

## Public Service Announcement

In order to maintain the safety of County residents, the Watauga County Board of Commissioners Meeting scheduled for 5:30 P.M. on Tuesday, March 2, 2021, will be conducted electronically. The Board Packet, including the agenda, is available on the County's website at:

[http://www.wataugacounty.org/App\\_Pages/Dept/BOC/boardpacket.aspx](http://www.wataugacounty.org/App_Pages/Dept/BOC/boardpacket.aspx)

**The public may access this meeting by**

**Calling: +1 929 205 6099 and entering the following:**

**Meeting ID: 884 1244 0767**

**Password: 12345**

**OR**

**Clicking the following link:**

<https://us02web.zoom.us/j/88412440767?pwd=czFsa0dlM0V2MTgxejFpeDd3dEgwQT09>

The County is making every effort to ensure that the public is able to, not only listen to the meeting, but also to participate in the public comment portion. You may submit public comments by email to: [public.comments@watgov.org](mailto:public.comments@watgov.org) or by mail to:

Clerk to the Board of Commissioners  
814 West King Street, Suite 205  
Boone, NC 28607

Public comments received by 5:00 P.M. on Monday, March 1, 2021, will be available to view by the time of the meeting (March 2, 2021, at 5:30 P.M.) on the County's website at:

[http://www.wataugacounty.org/App\\_Pages/Dept/BOC/boardpacket.aspx](http://www.wataugacounty.org/App_Pages/Dept/BOC/boardpacket.aspx)

A recording of this meeting will be available by 5:00 P.M. on Wednesday, March 3, 2021, on the County's website at:

[http://www.wataugacounty.org/App\\_Pages/Dept/BOC/boardpacket.aspx](http://www.wataugacounty.org/App_Pages/Dept/BOC/boardpacket.aspx)

**TENTATIVE AGENDA & MEETING NOTICE  
BOARD OF COUNTY COMMISSIONERS**

**TUESDAY, MARCH 2, 2021  
5:30 P.M.**

**ELECTRONIC MEETING ORIGINATING FROM THE  
WATAUGA COUNTY COMMUNITY RECREATION CENTER  
COMMUNITY ROOM**

| TIME | #  | TOPIC  | PRESENTER                            | PAGE |
|------|----|--|--------------------------------------|------|
| 5:30 | 1  | CALL REGULAR MEETING TO ORDER  |                                      |      |
|      | 2  | APPROVAL OF MINUTES:<br>February 16, 2021, Regular Meeting<br>February 16, 2021, Closed Session        |                                      | 1    |
|      | 3  | APPROVAL OF THE MARCH 2, 2021, AGENDA  |                                      | 11   |
| 5:35 | 4  | CORONAVIRUS (COVID-19) COMMUNITY UPDATE  | MS. JENNIFER GREENE                  | 13   |
| 5:40 | 5  | COOPERATIVE EXTENSION MATTERS  | MR. JIM HAMILTON                     |      |
|      |    | A. Update on the High Country Kill/Chill Facility  |                                      | 15   |
|      |    | B. Request to Submit Tobacco Trust Fund Grant Proposal   |                                      | 17   |
| 5:45 | 6  | SOIL AND WATER CONSERVATION FUNDING ACCEPTANCE AGREEMENT   | MS. MICHELLE KASEY<br>MR. GRAHAM FOX | 19   |
| 5:50 | 7  | MAINTENANCE MATTERS  | MR. ROBERT MARSH                     |      |
|      |    | A. Bid Award Request for Health Department Chiller Replacement   |                                      | 47   |
|      |    | B. Bid Award Request for Sealing/Striping Parking Lots   |                                      | 51   |
|      |    | C. Proposed Sports Complex Lighting Change Order # 1   |                                      | 65   |
| 5:55 | 8  | PROPOSED APPOINTMENT OF HOME & COMMUNITY CARE BLOCK GRANT (H&CCBG) ADVISORY COMMITTEE AND LEAD AGENCY  | MS. ANGIE BOITNOTTE                  | 83   |
| 6:00 | 9  | PLANNING AND INSPECTIONS MATTERS   | MR. JOE FURMAN                       |      |
|      |    | A. Proposed Community Development Block Grant – COVID-Relief (CDBG-CV) Program Sub-Recipient Contracts |                                      | 87   |
|      |    | B. Proposed Planning and Development Ordinance   |                                      | 109  |
| 6:05 | 10 | MISCELLANEOUS ADMINISTRATIVE MATTERS   | MR. DERON GEOUQUE                    |      |
|      |    | A. Proposed Architectural Services Contract with Clark Nexsen for Valle Crucis School Project          |                                      | 449  |
|      |    | B. Boards and Commissions  |                                      | 517  |
|      |    | C. Announcements   |                                      | 519  |
| 6:10 | 11 | PUBLIC COMMENT   | WRITTEN SUBMISSION                   | 524  |
| 6:15 | 12 | BREAK  |                                      | 524  |
| 6:20 | 13 | CLOSED SESSION   |                                      | 524  |
|      |    | Attorney/Client Matters – G. S. 143-318.11(a)(3)   |                                      |      |
|      |    | Land Acquisition – G. S. 143-318.11(a)(5)(i)   |                                      |      |
| 6:45 | 14 | ADJOURN  |                                      |      |



**AGENDA ITEM 2:**

**APPROVAL OF MINUTES:**

February 16, 2021, Regular Meeting

February 16, 2021, Closed Session

**DRAFT****MINUTES****WATAUGA COUNTY BOARD OF COMMISSIONERS  
TUESDAY, FEBRUARY 16, 2021**

The Watauga County Board of Commissioners held a regular meeting, as scheduled, on Tuesday, February 16, 2021, at 5:30 P.M. remotely with the meeting originating in the Community Room located in the Watauga County Community Recreation Center, Boone, North Carolina.

Chairman Welch called the remote electronic meeting to order at 5:34 P.M. The following were present:

**PRESENT:** John Welch, Chairman  
 Billy Kennedy, Vice-Chairman  
 Carrington Pertalion, Commissioner  
 Charlie Wallin, Commissioner  
 Larry Turnbow, Commissioner  
 Andrea Capua, County Attorney  
 Deron Geouque, County Manager  
 Anita J. Fogle, Clerk to the Board

Commissioner Wallin opened with a prayer and Commissioner Turnbow led the Pledge of Allegiance.

**APPROVAL OF MINUTES**

Chairman Welch called for additions and/or corrections to the February 2, 2021, regular meeting and closed session minutes as well as the February 8 & 9, 2021, special meeting minutes.

Vice-Chairman Kennedy, seconded by Commissioner Pertalion, moved to approve the February 2, 2021, regular meeting minutes as presented.

VOTE: Aye-5  
 Nay-0

Vice-Chairman Kennedy, seconded by Commissioner Pertalion, moved to approve the February 2, 2021, closed session minutes as presented.

VOTE: Aye-5  
 Nay-0

Vice-Chairman Kennedy, seconded by Commissioner Pertalion, moved to approve the February 8 & 9, 2021, special meeting minutes as presented.

VOTE: Aye-5  
 Nay-0

**APPROVAL OF AGENDA**

Chairman Welch called for additions and/or corrections to the February 16, 2021, agenda.

County Manager Geouque requested to add potential action after closed session and, under Boards and Commissions, consideration of appointments of the ETJ member to Blowing Rock's Planning Board and Board of Adjustment.

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to approve the February 16, 2021, agenda as amended.

VOTE: Aye-5  
Nay-0

**PUBLIC HEARING TO ALLOW CITIZEN COMMENT WITH RESPECT TO NOT TO EXCEED \$120,000,000 PUBLIC FINANCE AUTHORITY HEALTH CARE FACILITIES REVENUE BONDS (APPALACHIAN REGIONAL HEALTHCARE SYSTEM OBLIGATED GROUP), SERIES 2021, FOR THE BENEFIT OF APPALACHIAN REGIONAL HEALTHCARE SYSTEM AND WATAUGA MEDICAL CENTER**

Commissioner Wallin, seconded by Commissioner Turnbow, moved to recuse Commissioner Peralton from this discussion as she is an employee of Appalachian Regional Healthcare System (ARHS).

VOTE: Aye-5  
Nay-0

Mr. Jim Deal, President-Elect of the Watauga Medical Center Board of Trustees, stated that the public hearing was scheduled to allow citizen comment regarding the Appalachian Regional Healthcare System (ARHS) and Watauga Medical Center request to utilize Public Finance Authority Healthcare Facilities Revenue Bonds to finance and refinance capital improvements not to exceed \$120,000,000. The financing would be used for a new Central Energy Plant and hospital wing. The new hospital wing would include new surgical operating and patient care rooms as well as new equipment. The improvements would take place on land owned by the hospital and land currently leased from the County. The term of the bond for the hospital improvements was anticipated to be thirty-five (35) years and the hospital's lease with the County was required to be five (5) years longer than the bond. Therefore, the ARHS Board of Trustees requested an extension to the term of the lease of twenty-seven (27) years with the expiration date changing from 2034 to 2061.

Mr. Deal stated that the Bonds would not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County, and would be payable solely from the revenues and other funds generated by ARHS. Because no taxes or other revenues of the County were pledged to pay these bonds, the staff of the County does not need to do a financial analysis of the Bonds, the Borrowers or the Health System.

Commissioner Turnbow, seconded by Vice-Chairman Kennedy, moved to call the public hearing to order at 5:46 P.M.

VOTE: Aye-4(Welch, Kennedy, Turnbow, Wallin)  
Nay-0  
Recused-1(Pertalion)

There was no public comment; however, written public comments would be accepted in regards to the public hearing through Wednesday, February 17, 2021.

Commissioner Turnbow, seconded by Vice-Chairman Kennedy, moved to close the public hearing at 5:46 P.M.

VOTE: Aye-4(Welch, Kennedy, Turnbow, Wallin)  
Nay-0  
Recused-1(Pertalion)

*[Clerk's Note: No public comments were received by the deadline of Wednesday, February 17, 2021. Also, Commissioner Pertalion remained recused through the next two agenda items.]*

Mr. Deal shared that, after the public hearing, ARHS requested the adoption of a proposed resolution that would approve PFA's issuance of the bonds and the financing of the Project in the County. The resolution would provide that the bonds would not constitute a debt of the County; nor a charge against its general credit or taxing power and that the bonds were not an obligation or liability of the County.

**PROPOSED RESOLUTION APPROVING IN PRINCIPLE THE ISSUANCE OF NOT TO EXCEED \$120,000,000 OF PUBLIC FINANCE AUTHORITY HEALTH CARE FACILITIES REVENUE BONDS (APPALACHIAN REGIONAL HEALTHCARE SYSTEM OBLIGATED GROUP), SERIES 2021, FOR THE BENEFIT OF APPALACHIAN REGIONAL HEALTHCARE SYSTEM AND WATAUGA MEDICAL CENTER**

Chairman Welch presented the proposed resolution approving the issuance of a revenue bond not to exceed \$120,000,000 in accordance with the Public Finance Authority for Healthcare Facilities. The bonds shall not be deemed to constitute a debt of the County or a pledge of the faith and credit of the County. As such, the approval of this bond would have no impact on the potential debt service for the new Valle Crucis Elementary School.

Vice-Chairman Kennedy, seconded by Commissioner Wallin, moved to adopt the resolution as presented.

VOTE: Aye-4(Welch, Kennedy, Turnbow, Wallin)  
Nay-0  
Recused-1(Pertalion)

## **PROPOSED FIFTH AMENDMENT TO WATAUGA MEDICAL CENTER LEASE AGREEMENT**

Chairman Welch presented the proposed 5th amendment to the lease of County-owned property for Watauga County Medical Center. The extension was required as a part of the hospital's bond financing for the new Central Energy Plant and hospital wing, which would include new surgical operating and patient care rooms as well as medical equipment. The term of the bond for the hospital improvements was anticipated to be thirty-five (35) years and the lease was required to be five (5) years longer than the bond. The Board of Trustees had requested an extension of twenty-seven (27) years to the lease which would change the expiration date from 2034 to 2061.

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to approve the 5<sup>th</sup> Amendment to the Watauga Medical Center Lease Agreement modifying the expiration date from the year 2034 to 2061 as presented.

VOTE: Aye-4(Welch, Kennedy, Turnbow, Wallin)  
Nay-0  
Recused-1(Pertalion)

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to reinstate Commissioner Pertalion.

VOTE: Aye-4(Welch, Kennedy, Turnbow, Wallin)  
Nay-0  
Recused-1(Pertalion)

## **CORONAVIRUS (COVID-19) COMMUNITY UPDATE**

Ms. Jennifer Greene, AppHealthCare Director, provided an update on the Coronavirus (COVID-19). The report was for information only and, therefore, no action was required.

## **WATAUGA COUNTY PUBLIC LIBRARY ANNUAL REPORT**

Ms. Monica Caruso, County Librarian, presented the Watauga County Public Library Annual Report. Ms. Caruso reported on youth and adult services, activities at the Western Watauga Branch, volunteer activities and gave an overview of revenues and expenses, statistics, and grants received. The report was for information only and, therefore, no action was required.

## **TAX MATTERS**

### ***A. Monthly Collections Report***

Tax Administrator, Mr. Larry Warren, presented the Tax Collections Report for the month of January 2021. The report was presented for information only and, therefore, no action was required.

***B. Refunds and Releases***

Mr. Warren presented the Refunds and Releases Report for January 2021 for Board approval:

TO BE TYPED IN MINUTE BOOK

Vice-Chairman Kennedy, seconded by Commissioner Pertalion, moved to approve the Refunds and Releases Report for January 2021 as presented.

VOTE: Aye-5  
Nay-0

**SHERIFF'S OFFICE FY 21-22 VEHICLE PURCHASE REQUEST**

Major Kelly Redmon, with the Watauga County Sheriff's Office, requested to purchase the following vehicles from Ilderton Dodge through the NC Sheriffs Vehicle Procurement Contract: six (6) Dodge Durango SUV AWD V6 in the amount of \$30,702 for each vehicle; one (1) Dodge Charger Sedan AWD V6 in the amount of \$26,949; and one (1) Dodge Ram SSV Truck 4WD in the amount of \$27,024. The total Ilderton Dodge amount, including fees, was \$245,378.55.

Major Redmon stated that he had received an additional lower bid for radios and, therefore, requested to purchase eight (8) Kenwood Viking Dual Band Radios from Two Way Radio of Carolina, Inc. in the approximate amount of \$4,281 each, including taxes. The total amount requested was \$279,623.95 including taxes and tags. Adequate funds have been budgeted to cover the requested purchases.

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to accept Ilderton Dodge's bid, in the amount of \$245,378.55, for the vehicle purchases as presented by Major Kelly.

VOTE: Aye-5  
Nay-0

Commissioner Pertalion, seconded by Commissioner Turnbow, moved to accept Two Way Radio of Carolina, Inc.'s bid, in the amount of \$34,245.40, for the purchase of radios as presented by Major Kelly.

VOTE: Aye-5  
Nay-0

**MISCELLANEOUS ADMINISTRATIVE MATTERS**

***A. Designation of Unassigned Fund Balance from the Fiscal Year 2020 Audit***

County Manager Geouque presented, per direction from the Board, a proposed appropriation in the amount of \$982,500 to implement the Employee Compensation and Retention Plan and a proposed transfer, to the Capital Projects Fund, in the amount of \$4,000,000 for future County facilities, maintenance, emergency communications, and economic development.

Vice-Chairman Kennedy stated that this would take all employees to a minimum \$15.00 living wage. Mr. Kennedy also stated that all employees would benefit as salaries were adjusted to prevent compression.

Commissioner Turnbow, seconded by Commissioner Wallin, moved to approve the request as presented by the County Manager.

VOTE: Aye-5  
Nay-0

***B. Boards and Commissions***

County Manager Geouque presented the following:

*Boone Rural Fire Protection Service District Board*  
*Watauga County Planning Board*

Each Commissioner nominates a representative to the Boone Rural Fire Protection Service District Board and the Watauga County Planning Board whose terms run concurrent with the term of the appointing Commissioner. Planning Board members must live within the appointing Commissioner's District and action must be taken by the entire Board of Commissioners to make these appointments. Boone Rural Fire Service District Board members must own property and reside within the Fire Service District.

Commissioner Turnbow nominated Jody Eller to serve as the District 4 representative on the Boone Rural Fire Service District Board. Mr. Eller met the requirements to serve on the Board. This is a first reading.

Commissioner Turnbow, seconded by Vice-Chairman Kennedy, moved to waive the second reading and appoint Jody Eller to serve as the District 4 representative on the Boone Rural Fire Service District Board.

VOTE: Aye-5  
Nay-0

Commissioner Peralion nominated Tommy Critcher to be reappointed as the District 1 Boone Rural Fire Service District representative.

Commissioner Turnbow, seconded by Vice-Chairman Kennedy, moved to waive the second reading and reappoint Tommy Critcher to serve as the District 1 representative on the Boone Rural Fire Service District Board.

VOTE: Aye-5  
Nay-0

*Tourism Development Authority (TDA)*

The following Watauga County TDA Board members terms expired at the end of February: Jim Neustadt, Owner/Operator of Valle Crucis Log Cabin Rentals, and Brad Moretz, Owner/Operator of both Appalachian Ski Mountain and Appalachian Ski Mountain Slopeside Lodgings.

Both were willing and eligible to be re-appointed to three-year terms and the Tourism Development Authority (TDA) Board supported the re-nomination of both.

Commissioner Turnbow, seconded by Commissioner Wallin, moved to waive the second reading and reappoint Jim Neustadt and Brad Moretz to three-year terms on the Tourism Development Board.

VOTE: Aye-5  
Nay-0

*Blowing Rock ETJ Representative for Planning Board and Board of Adjustment*

Mr. Kevin Rothrock, Blowing Rock Planning Director, had stated that the Blowing Rock Town Council recommended Harrison Herbst to be reappointed to serve as an Extra-territorial Jurisdiction (ETJ) representative on both the Blowing Rock Planning Board and Board of Adjustment.

Commissioner Wallin, seconded by Commissioner Pertalion, moved to waive the second reading and reappoint Harrison Herbst to serve as an Extra-territorial Jurisdiction representative on the Blowing Rock Planning Board and Blowing Rock Board of Adjustment.

VOTE: Aye-5  
Nay-0

***C. Announcements***

Chairman Welch announced the following:

- The Parks and Recreation Department has scheduled a Drive-Thru Bunny Trail Parade from 2:00 to 4:00 P.M. on Sunday, March 28, 2021, at the Community Recreation Center.
- High Country Senior Games, for those over 50 years of age, will be held May through July 2021 by the Parks and Recreation Department. Please contact the Parks and Recreation Department for more information.
- The recent *Food for Friends Drive*, held at the Community Recreation Center by Parks and Recreation who had teamed up with Hospitality House, Casting Bread, and Hunger & Health Coalition, was a success. 1,875 pounds of food were collected as well as \$1,250 in cash donations.

**PUBLIC COMMENT**

There was no public comment.



**CLOSED SESSION**

At 6:44 P.M., Vice-Chairman Kennedy, seconded by Commissioner Wallin, moved to enter Closed Session to discuss Attorney/Client Matters, per G. S. 143-318.11(a)(3) and Land Acquisition, per G. S. 143-318.11(a)(5)(i).

VOTE: Aye-5  
Nay-0

Vice-Chairman Kennedy, seconded by Commissioner Turnbow, moved to resume the open meeting at 8:51 P.M.

VOTE: Aye-5  
Nay-0

**POTENTIAL ACTION AFTER CLOSED SESSION**

Chairman Welch announced that there was no action to take after closed session.

**ADJOURN**

Commissioner Wallin, seconded by Commissioner Turnbow, moved to adjourn the meeting at 8:52 P.M.

VOTE: Aye-5  
Nay-0

John Welch, Chairman

ATTEST:

Anita J. Fogle, Clerk to the Board

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**AGENDA ITEM 3:**

**APPROVAL OF THE MARCH 2, 2021, AGENDA**

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**AGENDA ITEM 4:**

**CORONAVIRUS (COVID-19) COMMUNITY UPDATE**

**MANAGER'S COMMENTS:**

Ms. Jennifer Greene, AppHealthCare Director, will provide an update on the Coronavirus (COVID-19).

The report is for information only; therefore, no action is required.

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**AGENDA ITEM 5:**

**COOPERATIVE EXTENSION MATTERS**

*A. Update on the High Country Kill/Chill Facility*

**MANAGER'S COMMENTS:**

Mr. Jim Hamilton, Cooperative Extension Director, will update the Board on the full proposal for the Golden Leaf Northwest Sector Community Based Grant Initiative program to create and construct new facilities for livestock slaughter and processing in Watauga County. The grant has been submitted in the amount of \$1.46 million.

The report is for information only; therefore, no action is required.

## High Country Kill/Chill Facility Update and Request to Submit Tobacco Trust Fund Grant Proposal

UPDATE: Watauga County submitted the full proposal for GoldenLEAF's Community Based Grants Initiative for the Northwest Sector on February 11<sup>th</sup>. The total request was for \$1.46 million to build a USDA certified slaughter/chill facility at the Watauga County Landfill, which would also complement the proposed composting facility at the transfer station by providing nitrogenous material & byproducts from the slaughter plant needed to create high-quality compost.

Based on discussions with County, project collaborators and consultants, and Watauga Butchery, it is still unclear if the requested funding will be sufficient for all of the site preparation costs & construction costs to build, equip, and open a facility to meet the needs of meat producers, and a solid operational model. Project partners are working on additional funding streams, grants, and financing to make sure that all cost considerations are covered before formally committing to construction. Golden LEAF understands that some costs & financing, at this phase of the planning are unclear. They communicated that if the grant funds are awarded, funds would not be released until we can acknowledge that the project can move forward with sufficient funding. With GoldenLEAF funding and other funding & financing sources that Watauga Butchery & Cooperative Extension are pursuing, we believe that we can fund the project. However, until a true site survey and construction estimates are completed, we will not know exact costs.

In the meantime, Cooperative Extension and Watauga Butchery request from the County approval to apply to the Tobacco Trust Fund grant program for \$220,000 for funding to equip the proposed facility with adequate coolers/chillers and other processing equipment that the facility will need to provide for the most efficient slaughter and packing needed for operation. This funding would be contingent, of course, on GoldenLEAF funding. However, the program manager for Tobacco Trust Fund (TTF) encouraged us to apply, as this proposed project checks their boxes for TTF funding priorities and TTF favors projects that are connected with GoldenLEAF. This grant proposal is due March 5 (Friday). Watauga County would be the fiscal agent for this grant funding as well. Dr. Jim Hamilton has completed the majority of the proposal and is nearing readiness for submission. Formal approval is requested for this proposal submission.

Additionally, on Friday, Feb. 26, we submitted an additional proposal to the USDA Rural Business Development Grant Program for North Carolina for an additional \$150,000 to supplement the Golden LEAF funding proposal **and** the Tobacco Trust Fund proposal for additional equipment needs to enhance automation and efficiency at the proposed facility. The county would be the fiscal agent for that one, as well. Formal approval is requested to receive and manage those funds, if awarded. It is important to note that the GoldenLEAF proposed funding is the key piece with these grant efforts. If Golden LEAF funding is not approved (award announcement will be the first week of April), we will withdraw both the Tobacco Trust Fund and the USDA proposal.



**AGENDA ITEM 5:****COOPERATIVE EXTENSION MATTERS*****B. Request to Submit Tobacco Trust Fund Grant Proposal*****MANAGER'S COMMENTS:**

Mr. Hamilton will request County approval to apply to the Tobacco Trust Fund grant program for \$200,000 for funding to equip the proposed kill/chill facility with adequate coolers/chillers and other processing equipment that the facility will need to provide for the most efficient slaughter and packing needed for operation.

On Friday, February 26, another proposal was submitted to the USDA Rural Business Development Grant Program for North Carolina for an additional \$150,000 to supplement the Golden LEAF funding proposal and the Tobacco Trust Fund proposal for additional equipment needs to enhance automation and efficiency at the proposed facility. The County would serve as the fiscal agent.

Formal approval is now requested to submit the grant proposal to the USDA Rural Business Development Grant Program for North Carolina for an additional \$150,000. No match is required. In the event the County is not awarded the GoldenLEAF grant the request to the Tobacco Trust Fund (TTF) and USDA Rural Business Development Grant Program will be withdrawn.

Board approval is required to grant authorization to apply to the Tobacco Trust Fund in the amount of \$200,000 and the USDA Rural Business Development Grant Program for North Carolina in the amount of \$150,000.



**AGENDA ITEM 6:**

**SOIL AND WATER CONSERVATION FUNDING ACCEPTANCE AGREEMENT**

**MANAGER'S COMMENTS:**

Watauga Soil and Water, will present the 2021-2023 technical assistance grant which funds a portion of the Soil and Water Conservation Tech position. The grant is for \$28,487 and is budgeted in the Fiscal Year 2021-2022 budget.

Board approval is requested to accept the grant.



*For Internal DSWC use only*  
 Tracking # 0  
 Contract # 18-024-4114

**DIVISION OF SOIL AND WATER CONSERVATION**  
 North Carolina Department of Agriculture & Consumer Services  
 1614 Mail Service Center • Raleigh, NC 27699-1614  
 919.707.3770 • [www.ncagr.gov/swc/](http://www.ncagr.gov/swc/)

**APPLICATION FOR MATCHING FUNDS FOR SOIL & WATER CONSERVATION DISTRICTS**

Complete and send 1 notarized original and 1 copy to the address above; keep a copy for your file

SWCD Name: Watauga  
 Federal ID Number for entity that will receive payment: 56-6001816  
 Address for entity that will receive payment: 814 West King St. Suite 216 Boone, NC 28607

**I. APPLICATION:**

**Watauga** Soil and Water Conservation District, **Watauga** County  
 Within the limits of appropriations by the N.C. General Assembly, the **Watauga** Soil and  
 Water Conservation District requests \$3,600.00 to match funds provided to the District by the County.

I certify that the matching funds received in the previous fiscal year (July 1st, 2019 to June 30th, 2020) were used according to NC Soil and Water Conservation Commission (SWCC) policy. I also certify that funds requested for the current fiscal year will be used in keeping with SWCC policy.

\_\_\_\_\_  
 Date SWCD Board Chairman Signature

**II. CERTIFICATION:**

I hereby certify that the **Watauga** County Board of Commissioners has approved an appropriation of \_\_\_\_\_ to the **Watauga** SWCD for soil and water conservation work during the current fiscal year, July 1st, 2020 to June 30th, 2021. This figure only includes the local County investment in the Soil and Water Conservation District program (takes into account the full appropriation for the District, minus an anticipated state matching funds and Technical Assistance dollars), and does not include local funds that will be used as a match for other state dollars (any local funds that will be used to match state Technical Assistance dollars have also been subtracted).

\_\_\_\_\_  
 Date County Finance Officer Signature

Sworn to and subscribed before me  
 \_\_\_\_\_  
 Notary Public Signature

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

My Commission Expires:

**III. APPROVAL:**

The above application is APPROVED for thirty six hundred and no/100 dollars (\$3,600.00).  
 The above application is DISAPPROVED.

