 10% of the balance of the watershed, which is outside the critical area, with a 70% built-upon area when approved as a special nonresidential intensity allocation (SNIA). The Watershed Review Board is authorized to approve SNIAs consistent with the provisions of this chapter, and such approved projects shall be awarded on a first come, first served basis. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals applications sites are allowed. Recreational Vehicle Parks shall not be eligible for a SNIA.

(1) Allowed uses.

(a) Agriculture as in WS-I.

(b) Silviculture as in WS-I.

(c) Residential development.

(d) Non-residential development excluding discharging landfills.

(2) Density and built-upon limits.

(a) Single-family residential development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre, except within an approved cluster development.

(b) All other residential and Non-residential development shall not exceed 12% built-upon area on a project by project basis except that up to 5% of the balance of the watershed may be developed for nonresidential

uses to 70% 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.

(D) *WS-III Watershed Areas - Critical Area (WS-III-CA)*. In order to maintain a low to moderate land use intensity pattern, single-family residential uses are allowed at a maximum of one dwelling unit per acre. All other residential and nonresidential development shall be allowed to a maximum of 12% built-upon area. New residuals application sites and landfills are specifically prohibited.

(1) Allowed uses.



- (a) Agriculture as in WS-I.
  - (b) Silviculture as in WS-I.
  - (c) Residential development.
  - (d) Non-residential development. Institutional, educational, religious, commercial, office or recreational.
  - (2) Prohibited uses.
    - (a) Sites for land application of residuals or petroleum contaminated soils.
    - (b) Landfills, incinerators and waste processors.
    - (c) Commercial use, which sells, stores, or distributes motor fuel or other hazardous materials.
    - (d) Airports.
    - (e) New industry.
    - (f) Metal salvage facilities, including junkyards.
    - (g) Manufacturing, use or storage of any hazardous or toxic materials waste as listed on the federal Environmental Protection Agency (EPA) hazardous materials list.
    - (h) Package treatment plants, solid waste facilities or community sewage facilities, except for subsurface septic tanks.
    - (i) Underground fuel or chemical storage tanks.
  - (3) Density and built-upon limits.
    - (a) Single-family residential development shall not exceed one dwelling unit per acre on a project by project basis. No residential lot shall be less than one acre, except within an approved cluster development.
    - (b) All other residential and non-residential development shall not exceed 12% built-upon area on a project by project basis. For the purpose of calculating built-upon area, the total project area shall not include total acreage in the tract on which the project is to be developed.
  - (E) *WS-III Watershed Areas - Balance of Watershed (WS-III-BW)*. In order to maintain a low to moderate land use intensity pattern, single-family detached uses shall develop at a maximum of two dwelling units per acre. All other residential and non-residential development shall be allowed a maximum of 24% built-upon area. In addition, non-residential uses may occupy 10% of the watershed with a 70% built-upon area when approved as a special non-residential intensity allocation (SNIA). The Watershed Review Board is authorized to approve SNIAs consistent with the provisions of this chapter, and such approved projects shall be awarded on a first come, first served basis. Projects must minimize built-upon surface area, direct stormwater away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and residuals application sites are allowed. Recreational Vehicle Parks shall not be eligible for a SNIA.
  - (1) Allowed uses.
    - (a) Agriculture as in WS-I.
    - (b) Silviculture as in WS-I.
    - (c) Residential development.
    - (d) Non-residential development excluding discharging landfills.
  - (2) Density and built-upon limits.
    - (a) Single-family residential development shall not exceed two dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half acre, except within an approved cluster development.
    - (b) All other residential and non-residential development shall not exceed 24% built-upon area on a project by project basis except that up to 5% of fine balance of the watershed may be developed for nonresidential uses to 70% 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.
- (Ord. passed 11-15-1993) Penalty, see § 156.99

**§ 156.32 CLUSTER DEVELOPMENT.**

Clustering of development is allowed in all Watershed areas (except WS-I) under the following conditions:

(A) Minimum lot sizes are not applicable to single-family cluster development projects nor recreational vehicle parks; however, the total number of lots shall not exceed the number of lots allowed for single-family detached developments in § 156.31. Density or built-upon area for the project shall not exceed that allowed for the critical area or balance of watershed, whichever applies.

(B) All built-upon area shall be designed and located to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow.

(C) The remainder of the tract shall remain in a vegetated or natural state. Title to the open space area shall be conveyed to an incorporated homeowners association for management: to a local government for preservation as a park or open space: or to a conservation organization for preservation in a permanent easement. Where a property association is not incorporated, a maintenance agreement shall be filed with the property deeds.

(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.33 BUFFER AREAS REQUIRED.**

(A) A minimum 30-foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies. Desirable artificial streambank or shoreline stabilization is permitted.

(B) No new development is allowed in the buffer except for water dependent structures, other structures such as flag poles, 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 runoff away from the surface waters and maximize the utilization of stormwater Best Management Practice.

(Ord. passed 11-15-1993)

#### **§ 156.34 RULES GOVERNING INTERPRETATION OF WATERSHED AREA BOUNDARIES.**

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the watershed maps, the following rules shall apply.

(A) Where area boundaries are indicated as approximately following either street, alley or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 25 feet or less from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.

