

Attachment #2

Statutory authority for this section is derived from N.C. General Statutes Chapter [153A][160A], Article [6][8], Section [121][174], Section [140][193] and Chapter 143-214.5. Alternate statutory authority for this article may be derived from N.C. General Statute 153A-340 through 153A-390, and 160A-381 through 160A-394. This article contains development regulations for each of the watershed classifications. Watersheds designated WS-V require no local government regulatory program. Local governments will only need to include the regulations corresponding to the classifications assigned to watersheds in their jurisdiction. For WS-II, WS-III and WS-IV watershed areas, the EMC rules provide for single family residential development to be controlled either by limiting built-upon area or by limiting density (dwelling units per acre). Those involved in drafting the model ordinance felt that most local units of government would find it easier to enforce single family residential requirements through density controls rather than limiting built-upon area. All other residential and non-residential development is controlled by regulating the amount of built-upon area as required by the EMC rules. Under the low density option used in this ordinance, local governments with jurisdiction within a WS-II and/or a WS-III watershed area as defined on July 1, 1993 are allowed to establish a procedure by which ten percent of the balance of watershed (area outside the critical area) may be developed with new development or expansions to existing development at up to 70 percent built-upon area without requiring stormwater controls. Local governments with jurisdiction within the protected area of a WS-IV watershed that do not allow development under the high density option within that WS-IV protected area, may also establish a procedure by which ten percent of that area may be developed with new development or expansions to existing development at up to 70 percent built-upon area. The amount of land allowed to development under this provision in WS-IV watershed areas is based on the size of the local government's jurisdiction on July 1, 1995. How this ten percent will be allocated, over time, among the local government's jurisdiction will be up to each local government. For example, the local government may choose to plan growth by identifying one or more areas of its jurisdiction that would be suited for an industrial park. Even though the rule states that this additional new development may be up to 70 percent built-upon area, other new development may occur throughout the watershed in conformance with the built-upon area requirements. Another method by which a local government may choose to use to allocate its share of the 10%-70% provision is on a project-by-project basis throughout the non-critical area of the watershed. This may occur either on a first-come-first-served basis or projects may be required to compete for the credits. If projects are required to compete for credits, the ordinance must specify specific rules and criteria that would apply to all projects competing for the credits. Regardless of the method of allocation chosen, each local government must keep careful records of the total amount of land that is eligible for development under the 10%-70% provision and the total number of acres of built-upon surface already developed. Local governments may establish procedures for trading land area available for development under the 10%-70% provision between local governments within the same watershed and also may apply the 10%-70% development potential of public lands within their jurisdiction to private lands within the same watershed. The rules allow each local government to choose either a low density or high density option for residential and non-residential development in WS-II, WS-III and WS-IV watershed areas. The text of the model ordinance only includes the low density option. Appendix C contains a suggested high density option text. Under the high density option, all new residential development must be controlled by limitations on built-upon area rather than dwelling units per acre. Under the high density option, any new development exceeding the low density requirements must use stormwater controls, including the 10% of the watershed that can be developed at up to 70% built-upon area (in WS-IV watersheds, a local government must choose either the high density option or the 10%-70% provision). Local watershed protection ordinances using the high density option must require all new development projects which

exceed the low density option limits to use engineered stormwater controls designed to control the first inch of rainfall. The rules also state that local governments will 1) assume ultimate responsibility for the operation and maintenance of all stormwater devices, 2) perform annual inspections of each device, and 3) keep standardized records on each stormwater device in their jurisdiction. Local governments will also have to require the "posting of adequate financial assurance, in the form of a cash deposit with or a bond made payable to the local government, or other acceptable security." This is to assure maintenance, repairs and reconstruction, when necessary. (Refer to sections .0104(f) and (g) and Rules .0214, .0215 and .0216 for more complete information.) All requirements contained in Article 300 implement the minimum standards adopted by the EMC. Local governments, therefore, cannot relax these regulations but may adopt more stringent ones if desired.