\_\_\_\_\_  
 Date DSWC Director Signature



**NORTH CAROLINA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES**

Steven W. Troxler, Commissioner

**Contract Check Off List for Grantee (Government/University)**

**INSTRUCTIONS:** Check the "Yes" boxes in the left column for the document titles that are being returned with the two signed, dated and witnessed copies of the contract, with signatures in blue ink. Be sure to include all the other documents specified in your contract package. If "No" has been checked off for you, that document is not required for this grant program or project.

**GRANTEE ORGANIZATION NAME:** Watauga Soil & Water Conservation District

**PROJECT TITLE/NAME:** District Master Agreement

**CONTRACT #:** 21-035-4074

| <i>Grantee Organization<br/>Entities Only<br/>Check One Box</i> |  |    | <i>Document Title</i>   | <i>Department Use –<br/>Documents Attached<br/>or On File</i> |  |    | <i>Grants and Contracts-<br/>Documents Attached<br/>or On File</i> |  |    |
|---|--|----|---|---|--|----|--|--|----|
| Yes   |  | No |   | Yes   |  | No | Yes  |  | No |
|   |  |    | Contractual "Check Off List for Grantee                               |   |  |    |  |  |    |
|   |  |    | Contract Cover (To be signed, dated & witnessed)                      |   |  |    |  |  |    |
|   |  |    | Attachment A – General Terms and Conditions – Government/University   |   |  |    |  |  |    |
|   |  |    | Attachment B – Scope of Work (includes Timeline and Line Item Budget) |   |  |    |  |  |    |
|   |  |    | Attachment C – Certifications and Assurances Section                  |   |  |    |  |  |    |
|   |  |    | Attachment D – NC OpenBook Supplemental Information                   |   |  |    |  |  |    |
|   |  |    | Attachment E – Signature Card   |   |  |    |  |  |    |
|   |  |    | Attachment F – W-9 Tax Information                                    |   |  |    |  |  |    |
|   |  |    | Attachment G – Vendor Electronic Payment Form                         |   |  |    |  |  |    |





Steve Troxler  
Commissioner

## North Carolina Department of Agriculture and Consumer Services

N. David Smith  
Chief Deputy Commissioner

December 14, 2020

Ms. Michelle Kasey, Administrative Assistant/ Education Coordinator  
Watauga Soil & Water Conservation District  
971 West King Street  
Boone, NC 28607

### NOTIFICATION OF FUNDING OFFER

Dear Ms. Kasey:

On behalf of Commissioner Steve Troxler and the North Carolina Department of Agriculture and Consumer Services – Division of Soil & Water Conservation, I am pleased to inform you that **\$28,817.00** has been approved for District Matching Funds and Technical Assistance.

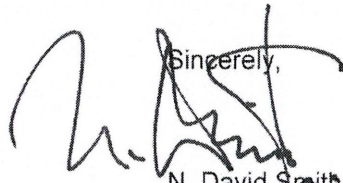
Two original contract packets must be completed and returned to the NCDA&CS, making sure that the contracts and certain forms have been signed, dated, and witnessed, as applicable, before they are returned to the address provided below. By completing these documents, you are agreeing to the specific stipulations, the general terms and conditions and specific reporting requirements. Please return the two completed packets to:

Helen Wiklund, Administrative Specialist  
NC Department of Agriculture & Consumer Services  
Division of Soil & Water Conservation  
1614 Mail Service Center  
Raleigh, NC 27699-1614

All authorized representative signatures must be in blue or black ink. Please Use the Contract Check Off List to ensure all attachments are included and are in the correct order for each contract packet.

One fully-executed, original contract will be returned to you for your records. If you have any questions about your contract or any of the forms contained in your offer packet, please call Helen Wiklund at 919-707-3773, or feel free to send an email to [helen.wiklund@ncagr.gov](mailto:helen.wiklund@ncagr.gov).

I would like to take this opportunity to thank you for your efforts to protect the soil and water resources of our state.

Sincerely,  


N. David Smith  
Chief Deputy Commissioner

Enclosures

STATE OF NORTH CAROLINA  
COUNTY OF WAKE



030221 BCC Meeting  
Departmental Use Only

CENTER: 1611-3701  
ACCOUNT: 536967  
AMOUNT: \$3,600.00

CENTER: 2710  
ACCOUNT: 536502  
AMOUNT: \$25,217.00

CENTER:           
ACCOUNT:           
AMOUNT:         

## North Carolina Department of Agriculture and Consumer Services Division of Soil and Water Conservation

### District Master Agreement – Government

**CONTRACT # 21-035-4074**

This Contract is made and entered into by and between the **North Carolina Department of Agriculture and Consumer Services, Division of Soil and Water Conservation**, (the “Agency”) and the Watauga Soil and Water Conservation District, (the “Grantee”), and referred to collectively as the “Parties.” The Grantee’s federal tax identification number is 56-6001816 and is physically located in Watauga County, and is further located at 971 West King Street, Boone, NC 28607.

The purpose of this Contract is to establish the procedures for the Agency to provide district matching funds and support for technical assistance to the Grantee. This Contract is funded by State appropriations. Funds awarded under this Contract must be used for the purpose for which they are intended.

The Grantee’s fiscal year ends June 30.

#### **Contract Documents:**

This Contract consists of the Contract and its attachments, all of which are identified by name as follows:

1. This Contract
2. General Terms and Conditions (Attachment A)
3. Scope of Work, including Timeline, Line Item Budget and Budget Narrative (Attachment B)
4. Certifications and Assurances Section (Attachment C)
5. NC Openbook Supplemental Information (Attachment D)
6. Signature Card (Attachment E)
7. W-9 Tax Information (Attachment F)
8. Vendor Electronic Payment Form (Attachment G)

These documents constitute the entire Contract between the Parties and supersede all prior oral or written statements or contracts.

#### **I. Precedence Among Contract Documents:**

In the event of a conflict between or among the terms of the Contract Documents, the terms in the Contract Document with the highest relative precedence shall prevail. The order of precedence shall be the order of documents as listed in Paragraph 1, above, with the first-listed document having the



highest precedence and the last-listed document having the lowest precedence. If there are multiple Contract Amendments, the most recent amendment shall have the highest precedence and the oldest amendment shall have the lowest precedence.

## II. Effective Period:

This Contract shall be effective on the 1<sup>st</sup> day of July, 2020, and shall terminate on the 30<sup>th</sup> day of June, 2023 with the option to extend, if mutually agreed upon, through a written amendment as provided for in the General Terms and Conditions as described in Attachment A.

## III. Grantee's Duties:

The Grantee hereby agrees to perform, in a manner satisfactory to the Agency and in accordance with the policies and rules of the Soil and Water Conservation Commission (the "Commission"), services described in Attachment B, Scope of Work.

Work to be performed under this Contract may be performed by employees of the District.

The District shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Contract Administrator.

## IV. Agency's Duties:

The Agency shall pay the Grantee in the manner and in the amounts specified in the Contract Documents. The total amount paid by the Agency to the Grantee under this Contract shall not exceed **\$28,817.00**.

This amount consists of: \$28,817.00 in State funds

The Grantee's matching requirement is **\$28,817.00**, which consists of:

|                     |                    |
|---------------------|--------------------|
| In Kind             | \$                 |
| Cash                |                    |
| Cash and In-kind    | \$                 |
| Cash and/or In-kind | <b>\$28,817.00</b> |
| Other/Specify       | \$                 |

The total Contract amount is **\$57,634.00**.

## V. Conflict of Interest Policy:

Any district receiving funding for an employee through this Contract shall have in place a secondary employment policy that protects the District, its employees, the County, the Agency, and the Commission from any actual, potential or perceived conflict of interest. Such policy shall be in accordance with the Commission Guidelines on Secondary Employment found at [http://www.ncagr.gov/SWC/costshareprograms/documents/secondary\\_employment\\_district\\_employee.pdf](http://www.ncagr.gov/SWC/costshareprograms/documents/secondary_employment_district_employee.pdf)

Any Grantee that receives funding for an employee through this Contract shall submit to the Agency by January 15, 2021 and annually thereafter a secondary employment form for each employee funded through this Contract. The Grantee shall submit an updated form along with its quarterly progress reports if the secondary employment or other potential conflicts of interest of a funded employee arise after the initial submission.



**VI. Statement of No Overdue Tax Debts:**

The Agency has determined that Grantee is a government agency and is not subject to N.C.G.S. § 143C-6-23(c). Therefore, the Grantee is not required to file a Statement of No Overdue Tax Debts with the Agency prior to disbursement of funds.

**VII. Reversion of Unexpended Funds:**

Allocations not dispersed under this Contract shall revert to the Agency upon the Contract's expiration or termination.

**VIII. Reporting Requirements:**Quarterly Progress Reports:

The Grantee shall submit quarterly progress reports to the Agency, with each report due on or before the 15th day of, October, January, and April and the 30<sup>th</sup> day of June continuing until the project is complete. The quarterly progress report is required even if no activity has occurred for the quarter and no reimbursement is requested for the quarter. Failure to provide quarterly reports constitutes a breach of contract and may result in funding being withheld or termination of the contract.

**IX. Payment Provisions:**

Upon execution of this Contract the Grantee shall submit to the Agency Contract Administrator a completed Request for Payment form, to be provided by the Agency. All Request for Payment forms should be received no more than quarterly, with an invoice showing expenditures and matching funds, if applicable, for the current period and cumulatively for the entire project, in addition to deliverables provided by the Grantee, subject to approval by the Agency. Upon approval by the Agency, payment may be made within 30 days. All payments are subject to the availability of funds.

The Grantee agrees to provide information required by the Agency to comply with the procedures for disbursement of funds under this Contract and maintain reports and accounting records, including but not limited to receipts and invoices that support the allowable expenditure of State funds.

The parties to the Contract further agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon the Grantee complying with all of the terms set forth in this Contract and performing the services specified in Attachment B in a satisfactory manner. It will be the responsibility of the Agency to determine if the Grantee is complying with the Contract and performing the services specified in Attachment B in a satisfactory manner. Failure to comply with the terms of the Contract and/or failure to perform services in a satisfactory manner may result in funding being withheld or immediate termination of the Contract.

Payment shall be made in accordance with the Contract Documents and limited to the amounts in the Scope of Work, Attachment B.

Eligible expenditures for payment must be within the effective period noted in the Contract.

All matching funds, including in-kind and cash, must be spent concurrently with funds provided by the Contract. Both types of matching funds expended shall be accounted for on the quarterly invoices.

Indirect costs are not allowable expenditures under this Contract.

**X. Contract Administrators:**

All notices permitted or required to be given by one party to the other and all questions about the Contract from one Party to the other shall be addressed and delivered to the other party's Contract Administrator. The name, post office address, street address, telephone number, fax number, and email address of the parties' respective initial Contract Administrator are set out below. Either party may change the name, post office address, street address, telephone number, fax number, or email address of its Contract Administrator by giving timely written notice to the other party.

**For the Agency:**

| IF DELIVERED BY US POSTAL SERVICE  | IF DELIVERED BY ANY OTHER MEANS   |
|--|---|
| Helen Wiklund, Administrative Specialist<br>Division of Soil & Water Conservation<br>1614 Mail Service Center<br>Raleigh, NC 27699-1614<br>Telephone: 919-707-3773<br>Email: helen.wiklund@ncagr.gov | Helen Wiklund, Administrative Specialist<br>Division of Soil & Water Conservation<br>Old Health Building<br>216 W. Jones Street, 3 <sup>rd</sup> Floor<br>Raleigh, NC 27603 |

**For the Grantee:**

| GRANTEE CONTRACT ADMINISTRATOR  | DISTRICT KEY PERSONNEL     |
|---|----------------------------|
| Michelle Kasey, Administrative Assistant/<br>Education Coordinator<br>Watauga SWCD<br>971 West King Street<br>Boone, NC 28607<br><br>Telephone: 828-264-0842<br>Fax: 828-264-3857<br>Email: Michelle.Kasey@watgov.org | Specified in Strategy Plan |

**XI. Supplementation of Expenditure of Public Funds:**

The Grantee assures that funds received pursuant to this Contract shall be used only to supplement, not to supplant, the total amount of federal, state and local public funds that the Grantee otherwise expends for activities involved with specialty services and related programs. Funds received under this Contract shall be used to provide additional public funding for such services. The funds shall not be used to reduce the Grantee's total expenditure of other public funds for such services.

**XII. Disbursements:**

As a condition of this Contract, the Grantee acknowledges and agrees to make disbursements of funds provided under this Contract in accordance with the following requirements:

- a. Will implement or already have implemented adequate internal controls over disbursements;
- b. Pre-audit all invoices presented for payment to determine:
  - Validity and accuracy of payment
  - Payment due date
  - Adequacy of documentation supporting payment
  - Legality of disbursement
- c. Assure adequate control of signature stamps/plates; and

- d. Assure adequate control of negotiable instruments; and
- e. Have procedures in place to ensure that account balance is solvent and to reconcile the account monthly.

**XIII. Outsourcing:**

The Grantee certifies that it has identified to the Agency all jobs related to the Contract that have been outsourced to other countries, if any. The Grantee further agrees that it will not outsource any such jobs during the term of this Contract without providing prior written notice to the Agency.

**XIV. N.C.G.S. § 133-32 and Executive Order 24:**

N.C.G.S. § 133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State employee of any gift from anyone with a Contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement or Contract, you attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employee of your organization.

**XV. Designation of Payees:**

As many soil and water conservation districts have entered into prior agreements with other governmental entities to administer all or a portion of their budget it is necessary to specify the payee for each activity described in the Scope of Work, Attachment B. Upon approval by the Agency of the required request for payment forms and supporting documentation, payments shall be issued to designated payees as follows:

| <b>Activity</b>   | <b>Payee Name</b> | <b>Payee Fed Tax ID</b> |
|---|-------------------|-------------------------|
| <b>District Matching Funds</b>                                | Watauga County    | 56-6001816              |
| <b>Technical Assistance<br/>Salary and Benefits<br/>Funds</b> | Watauga County    | 56-6001816              |
| <b>Technical Assistance<br/>Operating Funds</b>               | Watauga County    | 56-6001816              |



**XVI. Signature Warranty:**

The undersigned represent and warrant that they are authorized to bind their principals to the terms of this Contract.

IN WITNESS WHEREOF, the Grantee and the Agency execute this Contract in **two (2)** originals, one (1) of which is retained by the Grantee and one (1) which is retained by the Agency.

**Grantee:** Watauga Soil and Water Conservation District

\_\_\_\_\_  
Signature of Authorized Representative Date

\_\_\_\_\_  
Printed Name Title

**Witness:**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name Title



**North Carolina Department of Agriculture and Consumer Services**

\_\_\_\_\_  
Signature of Authorized Representative Date

N. David Smith, Chief Deputy Commissioner

**PUBLIC SECTOR CONTRACTS (Including Local Governments)**

**General Terms and Conditions**

**DEFINITIONS**

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein:

- (1) "Agency" (as used in the context of the definitions below) shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subagency of government. For other purposes in this Contract, "Agency" shall mean the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143C-6-23(a)(2): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143C-1-1(d)(18): Any of the following that is not a State agency: an individual, a firm, a partnership, an association, a county, a corporation, or any other organization acting as a unit. The term includes a unit of local government and public authority.
- (13) "Public Authority" has the meaning in N.C.G.S. 143C-1-1(d)(22): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal



**PUBLIC SECTOR CONTRACTS (Including Local Governments)**

financial assistance received by the State and transferred or disbursed to non-State entities. Both federal and State funds maintain their identity as they are subgranted to other organizations. Pursuant to N.C.G.S. 143C-6-23(a)(1), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.

- (17) "Subgrantee" has the meaning in G.S. 143C-6-23(a)(3): a non-State entity that receives a grant of State funds from a grantee or from another subgrantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.
- (18) "Unit of Local Government" has the meaning in G.S. 143C-1-1(d)(29): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

### Relationships of the Parties

**Independent Contractor:** The Grantee is and shall be deemed to be an independent Contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

**Subcontracting:** The Grantee shall not subcontract any of the work contemplated under this Contract without prior written approval from the Agency. Any approved subcontract shall be subject to all conditions of this Contract. Only the subcontractors or subgrantees specified in the Contract documents are to be considered approved upon award of the Contract. The Agency shall not be obligated to pay for any work performed by any unapproved subcontractor or subgrantee. The Grantee shall be responsible for the performance of all of its subgrantees and shall not be relieved of any of the duties and responsibilities of this Contract.

**Subgrantees:** The Grantee has the responsibility to ensure that all subgrantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

**Assignment:** No assignment of the Grantee's obligations or the Grantee's right to receive payment hereunder shall be permitted. However, upon written request approved by the issuing purchasing authority, the State may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

In no event shall such approval and action obligate the State to anyone other than the Grantee and the Grantee shall remain responsible for fulfillment of all Contract obligations.

**Beneficiaries:** Except as herein specifically provided otherwise, this Contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any such person or entity, other than the Agency or the Grantee, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

### Indemnity

**Indemnification:** The Grantee agrees to indemnify and hold harmless the Agency, including any of its Divisions, and any of its officers, agents and employees, from liability of any kind, and from any claims of third parties arising out of any act or omission of the Contractor in connection with the performance of this Contract to the extent permitted by law.

### Default and Termination

**Termination by Mutual Consent:** The Parties may terminate this Contract by mutual consent with 60 days notice to the other party, or as otherwise provided by law.

**Termination for Cause:** If, through any cause, the Grantee shall fail to fulfill its obligations under this Contract in a timely and proper manner, the Agency shall have the right to terminate this Contract by giving written notice to the Grantee and specifying the effective date thereof.

In that event, all finished or unfinished deliverable items prepared by the Grantee under this Contract



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shall, at the option of the Agency, become its property and the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed on such materials, minus any payment or compensation previously made.

Notwithstanding the foregoing provision, the Grantee shall not be relieved of liability to the Agency for damages sustained by the Agency by virtue of the Grantee's breach of this agreement, and the Agency may withhold any payment due the Grantee for the purpose of setoff until such time as the exact amount of damages due the Agency from such breach can be determined. The filing of a petition for bankruptcy by the Grantee shall be an act of default under this Contract.

**Waiver of Default:** Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the Contract.

**Availability of Funds:** The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

**Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**Survival of Promises:** All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the Contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

### Intellectual Property Rights

**Copyrights and Ownership of Deliverables:** All deliverable items produced pursuant to this Contract are the exclusive property of the Agency. The Grantee shall not assert a claim of copyright or other property interest in such deliverables.

### Compliance with Applicable Laws

**Compliance with Laws:** The Grantee shall comply with all laws, ordinances, codes, rules, regulations,

and licensing requirements that are applicable to the conduct of its business, including those of federal, State, and local agencies having jurisdiction and/or authority.

**Equal Employment Opportunity:** The Grantee shall take affirmative action in complying with all federal and State statutes and all applicable requirements concerning fair employment of people with disabilities, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or disability. For additional information see Title VI of the Civil Rights Act of 1964 (42 U.S.C., 2000d, 2000e-16), Title XI of the Education amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), and section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794).

**Executive Order 24:** In accordance with Executive Order 24, issued by Governor Perdue, and N.C.G.S. § 133-32, a vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, vendor, or grantee), is prohibited from making gifts or giving favors to any employee of the Agency of Agriculture and Consumer Services. This prohibition covers those vendors, contractors, and/or grantees who:

- (a) have a Contract with a governmental Agency; or
- (b) have performed under such a Contract within the past year; or
- (c) anticipate bidding on such a Contract in the future.

For additional information regarding the specific requirements and exemptions, vendors, contractors, and/or grantees are encouraged to review Executive Order 24 and N.C.G.S. § 133-32.

### Confidentiality

**Confidentiality:** Any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement shall be kept as confidential and not divulged or made available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract.

### Oversight

**Access to Persons and Records:** The State Auditor and the using agency's internal auditors shall have



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access to persons and records as a result of all Contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the Contract to verify accounts and data affecting fees or performance).

**Record Retention:** Records shall not be destroyed, purged or disposed of without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the Contract is subject to federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has been started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

### Miscellaneous

**Choice of Law:** The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters whether sounding in Contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

**Headings:** The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

**Time of the Essence:** Time is of the essence in the performance of this Contract.

**Care of Property:** The Grantee agrees that it shall be responsible for the proper custody and care of any property furnished to it for use in connection with the performance of this Contract and will reimburse the

Agency for loss of, or damage to, such property. At the termination of this Contract, the Grantee shall contact the Agency for instructions as to the disposition of such property and shall comply with these instructions.

**Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

**Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

**Travel Expenses:** Reimbursement to the Grantee for travel mileage, meals, lodging and other travel expenses incurred in the performance of this Contract shall be reasonable and supported by documentation. State rates shall be used. International travel shall not be reimbursed under this Contract.

**Sales/Use Tax Refunds:** If eligible, the Grantee and all subgrantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

**Advertising:** The Grantee shall not use the award of this Contract as a part of any news release or commercial advertising.

**Indirect Costs Policy:** The Agency has adopted a "Zero" policy that indirect costs are unallowable expenditures in all State funded grant applications and/or grant guidance, informational or directional documents.

**Allowable Uses of State Funds:** Expenditures of State funds by any grantee shall be in accordance with the Cost Principles outlined in the Office of Management and Budget (OMB) CFR Title 2, Part 200 Uniform Administrative Requirements, as applicable. If the grant funding includes federal sources, the grantee shall ensure adherence to the cost principles established by the Federal Office of Management and Budget. [09 NCAC 03M.020]



## ATTACHMENT B

### Scope of Work and Payment Provisions

The Watauga Soil & Water Conservation District will complete the following activities and supply the following deliverables:

1. District Matching Funds – Funds for district operating support are allocated to each county equally, subject to that District’s documentation that matching funds equal to or exceeding the allocated amount are available for match. To be eligible to receive matching funds the Grantee shall:
  - a. Submit by March 31 of each fiscal year an ‘Application for Matching Funds for Soil & Water Conservation Districts’ showing the amount of matching funds requested by the Grantee and documenting the source and amount of matching funds provided by the Grantee. The Grantee shall not count as match the funds that were allocated by the Commission for technical assistance cost share nor those local funds pledged to match technical assistance cost share. **Matching Funds not requested by March 31 shall be unencumbered from this Contract.**
  - b. Upload to the Agency’s SharePoint site:
    - i. The approved minutes of all district board meetings held during the period of the Contract.
    - ii. Term of office documentation for each board supervisor for their current term
      1. Oath of Office
      2. Employment Certification Form for District Supervisors (Form 201)
    - iii. Supervisor Disclosure Form (NC-CSPs-SD) – Due annually for each board supervisor by February 28
2. Cost Share Technical Assistance – cost share funds for technical assistance positions are allocated to districts by the Commission and through the Agency in accordance with its rules and procedure, 02 NCAC 59D .0108. To be eligible to receive technical assistance cost share, the Grantee shall:
  - a. Submit by June 1 of each fiscal year, the District Strategy Plan for cost share programs for the upcoming fiscal year, including a request for technical assistance funds. The request for technical assistance funds should include the name of each employee who does technical work to support Commission Cost Share Programs and an upload of those employees’ Job Approval Authority.
  - b. Implement cost share program activities in the District, pursuant to Commission rules and policies.
  - c. Submit a Request for Payment of Technical Assistance Form at least annually and no more frequently than quarterly documenting actual expenditures for salary, benefits, and operating expenses by the Grantee in support of the technical assistance position(s) approved by the Commission and listed in the Contract Budget. Any technical assistance funds encumbered for the current fiscal year that are not

requested by the Grantee on or before June 30 of that fiscal year shall be unencumbered from this Contract.

- d. Work with the technical supervisor to upload an updated Individual Development Plan in AgLearn by June 30, 2021 for each for each employee performing work on Commission cost share program contracts.
- e. Have in place a secondary employment policy consistent with the Commission's Guidelines on Secondary Employment and shall upload to the Agency's SharePoint site an annual Secondary Employment Form for each employee performing work on Commission cost share program contracts. The initial Secondary Employment Form shall be submitted annually on or before October 15 of each year. The Grantee shall submit an updated form along with its quarterly Request for Payment of Technical Assistance if the secondary employment changes or other potential conflicts of interest of a subject employee arise after the initial submission.

### **CONTRACT BUDGET**

The following budget reflects the maximum authorized payment for each activity described in the scope of work.

#### **Activity 1: District Matching Funds**

| <b>Fiscal Year</b> | <b>Maximum Amount Awarded</b> | <b>District Match Requirement</b> |
|--------------------|-------------------------------|-----------------------------------|
| <b>2020-21</b>     | \$3,600.00                    | \$3,600.00                        |
| <b>2021-22</b>     |                               |                                   |
| <b>2022-23</b>     |                               |                                   |

#### **Activity 2: Cost Share Technical Assistance**

| <b>Fiscal Year</b> | <b>Maximum Allocation</b> | <b>District Match Requirement</b> |
|--------------------|---------------------------|-----------------------------------|
| <b>2020-21</b>     | \$25,217.00               | \$25,217.00                       |
| <b>2021-22</b>     | \$0.00                    | \$0.00                            |
| <b>2022-23</b>     | \$0.00                    | \$0.00                            |



## Certifications and Assurances

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### CERTIFICATIONS REGARDING LOBBYING, NONPROCUREMENT, DEBARMENT, SUSPENSION AND DRUG-FREE WORKPLACE

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Signature of this form provides for compliance with certification requirements under 2 CFR, Subtitle B, Chapter IV, Part 417, "Nonprocurement Debarment and Suspension," Part 418, "New Restrictions on Lobbying," and Part 421, "Requirements for Drug-Free Workplace (Financial Assistance)," and 2 CFR Part 180. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Agriculture & Consumer Services determines to award the covered transaction, grant, or cooperative agreement.

---

#### 1. LOBBYING

As required by authority: 31 U.S.C. 1352 and U.S.C. 301 and implemented at 2 CFR Part 180, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 2 CFR Section 418.110, the applicant certifies that to the best of their knowledge and belief, that:

- 1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.
- 3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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#### 2. NONPROCUREMENT DEBARMENT AND SUSPENSION

As required by Executive Order 12549, Debarment and Suspension, and implemented at 2 CFR Part 180 and 2CFR Part 417, for prospective participants in primary covered transactions, as defined at 2 CFR 180.435 and Subpart C, 417.332, the applicant certifies that it and its principals:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph 2. (a) (b) of this certification.
- d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default.
- e) Agree to include a term or condition in lower tier covered transactions requiring lower tier participants to comply with subpart C of the OMB guidance in 2 CFR part 180, as supplemented by subpart C of Part 417.

Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this certification.

**3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 2 CFR Part 182, Subparts B, and C, for grantees:

The applicant certifies that it will:

- a) Make a good faith effort, on a continuing basis, to maintain a drug-free workplace. You must agree to do so as a condition for receiving any award covered by this part.
- b) Publish a drug-free workplace statement and establish a drug-free awareness program for your employees (see Sections 182.205 through 182.220); and
- c) Take actions concerning employees who are convicted of violating drug statutes in the workplace (see Section 182.225), including notification to any Federal agency on whose award the convicted employee was working and within 30 days take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
- d) You must identify all known workplaces under your Federal awards (see Section 182.230).

The grantee must provide the location site(s) for the performance of work done in connection with the specific grant.