(D) Where the watershed area boundaries lie at a scaled distance of 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 Watershed Administrator shall interpret the watershed maps as to location of such boundaries. This decision may be appealed to the Watershed Review Board.

(Ord. passed 11-15-1993)

#### **§ 156.35 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 chapter shall be included in the area required to make another building comply with the requirements hereof.

(C) Every residential building hereafter erected, moved or structurally altered shall be located on a lot which conforms to the regulations herein specified, except as permitted in § 156.36.

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

(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.36 EXISTING DEVELOPMENT.**

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

provisions provided herein.

(A) *Expansion of existing development.*

(1) Expansions of single-family residential development may be undertaken without restrictions.

(2) Expansions to all other residential development and all non-residential development may be made without including the built-upon area of the existing development in the density calculations, but including in those calculations the total acreage of the tract being developed. However, the total built-upon area added to a lot after the effective date of this chapter may not exceed the built-upon requirements of the water supply watershed critical area or the balance of the watershed, as appropriate.

(B) *Reconstruction of buildings or built-upon areas.* Single-family residential development may be repaired and/or reconstructed without restriction. Any other existing building or built-upon area not in conformance with the restrictions of this chapter that has been damaged or removed may be repaired and/or reconstructed, provided:

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

(2) The total amount of space devoted to built-upon area may not be increased unless the additional built-upon area meets the expansion requirements of division (A) above of this section.

(C) *Uses of land.* This category consists of uses existing at the time of implementation of this chapter where such use of the land is not permitted to be established hereafter in the watershed area in which it is located. Such uses may be continued except as follows:

(1) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.

(2) Such use of land as a non-permitted use shall be changed only to an allowed use.

(3) When such a non-permitted use ceases for a period of at least 12 consecutive months, it shall not be re-established.

(D) *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 Macon County. A lot may be used for any of the uses allowed in the watershed area in which it is located.

(Ord. passed 11-15-1993)

#### **§ 156.37 WATERSHED PROTECTION PERMIT.**

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form to be provided by the Watershed Administrator and supporting documentation deemed necessary by the Watershed Administrator.

(C) For those watershed protection permit applications which require use of the built-upon option instead of the lot-size option, the application shall include the following information:

(1) A site sketch, drawn to a scale of at least one inch to 40 feet, of the parcel of property showing its actual dimensions and size, and showing the dimensions and size of all buildings, pavement, gravel roads, recreation facilities, or any other portion of a development that is impervious or partially impervious;

(2) The use to which the completed project shall be devoted, and;

(3) Any other information reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this chapter.

(D) Prior to issuance of a watershed protection permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(E) A watershed protection permit shall expire if a building permit for such use is not obtained by the applicant within 12 months from the date of issuance.

(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.38 BUILDING PERMIT REQUIRED.**

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.  
(Ord. passed 11-15-1993)

#### ***PUBLIC HEALTH REGULATIONS***

##### **§ 156.50 NO THREAT TO PUBLIC HEALTH PERMITTED.**

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 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.

(Ord. passed 11-15-1993) Penalty, see § 156.99

##### **§ 156.51 ABATEMENT.**

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

(B) The Watershed Administrator shall report all 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 Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. passed 11-15-1993)

#### ***ADMINISTRATION, ENFORCEMENT AND APPEALS***

##### **§ 156.65 WATERSHED ADMINISTRATOR.**

Macon County shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(A) The Watershed Administrator shall issue watershed protection 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 Administrator.

(B) The Watershed Administrator shall serve as clerk to the Watershed Review Board.

(C) The Watershed Administrator shall keep records of all amendments to the local water supply watershed protection ordinance and shall provide copies of all amendments upon adoption to the Division of Water Quality.

(D) The Watershed Administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of 5% of the non-critical area of WSII-BW and WS-III-BW watersheds may be developed with nonresidential

development to a maximum of 70% built-upon surface area. Records

for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and 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.

(E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full police power of Macon County, except that no civil or criminal action can be taken without the expressed permission of the County Manager. The Watershed Administrator, or his or her duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him or her by this chapter.

(F) The Watershed Administrator shall keep a record of variances to the local water supply watershed protection ordinance and shall submit this record for each calendar year to the Division of Water Quality on or before January 1 of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. passed 11-15-1993)

**§ 156.66 APPEAL FROM ADMINISTRATOR.**

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

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

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. passed 11-15-1993)

**§ 156.67 CHANGES AND AMENDMENTS TO CHAPTER.**

(A) The Macon County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend the watershed protection chapter as described herein.

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

(Ord. passed 11-15-1993)

**§ 156.68 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this chapter, the Macon County Board of Commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date fixed for the hearing.

(Ord. passed 11-15-1993)

**§ 156.69 ESTABLISHMENT OF WATERSHED REVIEW BOARD.**

(A) There shall be and hereby is created the Watershed Review Board consisting of five members appointed by the Board of Commissioners. One member shall be a resident of the Cartoogechaye Creek public water supply watershed. One member shall be a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed. One member shall be a resident of the Big Creek public water supply watershed. Two members shall be selected on an at-large basis. Members from the public water supply watersheds shall be appointed for three year terms, and at-large members shall be appointed for two year terms. Thereafter, all new terms shall be for three years, and members may be re-appointed.