Place(s) of Performance (Street address, city, county, state, zip code)

|       |       |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 2 CFR Part 182:

- A. As a condition of the grant, I certify that I will comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of part 421, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152-5158 of the Drug Free Workplace Act of 1988 (Pub.L100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

B. I agree to notify the agency as required by 2 CFR 182.300(b) of any conviction for a criminal drug offense within ten days.

Notice shall include the identification number(s) of each affected grant.

**As the duly authorized representative of the Grantee, I hereby certify and state to the best of my knowledge and belief, that the Grantee will comply with the above certifications.**

---

Grantee Organization Name

---

Signature of Authorized Representative

Date

---

Printed Name of Authorized Representative

Title



NC OpenBook Supplemental Information

Instructions: Complete the information below and return it to the Contract Administrator identified in your original contract. This information must be submitted as part of your contract. If you have questions, please contact the Contract Administrator or the Alternate Contact as reflected in your contract.

DUNS Number: 08-998-8216
Contract Number:
Grantee Name: Watauga County SWCD
TAX ID Number: 56-6001816
Fiscal Year Ends: June 30
Amendment Number:

1. Brief Description and Background/History of your Organization.

Be sure to include the number of years in existence, number of employees, mission and goals of your organization.
Established in 1949 two employees will strive to protect and preserve the soil and water and related resources in Watauga County, by locally led educational, technical, and financial assistance to all citizens.

2. Current project timeline: Begin July, 2020 End June 30, 2023

3. Expected outcomes and specific deliverables.

(Example: Expected Outcome: Aquaculture operation will remain in business. Deliverable: Healthy food made available for human consumption.)
District matching funds and cost share technical assistance funds

4. The Grantee's WEB URL: WataugaCounty.org

5. \* Grantee County of Residence: Watauga Congressional District#: 5th
(CONGRESSIONAL DISTRICT # MUST BE IDENTIFIED)

6. \*\*County of Benefit: Single County: [X] Yes [ ] No County Name: Watauga
Statewide: [ ] Yes [ ] No
Regional: [ ] Yes [ ] No

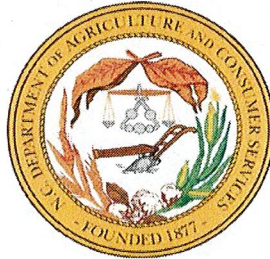
7. If the answer to question number 6 is more than one county or "Regional", list the counties receiving benefit.

Blank lines for listing counties receiving benefit.

\*Grantee County of Residence: County in which grantee is located.

\*\*County of Benefit: List only county or counties in which funding will be spent and/or food commodities will be received.

**Signature Card**



**CONTRACT & FINANCIAL DOCUMENTS**

**INSTRUCTIONS:** Please read and fill in the required information to the right of each field where applicable. Signatures must match the Contract signatures. In the event the affixed signature(s) are no longer valid, a revised form must be submitted prior to processing any contractual documents or submitting "Request for Payments" or any other financial documents. If more than two people will sign for the organization, this form may be duplicated.

**SECTION I.**

|  |  |
|--|--|
| <b>Date:</b>                                     |  |
| <b>Legal Applicant Organization/Agency Name:</b> |  |
| <b>Federal Tax Identification Number:</b>        |  |

**SECTION II.**

**Certification:**  
 By affixing my signature below, I certify that person(s) identified are designated having legal authorization to sign on behalf of the organization named in Section I., above, for purposes of executing contractual documents and preparing, approving and executing all financial documents; including "Requests for Payments." I understand the legal implications of any and all misrepresentation, which include but are not limited to defrauding the State of North Carolina, and certify that the person signing below has full authority to execute this Agreement on behalf of the named organization.

**NON-GOVERNMENTAL ORGANIZATIONS ONLY (Must match Contract Signature)**

| <b>Board Chair, Executive Director, etc.</b> | <b>Financial Representative, Treasurer, etc.</b> |
|--|--|
| <b>Print Name &amp; Title:</b>               | <b>Print Name &amp; Title:</b>                   |
| <b>Signature:</b>                            | <b>Signature:</b>                                |


**GOVERNMENTAL ENTITIES (Must match Contract Signature)**

| <b>Authorized Governmental Official</b> | <b>Chief Fiscal Officer</b>    |
|---|--------------------------------|
| <b>Print Name &amp; Title:</b>          | <b>Print Name &amp; Title:</b> |
| <b>Signature:</b>                       | <b>Signature:</b>              |







|   |  |   |
|---|--|---|
| NC Office of the State Controller<br>*Denotes a Required Field<br>This form is to be completed by the vendor. | <b>STATE OF NORTH CAROLINA</b><br><b>SUBSTITUTE W-9 FORM</b><br><b>Modification to Existing Vendor Records</b> |  |
|---|--|---|

This form is to be completed by the vendor if one or more of the following have changed:

1. Change of remittance address.
2. Change of Social Security Number (SSN), or Employer Identification Number (EIN), or Individual Taxpayer Identification Number (ITIN).
3. Change of Vendor Name.

Please complete the applicable sections below.

**Section 1:**

|   |   |
|---|---|
| <b>CHANGE FROM: Remittance Address</b>                                | <b>CHANGE TO: Remittance Address</b>                                  |
| *Address Line 1:  | *Address Line 1:  |
| Address Line 2:   | Address Line 2:   |
| *City                      *State                      *Zip (9 digit) | *City                      *State                      *Zip (9 digit) |
| *County   | *County   |

NOTE: If you would like to receive your payments electronically, please complete the [Vendor Electronic Payment Form](#)

**Section 2:**

|  |  |
|--|--|
| <b>* CHANGE FROM: SSN, or EIN, or ITIN</b> | <b>* CHANGE TO: SSN, or EIN, or ITIN</b> |
|--|--|

(PRESS THE TAB KEY TO ENTER EACH NUMBER)

(PRESS THE TAB KEY TO ENTER EACH NUMBER)

**Section 3:**

|  |  |
|--|--|
| <b>CHANGE FROM: Vendor Name</b>  | <b>CHANGE TO: Vendor Name</b>  |
| *Legal Name:   | *Legal Name:   |
| Business Name/DBA/Disregarded Entity Name, if different from Legal Name: | Business Name/DBA/Disregarded Entity Name, if different from Legal Name: |

|                             |  |                 |    |
|-----------------------------|--|-----------------|----|
| *Printed Name:              |  | *Printed Title: |    |
| *Authorized U.S. Signature: |  | * Date:         | 41 |

## NC Office of the State Controller Substitute W-9 Instructions

**General Instructions**

For General Instructions, please refer to the IRS Form W-9 located on the IRS Website (<https://www.irs.gov/>).

**Specific Instructions****Section 1 -Taxpayer Identification**

1. **Taxpayer Identification Type.** Check the type of identification number provided in box 2.
2. **Taxpayer Identification Number (TIN).** Enter taxpayer's nine-digit Employer Identification Number (EIN), Social Security Number (SSN), or Individual Taxpayer Identification Number (ITIN) without dashes.

Note: If an LLC has one owner, the LLC's default tax status is "disregarded entity". If an LLC has two owners, the LLC's default tax status is "partnership". If an LLC has elected to be taxed as a corporation, it must file IRS Form 2553 (S Corporation) or IRS Form 8832 (C Corporation).

3. **Dunn and Bradstreet Universal Numbering System (DUNS).** Vendors are requested to enter their DUNS number, if applicable.
4. **Legal Name.** Enter the legal name as registered with the IRS or Social Security Administration. In general, enter the name shown on your income tax return. Do not enter a Disregarded Entity Name on this line.
5. **Business Name.** Business, Disregarded Entity, trade, or DBA ("doing business as") name.

**Contact Information**

6. Enter your **Legal Address**.
7. Enter your **Remittance Address, if applicable.** A **Remittance Address** is the location in which you or your entity receives business payments.
8. Enter the **Contact Name**.
9. Enter your **Business Phone Number**.
10. Enter your **Fax Number**, if applicable.
11. Enter your **Email Address**, if applicable.

For clarification on IRS Guidelines, see [www.irs.gov](http://www.irs.gov).

12. **Entity Type.** Select the appropriate entity type.
13. **Entity Classification.** Select the appropriate classification type.

**Exemptions**

If you are exempt from backup withholding and/or FATCA reporting, enter in the Exemptions box, any code(s) that may apply to you. See Exempt payee code and Exemption from FATCA reporting code below.

**14. Exempt payee code.** Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.

**Note.** If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

The following codes identify payees that are exempt from backup withholding:

- 1 - An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2 - The United States or any of its agencies or instrumentalities
- 3 - A state, the District of Columbia, a possession of the United States, or any of their political subdivisions, or instrumentalities
- 4 - A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5 - A corporation
- 6 - A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States
- 7 - A futures commission merchant registered with the Commodity Futures Trading Commission
- 8 - A real estate investment trust
- 9 - An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10 - A common trust fund operated by a bank under section 584(a)
- 11 - A financial institution
- 12 - A middleman known in the investment community as a nominee or custodian
- 13 - A trust exempt from tax under section 664 or described in section 4947.

## NC Office of the State Controller Substitute W-9 Instructions

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

| If the payment is for...   | THEN the payment is exempt for...   |
|--|---|
| Interest and dividend payments   | All exempt payees except for 7  |
| Broker transactions  | Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012. |
| Barter exchange transactions and patronage dividends                                   | Exempt payees 1 through 4   |
| Payments over \$600 required to be reported and direct sales over \$5,000 <sup>1</sup> | Generally, exempt payees 1 through 5 <sup>2</sup>   |
| Payments made in settlement of payment card or third party network transactions        | Exempt payees 1 through 4   |

<sup>1</sup> See Form 1099-MISC, Miscellaneous Income, and its instructions.

<sup>2</sup> However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney, and payments for services paid by a federal executive agency.

**Exemption from FATCA reporting code.** The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements.

- A - An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)
- B - The United States or any of its agencies or instrumentalities
- C - A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities
- D - A corporation the stock of which is regularly traded on one or more established securities markets, as described in Reg. section 1.1472-1(c)(1)(i)
- E - A corporation that is a member of the same expanded affiliated group as a corporation described in Reg. section 1.1472-1(c)(1)(i)
- F - A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state
- G - A real estate investment trust
- H - A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940
- I - A common trust fund as defined in section 584(a)
- J - A bank as defined in section 581
- K - A broker
- L - A trust exempt from tax under section 664 or described in section 4947(a)(1)
- M - A tax exempt trust under a section 403(b) plan or section 457(g) plan

## Section 2 - Certification

To establish to the paying agency that your TIN is correct, you are not subject to backup withholding, or you are a U.S. person, or resident alien, sign the certification on NC Substitute Form W-9. You are being requested to sign by the State of North Carolina.

For additional information please refer to the IRS Form W-9 located on the IRS Website (<https://www.irs.gov/>).



**Office of the State Controller**  
**Return to: OSC Support Services Center**  
 Address: 1410 Mail Service Center  
 Raleigh, NC 27699-1410  
 Email: [osc.support.services@osc.nc.gov](mailto:osc.support.services@osc.nc.gov)  
 Telephone: 919-707-0795



**Vendor Electronic Payment Form**

- New Add Request
- Change/Update Existing Account
- Inactivate Existing Account

\*Denotes a required field

The State of North Carolina offers payees the opportunity to receive payments electronically through U.S. based banks. In addition to having the funds deposited electronically, you will also receive remittance information by e-mail.

We require you to submit a copy of a voided check, bank statement, or a letter from your bank for account verification.

|   |                       |  |  |  |  |              |  |              |  |  |
|---|-----------------------|--|--|--|--|--------------|--|--------------|--|--|
| *TAX ID # or SSN                                    | [Grid for Tax ID/SSN] |  |  |  |  |              |  |              |  |  |
| *PAYEE NAME   | [Text Field]          |  |  |  |  |              |  |              |  |  |
| *REMITTANCE ADDRESS<br>(AS PRINTED ON YOUR INVOICE) | STREET                |  |  |  |  | SUITE/ROOM # |  |              |  |  |
|   | [Text Field]          |  |  |  |  | [Text Field] |  | [Text Field] |  |  |
|   | CITY                  |  |  |  |  | STATE        |  | ZIP CODE     |  |  |
| *CONTACT  | [Text Field]          |  |  |  |  | [Text Field] |  |              |  |  |
|   | NAME & TITLE          |  |  |  |  | PHONE NUMBER |  |              |  |  |

**NEW FINANCIAL INFORMATION**

|                              |                                   |  |  |  |  |                                  |  |  |  |  |
|------------------------------|-----------------------------------|--|--|--|--|----------------------------------|--|--|--|--|
| *FINANCIAL INSTITUTION NAME: | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |
| *NAME ON ACCOUNT:            | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |
| *NEW ROUTING NUMBER:         | [Grid for Routing Number]         |  |  |  |  |                                  |  |  |  |  |
| *NEW ACCOUNT NUMBER:         | [Grid for Account Number]         |  |  |  |  |                                  |  |  |  |  |
| *ACCT TYPE:                  | <input type="checkbox"/> Checking |  |  |  |  | <input type="checkbox"/> Savings |  |  |  |  |
| *REMIT E-MAIL ADDRESS        | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |

New add requests MUST include contact information for the state agency with which you are doing business.

|   |   |
|---|---|
| *Agency Name:<br>NCDA&CS                                  | *Agency Contact Name:<br>Helen Wiklund        |
| *Agency Contact Email Address:<br>helen.wiklund@ncagr.gov | *Agency Contact Phone Number:<br>919-707-3773 |

**PRIOR FINANCIAL INFORMATION (only required for updates)**

|                             |                                   |  |  |  |  |                                  |  |  |  |  |
|-----------------------------|-----------------------------------|--|--|--|--|----------------------------------|--|--|--|--|
| FINANCIAL INSTITUTION NAME: | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |
| NAME ON ACCOUNT:            | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |
| ROUTING NUMBER:             | [Grid for Routing Number]         |  |  |  |  |                                  |  |  |  |  |
| ACCOUNT NUMBER:             | [Grid for Account Number]         |  |  |  |  |                                  |  |  |  |  |
| ACCT TYPE:                  | <input type="checkbox"/> Checking |  |  |  |  | <input type="checkbox"/> Savings |  |  |  |  |
| REMIT E-MAIL ADDRESS        | [Text Field]                      |  |  |  |  |                                  |  |  |  |  |

|   |   |  |  |  |  |  |  |  |  |  |
|---|---|--|--|--|--|--|--|--|--|--|
| <b>* ALL BOXES BELOW MUST BE REVIEWED AND CHECKED</b> |   |  |  |  |  |  |  |  |  |  |
| <input type="checkbox"/>                              | I acknowledge that electronic payments to the designated account must comply with the provisions of U.S. law, and the requirements of the Office of Foreign Assets Control (OFAC). I affirm the entire amount of the payment will not be transferred to a foreign bank account.   |  |  |  |  |  |  |  |  |  |
| <input type="checkbox"/>                              | I authorize the Office of the State Controller to initiate ACH payments, and if necessary, adjustments for any ACH payments in error, to the financial institution and account identified on the attached certification document. This authority will remain in effect until I, the vendor, cancel it in writing or the authority is terminated by the NC Office of the State Controller. |  |  |  |  |  |  |  |  |  |
| <input type="checkbox"/>                              | I have attached a copy of a <b>current</b> voided check, current bank statement or included a bank letter on bank letterhead.   |  |  |  |  |  |  |  |  |  |

|              |                |
|--------------|----------------|
| *PRINT NAME: | *DATE:         |
| *SIGNATURE:  | *PHONE NUMBER: |

**Instructions**

1. \*Check the appropriate box at the top of the form:
  - New Add Request – Vendor would like to begin receiving payments via ACH.
  - Change/Update Existing Account – Vendor’s account number, routing number, or remittance email address has changed.
  - Inactivate Existing Account – Vendor no longer wants to receive payments via ACH.
2. \*Enter the vendor’s Tax Identification Number or Social Security Number.
3. \*Enter the Payee Name – The name of the person or business receiving payment.
4. \*Enter the vendor’s remittance address. The remittance address is the address printed on your invoice where payments should be sent.
5. \*Enter the vendor’s contact name, title, and phone number.
6. \*Enter the vendor’s financial information:
  - Financial Institution Name – Name of the financial institution.
  - Name on Account – The account owner’s name.
  - Routing Number – Nine-digit number identifying the financial institution.
  - Account Number – The bank account number where the funds should be deposited.
  - Account Type – Is this a checking or savings account? Check the appropriate box.
  - Remit E-mail address - Enter the email address to which the remittance advices should be sent.
7. \*For a new add request only, provide the following:
  - Agency Name – The state agency the vendor is doing business with.
  - Agency Contact Name – The vendor’s contact person name at the state agency.
  - Agency Contact Email Address – The contact person’s email address at the state agency.
  - Agency Contact Phone Number – The contact person’s phone number at the state agency.

**NOTE: New add requests MUST include contact information for the state agency with which you are doing business.**
8. Prior Financial Information – this is required if the vendor’s bank account, routing number, or remittance email address has changed.
  - Financial Institution Name – Name of the financial institution.
  - Name on Account – The account owner’s name.
  - Routing Number – Nine-digit number identifying the financial institution.
  - Account Number – The bank account number where the funds should be deposited.
  - Account Type – Is this a checking or savings account? Check the appropriate box.
  - Remit E-mail address - Enter the email address to which the remittance advices should be sent.
9. \*Review all the information in the 3 attestation boxes located above the signature area. All 3 boxes must be checked – **otherwise the form will not be processed.**
10. \*Print Name – Print the name of the authorized signee on the form.  
 \*Date – Date of signature.  
 \*Signature – The authorized signee’s signature.  
 \*Phone Number – The authorized signee’s phone number.

**Return to: OSC Support Services Center**

Address:

1410 Mail Service Center  
Raleigh, NC 27699-1410Email: [osc.support.services@osc.nc.gov](mailto:osc.support.services@osc.nc.gov)

Please allow up to 30 days for processing.



**Instructions**

1. \*Check the appropriate box at the top of the form:
  - New Add Request – Vendor would like to begin receiving payments via ACH.
  - Change/Update Existing Account – Vendor's account number, routing number, or remittance email address has changed.
  - Inactivate Existing Account – Vendor no longer wants to receive payments via ACH.
2. \*Enter the vendor's Tax Identification Number or Social Security Number.
3. \*Enter the Payee Name – The name of the person or business receiving payment.
4. \*Enter the vendor's remittance address. The remittance address is the address printed on your invoice where payments should be sent.
5. \*Enter the vendor's contact name, title, and phone number.
6. \*Enter the vendor's financial information:
  - Financial Institution Name – Name of the financial institution.
  - Name on Account – The account owner's name.
  - Routing Number – Nine-digit number identifying the financial institution.
  - Account Number – The bank account number where the funds should be deposited.
  - Account Type – Is this a checking or savings account? Check the appropriate box.
  - Remit E-mail address - Enter the email address to which the remittance advices should be sent.
7. \*For a new add request only, provide the following:
  - Agency Name – The state agency the vendor is doing business with.
  - Agency Contact Name – The vendor's contact person name at the state agency.
  - Agency Contact Email Address – The contact person's email address at the state agency.
  - Agency Contact Phone Number – The contact person's phone number at the state agency.

**NOTE: New add requests MUST include contact information for the state agency with which you are doing business.**
8. Prior Financial Information – this is required if the vendor's bank account, routing number, or remittance email address has changed.
  - Financial Institution Name – Name of the financial institution.
  - Name on Account – The account owner's name.
  - Routing Number – Nine-digit number identifying the financial institution.
  - Account Number – The bank account number where the funds should be deposited.
  - Account Type – Is this a checking or savings account? Check the appropriate box.
  - Remit E-mail address - Enter the email address to which the remittance advices should be sent.
9. \*Review all the information in the 3 attestation boxes located above the signature area. All 3 boxes must be checked – **otherwise the form will not be processed.**
10. \*Print Name – Print the name of the authorized signee on the form.  
 \*Date – Date of signature.  
 \*Signature – The authorized signee's signature.  
 \*Phone Number – The authorized signee's phone number.

**Return to: OSC Support Services Center**

Address:

1410 Mail Service Center  
Raleigh, NC 27699-1410Email: [osc.support.services@osc.nc.gov](mailto:osc.support.services@osc.nc.gov)

Please allow up to 30 days for processing.

**AGENDA ITEM 7:****MAINTENANCE MATTERS*****A. Bid Award Request for Health Department Chiller Replacement*****MANAGER'S COMMENTS:**

In July of 2020, staff requested the Board approve a bid for a rebuilt compressor from Hoffman Mechanical Solutions, Greensboro, NC, in the amount of \$16,586.42. The entire chiller unit is scheduled for replacement in the FY 2024-2025 budget due to age and the phasing out of R22 refrigerant units.

The Board tabled the decision in consideration of full replacement of the chiller unit. Staff engaged Holston Engineering to review the existing mechanical system and to prepare bid documents for a chiller that matched the existing mechanical system. Holston completed the bid documents in January 2021, and staff immediately began the bid process.

Holston Engineering reviewed the Hargett bid submittal and confirmed their equipment is compliant with all bid specifications. \$15,000 is currently budgeted in the General Fund with the remaining \$54,000 to be appropriated from the Maintenance Facilities Capital Improvement Fund.

Staff requests the Board award the bid in the amount of \$69,000 to Jeff Hargett Mechanical for the replacement of the Health Department chiller and the appropriation of \$54,000 from the Maintenance Facilities Capital Improvement Fund.




## WATAUGA COUNTY MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430

Fax (828) 264-1473

TO: Deron Geouque, County Manager

FROM: Robert Marsh, Maintenance Director 

RE: Bid Award Request for Health Department Chiller Replacement

DATE: February 12, 2021

### BACKGROUND

Staff presented the Board a request for Bid Award to repair or replace defective components on the Health Department Chiller at the July 21, 2020, Board of County Commissioners Meeting. The consensus of the Board was to make no award due to the high repair cost of an old chiller that was nearing the end of its service life. Additionally, the old chiller utilizes R22 gas which is obsolete and expensive to obtain. The Board instructed staff to solicit bids for a complete chiller replacement, and return to the Board with bid results at a later date.

Staff obtained the services of Holston Engineering to review the existing mechanical system and to prepare bid documents for an efficient chiller well matched to the existing mechanical system. Holston finished the bid documents in January 2021, and staff immediately began the bid process.

### BID PROCESS

A number of firms were directly solicited for proposals. A bid opening was conducted on February 11, 2021.

| <b>BID TABULATION</b>                      |  |                     |               |
|--|--|---------------------|---------------|
| <b>Bidder</b>                              | <b>Contact</b>                                       | <b>Equipment</b>    | <b>Amount</b> |
| Jeff Hargett Mechanical<br>Greensboro, NC  | Jeff Hargett<br>(336) 580-5333                       | Carrier<br>30RBX080 | \$69,000      |
| Nor-Well<br>Elizabethton, TN               | Sandy Nave<br>(423) 543-4373                         | Carrier             | \$76,890      |
| Associated Heating & Air<br>Wilkesboro, NC | Aaron Caudill<br>(336) 667-7012                      | Carrier             | \$85,500      |
| Daikin Applied<br>Plymouth, MN             | Jeffery Metcalf<br>Jeffery.metcalf@daikinapplied.com | Daikin              | \$86,995      |
| HVAC Inc.<br>Bristol, TN                   | Kevin Johnson<br>(423) 989-5000                      | Daikin              | \$85,475      |



**RECOMMENDATION**

Staff recommends the County accept the lowest bid of \$69,000 submitted by Jeff Hargett Mechanical for the replacement of the Health Department chiller. Hargett Mechanical, NC license # 17463, is properly licensed and in good standing with the Licensing Board of Heating Contractors in North Carolina. Holston Engineering reviewed the Hargett bid submittal and confirmed their equipment is compliant with all bid specifications.

**FISCAL IMPACT**

\$15,000 was been approved in this year's budget to repair the old chiller, but the remainder would need to come from the General Fund.

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**AGENDA ITEM 7:**

**MAINTENANCE MATTERS**

***B. Bid Award Request for Sealing/Striping Parking Lots***

**MANAGER’S COMMENTS:**

Mr. Robert Marsh, Maintenance Director, will present bids for asphalt sealing and striping. Three bids were received with Carolina Pavement Technology being the lowest responsive bidder in the amount of \$30,126. Carolina Pavement Technology satisfactorily completed previous County projects. Adequate funds are available in the Fiscal Year 2020-2021 budget.

Staff recommends the Board award the bid to Carolina Pavement Technology in the amount of \$30,126 for asphalt sealing and striping.



# WATAUGA COUNTY

## MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430  
Fax (828) 264-1473

TO: Deron Geouque, County Manager

FROM: Robert Marsh, Maintenance Director

DATE: February 18, 2021

RE: Bid Award Recommendation for Sealing and Striping Parking Lots

### BACKGROUND

Staff opened bids for sealing and striping the Water Street, Ginn, Health Department and Human Services Center parking lots on February 18, 2021.

### BID SUMMARY

| Bidder                                   | Option 1                        | Option 2   |
|--|---------------------------------|--|
| Ram Pavement<br>Charlotte, NC            | \$39,710<br>(Two coat spray)    | \$50,120<br>(One coat squeegee & one coat spray) |
| Cactx Surfaces<br>Winston-Salem, NC      | \$34,751                        |  |
| Carolina Pavement Technology<br>Cary, NC | \$23,670<br>(Two coats sprayed) | \$30,126<br>(One squeegee coat & one spray coat) |

### RECOMMENDATION

Staff recommends the County accept the bid of \$30,126 and award the work to Carolina Pavement Technology of Cary, NC. Carolina Pavement will complete the work by July 1, 2021, weather permitting. Carolina Pavement has successfully bid this work for the County and, in both instances, performed the work in an excellent fashion.

### FISCAL IMPACT

This project was identified in the CIP and funded in the FY 20-21 budget.

**SPECIFICATIONS AND CONTRACT DOCUMENTS  
COUNTY OF WATAUGA  
2021 PARKING LOT SEALCOAT &  
PAVEMENT MARKING PROJECTS**

Contents

Section

|   |  |
|---|--|
| A | Notice to Contractors (Advertisement)          |
| B | Instructions to Bidders and General Conditions |
| C | Specifications and Project Description         |
| D | Proposal Form                                  |
| E | Contract Form                                  |



COUNTY OF WATAUGA  
ADVERTISEMENT FOR BIDS  
PARKING LOT SEALCOAT AND PAVEMENT MARKING PROJECTS  
SECTION A

Watauga County Building Maintenance Department is seeking bids from persons or firms interested in submitting bids for sealing and marking parking lots at the following Watauga County properties: Water Street Parking Lot, corner of Queen and Water Streets, Boone, NC; Ginn Parking Lot, corner of Queen and Water Streets; Human Services, 132 Poplar Grove Road Connector, Boone, NC; and Health Department, 126 Poplar Grove Road Connector, Boone, NC. The scope of this work includes the seal coating of approximately 21,519 SY of asphalt surface and restriping of 463 parking spaces. Bids may be delivered to Watauga County Building Maintenance Department, 274 Winklers Creek Road, Suite B, Boone, NC 28607. Bids will be accepted until 2:00 p.m. on Thursday, February 18, 2021. Contact Robert Marsh, Maintenance Director, at (828) 264-1430 for more information concerning this project.

Each bid must be accompanied by a certified check or Bid Bond in the amount of 5% of the total amount of the bid. The certified check or Bid Bond is a guarantee that the bidder will honor his bid and he agrees to forfeit the same should a contract be offered, based upon his bid and the contract documents, and which the bidder fails to execute within ten (10) days of the offer.

No bid may be withdrawn for thirty (30) days from the date bids are opened.

Each bidder agrees by the submission of his bid to commence work within ten (10) days of the issuance by the County of a "Written Notice to Proceed" and to fully complete the work within twenty (20) calendar days from the date of the Notice to Proceed.

X Contract documents and other bidding information may be obtained from the Maintenance Director at Watauga County Maintenance Department, 274 Winklers Creek Road, Suite B, Boone, NC 28607.

## COUNTY OF WATAUGA

INSTRUCTIONS TO BIDDERS AND GENERAL CONDITIONS  
PARKING LOT SEALCOAT AND PAVEMENT MARKING PROJECTS

## SECTION B

1. Defined Terms:
  - 1.1. The term "County" means the Owner, the County of Watauga.
  - 1.2. The term "Bidder" means one who submits a Bid directly to the County, as distinct from a sub bidder who submits a bid to a Bidder.
  - 1.3. The term "Successful Bidder" means the lowest, qualified, responsible and responsive Bidder to whom the County shall make an award of the Contract.
  - 1.4. The term "Bidding Documents" includes the Advertisement, these Instructions, the Bid Form, and the proposed Contract Documents.
  - 1.5. The term "Engineer" means the Maintenance Director or the Director's designee assigned to this project as the Contract Administrator.
2. Bidding Documents:
  - 2.1. Complete sets of the Bidding Documents may be obtained from the Maintenance Director's office at Watauga County Maintenance.
  - 2.2. Complete sets of Bidding Documents must be used in the preparations of bids. The County assumes no responsibility for errors or misinterpretations resulting from the use of incomplete sets of the Bidding Documents.
  - 2.3. The County, in making copies of the Bidding Documents available on the above terms, does so only to obtain bids on the Work, and does not confer a license or grant for any other use.
3. Qualifications of Bidders:
  - 3.1. Each Bidder must be prepared to submit upon request such written evidence as may be requested to demonstrate the Bidders qualifications to perform the Work. Such evidence may include financial data, previous experience and references, present commitments, and proposed contractors and suppliers. By submitting a bid, the Bidder certifies that he has the proper license to do the work within and/or

for the County of Watauga, including contractors and business license.

4. Examination of the Contract Documents and Project Sites:

4.1. It is the responsibility of the Bidder to:

1. Thoroughly examine the Contract Documents,
2. Visit the sites and become familiar with the existing conditions and the scope of the project work; verify quantities and become familiar with the surrounding conditions that may affect the cost, progress, performance or furnishing of the work,
3. Consider all federal, state and/or local laws and regulations that may affect the cost, progress, performance or furnishing of the Work,
4. Study and carefully correlate the Bidders observations with the Contract Documents, and
5. Notify the Engineer of all conflicts, errors or discrepancies found in the Contract Documents.

4.2. The submission of a bid will constitute an incontrovertible representation by the Bidder that the Bidder has complied with every requirement of this section, that without exception, the bid is premised upon performance and furnishing the work required by the Contract Documents, using the products, means, methods, techniques, sequences and/or procedures contained therein, and that the Contract Documents are sufficient in scope and detail and convey understanding of all specific products, materials or methods are specified, it is done to establish a standard of quality, function, dimension or appearance, and is not to restrict competition. Other products, materials and methods may be used, if approved in advance by the County.

5. Bid Form:

- 5.1. The Bid Form is included in the Bidding Documents.
- 5.2. All blanks on the Bid Form must be completed, either in ink or typewritten.
- 5.3. Bids by corporations must be executed in the corporate name by the President or Vice-President, or other corporate officer, when proper authorization to sign is attached to the bid.
- 5.4. Bids by a partnership must be signed by all partners.

5.5. Bids submitted on uncompleted bid forms or bids, which contain conditions, can be deemed to be unresponsive and may be rejected.

6. Submission of Bids:

6.1. Bids shall be submitted at or before the time indicated in the Advertisement and at the place therein stated. Bids sent through the mail shall be enclosed in a second envelope, both of which shall have the notation "Bid Enclosed" on the exterior.

6.2. All bids shall be enclosed in an opaque envelope, on the exterior of which, in addition to the notation "Bid Enclosed", is noted the name of the project, the time and place of the bid opening, the Bidder's name, license number (if applicable), classification and expiration date.

7. Modifications and Withdrawal of Bid:

7.1. Bids may be modified or withdrawn by an appropriate document executed and delivered to the place where the bids are to be submitted at any time prior to the opening of bids.

8. Bid Opening:

8.1. All Bids will be opened and, unless obviously non-responsive or otherwise irregular, read publicly aloud. All bids are then available for inspection by the public and the other Bidders.

9. Bids Acceptance and Bonds:

9.1 All bids will remain subject to acceptance for 7 days after bid opening.

9.2 Bonds. Each bid must be accompanied by a certified check or Bid Bond in the amount of 5% of the total amount of the bid. The certified check or Bid Bond is a guarantee that the bidder will honor his bid and he agrees to forfeit the same should a contract be offered, based upon his bid and the contract documents, and which the bidder fails to execute within ten (10) days of the offer.

10. Award of the Contract:

10.1. The County reserves the right to reject any and all bids, to waive any and all informalities, not involving price, time or changes in the work, and to negotiate contract terms with the Successful Bidder, and the right to disregard all non-conforming, non-responsive, unbalanced or conditioned bids. Also, the County



reserves the right to reject in whole or in part the bid of any Bidder if the County when, in the County's sole opinion, believes that it would not be in the best interest of the project or the County to make an award either in whole or in part to that Bidder, whether because the bid is not responsive, the Bidder is not qualified, of doubtful financial ability, has a history of poor performance and/or difficulty with previous County work, or fails to meet any other pertinent standard or criteria established by the County.

- 10.2. In evaluating bids, the County will consider the qualifications of the Bidders, whether or not the bids comply with the prescribed requirements, and such alternates, unit prices and other data, as may be requested in the bid form or prior to the Notice of Award.
- 10.3. The County recognizes that award of the Contract is dependent on the availability of funding and, therefore, the County makes no guarantees as to an award of a contract, to any Bidder. If the contract is to be awarded, it will be awarded to the lowest Bidder whose evaluation by the County indicates to the County that the award will be in the best interest of the County.

11. Signing of the Agreement:

- 11.1. When the County submits to the Successful Bidder the "Notice of Award" and Agreement for execution, it will be in the number of copies necessary, all of which shall be signed and shall constitute an original Agreement. Within five days thereafter, the Successful Bidder shall sign and deliver all copies of the Agreement to the County, accompanied by a certificate of insurance. The County, within three days thereafter, shall return to the Successful Bidder a fully executed copy of the agreement.

12. Notice of Award:

- 12.1. The County may give the Successful Bidder a Notice of Award at any time within the (10) days from the date of opening of bids. The Successful Bidder shall begin the Work no less than ten (10) days from the receipt of the Notice of Award.

13. Indemnity

- 16.1 The contractor will indemnify and save harmless the County, its officers, agents, servants, and employees from and against any and all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, and attorneys' fees to the extent resulting from a willful or negligent act or omission of the Contractor, its officers, agents, servants, and employees in the performance of this Contract; provided, however, that the Contractor shall not be liable for any suits, actions,

legal proceedings, claims, demands, damages, costs, expenses and attorneys' fees arising out of the award of this Contract or a willful or negligent act or omission of the County, its officers, agents, servants and employees.

17. Insurance

- 17.1 The Contractor shall at all times during the Contract maintain in full force and effect Employer's Liability, Workmen's Compensation, Public Liability and Property Damage Insurance, including contractual liability coverage for the provisions of Indemnity. All insurance shall be by insurers and for policy limits acceptable to the County and before commencement of work hereunder the Contractor agrees to furnish the County certificates of insurance or other evidence satisfactory to the County to the effect that such insurance has been procured and is in force.

## COUNTY OF WATAUGA

SPECIFICATIONS AND PROJECT DESCRIPTION  
PARKING LOT SEALCOAT & PAVEMENT MARKING

## SECTION C

1. Scope of the Work:

The work described in these specifications consists of furnishing all labor, materials, tools, equipment and services and performing all work required to (1) apply a sealcoat to public parking lots and (2) to apply markings for parking spaces on the public parking lots.

2. Specifications:

- 2.1 Preparation. Paved surfaces on which the emulsified asphalt sealcoat is to be placed shall be swept and/or blown clean and dry, and be free of loose foreign materials before placing the seal coat. Grease, oil and gas spots and stains shall be pre-treated.
- 2.2. Emulsified Asphalt Sealcoat. The sealcoat shall consist of a mixture of emulsified asphalt, mineral aggregate, additives and water properly proportioned, mixed and uniformly spread over the surfaces areas to be treated. The mixture shall contain no asbestos. The cured sealcoat shall have a homogeneous appearance, adhere firmly to the surface and provide a skid-resistant texture. The sealcoat product shall meet ASTM D-2939 standards or equivalent. Sealcoat product shall be approved by the Town of Boone.
- 2.3. Placing the sealcoat. Mixing and spreading equipment shall conform to manufacturer's requirements. Mixes are generally in the range of 100 gallons of emulsified asphalt sealer, 20 gallons of water, 2 gallons of additive and 300-500 pounds of sand (Portland cement or fly ash may be substituted depending on manufacturer's requirements). When properly mixed with water, additive and aggregate, and applied, one gallon of emulsified asphalt sealant will cover 11-13 square yards in one coat of application. All work shall be performed only when the surface and ambient air temperatures are at least 50 degrees F and rising and no rain is anticipated. Ideally, the surface temperature should not drop below 50 degrees in a 24-hour period following application. The mix shall be spread in a manner to fill cracks and achieve a uniform skid-resistant surface. Sealcoat shall be applied in two coats.
- 2.4. Equipment. A mixing machine equipped with a fines feeder, mixer, water pressure system and fog type sprayer and the ability to control the application rate

is recommended. The sealcoat application shall be applied by either pressurized spray application equipment or self-propelled squeegee equipment. Pressurized spray equipment shall be capable of spraying pavement sealer with sand (or other mineral aggregate) added. Equipment shall have continuous agitation or mixing capabilities to maintain a homogeneous consistency throughout the application process.

2.5. Pavement Markings. Public parking lots will be marked to maximize the number of spaces for automobile parking. Parking stalls will be marked for stall widths of 9 feet and stall lengths of 19 feet. Handicapped parking shall be marked. The minimum number of handicap parking spaces is 1 space for a lot serving up to 25 cars; 2 spaces for a lot serving 26 –50 cars.

2.5.1. Marking Materials. Duron DU9948500, DU1LZM100, DU1YZ100 or equivalent, applied per manufacturer's instructions.

### 3. Method of Measurement

3.1 Upon completion and acceptance of work performed in accordance with the specifications, and upon presentation of invoices showing quantity of emulsified asphalt sealcoat applied, payment shall become due and payable Payment shall constitute full compensation for furnishing, transporting, and placing the emulsified asphalt sealcoat and pavement markings for parking spaces and for all labor, tools, equipment and incidentals necessary to complete the work in full accordance with the specifications.

COUNTY OF WATAUGA  
 Proposal for Parking Lots Sealcoat and Pavement Marking Project

SECTION D

*Carolina Pavement Technology, Inc.*  
 Name of Bidder

In compliance with your legal Notice to Bidders for the County of Watauga 2021 Paving Project, the undersigned bidder, a corporation organized and existing under the laws of the State of NC, or a partnership of \_\_\_\_\_, or an individual doing business as \_\_\_\_\_, of the City of, State of \_\_\_\_\_, having examined the specifications and contract forms thereto attached, and being fully advised as to the extent and character of the work to be performed, and the equipment to be furnished, hereby proposes to furnish all labor, tools, material, plant and equipment necessary for the Project.

The undersigned further proposes to perform all work and furnish all equipment in accordance with the specifications and contract stipulations thereof, within the time limit specified, for the price so stated below.

COUNTY OF WATAUGA  
 Proposal for Parking Lot Sealcoat and Pavement Marking Projects

| Location                 | Area (S.Y.)   | No. Parking Spaces                                   | Gallons of Sealant             | No. of Coats |                     |   |
|--------------------------|---------------|--|--------------------------------|--------------|---------------------|---|
| Human Services           | 12,896        | 258 Regular Spaces<br>15 H/C Spaces                  | 2345                           | 2            | 4514                | 2 |
| Health Department        | 6,118         | 106 Regular Spaces<br>6 H/C Spaces                   | 1112                           | 2            | 2141                | 2 |
| Water Street Parking Lot | 1,098         | 32 Regular Spaces                                    | 200                            | 2            | 384                 | 2 |
| Ginn Parking Lot         | 1,407         | 46 Regular Spaces<br>6 Arrows<br>Spaces are numbered | 256                            | 2            | 492                 | 2 |
| <b>Total</b>             | <b>21,519</b> | <b>463 No. spaces</b>                                | <b>3913 Gallons of Sealant</b> |              | <b>7531 Gallons</b> |   |

*(2 Coats Sprayed)*      *(1 Squeegee Coat / 1 Spray Coat)*



**TOTAL BID**

**TOTAL BID PRICE FOR SEALCOATING AND PAVEMENT MARKING**

Twenty-three-thousand, six-hundred<sup>seventy</sup> DOLLARS AND  $\frac{00}{100}$  CENTS - 2 Coats Sprayed

OR

Thirty thousand, one hundred<sup>and twenty-six</sup> DOLLARS AND  $\frac{00}{100}$  CENTS - 1 Squeegee Coat & 1 Spray Coat

BIDDER understands that the County reserves the right to reject any or all bids and to waive any informality in bidding.

The bidder agrees that his bid shall be good and may not be withdrawn for a period of FIFTEEN (15) days after the scheduled closing time for receiving bids.

Upon receipt of written notice of acceptance of this bid, Bidder will execute the formal contract attached within FIVE (5) days and deliver insurance coverage as required by the Instructions to Bidders.

BY: Ken Clark Contractor's Name

Ken Clark

Caroline Pavement Technology Inc.

Seal--if bid is by a corporation.

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**AGENDA ITEM 7:**

**MAINTENANCE MATTERS**

*C. Proposed Sports Complex Lighting Change Order # 1*

**MANAGER'S COMMENTS:**

The Board recently approved Tommy Lawrence Electric for the sports lighting for the tennis, basketball, and pickleball courts at the new Community Recreation Center. Upon additional consideration and due to switching equipment, staff requested a quote for upgrading to LED. The additional cost for LED lights is \$36,100. The ROI on the upgrade is approximately ten years with a ten-year warranty. Adequate funds are available to cover the increase.

Staff recommends the Board approve the increase of \$36,100 for the upgrade to LED lights for the outdoor facilities at the new Community Recreation Center.



# WATAUGA COUNTY MAINTENANCE DEPARTMENT

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274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430  
Fax (828) 264-1473

TO: Deron Geouque, County Manager

FROM: Robert Marsh, Maintenance Director *RM*

DATE: February 19, 2021

RE: Change Order Request #1 for the Watauga Sports Complex Lighting Project

## BACKGROUND

The lighting contractor informed the County of a discrepancy in the plans which needed to be addressed by replacing the specified electrical switch gear and fixtures with equipment compatible with the voltage source available from New River Light and Power Co. During the discussion, the County requested a price to upgrade the HID fixtures to LED technology. Change Order #1 reflects these changes to the project scope (see attached).

## RECOMMENDATION

Staff has reviewed the Change Order and specifications for the equipment upgrade. Staff recommends the Board accept Change Order #1 in the amount of \$36,100.

## FISCAL IMPACT

The cost for this Change Order falls within the project budget for ongoing field renovations at the Complex Sports facility.

### WATAUGA SPORTS COMPLEX Change Order #1

Under the terms of the Contract and without invalidating the original provisions thereof, the following change in work is authorized for the change in contract amount herein set forth: (Description of change order with detailed breakdown is attached)

To install (60) LED light fixtures in lieu of (60) HID fixtures. LED fixture will be of equal or better lumen output.

Replace switchgear with one compatible with voltage available from public utility and delete steps and cages from steel poles.

Connect existing bathroom facility and scoreboard to power source

**Contract Cost Summary:**

|                                     |              |
|-------------------------------------|--------------|
| 1. Original Contract Amount         | \$235,721    |
| 2. Amount of Previous Change Orders | -0-          |
| 3. Amount of This Change Order      | ADD \$36,100 |
| 4. Revised Contract Total Amount    | \$271,821    |

**Tommy Lawrence Electrical Contractors, Inc.** By: Tommy Lawrence  
Date: 2-19-21

**Watauga County** By: \_\_\_\_\_ Date: \_\_\_\_\_

**Date approved by Watauga County Board of Commissioners:** \_\_\_\_\_

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_ Date: \_\_\_\_\_



## LED Annual Energy and Maintenance Savings

### Watauga County Community Recreation Center -Basketball Courts

Boone, NC

February 12th, 2021

| Hubbell 1500 Watt Metal Halide HID Fixtures | Geo Sport 1000 Watt LED | Savings |
|---|-------------------------|---------|
|---|-------------------------|---------|

|                    |         |       |         |
|--------------------|---------|-------|---------|
| Annual Energy Cost | \$1,440 | \$432 | \$1,008 |
| Project Cost       |         |       | \$0     |
| Years to Recoup    |         |       | 0       |

|                             | HID Fixtures | HID KW | LED Fixtures | LED KW | Annual Hours of Operation |
|-----------------------------|--------------|--------|--------------|--------|---------------------------|
| Sports Lights Basketball Ct | 6            | 10     | 6            | 3      | 960                       |

|             |        |
|-------------|--------|
| Cost per KW | \$0.15 |
|-------------|--------|

## LED Annual Energy and Maintenance Savings

### Watauga County Community Recreation Center -Softball Field

Boone, NC

February 12th, 2021

| Hubbell 1500 Watt Metal Halide HID Fixtures | Geo Sport 1000 Watt LED | Savings |
|---|-------------------------|---------|
|---|-------------------------|---------|

|                    |         |       |       |
|--------------------|---------|-------|-------|
| Annual Energy Cost | \$1,290 | \$480 | \$810 |
| Project Cost       |         |       | \$0   |
| Years to Recoup    |         |       | 0     |

|                              | HID Fixtures | HID KW | LED Fixtures | LED KW | Annual Hours of Operation |
|------------------------------|--------------|--------|--------------|--------|---------------------------|
| Sports Lights Softball Field | 26           | 43     | 26           | 16     | 200                       |

|             |        |
|-------------|--------|
| Cost per KW | \$0.15 |
|-------------|--------|

## LED Annual Energy and Maintenance Savings

### Watauga County Community Recreation Center -Tennis+Pickleball Cts

Boone, NC

February 12th, 2021

| Hubbell 1500 Watt Metal Halide HID Fixtures | Geo Sport 1000 Watt LED | Savings |
|---|-------------------------|---------|
|---|-------------------------|---------|

|                    |         |         |         |
|--------------------|---------|---------|---------|
| Annual Energy Cost | \$6,624 | \$2,304 | \$4,320 |
| Project Cost       |         |         | \$0     |
| Years to Recoup    |         |         | 0       |

|                             | HID Fixtures | HID KW | LED Fixtures | LED KW | Annual Hours of Operation |
|-----------------------------|--------------|--------|--------------|--------|---------------------------|
| Sports Lights Tennis/Pickle | 28           | 46     | 28           | 16     | 960                       |

|             |        |
|-------------|--------|
| Cost per KW | \$0.15 |
|-------------|--------|





## WATAUGA COUNTY COMMUNITY CENTER - LED SPORTS LIGHTING PROJECT

### 10-YEAR PRODUCT WARRANTY TERMS AND CONDITIONS

Service under this Contract is provided by Geo-Surfaces Manufacturing, LLC (GML). Services completed under this Contract shall consist of furnishing parts necessary to restore the operation of the Warranted Product(s) to original design conditions provided such service is necessitated by failure of the Warranted Product(s) during normal usage. This Contract covers Product(s) consisting of GeoSport™ Lighting LED System.

"We", "us" and "our" mean GML. "You" and "your" mean the Purchaser of the Warranted Product(s). No one has the authority to change this Contract without the prior written approval of GML. GML shall not assume responsibility for their agents or assignees other than as described below. If there is a conflict between the terms of this Contract and information communicated either orally or in writing by one or more of our employees or agents, this Contract shall control.

**1. Special Warranty:** Manufacturer's standard form in which manufacturer agrees to repair or replace components of luminaires, lamps, and luminaire alignment products and to correct misalignment that occurs subsequent to successful acceptance tests. Manufacturer may exclude lightning damage, hail damage, vandalism, abuse, and unauthorized repairs and alterations from special warranty coverage.

**2. Warranty Period:** Ten (10) year(s) from date of Substantial Completion.

**3. Hours of Usage:** Designs shall be based on the specified hours of usage: **Estimated Usage: 900 annual hours.**

**4. Service Availability:** Maintenance service specialists shall be available 8:00am to 5:00pm Central Standard Time, and services shall be performed during these same hours in your local time zone, Monday through Friday (with the exception of national holidays). Hours of operation are subject to change without notice. GML will exercise all reasonable efforts to perform service under this Contract but will not be responsible for delays or failure in performing such services caused by adverse weather conditions, acts of any government, failure of transportation, accidents, riots, war, labor actions or strikes or other causes beyond its control.

**5. Repair Determination:** GML will utilize the monitoring system and any information provided by the customer to determine when the usage of the field is materially impacted (typically 10% outage). From this information, GML will determine repair and/or replacement of Warranted Product(s) and parts. Repair will be with product(s) of similar kind and quality.

**Your Requirements Under this Contract:** You must meet all electrical and installation requirements as specified by the Manufacturer. In addition, you assure: full cooperation with GML technicians and authorized servicers during diagnosis and repair of the Warranted Product(s); reasonable accessibility of the Warranted Product(s); a non-threatening and safe environment for service. You agree to check and replace fuses as needed. GML provides spare fuses in each A-pole enclosure. GML will replace spare fuses used. You agree to keep your control system online. This means keeping the required control voltage to the control system at all times. Avoiding this practice must be discussed with GML's Warranty Department.

**6. Service Limitations Not Covered by this Contract:** Maintenance, repair or replacement necessitated by loss or damage resulting from any external causes such as, but not limited to, theft, environmental conditions, negligence, misuse, abuse, improper electrical/power supply, unauthorized repairs by third parties, attachments, damage to cabinetry, equipment modifications, vandalism, animal or insect infestation, physical damage to Warranted Product(s) parts or components, failure of existing structures, supporting electrical systems or any non-GML equipment, or acts of nature (including, but not limited to: earthquake, flood, tornadoes, typhoons, hurricanes or lightning).







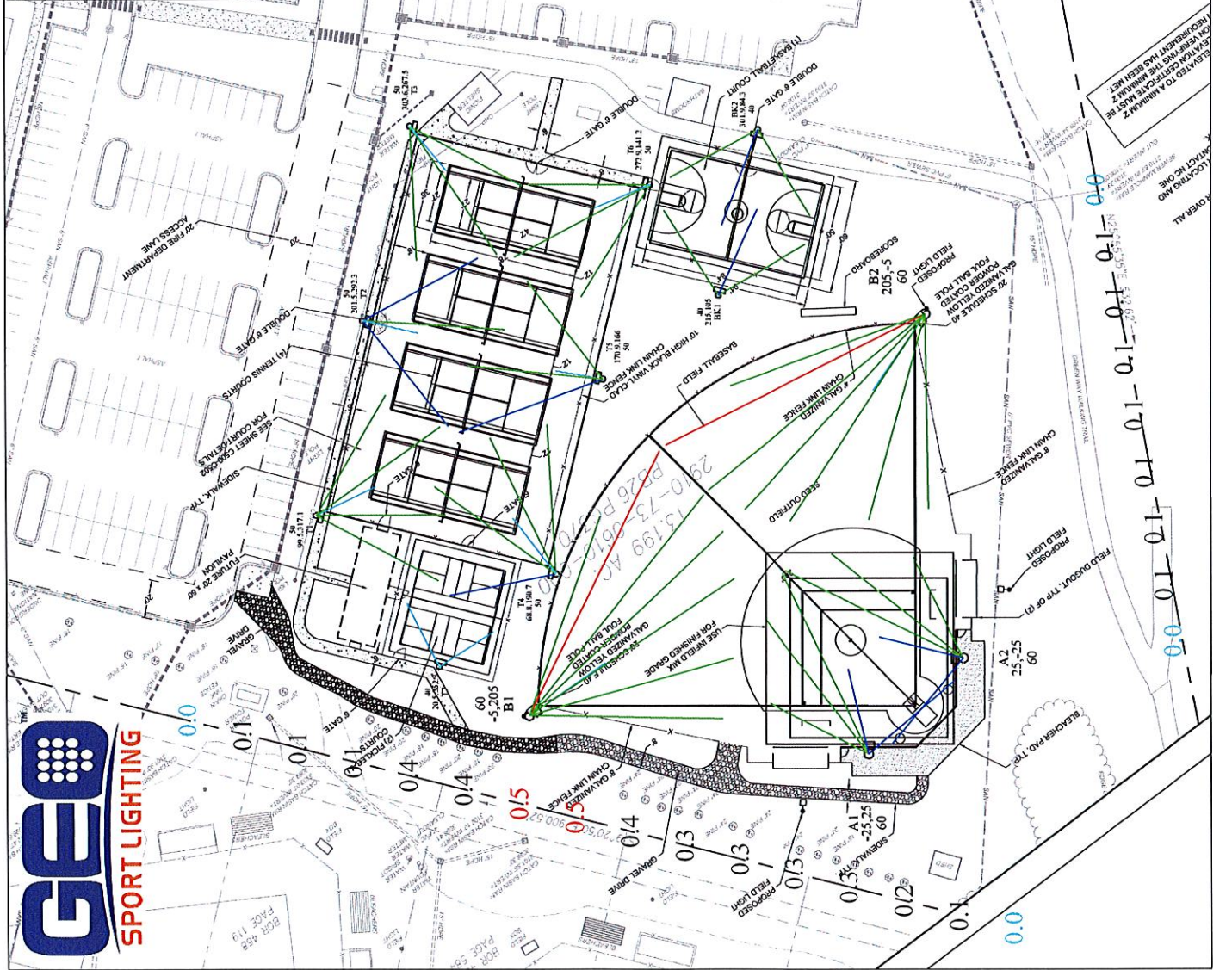
| Point | x-loc | y-loc | height | NI 15 | M20 | W40 | XW60 | Total | kw   |
|-------|-------|-------|--------|-------|-----|-----|------|-------|------|
| A1    | -25   | 25    | 60ft   |       | 3   | 2   |      | 5     | 3.1  |
| A2    | -25   | -25   | 60ft   |       | 3   | 2   |      | 5     | 3.1  |
| B1    | -5    | 205   | 60ft   | 1     | 6   |     | 1    | 8     | 4.9  |
| B2    | -5    | -5    | 60ft   | 1     | 6   |     | 1    | 8     | 4.9  |
| B3    | 205   | 105   | 40ft   |       | 2   | 1   |      | 3     | 1.9  |
| B4    | 205   | -5    | 40ft   |       | 2   | 1   |      | 3     | 1.9  |
| BK1   | 200.9 | 84.3  | 40ft   |       | 4   | 1   |      | 5     | 3.1  |
| BK2   | 200.9 | 37.1  | 40ft   |       | 4   | 1   |      | 5     | 3.1  |
| T1    | 99.5  | 201.5 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T2    | 201.5 | 201.5 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T3    | 303.6 | 201.5 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T4    | 68.8  | 170.9 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T5    | 170.9 | 170.9 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T6    | 272.9 | 141.2 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| T7    | 20.5  | 252.3 | 50ft   |       | 3   | 1   |      | 4     | 2.5  |
| Total |       |       |        | 2     | 38  | 10  | 10   | 60    | 37.2 |