(B) Three alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member. The county shall appoint one alternate member who is a resident of the Cartoogechaye Creek public water supply watershed, one alternate member who is a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed, and one alternate member who is a resident of the Big Creek public water supply watershed.

(C) Compensation for board members shall be determined and established, in an amount from time to time, by the Board of Commissioners by resolution duly enacted.

(Ord. passed 11-15-1993)

**§ 156.70 RULES OF CONDUCT FOR MEMBERS.**

Members of the Watershed Review Board may be removed by the Board of Commissioners for cause,

including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested. A Board member shall have a financial interest in a case when a decision in the case will: cause the member or the member's spouse to experience a direct financial benefit or loss or, will cause a business in which the member or the member's spouse owns a 10% or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a personal interest in a case when it involves a member of his or her immediate family (such as, parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(D) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(E) Members of the Board shall give notice to the chairperson at least 48 hours prior to the hearing of any potential conflict of the interest which he or she has in a particular case before the Board.

(F) No Board member shall vote on any matter that decides an application or appeal unless he or she had participated in the public hearing on that application or appeal.

(Ord. passed 11-15-1993)

#### **§ 156.71 POWERS AND DUTIES OF BOARD.**

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

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

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

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

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

1. If he or she complies with the provisions of the chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would

permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the chapter that will make possible the reasonable use of his or her property.

2. The hardship results from the application of the chapter to the property rather than from other factors such as deed restrictions or other hardship.

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

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

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

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

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, construction alteration, or use shall be in accordance with the approved site plan.

(4) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six months from the date of the decision. Once a variance has been issued for a particular parcel, it shall remain in effect for the six-month period, regardless of a transfer in ownership.

(6) If the application calls for the granting of a major variance, and if the Watershed Review Board 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:

(a) The variance application;

(b) The hearing notices;

(c) The evidence presented;

(d) Motions, offers of proof, objections to evidence, and rulings on them;

(e) Proposed findings and exceptions;

(f) The proposed decision, including all conditions proposed to be added to the permit.

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

(a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and 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 Watershed Review Board.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of the property without the variance or 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 Watershed Review Board.

(C) *Subdivision approval*. See §§ 156.15 through 156.19.

(D) *Public health*. See §§ 156.50 and 156.51.

(Ord. passed 11-15-1993)

#### **§ 156.72 APPEALS FROM WATERSHED REVIEW BOARD.**

Appeals from the Watershed Review Board must be filed with the Superior Court of Macon County within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

(Ord. passed 11-15-1993)

#### **§ 156.73 REMEDIES.**

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the Macon County Board of Commissioners may, in addition to all other remedies available either in law or in equity, impose a civil penalty in the amount of \$100, action or proceedings to restrain, correct, or 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. The penalties and remedies herein provided shall be in addition to and not in substitution of other penalties now or hereafter provided by law. Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to

correct it. The Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. The aggrieved party or parties may appeal the ruling of the Watershed Administrator to the Watershed Review Board.

(Ord. passed 11-15-1993)

### ***DRAINAGE OF IMPOUNDMENTS WITHIN THE WATERSHED AREA OF THE TOWN OF HIGHLANDS***

#### **§ 156.85 AUTHORITY.**

This subchapter is adopted pursuant to G.S. § 153A-121, and other provisions of Article 6 of Chapter 153A.

(Ord. passed 7-1-2002)

#### **§ 156.86 PURPOSE AND SCOPE.**

The draining of impoundments without taking adequate precautions to prevent the release of accumulated sediment into the stream below the impoundment shall be considered a threat to the public health, safety and welfare. This subchapter is adopted for the purposes of regulating the draining of impoundments.

(Ord. passed 7-1-2002)

#### **§ 156.87 JURISDICTION.**

The provisions of this subchapter shall apply within that portion of the watershed area of the Town of Highlands which is located within the County of Macon and not within the boundaries of the Town of Highlands, as the same is described in the Appendix of this subchapter.

(Ord. passed 7-1-2002)

#### **§ 156.88 DEFINITIONS.**

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DAM.** A structure and appurtenant works erected by human effort and direction to impound or divert water.

**DRAINING.** Any act in furtherance of the release of water from an impoundment at a rate greater than the rate by which the impoundment is normally replenished by its usual groundwater and subsurface sources.

**IMPOUNDMENT.** The body of water impounded by a dam.

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by water from its site of origin.

**TEN-YEAR STORM.** The surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of run-off for the watershed of interest under average antecedent wetness conditions.



(Ord. passed 7-1-2002)

**§ 156.89 PERMIT REQUIRED BEFORE DRAINING IMPOUNDMENT.**

(A) Before the owner of any impoundment drains an impoundment, he or she shall first notify the Town of Highlands Watershed Administrator in writing not less than 30 days prior to doing so, specifying the name of the impoundment, if any, the location of the impoundment, the surface area of the impoundment, and the size of the contributing drainage area. The owner or his or her agent shall not proceed with the draining without issuance of an Impoundment Draining Permit from the Watershed Administrator.