**XW60**  
 GeoSport Clir EV OM 630W  
 Light Loss Factor = 0.950  
 Watts per luminaire = 612  
 Number luminaires used = 10  
 kw these luminaires = 6.1

**W40**  
 GeoSport Clir EV OM 630W  
 Light Loss Factor = 0.950  
 Watts per luminaire = 631  
 Number luminaires used = 10  
 kw these luminaires = 6.3

**M20**  
 GeoSport Clir EV OM 630W  
 Light Loss Factor = 0.950  
 Watts per luminaire = 610  
 Number luminaires used = 2  
 kw these luminaires = 1.2

**M20**  
 GeoSport Clir EV OM 630W  
 Light Loss Factor = 0.950  
 Watts per luminaire = 610  
 Number luminaires used = 2  
 kw these luminaires = 1.2



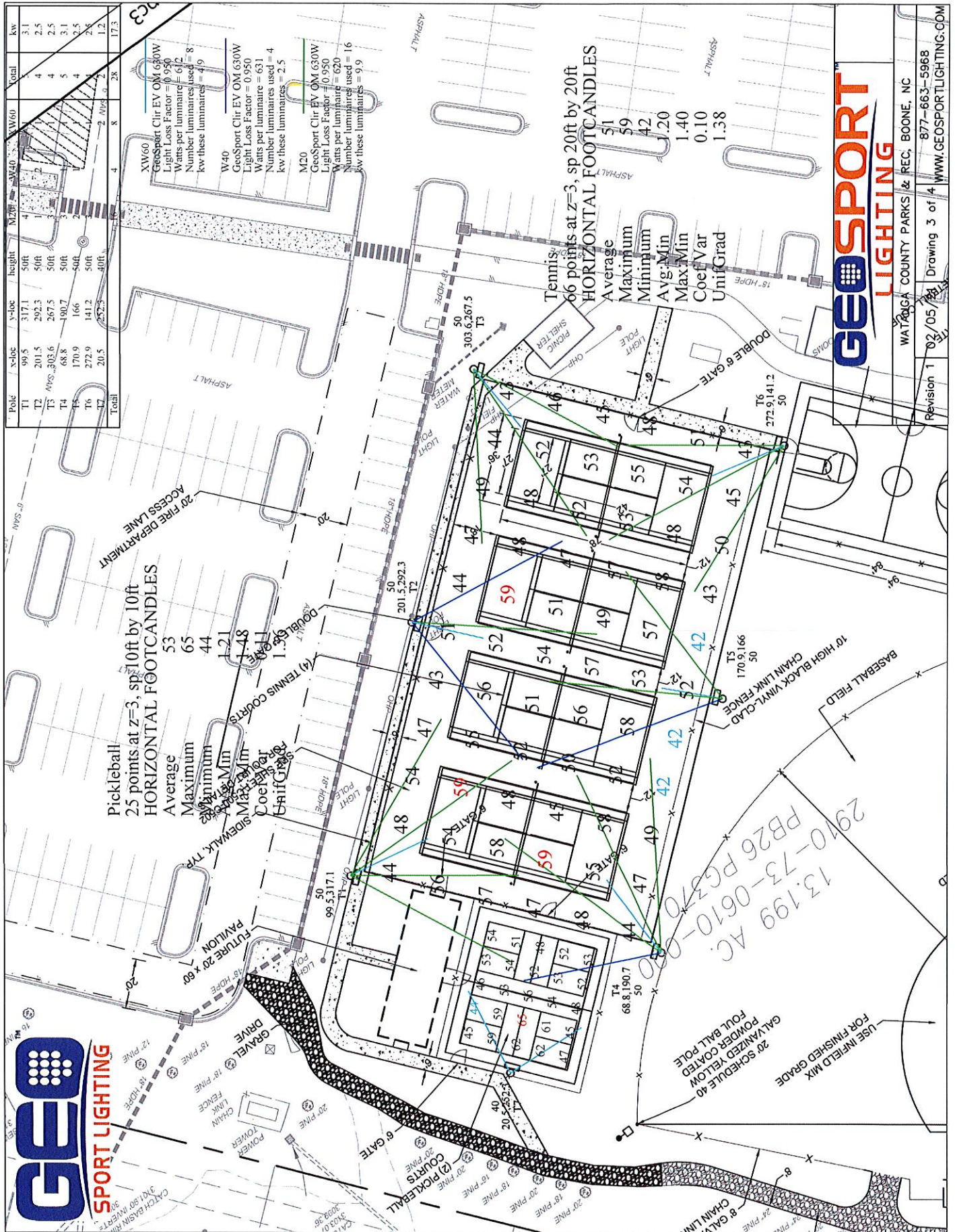
WATAUGA COUNTY PARKS & REC, BOONE, NC  
 877-663-5968  
 WWW.GEOSPORTLIGHTING.COM  
 Revision, 1 02/05/21 Drawing 1 of 4





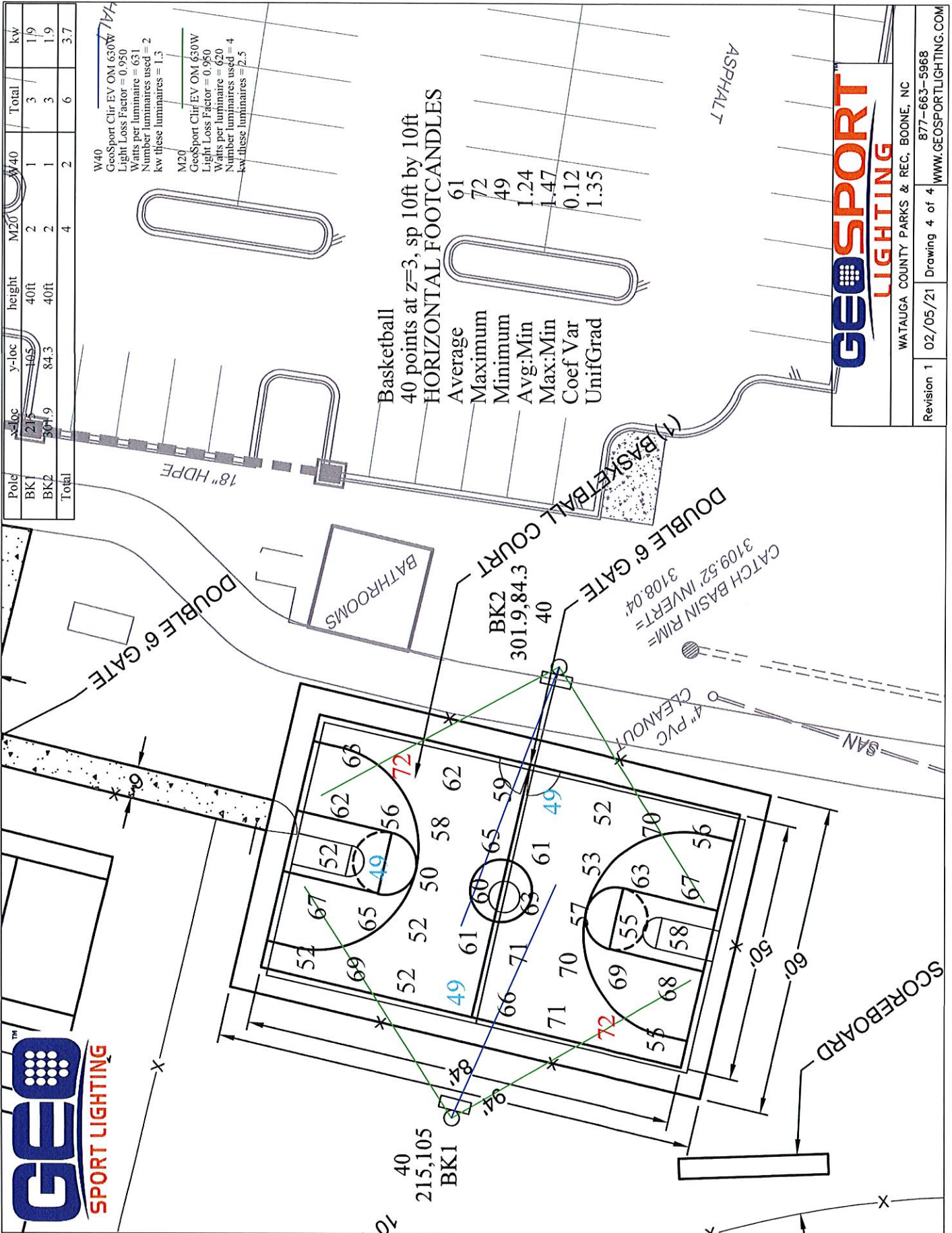






WATAUGA COUNTY PARKS & REC. BOONE, NC  
 Revision 1 02/05/2014 Drawing 3 of 4  
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Revision 1 02/05/21 Drawing 4 of 4



# GEOSPORT™ LIGHTING

**ELITE CLIR™ SERIES**  
CANDELA LUMEN INTENSITY REFINEMENT







## SYSTEM SPECIFICATIONS

### High Performance Sport Lighting System

**Housing Material:** Aluminum Powder Coated

**Power Factor:** 0.95

**CLIR Module:** Open OR Closed

**THD:** <15%

**System Watts:** 630W

**Input Protection:** 10kA Current Surge

**CCT:** 5700K

**Driver:** Integral / Remote

**CRI:** >70Ra

**Operating Temp Range:** -40° C to +55° C

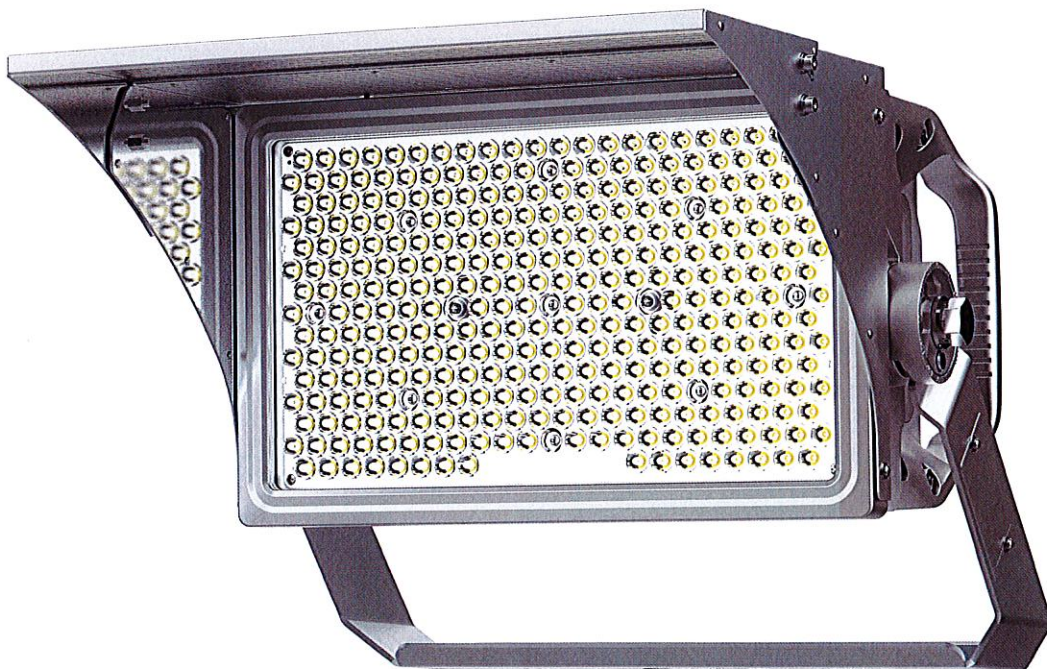
**Input Voltage:** 208-480V

**IP Rating:** IP66 / IP68

**Weight of Fixture:** 32 lbs

**Beam Angle:** Narrow/Medium/Wide/Extra Wide

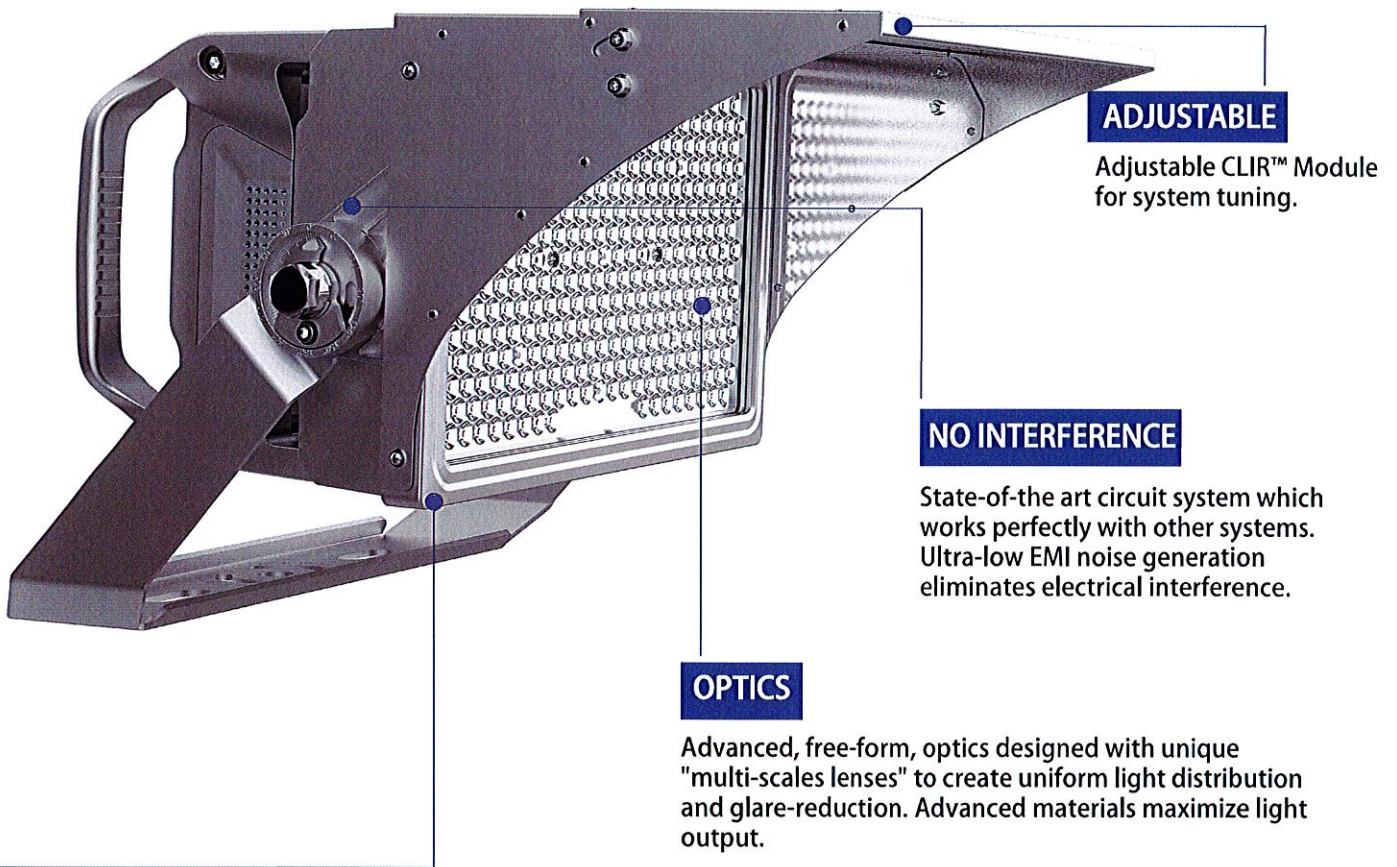
**EPA:** 1.4





# GEOSPORT™ LIGHTING

## ELITE CLIR™ SERIES



### ADJUSTABLE

Adjustable CLIR™ Module for system tuning.

### NO INTERFERENCE

State-of-the art circuit system which works perfectly with other systems. Ultra-low EMI noise generation eliminates electrical interference.

### OPTICS

Advanced, free-form, optics designed with unique "multi-scales lenses" to create uniform light distribution and glare-reduction. Advanced materials maximize light output.

### SOLID STATE DESIGN

Unique "SSD" design, simple and advanced. Ensures durability of LED chip. All parts are individual, rugged and strong.

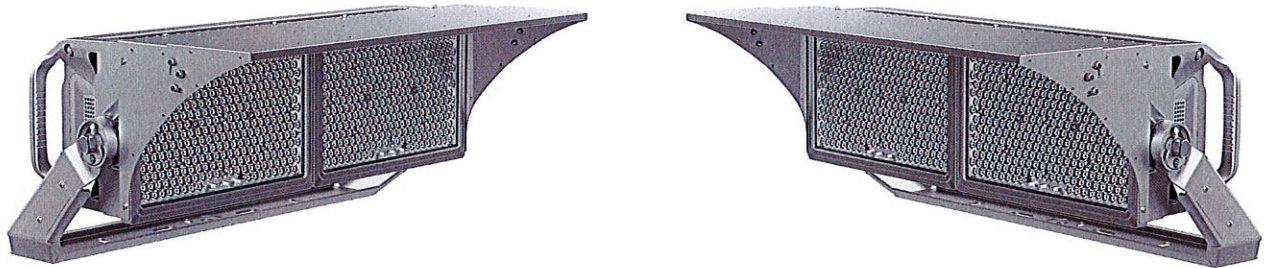


**ELITE** **GEOSPORT™** **CLIR**  
**LIGHTING**

**CLIR SERIES DESIGN**

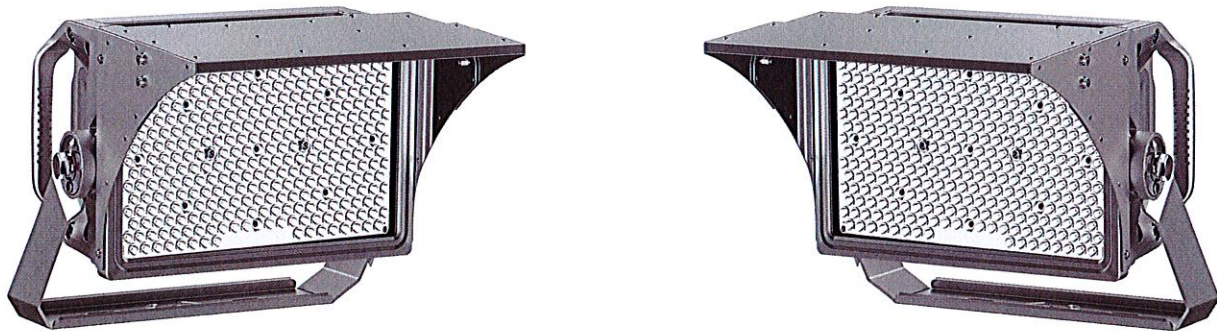
**CLIR-OM SERIES**  
Open Module

( 1260W SHOWN )



**CLIR-CM SERIES**  
Closed Module

( 630W SHOWN )





[WWW.GEOSPORTLIGHTING.COM](http://WWW.GEOSPORTLIGHTING.COM)  
1-877-663-5968





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**AGENDA ITEM 8:**

**PROPOSED APPOINTMENT OF HOME & COMMUNITY CARE BLOCK GRANT (H&CCBG) ADVISORY COMMITTEE AND LEAD AGENCY**

**MANAGER’S COMMENTS:**

Each year the Board is required to appoint a lead agency and advisory committee to make recommendations on how to best expend the County’s allocation from the Home and Community Care Block Grant (H&CCBG) funds. These funds were previously established by the Older American’s Act and are administered by the North Carolina Division of Aging.

Board action is requested to approve the Watauga County Project on Aging as the Lead Agency. In that this is the first reading, you may delay action or waive your policy and appoint the members to the Advisory Board as presented.

Direction from the Board is requested.



# Watauga County Project on Aging

132 Poplar Grove Connector, Suite A • Boone, North Carolina 28607

Website: [www.wataugacounty.org/aging](http://www.wataugacounty.org/aging) [angie.boitnotte@watgov.org](mailto:angie.boitnotte@watgov.org)

Telephone 828-265-8090 Fax 828-264-2060 TTY 1-800-735-2962 Voice 1-800-735-8262 or 711

## MEMORANDUM

**TO:** Deron Geouque, County Manager

**FROM:** Angie Boitnotte, Director

**DATE:** February 22, 2021

**SUBJ:** Request for Board of Commissioners' Consideration: Appointment of the Home and Community Care Block Grant Advisory Committee and Lead Agency

Please accept the attached list as nominations for the Home and Community Care Block Grant Advisory Committee for FY 2022. I also recommend that the Watauga County Project on Aging be appointed as the Lead Agency.

**HOME AND COMMUNITY CARE BLOCK GRANT  
ADVISORY COMMITTEE FY 2022**

**LEAD AGENCY**

Angie Boitnotte, Director  
132 Poplar Grove Connector, Suite A  
Boone, NC 28607

Watauga County Project on Aging  
265-8090  
angie.boitnotte@watgov.org

**ADVISORY COMMITTEE**

**NAME**

**REPRESENTING**

Carrington Pertalion  
814 W. King St., Suite 205  
Boone, NC 28607

Watauga County Board of Commissioners  
265-8000  
carrington.pertalion@watgov.org

Nicole Hiegl  
Area Agency on Aging  
468 New Market Blvd.  
Boone, NC 28607

High Country Council of Governments  
265-5434 ext. 122  
nhiegl@hccog.org

Jennifer Greene, Health Director  
126 Poplar Grove Connector  
Boone, NC 28607

Appalachian District Health Department  
264-4995  
jen.greene@apphealth.com

Gail Pinkham, Patient Resource Specialist  
935 State Farm Rd  
Boone, NC 28607

High Country Community Health  
(828)262-3886, ext. 124  
gailpinkham@hcchmail.org

Betsy Richards, Adult Services Supervisor  
132 Poplar Grove Connector, Suite C  
Boone, NC 28607

Watauga County Department of Social Services  
265-8100  
betsy.richards@watgov.org

Holly Robinson, Watauga Center Director  
132 Poplar Grove Connector, Suite B  
Boone, NC 28607

Daymark Recovery Services  
264-8759  
hrobinson@daymarkrecovery.org

Jesse Smathers, Community Relations Regional Director  
200 Ridgefield Ct, Suite 206  
Asheville, NC 28806

Vaya Health  
(828)225-2785, ext. 5923; (828)226-6646  
Jesse.Smathers@vayahealth.com

Pat Coley  
P. O. Box 307  
Blowing Rock, NC 28605

Senior Citizen (STHL Delegate)  
295-3556

Kat Danner  
280 Foster Circle  
Boone, NC 28607

Senior Citizen  
264-7985 or 773-0682  
dannerk@charter.net



Linda Marcoux  
2326 Bairds Creek Rd  
Vilas, NC 28692

Senior Citizen  
964-5489

Mary Moretz  
1419 Deerfield Rd.  
Boone, NC 28607

Senior Citizen (STHL Alternate)  
(828)264-2281

Carolyn Owens  
433 NC Hwy 105 Bypass  
Boone, NC 28607

Senior Citizen  
(828)406-1245

Dr. Ed Rosenberg  
278 Rushing Creek Dr., Unit D  
Boone, NC 28607-5835

Senior Citizen  
262-6146 (w)  
RosenbergE@appstate.edu

Updated: 2/19/21

**AGENDA ITEM 9:**

**PLANNING AND INSPECTIONS MATTERS**

***A. Proposed Community Development Block Grant – COVID-Relief (CDBG-CV) Program  
Sub-Recipient Contracts***

**MANAGER’S COMMENTS:**

The County recently was awarded the Community Development Block Grant – COVID (CDBG-CV). One of the conditions of the CDBG-CV grant requires the County to execute agreements with all of the partners in the project, identified as sub-recipients. These include WAMY Community Action, Daymark Recovery Services, Hospitality House, and High Country United Way.

Staff requests the Board approve the sub-recipients contracts as included.



# WATAUGA COUNTY

126 Poplar Grove Connector, Suite 201 Boone, NC 28607


Department of  
Planning & Inspections

Phone (828) 265-8043  
TTY 1-800-735-2962  
Voice 1-800-735-8262  
or 711  
FAX (828) 265-8080

## MEMORANDUM

**DATE:** February 23, 2021

**TO:** County Manager, Board of Commissioners

**FROM:** Joe Furman 

**RE:** CDBG-CV sub-recipient contracts

One of the conditions of the CDBG-CV COVID Relief grant is that the County execute agreements with all of the partners in the project, known as sub-recipients. The partners are WAMY Community Action, Daymark Recovery Services, Hospitality House, and High Country United Way; contracts for each are attached. I request approval of these by the Board of Commissioners. The Project on Aging is technically a partner and sub-recipient, but is also a County Department, so I'm assuming at this point the County doesn't need to contract with itself. I will clarify that point at the start-up meeting with Department of Commerce staff, which will occur ASAP. Thank you.

**AGREEMENT FOR ADMINISTRATION OF THE  
CDBG – COVID RELIEF PROGRAM GRANT**

This Agreement, made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2021 by and between WAMY Community Action, Inc., a North Carolina not for profit Corporation (hereinafter "WAMY") and the Watauga County, North Carolina, a body politic (hereinafter "Watauga County");

**WITNESSETH**

WHEREAS, Watauga County has received grant funding through the CDBG COVID Relief Program for the period March 17, 2021 - June 17, 2023, such grant to provide for subsistence payments for eligible citizens of Watauga County; and

WHEREAS, Watauga County has requested WAMY Community Action, Inc. to administer and disburse said payments; and

WHEREAS, WAMY desires to cooperate with Watauga County in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1) *Scope of Services* – WAMY will provide CDBG-CV funds to households that are low-moderate income for the purposes of rent/mortgage payments and utility payments (to include internet connections depending upon need), and heating fuel until funds allocated to WAMY are exhausted. The goal is 100 households (224 individuals). The following administrative functions will be included:

Coordinate referrals and intake of participant applications.

Verify participant eligibility (income, COVID-19 effects, etc.)

Keep complete files on each participant including income verification, COVID-19 impacts, assistance provided, and amount of CDBG-CV and other funds spent per household.

Provide progress reports to Program Administrator quarterly. Reports may be required more frequently based up upon requests from the Department of Commerce.

Submit reimbursement payment requests to the County for processing.