(B) Submittal of the following information shall be required:

(1) *Impoundments either less than or equal to ½ acre in surface area or naturally receiving the surface water runoff of less than or equal to 75 acres.* For impoundments either less than or equal to ½ acre in surface area at full pool, or receiving the surface water runoff from less than or equal to 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Plans showing the specific measures to be taken to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(2) *Impoundments either more than ½ acre in surface area or naturally receiving the surface water runoff of more than 75 acres.* For impoundments either more than ½ acre in surface area at full pool, or receiving the surface water runoff from more than 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan prepared by a N. C. Professional Engineer, indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Detailed plans and specifications sealed by a N.C. Professional Engineer showing temporary erosion control measures, diversion measures, or other channel protection measures designed to protect against erosion and the loss of sedimentation at all times up to and including a ten-year storm, and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(3) The Watershed Administrator may submit any plans received under the foregoing divisions (A) and (B) to the town Engineer, to a consulting engineer having expertise in this field, or to the North Carolina Department of Environment and Natural Resources (DENR) for review and comment at the expense of the Town of Highlands. The Watershed Administrator shall issue the Impoundment Draining Permit only upon a determination that the plan is adequate to prevent the release of sediment from the impoundment and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(4) Such permit shall not relieve the applicant of the obligation to obtain whatever state or federal permits are required under the law.

(5) The applicant shall comply in all respects with the time schedules and approved plans.

(6) The Watershed Administrator may also request the Town Engineer, qualified officials from the North Carolina Department of Environment and Natural Resources, or other qualified consultants or employees of the Town of Highlands, to conduct turbidity monitoring downstream from the impoundment to ensure compliance with the plan submitted and approved. "Turbidity monitoring," as used herein, shall mean all testing, sampling, or other procedures or activities related to the determination of turbidity levels both upstream and downstream from impoundments. The Watershed Administrator may assess the costs of all turbidity monitoring to the applicant. The applicant shall allow access to all portions of the applicant's land necessary to accomplish any of the purposes of this subchapter.

(Ord. passed 7-1-2002)

**§ 156.90 PENALTIES AND REMEDIES.**

(A) Any person who willfully or negligently violates any provision of this subchapter shall be guilty of a Class A1 misdemeanor, or the highest misdemeanor class as may be possible under existing sentencing statutes. The maximum fine authorized under G.S. § 15A-1340.23 (or similar amended or replacement section) shall be \$5,000.

(B) Violation of this subchapter shall subject the offender to a civil penalty of \$5,000 to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after he or she has been cited for violation of the subchapter.

(C) This subchapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.

(D) This subchapter may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful uses 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. In addition to an injunction, the court may enter an order of abatement as apart of the judgment in the cause. An order of abatement may direct that action be taken that is necessary to place the body of water downstream from the dam in its former condition and otherwise bring the property into compliance with this subchapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she 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.

(E) This subchapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(F) Each day's continuing violation of this subchapter shall be a separate and distinct offense.

(Ord. passed 7-1-2002)

**§ 156.91 APPEALS.**

(A) Any person aggrieved by the action of the Town of Highlands Watershed Administrator with regard to enforcement of the provisions of this subchapter, shall be given the opportunity of a conference with the County Manager who may affirm or reverse the original decision of the Administrator.

(B) Further appeal from the decision of the Town Watershed Administrator shall be by civil action filed in the General Court of Justice for the County of Macon, State of North Carolina. Trial shall be de novo.

(Ord. passed 7-1-2002)

**§ 156.92 CONFLICT WITH OTHER LAWS.**

Nothing in this subchapter shall be construed to conflict with existing provisions of the General Statutes of the State of North Carolina, as the same are now enacted and as they may be amended from time to time, or other similar statutes, rules or similar statutes, rules or regulations which are in force by authorities other than Macon County.

(Ord. passed 7-1-2002)

**§ 156.93 NO IMPLIED WARRANTY OR GUARANTY.**

The adoption, enforcement, or other action taken pursuant to the provisions of this subchapter shall not constitute a warranty, guaranty, or certification that any stream located within the area affected by this

subchapter shall not be affected by accumulations of sediment or other pollution, nor that they are safe for any purpose.

(Ord. passed 7-1-2002)

**§ 156.99 PENALTY.**

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(Ord. passed 11-15-1993)

**§ 156.37 WATERSHED PROTECTION PERMIT.**

(A) Except where a single-family residence is constructed on a lot deeded prior to the effective date of this chapter, no building or built-upon area shall be erected, moved, enlarged or structurally altered, nor shall any building permit be issued nor shall any change in the use of any building or land be made until a watershed protection permit has been issued by the Watershed Administrator. No watershed protection permit shall be issued except in conformity with the provisions of this chapter.

(B) Watershed protection permit applications shall be filed with the Watershed Administrator. The application shall include a completed application form to be provided by the Watershed Administrator and supporting documentation deemed necessary by the Watershed Administrator.