2) *Compensation* - Watauga County will provide an initial payment of \$100,000 and will provide equal payments of \$100,000 on a quarterly basis upon satisfactory performance. Total payment will be up to the amount of



\$400,000, for subsistence payments, service delivery, and administration.

- 3-) *Time of performance* - WAMY shall ensure that all services required herein shall be completed and all required reports, and documents submitted during the period beginning March 17, 2021 –June 17, 2023.
- 4) *Interest of Members, Officers, or Employees of WAMY, Members of Watauga County, or Other Public Officials* - no member, officer, or employee of WAMY, or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof. for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. WAMY shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.
- 5) *Nondiscrimination Clause* - No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
- 6) *Age Discrimination Act of 1975, as amended* - No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 7) *Section 504, Rehabilitation Act of 1973, as amended* - No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 8) *Access to Records and Record Retainage* - All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Record keeping. The North Carolina Department of Commerce, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of

the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of WAMY Community Action, Inc. which are pertinent to the execution of this Agreement, for the purpose of making audits, examination, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Record keeping.

- 9) *Termination of Agreement for Cause* - If, through any cause, WAMY Community Action, Inc. shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, Watauga County shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of Watauga County, become its property, and WAMY shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.
  
- 10) *Grantee Assurances* - In the performance of this Agreement, WAMY shall comply with all applicable Federal rules including the Section 3 Clause (Attachment A)
  
- 11) *Legal Remedies Provision* - As stated in 24 CFR Part 85.36, Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. Examples of legal remedies could be liquidated damages, consequential damages, arbitrations, and others not listed.
  
- 12) *Remedies/Sanctions or Breach of Contract Terms* - In accordance with 24 CFR 85.36, upon written notice, Watauga County may withhold payments to WAMY if WAMY fails to fulfill in a timely and proper manner its obligations to Watauga County under this contract, or if WAMY shall violate any of the conditions of this contract. Watauga County shall in its written notice to WAMY fully describe the nature of failure or violation by WAMY, the corrective action required of WAMY, and Watauga County shall allow WAMY thirty (30) days from the date of the notification to correct such failure and/or violation. If such failure or violation is corrected by WAMY within thirty (30) days from the date of notification, then Watauga County shall process payment(s) to WAMY. If such failure or violation is not corrected within thirty (30) days from the date of the notification, then Watauga County may proceed to terminate this contract.

IN WITNESS WHEREOF, WAMY Community Action, Inc. and Watauga County have  
executed this Agreement as of \_\_\_\_\_, 2021

**For Watauga County Government**

**For WAMY Community Action, Inc.**

By: \_\_\_\_\_  
Chairman, Watauga County  
Board of Commissioners

By: Melissa Loto  
Executive Director

\_\_\_\_\_  
Attest

Bryan Linton  
Attest

**ATTACHMENT A****§135.38 Section 3 clause**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of sect3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).



**AGREEMENT FOR ADMINISTRATION OF THE  
CDBG – COVID RELIEF PROGRAM GRANT**

This Agreement, made and entered into effective the 22nd day of February, 2021 by and between Daymark Recovery Services, Inc., a North Carolina not for profit Corporation (hereinafter "Daymark") and the Watauga County, North Carolina, a body politic (hereinafter "Watauga County");

**WITNESSETH**

WHEREAS, Watauga County has received grant funding through the CDBG COVID Relief Program for the period March 17, 2021 - June 17, 2023, such grant to provide for expanded mental health services for eligible low-moderate income citizens of Watauga County; and

WHEREAS, Watauga County has requested Daymark to provide said services; and

WHEREAS, Daymark desires to cooperate with Watauga County in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1) *Scope of Services* – Daymark will provide expanded telehealth and community based services to individuals and families facing mental health and substance abuse problems as a result of the COVID-19 pandemic until CDBG-CV funds allocated to Daymark are exhausted. The goal is 50 individuals. The following administrative functions will be included:

Coordinate referrals and intake of participant applications.

Verify participant eligibility (income, COVID-19 effects, etc.)

Keep complete files on each participant including income verification, COVID-19 impacts, assistance provided, and amount of CDBG-CV and other funds spent per household.

Provide progress reports to Program Administrator quarterly. Reports may be required more frequently based up upon requests from the Department of Commerce.

Submit reimbursement payment requests to the County for processing.

2) *Compensation* - Watauga County will pay Daymark up to the amount of \$50,000 for delivery of said services.

- 3-) *Time of performance* - Daymark shall ensure that all services required herein shall be completed and all required reports, and documents submitted during the period beginning March 17, 2021 –June 17, 2023.
- 4) *Interest of Members, Officers, or Employees of Daymark, Members of Watauga County, or Other Public Officials* - no member, officer, or employee of Daymark, or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. Daymark shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.
- 5) *Nondiscrimination Clause* - No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
- 6) *Age Discrimination Act of 1975, as amended* - No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 7) *Section 504, Rehabilitation Act of 1973, as amended* - No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 8) *Access to Records and Record Retainage* - All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Record keeping. The North Carolina Department of Commerce, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of Daymark which are pertinent to the

execution of this Agreement, for the purpose of making audits, examination, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Record keeping.

- 9) *Termination of Agreement for Cause* - If, through any cause, Daymark shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, Watauga County shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of Watauga County, become its property, and Daymark shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.
- 10) *Grantee Assurances* - In the performance of this Agreement, Daymark shall comply with all applicable Federal rules including the Section 3 Clause (Attachment A)
- 11) *Legal Remedies Provision* - As stated in 24 CFR Part 85.36, Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. Examples of legal remedies could be liquidated damages, consequential damages, arbitrations, and others not listed.
- 12) *Remedies/Sanctions or Breach of Contract Terms* - In accordance with 24 CFR 85.36, upon written notice, Watauga County may withhold payments to Daymark if Daymark fails to fulfill in a timely and proper manner its obligations to Watauga County under this contract, or if Daymark shall violate any of the conditions of this contract. Watauga County shall in its written notice to Daymark fully describe the nature of failure or violation by Daymark, the corrective action required of Daymark, and Watauga County shall allow Daymark thirty (30) days from the date of the notification to correct such failure and/or violation. If such failure or violation is corrected by Daymark within thirty (30) days from the date of notification, then Watauga County shall process payment(s) to Daymark. If such failure or violation is not corrected within thirty (30) days from the date of the notification, then Watauga County may proceed to terminate this contract.

IN WITNESS WHEREOF, Daymark Recovery Services, Inc. and Watauga County have

executed this Agreement as of \_\_\_\_\_, 2021


**For Watauga County Government**

**For Daymark Recovery Services, Inc.**

By: \_\_\_\_\_  
Chairman, Watauga County  
Board of Commissioners

By:   
Executive Director

\_\_\_\_\_  
Attest

  
\_\_\_\_\_  
Attest



**ATTACHMENT A****§135.38 Section 3 clause**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**AGREEMENT FOR ADMINISTRATION OF THE  
CDBG – COVID RELIEF PROGRAM GRANT**

This Agreement, made and entered into effective the 16<sup>th</sup> day of February, 2021 by and between Hospitality House of Northwest North Carolina a North Carolina not for profit Corporation (hereinafter "Hospitality House") and the Watauga County, North Carolina, a body politic (hereinafter "Watauga County");

**WITNESSETH**

WHEREAS, Watauga County has received grant funding through the CDBG COVID Relief Program for the period March 17, 2021 - June 17, 2023, such grant to provide for mental health counseling and food distribution for eligible low-moderate income citizens of Watauga County; and

WHEREAS, Watauga County has requested Hospitality House to expand mental health counseling services and to distribute food boxes; and

WHEREAS, Hospitality House desires to cooperate with Watauga County in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1) *Scope of Services* – Hospitality House will expend CDBG-CV funds to expand services through additional counseling hours dedicated to behavioral telehealth services (known as Homeless Health Initiative), and to distribute food boxes (known as Watauga Food Distribution Network) until funds allocated to Hospitality House are exhausted. The goal for Homeless Health Initiative is 150 individuals, for Watauga Food Distribution Network it is 30 households (67 individuals). The following administrative functions will be included:

Coordinate referrals and intake of participant applications.

Verify participant eligibility (income, COVID-19 effects, etc.)

Keep complete files on each participant including income verification, COVID-19 impacts, assistance provided, and amount of CDBG-CV and other funds spent per household.

Provide progress reports to Program Administrator quarterly. Reports may be required more frequently based up upon requests from the Department of Commerce.

Submit reimbursement payment requests to the County for processing.

2) *Compensation* - Watauga County will pay Hospitality House up to the amount of

\$160,000, for purchase of food and food distribution, telehealth program delivery, and administration.

- 3-) *Time of performance* – Hospitality House shall ensure that all services required herein shall be completed and all required reports, and documents submitted during the period beginning March 17, 2021 –June 17, 2023.
- 4) *Interest of Members, Officers, or Employees of Hospitality House, Members of Watauga County, or Other Public Officials* - no member, officer, or employee of Hospitality House, or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof. for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. Hospitality House shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.
- 5) *Nondiscrimination Clause* - No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
- 6) *Age Discrimination Act of 1975, as amended* - No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 7) *Section 504, Rehabilitation Act of 1973, as amended* - No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 8) *Access to Records and Record Retainage* - All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Record keeping. The North Carolina Department of Commerce, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any

executed this Agreement as of February 16, 2021

**For Watauga County Government**

**For Hospitality House of Northwest  
North Carolina**

By: \_\_\_\_\_  
Chairman, Watauga County  
Board of Commissioners

By: Anna B Krause  
Executive Director

\_\_\_\_\_  
Attest Al Shane Johnson, MSW  
Attest

books, documents, papers, and records of Hospitality House which are pertinent to the execution of this Agreement, for the purpose of making audits, examination, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Record keeping.

- 9) *Termination of Agreement for Cause* - If, through any cause, Hospitality House shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, Watauga County shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of Watauga County, become its property, and Hospitality House shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.
  
- 10) *Grantee Assurances* - In the performance of this Agreement, Hospitality House shall comply with all applicable Federal rules including the Section 3 Clause (Attachment A)
  
- 11) *Legal Remedies Provision* - As stated in 24 CFR Part 85.36, Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. Examples of legal remedies could be liquidated damages, consequential damages, arbitrations, and others not listed.
  
- 12) *Remedies/Sanctions or Breach of Contract Terms* - In accordance with 24 CFR 85.36, upon written notice, Watauga County may withhold payments to Hospitality House if Hospitality House fails to fulfill in a timely and proper manner its obligations to Watauga County under this contract, or if Hospitality House shall violate any of the conditions of this contract. Watauga County shall in its written notice to Hospitality House fully describe the nature of failure or violation by Hospitality House, the corrective action required of Hospitality House, and Watauga County shall allow Hospitality House thirty (30) days from the date of the notification to correct such failure and/or violation. If such failure or violation is corrected by Hospitality House within thirty (30) days from the date of notification, then Watauga County shall process payment(s) to Hospitality House. If such failure or violation is not corrected within thirty (30) days from the date of the notification, then Watauga County may proceed to terminate this contract.

IN WITNESS WHEREOF, Hospitality House of Northwest North Carolina and Watauga County have



## ATTACHMENT A

### §135.38 Section 3 clause

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of sect3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**AGREEMENT FOR ADMINISTRATION OF THE  
CDBG – COVID RELIEF PROGRAM GRANT**

This Agreement, made and entered into effective the 9<sup>th</sup> day of February, 2021 by and between High Country United Way, a North Carolina not for profit Corporation (hereinafter "HCUW") and the Watauga County, North Carolina, a body politic (hereinafter "Watauga County");

**WITNESSETH**

WHEREAS, Watauga County has received grant funding through the CDBG COVID Relief Program for the period March 17, 2021 - June 17, 2023, such grant to provide for subsistence payments to eligible citizens of Watauga County; and

WHEREAS, Watauga County has requested High Country United Way to administer and disburse said payments; and

WHEREAS, HCUW desires to cooperate with Watauga County in every way possible to the end that the proposed activities are carried out in an efficient and professional manner.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

1) *Scope of Services* – HCUW will provide CDBG-CV funds for households that are low-moderate income for the purposes of rent/mortgage payments and utility payments (to include internet connections depending upon need), and heating fuel until funds allocated to HCUW are exhausted. HCUW will work with small businesses affected by the COVID pandemic to identify households needing assistance through the “Business United” program. Business owners and employees will be targeted. The goal is 50 households (112 individuals). The following administrative functions will be included:

Coordinate referrals and intake of participant applications.

Verify participant eligibility (income, COVID-19 effects, etc.)

Keep complete files on each participant including income verification, COVID-19 impacts, assistance provided, and amount of CDBG-CV and other funds spent per household.

Provide progress reports to Program Administrator quarterly. Reports may be required more frequently based up upon requests from the Department of Commerce.

Submit reimbursement payment requests to the County for processing.

2) *Compensation* - Watauga County will pay HCUW up to the amount of

\$150,000, for subsistence payments, service delivery, and administration.

- 3-) *Time of performance* – HCUW shall ensure that all services required herein shall be completed and all required reports, and documents submitted during the period beginning March 17, 2021 –June 17, 2023.
- 4) *Interest of Members, Officers, or Employees of HCUW, Members of Watauga County, or Other Public Officials* - no member, officer, or employee of HCUW, or its agents; no member of the governing body of the locality in which the program is situated; and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure or for one year thereafter, shall have any financial interest, either direct or indirect, in any contract or subcontract, or the proceeds thereof for work to be performed in connection with the program assisted under this Agreement. Immediate family members of said members, officers, employees, and officials are similarly barred from having any financial interest in the program. HCUW shall incorporate, or cause to be incorporated, in all such contracts or subcontracts, a provision prohibiting such interest pursuant to the purpose of this section.
- 5) *Nondiscrimination Clause* - No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds available under the Housing and Community Development Act of 1974, Section 109.
- 6) *Age Discrimination Act of 1975, as amended* - No qualified person shall on the basis of age be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 7) *Section 504, Rehabilitation Act of 1973, as amended* - No qualified handicapped person shall, on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.
- 8) *Access to Records and Record Retainage* - All official project records and documents must be maintained during the operation of this project and for a period of three years following closeout, in compliance with 15 NCAC 13L Rule .0911, Record keeping. The North Carolina Department of Commerce, the North Carolina Department of Treasurer, U.S. Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of HCUW which are pertinent to the



execution of this Agreement, for the purpose of making audits, examination, excerpts, and transcriptions in compliance with 15 NCAC 13L Rule .0911, Record keeping.

- 9) *Termination of Agreement for Cause* - If, through any cause, HCUW shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or violate any of the covenants, conditions, or stipulations of this Agreement, Watauga County shall thereupon have the right to terminate this Agreement by giving written notice of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared under this Agreement shall, at the option of Watauga County, become its property, and HCUW shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials in direct proportion to the extent of services actually completed.
  
- 10) *Grantee Assurances* - In the performance of this Agreement, HCUW shall comply with all applicable Federal rules including the Section 3 Clause (Attachment A)
  
- 11) *Legal Remedies Provision* - As stated in 24 CFR Part 85.36, Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.  
Examples of legal remedies could be liquidated damages, consequential damages, arbitrations and others not listed.
  
- 12) *Remedies/Sanctions or Breach of Contract Terms* - In accordance with 24 CFR 85.36, upon written notice, Watauga County may withhold payments to HCUW if HCUW fails to fulfill in a timely and proper manner its obligations to Watauga County under this contract, or if HCUW shall violate any of the conditions of this contract. Watauga County shall in its written notice to HCUW fully describe the nature of failure or violation by HCUW, the corrective action required of HCUW, and Watauga County shall allow HCUW thirty (30) days from the date of the notification to correct such failure and/or violation. If such failure or violation is corrected by HCUW within thirty (30) days from the date of notification, then Watauga County shall process payment(s) to HCUW. If such failure or violation is not corrected within thirty (30) days from the date of the notification, then Watauga County may proceed to terminate this contract.

IN WITNESS WHEREOF, High Country United Way and Watauga County have executed this Agreement as of February 9<sup>th</sup>, 2021

**For Watauga County Government**

**For High Country United Way**

By: \_\_\_\_\_  
Chairman, Watauga County  
Board of Commissioners

By: Susan Stuber  
Executive Director (acting)

\_\_\_\_\_  
Attest

Sandra J. Williams  
Attest



**ATTACHMENT A****§135.38 Section 3 clause**

- A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.
- D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.
- E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of sect3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**AGENDA ITEM 9:****PLANNING AND INSPECTIONS MATTERS*****B. Proposed Planning and Development Ordinance*****MANAGER'S COMMENTS:**

The Board directed the Planning and Inspections Department to begin work on bringing the County's development ordinances into compliance with the new NC General Statute Chapter 160D. The Planning Board voted on February 15, 2021 to recommend the Planning and Development Ordinance to the Board of Commissioners for consideration and scheduling of the public hearing required for adoption. The staff did not propose changes to any of the ordinances being combined into the Planning and Development Ordinance other than those prompted by NCGS 160D. There are some choices to be made dictated by 160D; those are highlighted in yellow in the document and discussed in Mr. Furman's memo. Planning Board action on each is indicated in red.

Staff recommends the Board approve the changes as detailed and schedule a public hearing for April 6, 2021.



# WATAUGA COUNTY

126 Poplar Grove Connector, Suite 201 Boone, NC 28607

Department of  
Planning & Inspections

Phone (828) 265-8043  
TTY 1-800-735-2962  
Voice 1-800-735-8262  
or 711  
FAX (828) 265-8080

## Memorandum

**Date:** February 23, 2021  
**To:** County Manager, Board of Commissioners  
**From:** Joe Furman *Joseph W. Furman*  
**RE:** Proposed Planning & Development Ordinance

About a year ago, the Planning and Inspection Department staff began work to bring the County's development ordinances into compliance with the new NC General Statute Chapter 160D. This Chapter is the result of a five (5) year process initiated by the NC Bar Association, aided by the UNC School of Government and others. Chapter 160D is the first major recodification and modernization of city and county development regulations since 1905. It combines and standardizes the statutes enabling county and municipal development regulations, and replaces Chapter 153A, Article 18 (counties) and Chapter 160A, Article 19 (municipalities) which were repealed effective January 1, 2021. The provisions of Chapter 160D are effective now (have been since June, 2020), but local governments have until July 1, 2021 to bring their regulations into compliance. This blog <https://canons.sog.unc.edu/chapter-160d-deadlines-and-transitions/> reviews the General Assembly's actions. This checklist provided by the UNC School of Government describes the actions that must be taken as well as ones that are optional: <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/160D%20Checklist%20Aug%2020%20update.pdf>. And here is a Q&A by the School of Government: <https://www.sog.unc.edu/sites/www.sog.unc.edu/files/160D%20Q%26A%20updated%20Aug%2020.pdf>.

Rather than amend sixteen (16) distinct development ordinances, the staff proposed to combine them into one (1) ordinance, and beyond that, to create a County Code of Ordinances within which the development ordinance will reside. The Planning Board voted on 2/15/21 to recommend the Planning and Development Ordinance to the Board of Commissioners for consideration and scheduling of the public hearing required for adoption. The creation of the Code of Ordinances would occur after said adoption, and does not require a public hearing, as it is simply an organizational process. The proposed ordinance is attached, and it includes some pages (first 3 pages following the cover sheet) that describe its organization and the organization of the proposed Code of Ordinances.

The staff did not propose any changes to any of the ordinances being combined into the Planning and Development Ordinance other than those prompted by NCGS 160D. There are some choices to be made dictated by 160D; those are highlighted in yellow in the document and discussed below. Planning Board action on each is indicated in red.

- Chapter 1, effective date. **TBD.**
- Chapter 5, amount of civil penalties. The statute requires the County to set by ordinance the \$ amount of civil penalties. Currently our ordinances have varying amounts, or no amount at all. Staff proposed to standardize the amount to \$100, which is typical in ordinances elsewhere. An option would be \$50, which is the amount of criminal penalties for misdemeanors in the statutes. **PB approved \$100.**
- Chapter 5, definition of site-specific development plan for vested rights purposes. The County must define what “counts” as such a plan; staff proposed any plan/plat requiring Planning Board or Board of Adjustment approval is such a plan, upon request of the applicant. **PB approved staff recommendation.**
- Chapter 10, Foscoe Grandfather conditional zoning industrial district. Currently the Foscoe Grandfather Zoning Ordinance includes a two-step process for industrial uses. First, a property must be rezoned to industrial (legislative decision ultimately made by the Board of Commissioners). Second, since there is no list of permitted uses in that district, the Board of Adjustment must grant a conditional use permit (quasi-judicial decision). NCGS 160D prohibits this process and replaces it with conditional zoning, which is a legislative decision made by the Board of Commissioners. The proposed ordinance includes that, and also a list of permitted uses. **PB approved staff recommendation.** Related to the above, NCGS 160D eliminates the term conditional use permit, and replaces it with the term special use permit. The proposed ordinance incorporates that throughout.
- Chapter 13, duration of High Impact Land Use permit. It is currently two (2) years, can remain as such, or can revert to NCGS 160D default one (1) year. **PB approved default one (1) year.**
- Chapter 20, appeal of Valle Crucis Historic Preservation Commission decisions. NCGS 160D provides the option of appeal to the Board of Adjustment or directly to Superior Court. The current historic district ordinance provides for appeal to the Board of Adjustment; staff proposed that be changed to Superior Court. The reason for the recommendation is that the appeal is in the nature of certiorari (the appeal board/judge reviews the record only), and the Board of Adjustment is not used to operating that way, whereas the Superior Court is. **PB approved staff recommendation.**





# Watauga County Code of Ordinances



# **WATAUGA COUNTY CODE OF ORDINANCES**

Title I Planning & Development

Title II Emergency Management

Title III Solid Waste, Junk, & Nuisances

Title IV Animals

Title V Tax

Title VI Miscellaneous

Title VII Fee Schedules

## **Format:**

Code

    Titles

        Chapters

            Articles

                Sections

# **Code of Ordinances Contents**

## **Planning and Development Ordinance**

### **Emergency Management**

- Emergency Management Ordinance
- Hazardous Waste Ordinance
- Hazardous Materials Emergencies
- State of Emergency Ordinance?
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## **CHAPTER 1 AUTHORITY AND JURISDICTION**

### **Article I Title of Ordinance**

This ordinance shall be known and may be cited as the Watauga County Planning and Development Ordinance.

### **Article II Authority and Purposes**

This ordinance is enacted pursuant to the authority contained in the North Carolina Constitution and General Statutes, and is in fact a compilation of existing individual ordinances, amended as required by SL 2019-111, SL 2020-25, and NCGS 160D. Specific authorities and purposes for each chapter are stated therein.

### **Article III Jurisdiction**

This ordinance shall be effective throughout unincorporated Watauga outside of the jurisdictions of the municipalities; for regulations adopted under the authority of N.C.G.S. 160D, said municipal jurisdictions shall include extraterritorial jurisdictions, if any.

### **Article IV Effective Date**

This ordinance shall take effect **January 1, 2021**.

### **Article V Relationship to Existing Ordinances**

To the extent that the provisions of this ordinance are the same in substance as the provisions they replace in previously adopted County ordinances, they shall be considered as continuations thereof and not new enactments unless otherwise specifically provided, as stated above in Article II.

### **Article VI Fees**

Pursuant to N.C.G.S. 160D-402(d), reasonable fees for support, administration, and implementation of programs authorized by the General Statutes are established and amended from time-to-time by the Board of County Commissioners of Watauga County.

## **CHAPTER 2 PLANNING BOARD; PLANNING AND INSPECTIONS DEPARTMENT**

### **Article I Planning Board Established; Duties**

The Watauga County Planning Board is established pursuant to North Carolina General Statute 160D-301. The Board shall have the following powers and duties:

- (A) To prepare, review, maintain, monitor, and periodically update and recommend to Board of Commissioners a comprehensive plan, and such other plans as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis.
- (B) To facilitate and coordinate citizen engagement and participation in the planning process.
- (C) To develop and recommend policies, ordinances, development regulations, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
- (D) To advise the Board of Commissioners concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments as required by G.S. 160D-604.
- (E) To exercise any functions in the administration and enforcement of various means for carrying out plans that the Board of Commissioners may direct.
- (F) To provide a preliminary forum for review of quasi-judicial decisions, provided that no part of the forum or recommendation may be used as a basis for the deciding board.
- (G) To perform any other related duties that the Board of Commissioners may direct.

### **Article II Planning Board Membership and Vacancies**

The Planning Board shall consist of seven (7) members; five (5) appointed by the Board of County Commissioners on a district basis and two (2) appointed at-large with no residency requirements. Upon taking office after a general election, each County Commissioner shall nominate, subject to the approval of a majority of the Board of County Commissioners, one (1) person from his/her district. Two (2) at-large members shall be nominated and approved by the entire Board of County Commissioners. No more than



three (3) members at one time shall be from the same profession or occupation.

The terms of the appointees representing districts shall be concurrent with the terms of the County Commissioners elected to represent the districts. At-large appointees' terms shall be four (4) years, staggered. Planning Board members may be reappointed upon expiration of terms, and shall serve at the pleasure of the Board of Commissioners.

Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term. Faithful attendance at the meetings of the Planning Board is considered a prerequisite for the maintenance of membership on the Planning Board. Failure to attend three (3) consecutive regular meetings of the Planning Board without good cause shall terminate the membership of any appointee to the Planning Board.

### **Article III Department of Planning and Inspections**

The Department of Planning and Inspections is established pursuant to North Carolina General Statute 160D-401. The staff may consist of a director, administrators, inspectors, enforcement officers, planners, technicians, and other staff necessary to fulfill the duties of the Department.

Duties assigned to staff include, but are not limited to, drafting and implementing plans and development regulations to be adopted pursuant to NCGS 160D and 153A; determining whether applications for development approvals are complete; receiving and processing applications for development approvals; providing notices of applications and hearings; making decisions and determinations regarding development regulation implementation; determining whether applications for development approvals meet applicable standards as established by law and local ordinance; enforcing the North Carolina Building and Residential Codes (pursuant to NCGS 160D-1102); conducting inspections; issuing or denying certificates of compliance or occupancy; enforcing development regulations, including issuing notices of violation, orders to correct violations, and recommending bringing judicial actions against actual or threatened violations; keeping adequate records; and any other actions that may be required in order adequately to enforce the laws and development regulations under their jurisdiction.

**Article IV Ordinance Administrator**

The "Ordinance Administrator" is the Planning & Inspections Director or his/her subordinate officials designated by him/her. The title may be used interchangeably with: watershed administrator, floodplain administrator, county official, administrator, zoning official, planning staff, Department of Planning & Inspections, Office of Planning & Inspections, the County.

## **CHAPTER 3 BOARD OF ADJUSTMENT**

### **Article I Establishment of Board**

Board of Adjustment members shall be appointed by the Board of Commissioners and shall consist of five (5) regular members and any alternate members (if any) that the Board of Commissioners shall designate. Appointments shall be for three (3) years. If practicable, the Board of Commissioners shall appoint at least one member from each zoned and watershed area in the County.