(C) For those watershed protection permit applications which require use of the built-upon option instead of the lot-size option, the application shall include the following information:

(1) A site sketch, drawn to a scale of at least one inch to 40 feet, of the parcel of property showing its actual dimensions and size, and showing the dimensions and size of all buildings, pavement, gravel roads, recreation facilities, or any other portion of a development that is impervious or partially impervious;

(2) The use to which the completed project shall be devoted, and;

(3) Any other information reasonably necessary to evaluate the compliance of the applicant's proposal with the provisions of this chapter.

(D) Prior to issuance of a watershed protection permit, the Watershed Administrator may consult with qualified personnel for assistance to determine if the application meets the requirements of this chapter.

(E) A watershed protection permit shall expire if a building permit for such use is not obtained by the applicant within 12 months from the date of issuance.  
(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.38 BUILDING PERMIT REQUIRED.**

Except for a single-family residence constructed on a lot deeded prior to the effective date of this chapter, no permit required under the North Carolina State Building Code shall be issued for any activity for which a watershed protection permit is required until that permit has been issued.  
(Ord. passed 11-15-1993)

### ***PUBLIC HEALTH REGULATIONS***

#### **§ 156.50 NO THREAT TO PUBLIC HEALTH PERMITTED.**

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 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.  
(Ord. passed 11-15-1993) Penalty, see § 156.99

#### **§ 156.51 ABATEMENT.**

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

(B) The Watershed Administrator shall report all 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 Board shall institute any appropriate action or proceeding to restrain, correct or abate the condition and/or violation.

(Ord. passed 11-15-1993)

### ***ADMINISTRATION, ENFORCEMENT AND APPEALS***

#### **§ 156.65 WATERSHED ADMINISTRATOR.**

Macon County shall appoint a Watershed Administrator, who shall be duly sworn in. It shall be the duty of the Watershed Administrator to administer and enforce the provisions of this chapter as follows:

(A) The Watershed Administrator shall issue watershed protection 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 Administrator.

(B) The Watershed Administrator shall serve as clerk to the Watershed Review Board.

(C) The Watershed Administrator shall keep records of all amendments to the local water supply watershed protection ordinance and shall provide copies of all amendments upon adoption to the Division of Water Quality.

(D) The Watershed Administrator shall keep records of the jurisdiction's utilization of the provision that a maximum of 5% of the non-critical area of WSII-BW and WS-III-BW watersheds may be developed with non-residential development to a maximum of 70% built-upon surface area. Records

for each watershed shall include the total acres of non-critical watershed area, total acres eligible to be developed under this option, total acres approved for this development option, and 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.

(E) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his or her responsibility the full police power of Macon County, except that no civil or criminal action can be taken without the expressed permission of the County Manager. The Watershed Administrator, or his or her duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him or her by this chapter.

(F) The Watershed Administrator shall keep a record of variances to the local water supply watershed protection ordinance and shall submit this record for each calendar year to the Division of Water Quality on or before January 1 of the following year and provide a description of each project receiving a variance and the reasons for granting the variance.

(Ord. passed 11-15-1993)

#### **§ 156.66 APPEAL FROM ADMINISTRATOR.**

(A) Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Watershed Review Board.

(B) An appeal from a decision of the Watershed Administrator must be submitted to the Watershed Review Board within 30 days from the date the order, interpretation, decision or determination is made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

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

(D) The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

(Ord. passed 11-15-1993)

#### **§ 156.67 CHANGES AND AMENDMENTS TO CHAPTER.**

(A) The Macon County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend the watershed protection chapter as described herein.

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

(Ord. passed 11-15-1993)

#### **§ 156.68 PUBLIC NOTICE AND HEARING REQUIRED.**

Before adopting or amending this chapter, the Macon County Board of Commissioners shall hold a public hearing on the proposed changes. A notice of the public hearing shall be given once a week for two



successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than ten nor more than 25 days before the date fixed for the hearing.  
(Ord. passed 11-15-1993)

#### **§ 156.69 ESTABLISHMENT OF WATERSHED REVIEW BOARD.**

(A) There shall be and hereby is created the Watershed Review Board consisting of five members appointed by the Board of Commissioners. One member shall be a resident of the Cartoogechaye Creek public water supply watershed. One member shall be a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed. One member shall be a resident of the Big Creek public water supply watershed. Two members shall be selected on an at-large basis. Members from the public water supply watersheds shall be appointed for three year terms, and at-large members shall be appointed for two year terms. Thereafter, all new terms shall be for three years, and members may be re-appointed.

(B) Three alternate members shall be appointed to serve on the Watershed Review Board in the absence of any regular member and shall be appointed for three year terms. While attending in the capacity of a regular member, the alternate shall have and exercise all the powers and duties of the absent regular member. The county shall appoint one alternate member who is a resident of the Cartoogechaye Creek public water supply watershed, one alternate member who is a resident of the Cullasaja River (Lake Sequoyah) public water supply watershed, and one alternate member who is a resident of the Big Creek public water supply watershed.

(C) Compensation for board members shall be determined and established, in an amount from time to time, by the Board of Commissioners by resolution duly enacted.  
(Ord. passed 11-15-1993)

## **§ 156.70 RULES OF CONDUCT FOR MEMBERS.**

Members of the Watershed Review Board may be removed by the Board of Commissioners for cause, including violation of the rules stated below:

(A) Faithful attendance at meetings of the Board and conscientious performance of the duties required of members of the Board shall be considered a prerequisite to continuing membership on the Board.