### **Article II Duties of the Board**

The board shall hear and decide all matters upon which it is required to pass under any statute or development regulation adopted pursuant to NCGS 153A-121 or NCGS 160D, with the exception that the Watauga County Planning Board shall perform the duties of the Board of Adjustment pertaining to Chapter 18 Subdivisions and Multi-Unit Structures, and shall comply with all of the procedures and process applicable to the Board of Adjustment in making quasi-judicial decisions.

- (A) Hear and decide appeals from and review any order, requirement, decision, or determination made by the Department of Planning & Inspections in the performance of official duties.
- (B) Hear and decide appeals for variances. Nothing in this Section shall be construed to authorize the Board to permit a use in a district where that use is not a permitted use.
- (C) Hear and decide upon applications for special use permits.
- (D) Subpoenas. – The board making a quasi-judicial decision under this Chapter through the chair or, in the chair's absence, anyone acting as chair may subpoena witnesses and compel the production of evidence. To request issuance of a subpoena, the applicant, the County, and any person with standing under G.S. 160D-1402(c) may make a written request G.S. 160D-406 Page 2 to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be immediately appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

### **Article III Administration**

The Board shall adopt rules of procedures and regulations for the conduct of its affairs.

All meetings of the Board shall be open to the public. The Board shall keep a record of its meetings, including the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it and all official actions.

The Board Chair or any member acting as Chair and Board Clerk are authorized to administer oaths to any witnesses in any matter coming before the Board. Any person who, while under oath during a proceeding before the Board of Adjustment willfully swears falsely is guilty of a Class 1 misdemeanor.

Applications for special use permits, variances, and appeal of decisions of the Department of Planning & Inspections shall be filed with the Clerk to the Board of Adjustment, as agent for the Board, on forms provided by the Clerk.

#### **Section 1. Administrative Materials.**

The administrator or staff to the board shall transmit to the board all applications, reports, and written materials relevant to the matter being considered. The administrative materials may be distributed to the members of the board prior to the hearing if at the same time they are distributed to the board a copy is also provided to the appellant or applicant and to the landowner if that person is not the appellant or applicant. The administrative materials shall become a part of the hearing record. The administrative materials may be provided in written or electronic form. Objections to inclusion or exclusion of administrative materials may be made before or during the hearing. Rulings on unresolved objections shall be made by the board chair at the hearing; such ruling may be appealed to the full board.

#### **Section 2. Presentation of Evidence.**

The applicant, the local government, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board. Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair's rulings may be appealed to the full board. These rulings are also subject to judicial review pursuant to G.S.

160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

### **Section 3. Appearance of Official New Issues.**

The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness. The appellant shall not be limited at the hearing to matters stated in a notice of appeal. If any party or the local government would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing.

### **Section 4. Decisions.**

The board shall determine contested facts and make its decision within a reasonable time. When hearing an appeal, the board may reverse or affirm, wholly or partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing, reflect the board's determination of contested facts and their application to the applicable standards, and be approved by the board and signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board or such other office or official as the development regulation specifies. The decision of the board shall be delivered within a reasonable time by personal delivery, electronic mail, or first-class mail to the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify to the local government that proper notice has been made, and the certificate shall be deemed conclusive in the absence of fraud.

### **Section 5. Appeals in Nature of Certiorari.**

When hearing an appeal pursuant to G.S. 160D-947(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below, and the scope of review shall be as provided in G.S. 160D-1402(j).



## **Section 6. Standing.**

A petition may be filed under this Chapter only by a petitioner who has standing to challenge the decision being appealed. The following persons shall have standing to file a petition under this Chapter:

- (A) Any person possessing any of the following criteria:
  - (1) An ownership interest in the property that is the subject of the decision being appealed, a leasehold interest in the property that is the subject of the decision being appealed, or an interest created by easement, restriction, or covenant in the property that is the subject of the decision being appealed.
  - (2) An option or contract to purchase the property that is the subject of the decision being appealed.
  - (3) An applicant before the decision-making board whose decision is being appealed.
- (B) Any other person who will suffer special damages as the result of the decision being appealed.
- (C) An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

## **Section 7. Judicial Review.**

Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402.

Appeals shall be filed within the times specified in G.S. 160D-1405(d).

(2019-111, s. 2.4.)

## **Article IV Notice of Hearing**

- (A) Notice of evidentiary hearings conducted pursuant to this Chapter shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the local development

- regulation. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. The board may continue an evidentiary hearing that has been convened without further advertisement. If an evidentiary hearing is set for a given date and a quorum of the board is not then present, the hearing shall be continued until the next regular board meeting without further advertisement.
- (B)** Additional notice for evidentiary hearings conducted under Chapter 13, High Impact Land Uses is required as follows. Notice shall be posted on the subject parcel and mailed to all owners of property abutting and within 500 feet of the subject parcel twenty five (25) days in advance of the hearing. In addition, notice shall be published in a newspaper of general circulation in the area sixty (60) days and again two (2) weeks in advance of the hearing, and an announcement of the hearing shall be placed on the County's web site sixty (60) days in advance of the hearing, and remain there continuously until the hearing.

### **Article V Voting**

- (A)** The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.
- (B)** A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

### **Article VI Variances**

A variance may only be allowed by the Board in cases involving unnecessary hardships when competent, material, and substantial evidence in the record supports all of the following findings:

- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (D) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and substantial justice is achieved.

No change in permitted uses may be authorized by variance.

The Board may impose appropriate conditions upon the granting of any variance, provided that the conditions are reasonably related to the variance.

### **Article VII Appeals**

#### **Section 1. Designated Board.**

Except as provided in N.C.G.S 160D-1403.1, appeals of administrative decisions made by the staff under this Chapter shall be made to the board of adjustment unless a different board is provided or authorized otherwise by statute or an ordinance adopted pursuant to this Chapter. If this function of the board of adjustment is assigned to any other board pursuant to G.S.

160D-302(b), that board shall comply with all of the procedures and processes applicable to a board of adjustment hearing appeals. Appeal of a decision made pursuant to an erosion and sedimentation control regulation, a storm water control regulation, or a provision of the housing code shall not be made to the board of adjustment unless required by a County ordinance or code provision.

### **Section 2. Standing.**

Any person who has standing under G.S. 160D-1402(c) or the County may appeal an administrative decision to the board. An appeal is taken by filing a notice of appeal with the clerk or such other local government official as designated by regulation. The notice of appeal shall state the grounds for the appeal.

### **Section 3. Time to Appeal.**

The owner or other party shall have 30 days from receipt of the written notice of the determination within which to file an appeal. Any other person with standing to appeal has 30 days from receipt from any source of actual or constructive notice of the determination within which to file an appeal. In the absence of evidence to the contrary, notice given pursuant to G.S. 160D-403(b) by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service.

### **Section 4. Record of Decision.**

The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the decision appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

### **Section 5. Stays.**

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from including any accumulation of fines, during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law, or appeals therefrom, unless the official who made the decision certifies to the board after notice of appeal has been filed that, because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or, because the violation is transitory in nature, a stay would seriously interfere with enforcement of the

development regulation. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding any other provision of this Section, appeals of decisions granting a development approval or otherwise affirming that a proposed use of property is consistent with the development regulation does not stay the further review of an application for development approvals to use such property; in these situations, the appellant or local government may request and the board may grant a stay of a final decision of development approval applications, including building permits affected by the issue being appealed.

### **Section 6. Alternative Dispute Resolution.**

The parties to an appeal that has been made under this section may agree to mediation or other forms of alternative dispute resolution. The development regulation may set standards and procedures to facilitate and manage such voluntary alternative dispute resolution. (2019-111, s. 2.4.)

### **Section 7. No Estoppel.**

N.C.G.S. 160D-1403.2, limiting a local government's use of the defense of estoppel, applies to proceedings under this Section.

## **Article VIII Special Use Permits**

- (A) An application for a special use permit shall be submitted to the Board of Adjustment by filing a copy of the application with the Clerk to the Board.
- (B) Subject to [subsection \(C\)](#), the Board of Adjustment shall issue the requested permit unless it concludes, based upon the information submitted at the hearing, that:
  - (1) The requested permit is not within its jurisdiction according to the district regulations pertaining to uses, or
  - (2) The application is incomplete, or
  - (3) If completed as proposed in the application, the development will not comply with one or more requirements of the subject regulation.
- (C) Even if the Board finds that the application complies with all other provisions of this chapter, it may still deny the permit if it concludes, based upon the information submitted at the hearing, that if completed as proposed, the development, more probably than not:
  - (1) Will materially endanger the public health or safety, or



- (2) Will substantially injure the value of adjoining or abutting property, or
  - (3) Will not be in harmony with the area in which it is to be located, or
  - (4) Will not be in general conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.
- (D) The Board shall consider whether the application is complete. If the Board concludes that the application is incomplete and the applicant refuses to provide the necessary information, the application shall be denied. A motion to this effect shall specify either the particular type of information lacking or the particular requirement with respect to which the application is incomplete. A motion to this effect, concurred in by a majority of the Board, shall constitute the Board's finding on this issue. If a motion to this effect is not made and concurred in by a majority of members, this shall be taken as an affirmative finding by the Board that the application is complete.
- (E) The Board shall consider whether the application complies with all of the applicable requirements of the subject regulation. If a motion to this effect passes by a majority of members, the Board need not make further findings concerning such requirements. If such a motion fails to receive the majority vote or is not made, then a motion shall be made that the application be found not in compliance with one or more requirements of the ordinance. Such a motion shall specify the particular requirements the application fails to meet. A separate vote may be taken with respect to each requirement not met by the application. It shall be conclusively presumed that the application complies with all requirements not found by the Board to be unsatisfied through this process. As provided in [subsection \(C\)](#) if the Board concludes that the application fails to meet one or more of the requirements of this section, the application shall be denied.
- (F) If the Board concludes that all such requirements are met, it shall issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in [subsection \(C\)](#). Such motion shall propose specific findings, based upon the evidence submitted, justifying such a conclusion and is carried by a simple majority vote.
- (G) Subject to [subsection \(H\)](#), in granting a special use permit, the Board of Adjustment may attach to the permit such reasonable requirements in addition to those specified in this chapter as will ensure that the development in its proposed location:
- (1) Will not endanger the public health or safety,
  - (2) Will not injure the value of adjoining or abutting property,

- (3) Will be in harmony with the area in which it is located, and
  - (4) Will be in conformity with the land-use plan, thoroughfare plan, or other plan officially adopted by the Board of Commissioners.
- (H) The board may not attach additional conditions that modify or alter the specific requirements set forth in this ordinance unless the development in question presents extraordinary circumstances that justify the variation from the specified requirements.  
The board may not impose conditions that the County does not otherwise have statutory authority to impose unless agreed to in writing by the applicant.
- (I) Without limiting the foregoing, the board may attach to a permit a condition limiting the permit to a specified duration.
- (J) All additional conditions or requirements shall be entered on the permit, and consented to in writing by the applicant.
- (K) All additional conditions or requirements authorized by this Section are enforceable in the same manner and to the same extent as any other applicable requirements of the subject Ordinance.
- (L) A vote may be taken on application conditions or requirements before consideration of whether the permit should be denied for any of the reasons set forth in [Subsections \(B\)](#) or [\(C\)](#).

### **Article IX Appeals of Board Actions**

Every decision of the Board shall be subject to review at the instance of any aggrieved party by the Superior Court by proceedings in the nature of certiorari. The appeal to Superior Court must be filed within 30 days of the filing by the Board Clerk of the decision in the office of the Department of Planning & Inspections or the delivery of the notice required in [Article III, Section 4](#), whichever is later.

## **CHAPTER 4 PROCEDURE FOR ADOPTING, AMENDING, OR REPEALING DEVELOPMENT REGULATIONS.**

### **Article I Hearing with Published Notice**

Before adopting, amending, or repealing any development regulation authorized by NCGS 160D, the Board of Commissioners shall hold a legislative hearing. A notice of the 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 the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

### **Article II Notice of Hearing on Proposed Zoning Map Amendments**

- (A) Mailed Notice. –The owners of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first-class mail at the last addresses listed for such owners on the county tax abstracts. For the purpose of this section, properties are "abutting" even if separated by a street, railroad, or other transportation corridor. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.
- (B) Optional Notice for Large-Scale Zoning Map Amendments. – The first-class mail notice required under [subsection \(A\)](#) of this section is not required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the ordinance administrator elects to use the expanded published notice provided for in this subsection. In this instance, a local government may elect to make the mailed notice provided for in [subsection \(A\)](#) of this section or, as an alternative, elect to publish notice of the hearing as required by G.S. 160D-601, provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement is only effective only for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation

area, according to the address listed on the most recent property tax listing for the affected property, shall be notified according to the provisions of [subsection \(A\)](#) of this section.

- (C) Posted Notice. – When a zoning map amendment is proposed, the County shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way. The notice shall be posted within the same time period specified for mailed notices of the hearing. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required but the County shall post sufficient notices to provide reasonable notice to interested persons.

### **Article III Citizen Comments**

If any resident or property owner submits a written statement regarding a proposed amendment, modification, or repeal to a development regulation, including a text or map amendment, that has been properly initiated as provided in N.C.G.S. 160D-601, to the Clerk to the Board of Commissioners at least two business days prior to the proposed vote on such change, the Clerk to the Board shall deliver such written statement to the Board.

### **Article IV Amendments**

Subsequent to initial adoption of a development regulation, all proposed amendments to the regulation or map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to that board, the Board of Commissioners may act on the amendment without the Planning Board report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board. Proposed amendments to the zoning regulations or maps for the Foscoe Grandfather Community and Valle Crucis Historic District shall be submitted to the Community Councils, if active, for those communities respectively, under the same conditions as referral to the Planning Board.

### **Article V Down-Zoning**

No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor shall it be enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the

county. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- (A) By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- (B) By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

### **Article VI Plan Consistency**

When conducting a review of proposed zoning text or map amendments pursuant to this section, the Planning Board shall advise and comment on whether the proposed action is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Planning Board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

### **Article VII Statement of Board of Commissioners**

- (A) Plan Consistency. – When adopting or rejecting any zoning text or map amendment, the Board of Commissioners shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Board that at the time of action on the amendment the Board was aware of and considered the Planning Board's (and Community Council's if applicable) recommendations and any relevant portions of an adopted comprehensive plan. If a zoning map amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land-use map in the



- approved plan, and no additional request or application for a plan amendment shall be required. A plan amendment and a zoning amendment may be considered concurrently. The plan consistency statement is not subject to judicial review. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board of Commissioners' statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the action taken.
- (B)** Additional Reasonableness Statement for Rezonings. – When adopting or rejecting any petition for a zoning map amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-602(b), the Board's statement on reasonableness may address the overall rezoning.
- (C)** Single Statement Permissible. – The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

## **CHAPTER 5 MISCELLANEOUS PROVISIONS**

### **Article I Conflict with Other Laws**

Wherever the regulations made under authority of any chapter of this ordinance require a greater width or size or yards, or courts, or require a lower height of building or less number of stories, or require a greater percentage of lots to be left unoccupied or impose other higher standards than that required in any other chapter, the more restrictive provisions shall govern.

### **Article II Notices of Violation**

When the Ordinance Administrator determines work or activity has been undertaken in violation of a development regulation adopted pursuant to this ordinance or other local development regulation or any State law delegated to Watauga County for enforcement purposes in lieu of the State including but not limited to the NC Building and Residential Codes (NCGS 160D, Article 11), or in violation of the terms of a development approval, a written notice of violation may be issued. The notice of violation shall be delivered to the holder of the development approval and to the landowner of the property involved, if the landowner is not the holder of the development approval, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property or the person undertaking the work or activity. The notice of violation may be posted on the property. The person providing the notice of violation shall certify to the local government that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1123 or G.S. 160D-1206 or otherwise provided by law, a notice of violation may be appealed to the board of adjustment pursuant to G.S. 160D-405.

### **Article III Stop Work Orders**

Whenever any work or activity subject to regulation pursuant to this ordinance or other applicable local development regulation or any State law delegated to the County for enforcement purposes in lieu of the State is undertaken in substantial violation of any State or local law, or in a manner that endangers life or property, staff may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. The order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and to the owner of the property involved (if that person is not the holder of the development approval) by personal delivery,

electronic delivery, or first-class mail. The person or persons delivering the stop work order shall certify to the local government that the order was delivered and that certificate shall be deemed conclusive in the absence of fraud. Except as provided by G.S. 160D-1112 and G.S. 160D-1208, a stop work order may be appealed pursuant to G.S. 160D-405. No further work or activity shall take place in violation of a stop work order pending a ruling on the appeal. Violation of a stop work order shall constitute a Class 1 misdemeanor.

#### **Article IV Remedies**

Subject to the provisions of the development regulation, any development regulation adopted pursuant to authority conferred by N.C.G.S. 153A-121 or N.C.G.S. 160D, or any State law delegated to the County for enforcement purposes in lieu of the State may be enforced by any remedy provided by N.C.G.S. 160A-175 or N.C.G.S. 153A-123. If a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used or developed in violation of any development regulation or other regulation made under authority of the cited statutes, the County, in addition to other remedies, may institute any appropriate action or proceedings to prevent the unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, use, or development; 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.

#### **Article V Penalties**

Any person, firm or corporation who violates any provision of any article of this ordinance, or NCGS 160D, Article 11; or who shall violate or fail to comply with any order made there under; or who shall continue to work upon any structure after having received written notice from the Ordinance Administrator or Building Inspector to cease work, shall, upon conviction, be guilty of a misdemeanor and shall be punishable by a fine not to exceed fifty (\$50.00) dollars, or imprisonment not to exceed thirty days. Each day such violation shall be permitted to exist shall constitute a separate offense. Notice of violation shall be sufficient if directed to the owner, the agent of the owner, or the contractor and left at his known place of residence or place of business. In lieu of or in addition to the criminal penalties outlined above, a person violating this ordinance may be subject to a civil penalty, under N.C.G.S. 153A-123(c), in the discretion of the Board of County Commissioners, not to exceed \$100.00. No penalty shall be assessed prior to notice to the violator. For every day a violator is in violation of this ordinance, it may be considered a separate offense. If the violator does not

pay such penalty within 30 days of notification of its assessment by written citation it may be recovered by the County in a civil action in the nature of a debt. The violator may contest said penalty in the court of appropriate jurisdiction.

### **Article VI Additional Remedies and Penalties for Soil Erosion and Sedimentation**

Additional remedies and penalties are set forth in [Chapter 8, Soil Erosion and Sedimentation Control](#) for violations of that chapter.

### **Article VII Severability Clause**

Should any section or provisions of this code be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this code as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid

### **Article VIII Development Approvals**

To the extent consistent with the scope of regulatory authority granted by this ordinance, no person shall commence or proceed with development without first securing any required development approval from the County. A development approval shall be in writing and may contain a provision that the development shall comply with all applicable State and local laws. The County may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

### **Article IX Duration of Development Approval**

Unless a different period is specified by this ordinance or other specific applicable law, including for a development agreement, or a local ordinance, a development approval issued pursuant to this ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Nothing in this subsection limits any vested rights secured under N.C.G.S. 160D-108 or 108.1. To secure such vested rights, an applicant may request approval of a site-specific development plan for any

project that is to be reviewed and approved by the Planning Board or Board of Adjustment.

### **Article X Inspections**

Pursuant to N.C.G.S. 160D-403(e) the Ordinance Administrator may inspect work undertaken pursuant to a development approval to assure that the work is being done in accordance with applicable State and local laws and of the terms of the approval. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the County at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured. Pursuant to N.C.G.S. 160D-402(b), the Ordinance Administrator may inspect premises at all reasonable hours for which ordinance violations are suspected, upon presentation of proper credentials.

### **Article XI Revocation of Development Approvals**

In addition to initiation of enforcement actions under N.C.G.S. 160D-404, development approvals may be revoked by the County by notifying the holder in writing stating the reason for the revocation. The County shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the County for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. If an appeal is filed regarding a development regulation adopted by the County pursuant to N.C.G.S. 153A-121 or N.C.G.S. 160D, the provisions of G.S. 160D-405(e) regarding stays apply.

### **Article XII Development approvals run with the land**

Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this ordinance attach to and run with the land.

### **Article XIII Minor modifications**

Modifications of special use permits and conditional zoning that may be reviewed and approved by the Ordinance Administrator. Such modifications include changes to: building locations, landscaping, parking locations, grading, storm water, lighting, road/street names, development names, provided no violation or waiver of ordinance provisions is approved. Minor modifications shall not include change of use (except in mix of residential types), increase in development density, set back encroachments, or reduction of road/street right-of-way.

### **Article XIV Conditional Districts**

Property may be placed in a conditional district only in response to a petition by all owners of the property to be included. Specific conditions may be proposed by the petitioner or the local government or its agencies, but only those conditions mutually approved by the local government and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to local government ordinances, plans adopted pursuant to G.S. 160D-501, or the impacts reasonably expected to be generated by the development or use of the site. The zoning regulation may provide that defined minor modifications in conditional district standards that do not involve a change in uses permitted or the density of overall development permitted may be reviewed and approved administratively. Any other modification of the conditions and standards in a conditional district shall follow the same process for approval as are applicable to zoning map amendments. If multiple parcels of land are subject to a conditional zoning, the owners of individual parcels may apply for modification of the conditions so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification. The applicant's written consent is required for conditions not authorized by otherwise applicable law, including, without limitation, taxes, impact fees, building design elements within the scope of N.C.G.S 160D-702, driveway-related improvements in excess of those allowed in N.C.G.S. 136-18(29), or other unauthorized limitations on the development or use of land.

### **Article XV Determinations**

The officer making the determination shall give written notice to the owner of the property that is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice



shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner.

### **Article XVI Optional posting of signs by owner**

It is conclusively presumed that all persons with standing to appeal have constructive notice of the determination from the date a sign providing notice that a determination has been made is prominently posted on the property that is the subject of the determination, provided the sign remains on the property for at least 10 days. The sign shall contain the words "Zoning Decision" or "Subdivision Decision" or similar language for other determinations in letters at least 6 inches high and shall identify the means to contact a local government staff member for information about the determination. Posting of signs is not the only form of constructive notice. Any such posting is the responsibility of the landowner, applicant, or person who sought the determination. Verification of the posting shall be provided to the staff member responsible for the determination. Posting of signs shall not be required by the Ordinance Administrator.

### **Article XVII Word Interpretation**

For the purpose of this ordinance, certain words shall be interpreted as follows:

Words in the present tense include the 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.

The word "person" includes a firm, association, corporation, trust, and company as well as an individual.

The word "structure" shall include the word "building."

The word "lot" shall include the words, "plot," "parcel," or "tract."

The word "shall" is always mandatory and not merely directory.

The word "will" is always mandatory and not merely directory.

## **CHAPTER 6 STATUTORY PROVISIONS**

The following provisions are found in the North Carolina General Statutes and are adopted by reference and incorporated in this code as currently set forth and as amended in the future. Copies of the current versions are included here for ease of review.

Permit Choice and Vested Rights: [NCGS 160D-108](#) & [108.1](#)

[Conflicts of Interest: NCGS 160D-109](#)

[Split Jurisdiction: NCGS 160D-203](#)

[Agricultural Uses: NCGS 160D-903](#)

### **§ 160D-108. Permit choice and vested rights.**

(a) Findings. - The General Assembly recognizes that local government approval of development typically follows significant investment in site evaluation, planning, development costs, consultant fees, and related expenses. The General Assembly finds that it is necessary and desirable to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the development regulation process, to secure the reasonable expectations of landowners, and to foster cooperation between the public and private sectors in land-use planning and development regulation. The provisions of this section and G.S. 160D-108.1 strike an appropriate balance between private expectations and the public interest.

(b) Permit Choice. - If a land development regulation is amended between the time a development permit application was submitted and a development permit decision is made or if a land development regulation is amended after a development permit decision has been challenged and found to be wrongfully denied or illegal, G.S. 143-755 applies.

(c) Vested Rights. - Amendments in land development regulations are not applicable or enforceable without the written consent of the owner with regard to any of the following:

- (1) Buildings or uses of buildings or land for which a development permit application has been submitted and subsequently issued in accordance with G.S. 143-755.
- (2) Subdivisions of land for which a development permit application authorizing the subdivision has been submitted and subsequently issued in accordance with G.S. 143-755.
- (3) A site-specific vesting plan pursuant to G.S. 160D-108.1.

- (4) A multi-phased development pursuant to subsection (f) of this section.
- (5) A vested right established by the terms of a development agreement authorized by Article 10 of this Chapter.

The establishment of a vested right under any subdivision of this subsection does not preclude vesting under one or more other subdivisions of this subsection or vesting by application of common law principles. A vested right, once established as provided for in this section or by common law, precludes any action by a local government that would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property allowed by the applicable land development regulation or regulations, except where a change in State or federal law mandating local government enforcement occurs after the development application is submitted that has a fundamental and retroactive effect on the development or use.

(d) Duration of Vesting. - Upon issuance of a development permit, the statutory vesting granted by subsection (c) of this section for a development project is effective upon filing of the application in accordance with G.S. 143-755, for so long as the permit remains valid pursuant to law. Unless otherwise specified by this section or other statute, local development permits expire one year after issuance unless work authorized by the permit has substantially commenced. A local land development regulation may provide for a longer permit expiration period. For the purposes of this section, a permit is issued either in the ordinary course of business of the applicable governmental agency or by the applicable governmental agency as a court directive.

Except where a longer vesting period is provided by statute or land development regulation, the statutory vesting granted by this section, once established, expires for an uncompleted development project if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, and the statutory vesting period granted by this section for a nonconforming use of property expires if the use is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months. The 24-month discontinuance period is automatically tolled during the pendency of any board of adjustment proceeding or civil action in a State or federal trial or appellate court regarding the validity of a development permit, the use of the property, or the existence of the statutory vesting period granted by this section. The 24-month discontinuance period is also tolled during the pendency of any litigation involving the development project or property that is the subject of the vesting.

(e) Multiple Permits for Development Project. - Subject to subsection (d) of this section, where multiple local development permits are required to complete a development project, the development permit applicant may

choose the version of each of the local land development regulations applicable to the project upon submittal of the application for the initial development permit. This provision is applicable only for those subsequent development permit applications filed within 18 months of the date following the approval of an initial permit. For purposes of the vesting protections of this subsection, an erosion and sedimentation control permit or a sign permit is not an initial development permit.

(f) Multi-Phased Development. - A multi-phased development is vested for the entire development with the land development regulations then in place at the time a site plan approval is granted for the initial phase of the multi-phased development. A right which has been vested as provided for in this subsection remains vested for a period of seven years from the time a site plan approval is granted for the initial phase of the multi-phased development.

(g) Continuing Review. - Following issuance of a development permit, a local government may make subsequent inspections and reviews to ensure compliance with the applicable land development regulations in effect at the time of the original application.

(h) Process to Claim Vested Right. - A person claiming a statutory or common law vested right may submit information to substantiate that claim to the zoning administrator or other officer designated by a land development regulation, who shall make an initial determination as to the existence of the vested right. The decision of the zoning administrator or officer may be appealed under G.S. 160D-405. On appeal, the existence of a vested right shall be reviewed de novo. In lieu of seeking such a determination or pursuing an appeal under G.S. 160D-405, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.