(B) No Board member shall take part in the hearing, consideration, or determination of any case in which he or she is personally or financially interested. A Board member shall have a financial interest in a case when a decision in the case will: cause the member or the member's spouse to experience a direct financial benefit or loss or, will cause a business in which the member or the member's spouse owns a 10% or greater interest, or is involved in a decision-making role, to experience a direct financial benefit or loss. A Board member shall have a personal interest in a case when it involves a member of his or her immediate family (such as, parent, spouse, or child).

(C) No Board member shall discuss any case with any parties thereto prior to the public hearing on that case; provided, however, that members may receive and/or seek information pertaining to the case from the Watershed Administrator or any other member of the Board, its secretary or clerk prior to the hearing.

(D) Members of the Board shall not express individual opinions on the proper judgment of any case prior to its determination on that case.

(E) Members of the Board shall give notice to the chairperson at least 48 hours prior to the hearing of any potential conflict of the interest which he or she has in a particular case before the Board.

(F) No Board member shall vote on any matter that decides an application or appeal unless he or she

had participated in the public hearing on that application or appeal.  
(Ord. passed 11-15-1993)

#### **§ 156.71 POWERS AND DUTIES OF BOARD.**

(A) *Administrative review.* The Watershed Review Board shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this chapter.

(B) *Variances.* The Watershed Review Board shall have the power to authorize, in specific cases, minor variances from the terms of this chapter as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this chapter will result in practical difficulties or unnecessary hardship, so that the spirit of this chapter shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed Administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one inch to 40 feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

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

(c) The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed and the entity using the water supply for consumption. Such notice shall include a description of the variance being requested. Local governments receiving notice of the variance request may submit comments to the Watershed Administrator prior to a decision by the Watershed Review Board. Such comments shall become a part of the record of proceedings of the Watershed Review Board.

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

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

1. If he or she complies with the provisions of the chapter, the applicant can secure no reasonable return from, nor make reasonable use of, his or her property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the chapter that will make possible the reasonable use of his or her property.

2. The hardship results from the application of the chapter to the property rather than from other factors such as deed restrictions or other hardship.

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

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

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

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

(c) In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(3) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this chapter. If a variance for the construction, construction alteration, or use shall be in accordance with the approved site plan.

(4) The Watershed Review Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

(5) A variance issued in accordance with this section shall be considered a watershed protection permit and shall expire if a building permit or watershed occupancy permit for such use is not obtained by the applicant within six months from the date of the decision. Once a variance has been issued

for a particular parcel, it shall remain in effect for the six-month period, regardless of a transfer in ownership.

(6) If the application calls for the granting of a major variance, and if the Watershed Review Board 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:

- (a) The variance application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

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

(a) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and 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 Watershed Review Board.

(b) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that the property owner can secure a reasonable return from or make a practical use of

the property without the variance or 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 Watershed Review Board.

(C) *Subdivision approval.* See §§ 156.15 through 156.19.

(D) *Public health.* See §§ 156.50 and 156.51.  
(Ord. passed 11-15-1993)

## **§ 156.72 APPEALS FROM WATERSHED REVIEW BOARD.**

Appeals from the Watershed Review Board must be filed with the Superior Court of Macon County within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.  
(Ord. passed 11-15-1993)

## **§ 156.73 REMEDIES.**

(A) If any subdivision, development and/or land use is found to be in violation of this chapter, the Macon County Board of Commissioners may, in addition to all other remedies available either in law or in equity, impose a civil penalty in the amount of \$100, action or proceedings to restrain, correct, or 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. The penalties and remedies herein provided shall be in addition to and not in substitution of other penalties now or hereafter provided by law. Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this chapter are being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation, and ordering the action necessary to

correct it. The Administrator shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this chapter to ensure compliance with or to prevent violation of its provisions. The aggrieved party or parties may appeal the ruling of the Watershed Administrator to the Watershed Review Board.  
(Ord. passed 11-15-1993)

***DRAINAGE OF IMPOUNDMENTS WITHIN  
THE WATERSHED AREA OF THE  
TOWN OF HIGHLANDS***

**§ 156.85 AUTHORITY.**

This subchapter is adopted pursuant to G.S. § 153A-121, and other provisions of Article 6 of Chapter 153A.  
(Ord. passed 7-1-2002)

**§ 156.86 PURPOSE AND SCOPE.**

The draining of impoundments without taking adequate precautions to prevent the release of accumulated sediment into the stream below the impoundment shall be considered a threat to the public health, safety and welfare. This subchapter is adopted for the purposes of regulating the draining of impoundments.  
(Ord. passed 7-1-2002)

**§ 156.87 JURISDICTION.**

The provisions of this subchapter shall apply within that portion of the watershed area of the Town of Highlands which is located within the County of Macon and not within the boundaries of the Town of Highlands, as the same is described in the Appendix of this subchapter.  
(Ord. passed 7-1-2002)

**§ 156.88 DEFINITIONS.**

For the purpose of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**DAM.** A structure and appurtenant works erected by human effort and direction to impound or divert water.

**DRAINING.** Any act in furtherance of the release of water from an impoundment at a rate greater than the rate by which the impoundment is normally replenished by its usual groundwater and subsurface sources.

**IMPOUNDMENT.** The body of water impounded by a dam.

**SEDIMENT.** Solid particulate matter, both mineral and organic, that has been or is being transported by water from its site of origin.



***TEN-YEAR STORM.*** The surface run-off resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten years, and of a duration which will produce the maximum peak rate of run-off for the watershed of interest under average antecedent wetness conditions.  
(Ord. passed 7-1-2002)

**§ 156.89 PERMIT REQUIRED BEFORE DRAINING IMPOUNDMENT.**

(A) Before the owner of any impoundment drains an impoundment, he or she shall first notify the Town of Highlands Watershed Administrator in writing not less than 30 days prior to doing so, specifying the name of the impoundment, if any, the location of the impoundment, the surface area of the impoundment, and the size of the contributing drainage area. The owner or his or her agent shall not proceed with the draining without issuance of an Impoundment Draining Permit from the Watershed Administrator.

(B) Submittal of the following information shall be required:

(1) *Impoundments either less than or equal to ½ acre in surface area or naturally receiving the surface water runoff of less than or equal to 75 acres.* For impoundments either less than or equal to ½ acre in surface area at full pool, or receiving the surface water runoff from less than or equal to 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Plans showing the specific measures to be taken to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(2) *Impoundments either more than ½ acre in surface area or naturally receiving the surface water runoff of more than 75 acres.* For impoundments either more than ½ acre in surface area at full pool, or receiving the surface water runoff from more than 75 acres of contributing drainage area, or both (such as meeting both of the two foregoing criteria), the applicant shall submit a plan prepared by a N. C. Professional Engineer, indicating the method to be used in draining the lake and the measures to be taken to prevent the release of sediment from the impoundment. Such plans shall also include the following:

(a) A time schedule for completion of the draining. The time limit for draining the

impoundment shall not exceed 60 days without written permission from the Watershed Administrator, unless the draining is of a permanent nature, and in such case all areas subject to erosion and sedimentation shall be permanently stabilized.

(b) Detailed plans and specifications sealed by a N.C. Professional Engineer showing temporary erosion control measures, diversion measures, or other channel protection measures designed to protect against erosion and the loss of sedimentation at all times up to and including a ten-year storm, and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(3) The Watershed Administrator may submit any plans received under the foregoing divisions (A) and (B) to the town Engineer, to a consulting engineer having expertise in this field, or to the North Carolina Department of Environment and Natural Resources (DENR) for review and comment at the expense of the Town of Highlands. The Watershed Administrator shall issue the Impoundment Draining Permit only upon a determination that the plan is adequate to prevent the release of sediment from the impoundment and to limit turbidity immediately downstream from the impoundment to 50 NTUs at all times during and after draining.

(4) Such permit shall not relieve the applicant of the obligation to obtain whatever state or federal permits are required under the law.

(5) The applicant shall comply in all respects with the time schedules and approved plans.

(6) The Watershed Administrator may also request the Town Engineer, qualified officials from the North Carolina Department of Environment and Natural Resources, or other qualified consultants or employees of the Town of Highlands, to conduct turbidity monitoring downstream from the impoundment to ensure compliance with the plan submitted and approved. "Turbidity monitoring," as used herein, shall mean all testing, sampling, or other

procedures or activities related to the determination of turbidity levels both upstream and downstream from impoundments. The Watershed Administrator may assess the costs of all turbidity monitoring to the applicant. The applicant shall allow access to all portions of the applicant's land necessary to accomplish any of the purposes of this subchapter.  
(Ord. passed 7-1-2002)

#### **§ 156.90 PENALTIES AND REMEDIES.**

(A) Any person who willfully or negligently violates any provision of this subchapter shall be guilty of a Class A1 misdemeanor, or the highest misdemeanor class as may be possible under existing sentencing statutes. The maximum fine authorized under G.S. § 15A-1340.23 (or similar amended or replacement section) shall be \$5,000.

(B) Violation of this subchapter shall subject the offender to a civil penalty of \$5,000 to be recovered by the county in a civil action in the nature of debt if the offender does not pay the penalty within 30 days after he or she has been cited for violation of the subchapter.

(C) This subchapter may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the county for equitable relief that there is an adequate remedy at law.

(D) This subchapter may be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation occurs, the county may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful uses 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. In addition to an injunction, the court may enter an order of abatement as apart of the judgment in the cause. An order of abatement may direct that action be taken that is necessary to place the body of water downstream from the dam in its former condition and otherwise bring the property into compliance with this subchapter. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he or she 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.

(E) This subchapter may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.

(F) Each day's continuing violation of this subchapter shall be a separate and distinct offense.  
(Ord. passed 7-1-2002)

#### **§ 156.91 APPEALS.**

(A) Any person aggrieved by the action of the Town of Highlands Watershed Administrator with regard to enforcement of the provisions of this subchapter, shall be given the opportunity of a conference with the County Manager who may affirm or reverse the original decision of the Administrator.

(B) Further appeal from the decision of the Town Watershed Administrator shall be by civil action

filed in the General Court of Justice for the County of Macon, State of North Carolina. Trial shall be de novo.  
(Ord. passed 7-1-2002)

**§ 156.92 CONFLICT WITH OTHER LAWS.**

Nothing in this subchapter shall be construed to conflict with existing provisions of the General Statutes of the State of North Carolina, as the same are now enacted and as they may be amended from time to time, or other similar statutes, rules or similar statutes, rules or regulations which are in force by authorities other than Macon County.

(Ord. passed 7-1-2002)

**§ 156.93 NO IMPLIED WARRANTY OR GUARANTY.**

The adoption, enforcement, or other action taken pursuant to the provisions of this subchapter shall not constitute a warranty, guaranty, or certification that any stream located within the area affected by this subchapter shall not be affected by accumulations of sediment or other pollution, nor that they are safe for any purpose.

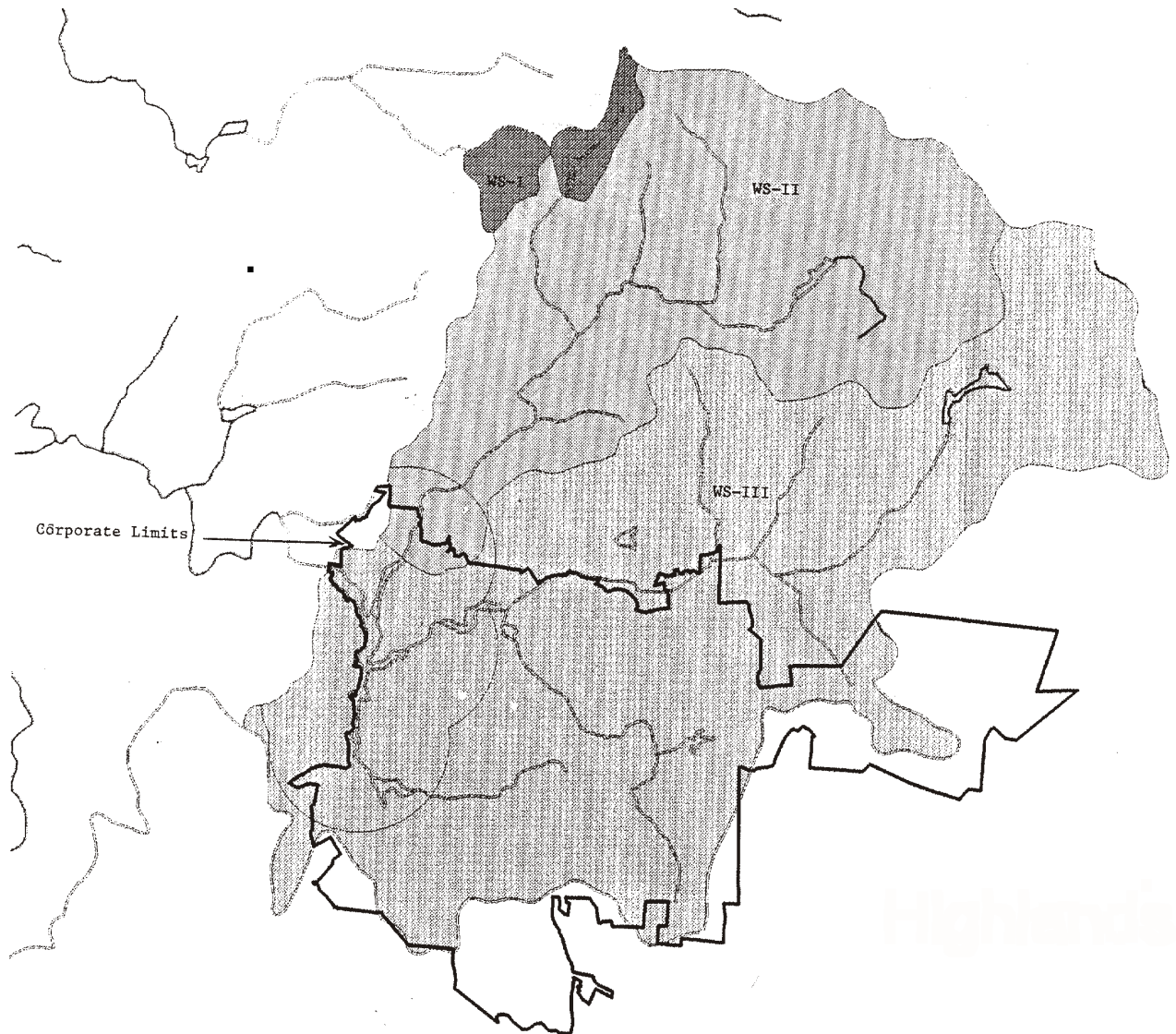
(Ord. passed 7-1-2002)

**§ 156.99 PENALTY.**

Any person violating any provisions of this chapter shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with G.S. § 14-4. The maximum fine for each offense shall not exceed \$500. Each day that the violation continues shall constitute a separate offense.

(Ord. passed 11-15-1993)

## APPENDIX: HIGHLANDS WATERSHED



Highlands Watershed as of 7-1-02

(Ord. passed 7-1-2002)