(i) Miscellaneous Provisions. - The vested rights granted by this section run with the land except for the use of land for outdoor advertising governed by G.S. 136-131.1 and G.S. 136-131.2 in which case the rights granted by this section run with the owner of a permit issued by the North Carolina Department of Transportation. Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.

(j) [Definitions. -] As used in this section, the following definitions apply:

- (1) Development. - As defined in G.S. 143-755(e)(1).
- (2) Development permit. - As defined in G.S. 143-755(e)(2).
- (3) Land development regulation. - As defined in G.S. 143-755(e)(3).

- (4) Multi-phased development. - A development containing 25 acres or more that is both of the following:
- a. Submitted for development permit approval to occur in more than one phase.
  - b. Subject to a master development plan with committed elements showing the type and intensity of use of each phase. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 5(a), 50(b), 51(a), (b), (d).)

**§ 160D-108.1. Vested rights - site-specific vesting plans.**

(a) Site-Specific Vesting Plan. - A site-specific vesting plan consists of a plan submitted to a local government in which the applicant requests vesting pursuant to this section, describing with reasonable certainty on the plan the type and intensity of use for a specific parcel or parcels of property. The plan may be in the form of, but not be limited to, any of the following plans or approvals: a planned unit development plan, a subdivision plat, a preliminary or general development plan, a special use permit, a conditional district zoning plan, or any other land-use approval designation as may be utilized by a local government. Unless otherwise expressly provided by the local government, the plan shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. What constitutes a site-specific vesting plan under this section that would trigger a vested right shall be finally determined by the local government pursuant to a development regulation, and the document that triggers the vesting shall be so identified at the time of its approval. A variance does not constitute a site-specific vesting plan, and approval of a site-specific vesting plan with the condition that a variance be obtained does not confer a vested right unless and until the necessary variance is obtained. If a sketch plan or other document fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property, it may not constitute a site-specific vesting plan.

(b) Establishment of Vested Right. - A vested right is established with respect to any property upon the valid approval, or conditional approval, of a site-specific vesting plan as provided in this section. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the site-specific vesting plan, including any amendments thereto.

(c) Approval and Amendment of Plans. - If a site-specific vesting plan is based on an approval required by a local development regulation, the local government shall provide whatever notice and hearing is required for that underlying approval. A duration of the underlying approval that is less than two years does not affect the duration of the site-specific vesting plan established under this section. If the site-specific vesting plan is not based on such an approval, a legislative hearing with notice as required by G.S. 160D-602 shall be held.

A local government may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare. Conditional approval results in a vested right, although failure to abide by the terms and conditions of the approval will result in a forfeiture of vested rights. A local government shall not require a landowner to waive the landowner's vested rights as a condition of developmental approval. A site-specific vesting plan is deemed approved upon the effective date of the local government's decision approving the plan or another date determined by the governing board upon approval. An approved site-specific vesting plan and its conditions may be amended with the approval of the owner and the local government as follows: any substantial modification must be reviewed and approved in the same manner as the original approval; minor modifications may be approved by staff, if such are defined and authorized by local regulation.

(d) Continuing Review. - Following approval or conditional approval of a site-specific vesting plan, a local government may make subsequent reviews and require subsequent approvals by the local government to ensure compliance with the terms and conditions of the original approval, provided that these reviews and approvals are not inconsistent with the original approval. The local government may, pursuant to G.S. 160D-403(f), revoke the original approval for failure to comply with applicable terms and conditions of the original approval or the applicable local development regulations.

(e) Duration and Termination of Vested Right. -

- (1) A vested right for a site-specific vesting plan remains vested for a period of two years. This vesting shall not be extended by any amendments or modifications to a site-specific vesting plan unless expressly provided by the local government.
- (2) Notwithstanding the provisions of subdivision (1) of this subsection, a local government may provide for rights to be vested for a period exceeding two years but not exceeding five years where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. These determinations are in the sound



discretion of the local government and shall be made following the process specified for the particular form of a site-specific vesting plan involved in accordance with subsection (a) of this section.

- (3) Upon issuance of a building permit, the provisions of G.S. 160D-1111 and G.S. 160D-1115 apply, except that a permit does not expire and shall not be revoked because of the running of time while a vested right under this section is outstanding.
  - (4) A right vested as provided in this section terminates at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.
- (f) Subsequent Changes Prohibited; Exceptions. -
- (1) A vested right, once established as provided for in this section, precludes any zoning action by a local government which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site-specific vesting plan, except under one or more of the following conditions:
    - a. With the written consent of the affected landowner.
    - b. Upon findings, by ordinance after notice and an evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan.
    - c. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees incurred after approval by the local government, together with interest as provided under G.S. 160D-106. Compensation shall not include any diminution in the value of the property which is caused by the action.
    - d. Upon findings, by ordinance after notice and an evidentiary hearing, that the landowner or the landowner's representative intentionally supplied inaccurate information or made material misrepresentations that made a difference in the

- approval by the local government of the site-specific vesting plan or the phased development plan.
- e. Upon the enactment or promulgation of a State or federal law or regulation that precludes development as contemplated in the site-specific vesting plan or the phased development plan, in which case the local government may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and an evidentiary hearing.
- (2) The establishment of a vested right under this section does not preclude the application of overlay zoning or other development regulations which impose additional requirements but do not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to development regulation by a local government, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations become effective with respect to property which is subject to a site-specific vesting plan upon the expiration or termination of the vesting rights period provided for in this section.
  - (3) Notwithstanding any provision of this section, the establishment of a vested right does not preclude, change, or impair the authority of a local government to adopt and enforce development regulations governing nonconforming situations or uses.
- (g) Miscellaneous Provisions. -
- (1) A vested right obtained under this section is not a personal right, but attaches to and runs with the applicable property. After approval of a site-specific vesting plan, all successors to the original landowner are entitled to exercise these rights.
  - (2) Nothing in this section precludes judicial determination, based on common law principles or other statutory provisions, that a vested right exists in a particular case or that a compensable taking has occurred. Except as expressly provided in this section, nothing in this section shall be construed to alter the existing common law.
  - (3) In the event a local government fails to adopt a development regulation setting forth what constitutes a site-specific vesting plan triggering a vested right, a landowner may establish a vested right with respect to property upon the approval of a zoning permit, or otherwise may seek appropriate relief from

the Superior Court Division of the General Court of Justice. (2020-25, ss. 5(b), 50(b).)

**§ 160D-109. Conflicts of interest.**

(a) **Governing Board.** - A governing board member shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(b) **Appointed Boards.** - Members of appointed boards shall not vote on any advisory or legislative decision regarding a development regulation adopted pursuant to this Chapter where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

(c) **Administrative Staff.** - No staff member shall make a final decision on an administrative decision required by this Chapter if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest under this section, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Chapter unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with a local government to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the local government, as determined by the local government.

(d) **Quasi-Judicial Decisions.** - A member of any board exercising quasi-judicial functions pursuant to this Chapter shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a

fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter.

(e) Resolution of Objection. - If an objection is raised to a board member's participation at or prior to the hearing or vote on a particular matter and that member does not recuse himself or herself, the remaining members of the board shall by majority vote rule on the objection.

(f) Familial Relationship. - For purposes of this section, a "close familial relationship" means a spouse, parent, child, brother, sister, grandparent, or grandchild. The term includes the step, half, and in-law relationships. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### **§ 160D-203. Split jurisdiction.**

If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, for the purposes of this Chapter, the local governments may, by mutual agreement pursuant to Article 20 of Chapter 160A of the General Statutes and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction under this Chapter for the entire parcel to any one of those local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other nonregulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by each governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last required resolution. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

### **§ 160D-903. Agricultural uses.**

(a) Bona Fide Farming Exempt From County Zoning. - County zoning regulations may not affect property used for bona fide farm purposes; provided, however, that this section does not limit zoning regulation with respect to the use of farm property for nonfarm purposes. Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures

sheltering or supporting the farm use and operation. For purposes of this section, "when performed on the farm" in G.S. 106-581.1(6) includes the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this section, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following is sufficient evidence that the property is being used for bona fide farm purposes:

- (1) A farm sales tax exemption certificate issued by the Department of Revenue.
- (2) A copy of the property tax listing showing that the property is eligible for participation in the present-use value program pursuant to G.S. 105-277.3.
- (3) A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
- (4) A forest management plan.

A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farm sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide farm purpose pursuant to this subsection subjects the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to G.S. 160D-702 in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, hunting, fishing, equestrian activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.

(b) County Zoning of Residential Uses on Large Lots in Agricultural Districts. - A county zoning regulation shall not prohibit single-family detached residential uses constructed in accordance with the North Carolina State Building Code on lots greater than 10 acres in size and in zoning districts where more than fifty percent (50%) of the land is in use for

agricultural or silvicultural purposes, except that this restriction does not apply to commercial or industrial districts where a broad variety of commercial or industrial uses are permissible. A zoning regulation shall not require that a lot greater than 10 acres in size have frontage on a public road or county-approved private road or be served by public water or sewer lines in order to be developed for single-family residential purposes.

(c) Agricultural Areas in Municipal Extraterritorial Jurisdiction. - Property that is located in a city's extraterritorial planning and development regulation jurisdiction and that is used for bona fide farm purposes is exempt from the city's zoning regulation to the same extent bona fide farming activities are exempt from county zoning pursuant to this section. As used in this subsection, "property" means a single tract of property or an identifiable portion of a single tract. Property that ceases to be used for bona fide farm purposes becomes subject to exercise of the city's extraterritorial planning and development regulation jurisdiction under this Chapter. For purposes of complying with State or federal law, property that is exempt from municipal zoning pursuant to this subsection is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

(d) Accessory Farm Buildings. - A city may provide in its zoning regulation that an accessory building of a "bona fide farm" has the same exemption from the building code as it would have under county zoning.

(e) City Regulations in Voluntary Agricultural Districts. - A city may amend the development regulations applicable within its planning and development regulation jurisdiction to provide flexibility to farming operations that are located within a city or county, voluntary agricultural district, or enhanced voluntary agricultural district adopted under Article 61 of Chapter 106 of the General Statutes. Amendments to applicable development regulations may include provisions regarding on-farm sales, pick-your-own operations, road signs, agritourism, and other activities incident to farming. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, ss. 22, 51(a), (b), (d); 2020-74, s. 20.)



## **CHAPTER 7 DEFINITIONS**

- (1) **Abandoned Sign** - A sign which for a period of at least 180 consecutive days or longer no longer advertises or identifies a legal business establishment, product or activity.
- (2) **Abandonment** - Cessation of use of a wireless support structure for wireless telecommunications activity for at least the minimum period of time specified under this ordinance.
- (3) **Accelerated Erosion** - means any increase over the rate of natural erosion as a result of land-disturbing activity.
- (4) **Accessory Equipment** - Any equipment serving or being used in conjunction with a wireless facility or wireless support structure. The term includes utility or transmission equipment, power supplies, generators, batteries, cables, equipment buildings, cabinets and storage sheds, shelters or similar structures.
- (5) **Accessory Structure (Appurtenant Structure, Accessory Building)** - means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principle structures. 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.
- (6) **Accessory Use** - See [Chapter 10, Article V, Section 5](#).
- (7) **Act** - means the North Carolina Sedimentation Pollution Control Act of 1973 and all rules and orders adopted pursuant to it.
- (8) **Addition (to an existing building)** - means an extension or increase in the floor area or height of a building or structure.
- (9) **Adequate Erosion Control Measure, Structure, or Device** - means one which controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.
- (10) **Administrative Approval** - Approval that the Administrator or designee is authorized to grant after administrative review.
- (11) **Administrative Decision** - Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Chapter or local government development regulations. These are sometimes referred to as ministerial decisions or administrative determinations.
- (12) **Administrative Hearing** - A proceeding to gather facts needed to make an administrative decision.

- (13)** Administrative Review – Non-discretionary evaluation of an application by the Administrator or designee. The process is not subject to a public hearing.
- (14)** Administrator - The person or persons assigned by the Board of Commissioners to enforce this ordinance. Aka, Ordinance Administrator, County Official, Zoning Administrator, Watershed Administrator, Planning Staff, etc.
- (15)** Adult Arcade - means any place to which the public is permitted or invited wherein coin-operated, slug-operated, or for any form of consideration, or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of "specified sexual activities" or "specified anatomical areas."
- (16)** Adult Bookstore - means a bookstore:
- (a)** which receives a majority of its gross income during any calendar month from the sale or rental of publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section; or
  - (b)** having as a preponderance (either in terms of the weight and importance of the material or in terms of greater volume of materials) of its publications (including books, magazines, other periodicals, videotapes, compact discs, other photographic, electronic, magnetic, digital, or other imaging medium) which are distinguished or characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section. A commercial establishment may have other principal business purposes that do not involve the offering for sale or rental of material depicting or describing "specified sexual activities" or "specified anatomical areas" and still be categorized as ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an ADULT BOOKSTORE, ADULT NOVELTY STORE, or ADULT VIDEO STORE so long as one of its principal business purposes is the offering for sale or rental for consideration the specified materials which

are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."

- (17)** Adult Cabaret - means a nightclub, bar, restaurant, or similar commercial establishment which regularly features:
- (a)** persons who appear in a state of nudity or semi-nude; or
  - (b)** live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities"; or
  - (c)** films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas."
- (18)** Adult Establishment - means an adult bookstore, adult motion picture theatre, adult mini motion picture theatre, adult live entertainment business, or massage business as defined in this section.
- (19)** Adult Live Entertainment - means any performance of or involving the actual presence of real people which exhibits specified sexual activities or specified anatomical areas, as defined in this section.
- (20)** Adult Live Entertainment Business - means any establishment or business wherein adult live entertainment is shown for observation by patrons.
- (21)** Adult Mini Motion Picture Theatre - means an enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas as defined in this section, for observation by patrons therein.
- (22)** Adult Motel - means a hotel, motel or similar commercial establishment which:
- (a)** offers accommodations to the public for any form of consideration; provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions which are characterized by the depiction or description of "specified sexual activities" or "specified anatomical areas"; and has a sign visible from the public right of way which advertises the availability of this adult type of photographic reproductions; or
  - (b)** offers a sleeping room for rent for a period of time that is less than ten (10) hours; or
  - (c)** allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
- (23)** Adult Motion Picture Theatre - Means enclosed adult building or premises used for presenting motion pictures, a preponderance of

- which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas, as defined in this section, for observation by patrons therein. "Adult motion picture theatre" does not include any adult mini motion picture theatre as defined in this section.
- (24)** Adult Theatre - means a theatre, concert hall, auditorium, or similar commercial establishment which regularly features persons who appear in a state of nudity or semi-nude, or live performances which are characterized by the exposure of "specified anatomical areas" or by "specified sexual activities."
- (25)** Affiliate - means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control of another person.
- (26)** Agricultural Farm - A bona fide farm whose primary purpose is the production of agricultural products including but not limited to crops, fruits, Christmas trees, vegetables, ornamental or flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.
- (27)** Agricultural Use - The use of waters for stock watering, irrigation, and other farm purposes.
- (28)** Alteration - Any change in copy, color, size or shape, which changes appearance of a sign, or a change in position, location, construction or supporting structure of a sign, except that a copy change on a sign is not an alteration.
- (29)** Animated Sign - A sign which has any visible moving part, flashing or osculating lights, visible mechanical movement of any description, or other apparent visible movement achieved by any means that move, change, flash, osculate or visibly alters in appearance in a manner that is not permitted by these regulations.
- (30)** Antenna - Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (31)** Appeal - means a request for a review of the Ordinance Administrator's interpretation of any provision of this ordinance.
- (32)** Area of Sign - Refer to measurement standards in [Chapter 16 Article II Section 1](#).
- (33)** Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)".
- (34)** Art - An aesthetic physical item or artistic creation.
- (35)** Asphalt Plant - A facility utilizing equipment that blends, dries, heats and mixes aggregates with asphalt cement to produce hot mix asphalt (HMA), including *batch* and *drum* plants.

- (36)** Assisted Living Facility – Any group housing and services program for two or more unrelated adults, however named, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more NC licensed home care or hospice agencies.
- (37)** Attraction or Reader Board - Any sign having changeable copy for the purpose of advertising events, sales, services or products provided on the site.
- (38)** Automobile Graveyard – An outdoor establishment which is used for storing, keeping, processing, buying or selling more than five (5) wrecked, abandoned, scrapped, ruined or dismantled motor vehicles or motor vehicle parts.
- (39)** Awning Sign - Any permanent sign painted on or attached to or supported by an awning.
- (40)** Awning - A shelter extending from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.
- (41)** Balloon Sign - A temporary lighter-than-air gas-filled balloon, tethered in a fixed location that has a sign with a message on its surface or attached in any manner to the balloon.
- (42)** Banner Sign A temporary, lightweight sign that contains a message which is attached or imprinted on a flexible surface that deforms under light pressure and that is typically constricted of non-durable materials, including, but not limited to, cardboard, cloth and/or plastic.
- (43)** Base Flood Elevation (BFE) - means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".
- (44)** Base Flood - means the flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (45)** Base Station - A station at a specific site authorized to communicate with mobile stations, generally consisting of radio transceivers, antennas, coaxial cables, power supplies and other associated electronics.
- (46)** Basement - means any area of the building having its floor subgrade (below ground level) on all sides.

- (47) Being Conducted - means a land-disturbing activity has been initiated and permanent stabilization of the site has not been completed.
- (48) Best Management Practices (BMP) - A structural or nonstructural management-based practice used singularly or in combination to reduce nonpoint source inputs to receiving waters in order to achieve water quality protection goals.
- (49) Bona Fide Farm Purposes - Agricultural activities as set forth in G.S. 160D-903.
- (50) Boarding House - A residential use consisting of at least one dwelling unit together with more than two rooms that are rented or are designed or intended to be rented but which rooms, individually or collectively, do not constitute separate dwelling units. A rooming house or boarding house is distinguished from a tourist home in that the former is designed to be occupied by longer-term residents (at least month-to-month tenants) as opposed to overnight or weekly guests.
- (51) Borrow - means fill material which is required for on-site construction and is obtained from other locations.
- (52) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (53) 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.
- (54) 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 structure, with or without a roof, shall not be deemed to make them one building.
- (55) Building Identification Sign - A permanent sign containing the name or address of a building and may include hours of operation and emergency information, such sign being located on the same site as the structure.
- (56) Building Lines - Lines tangent to the exterior surface of a building and parallel to front, side and rear property lines.
- (57) Building Setback Line (Minimum) - A line parallel with the property line designating an area bordering the property lines on which no building shall be placed.



- (58)** Building, Accessory - A minor building that is located on the same lot as a principal building and that is used incidentally to a principal building or that houses an accessory use.
- (59)** Building, Principal - The primary building on a lot or a building that house a principal use.
- (60)** 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 roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).
- (61)** Canopy - A freestanding permanent roof-like shelter not attached to or requiring support from an adjacent structure.
- (62)** Canopy Sign - Any permanent sign attached to or constructed underneath a canopy. These signs are below a projecting structure which extends over the pedestrian walkway which effectively prevents the wall signs for being visible to the pedestrian walking under the canopy. See Also Projecting Sign.
- (63)** Carrier on Wheels or Cell on Wheels (COW) - A portable self-contained wireless facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis. A COW is normally vehicle-mounted and contains a telescoping boom as the antenna support structure.
- (64)** Cement Mixing Facility - A facility utilizing equipment that combines materials including but not limited to sand, water, aggregate, ash, and cement to form concrete, including *ready mix* and *central mix* plants.
- (65)** Certified Local Government (CLG) Program - Certified Local Government (CLG) Programs arc approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.
- (66)** Certify - Whenever this chapter requires that some agency certify the existence of some fact or circumstance to the county, the county may require that such certification be made in any manner that provides reasonable assurance of the accuracy of the certification. By way of illustration, and without limiting the foregoing, the county may accept certification by telephone from some agency when the circumstances warrant it, or the county may

- require that the certification be in the form of a letter or other document.
- (67)** Chemical – An element, chemical compound, a mixture of elements or compounds or both.
  - (68)** Chemical Manufacturing – A facility involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk.
  - (69)** Chemical Storage Facilities – A facility used for the storage of chemical compounds in bulk.
  - (70)** Child Care Facility – Includes child care centers, family child care homes, and any other child care arrangement not excluded by NCGS §110-86(2), that provides child care, regardless of the time of day, wherever operated, and whether or not operated for profit.
    - (a)** A child care center is an arrangement where, at any one time, there are three or more preschool-age children or nine or more school-age children receiving child care.
    - (b)** A family child care home is a child care arrangement located in a residence where, at any one time, more than two children, but less than nine children, receive child care.
  - (71)** Chip Mill – A mechanized facility that grinds whole logs into wood chips for paper, particle board and other products and is capable of producing at least 250,000 tons annually.
  - (72)** 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 single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.
  - (73)** Coastal Counties - means the following counties: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell and Washington.
  - (74)** Collocation - The placement or installation of wireless facilities on existing structures, including electrical transmission towers, water towers, buildings and other structures capable of structurally supporting the attachment of wireless facilities in compliance with applicable codes.
  - (75)** Combination Use - A use consisting of a combination on one lot of two or more principal uses. When two or more separately owned or separately operated enterprises occupy the same lot, and all such

enterprises fall within the same principal use classification, this shall not constitute a combination use.

- (76)** Commercial – Used for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.
- (77)** Commercial or Industrial Area (re: wireless telecommunications regulations) – A parcel of land on which commercial or industry activity is actually conducted and the area along the highway extending outward 800 feet from and beyond such activity.
- (78)** Commission - means the North Carolina Sedimentation Control Commission.
- (79)** Completion of Construction or Development - means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (80)** Composting Facility - A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.
- (81)** Concealed Wireless Facility - Any wireless facility that is integrated as an architectural feature of an existing structure or any new wireless support structure designed to camouflage or conceal the presence of antennas or towers so that the purpose of the facility or wireless support structure is not readily apparent to a casual observer.
- (82)** Conditional Zoning – A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.
- (83)** Construction Sign - A temporary sign identifying the persons, firms or business directly connected with a construction project.
- (84)** Convenience Store - A one-story, retail store containing less than 2,000 square feet of gross floor area that is designed and stocked to sell primarily food, beverages, and other household supplies to customers who purchase only a relatively few items (in contrast to a “supermarket”). It is designed to attract and depends upon a large volume of stop-and-go traffic. Illustrative examples of convenience stores are those operated by the “Fast Fare”, “7-11” and “Pantry” chains.
- (85)** 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 one-half 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 one-half 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-I 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.
- (86)** Cul-de-sac - A short subdivision street having but one end open to traffic and the other end being permanently terminated and a vehicular turn-around provided.
- (87)** Department - when used alone means the North Carolina Department of Environmental Quality.
- (88)** Determination - A written, final, and binding order, requirement, or determination regarding an administrative decision.
- (89)** Developer - A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.
- (90)** Development - Unless the context clearly indicated otherwise, the term means any of the following:
- (a)** The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
  - (b)** The excavation, grading, filing, clearing or alteration of land.
  - (c)** The subdivision of land as defined in G.S. 160D-802.
  - (d)** The initiation or substantial change in the use of land or the intensity of use of land.
- The definition does not alter the scope of regulatory authority granted by this Chapter.
- (91)** Development Approval - An administrative or quasi-judicial approval made pursuant to this Chapter that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to this Chapter, including plat approvals, permits issued, development agreements entered into, and building permits issued.
- (92)** Development regulation - A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, mountain ridge protection regulation, stormwater control regulation, wireless telecommunication facility regulation,

historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other regulation adopted pursuant to NCGS160D, or a local act or charter that regulates land use or development.

- (93)** Digital Billboard - A highway sign utilizing electronic image displays that present multiple static advertisements on a rotating basis.
- (94)** Dimensional Nonconformity - A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.
- (95)** Directional Sign - A temporary sign, not exceeding 4 square feet, used as a navigational aid to direct motorists to specific destination(s) for a single purpose or event open to the public.
- (96)** Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environment and Natural Resources.
- (97)** Discharge Point - means that point at which storm water runoff leaves a tract of land.
- (98)** Discharging Landfill - A facility with liners, monitoring equipment and other measures to detect and/or prevent leachate from entering the environment and in which the leachate is treated on site and discharged to a receiving stream.
- (99)** Disposal - means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwater.
- (100)** District - means the Watauga County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (101)** Double Frontage Lot - A continuous (through) lot which borders two or more streets.
- (102)** Dwelling- Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith. For the purposes of Article 12 of NCGS 106D, the term does not include any manufactured home, mobile home, or recreational vehicle, if used solely for a seasonal vacation purpose.

- (103)** EASEMENT - A strip of land designated by the property owner for a specified purpose and use by the public, a corporation, or persons.
- (104)** Educational Facility - Elementary schools, secondary schools, community colleges, colleges, and universities, including support facilities such as administration for all of the preceding. Also includes any property owned or operated by those facilities used for educational, vocational or athletic purposes.
- (105)** Electrical Transmission Tower - An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.
- (106)** Electricity Generating Facility - A stand-alone plant, not ancillary to another land use which generates electricity to be distributed to consumers including but not limited to fossil fuel burning facilities and solar power farms. This definition shall not include electricity produced on an agricultural farm or residence whose use is limited to on-site consumption which only sells electricity to a public utility incidental to the on-site use.
- (107)** Electronic Message Center/Changeable Copy Sign - A permanent sign or portion thereof on which the copy or symbols change either automatically through electrical or electronic means (for example, time and temperature units), or manually through placement of letters or symbols on a panel mounted in or on a track system.
- (108)** Elevated Building - means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
- (109)** Eligible Facilities Request - A request for modification of an existing wireless tower or base station that involves collocation of new transmission equipment or replacement of transmission equipment but does not include a substantial modification.
- (110)** Employee - means a person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not said person is paid a salary, wage or other compensation by the operator of said business. Also included are all persons who participate for consideration or possibility of a prize in any contests, performances, or exhibitions sponsored by or allowed at a sexually oriented business or occurring upon the premises of the sexual oriented business. Employee does not include a person exclusively



- on the premises for repair or maintenance of the premises or equipment on the premises, or for the delivery of goods to the premises.
- (111)** Encroachment - means the advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
- (112)** Energy Dissipator - means 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.
- (113)** Equipment Compound - An area surrounding or near the base of a wireless support structure within which are located wireless facilities.
- (114)** Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (115)** Escort - means a person who, for consideration, agrees or offers to act as a companion, guide, or date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
- (116)** Escort Agency means a person or business association who furnishes, offers to furnish, or advertises to furnish escorts as one of its primary business purposes for a fee, tip, or other consideration.
- (117)** Establishment - means and includes any of the following:
- (a)** the opening or commencement of any sexually oriented business as a new business;
  - (b)** the conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business;
  - (c)** the additions of any sexually oriented business to any other existing sexually oriented business; or
  - (d)** the relocation of any sexually oriented business.
- (118)** Evidentiary Hearing - A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Chapter.
- (119)** 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 ordinance based on at least one of the following criteria: 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 having an outstanding valid building permit as authorized by the General Statutes (G.S. 160D-108, 108.1), or (3) having an approved

- site specific or phased development plan as authorized by the General Statutes (G.S. 160D-108,108.1).
- (120)** 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 adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.
- (121)** Existing Manufactured Home Park or Manufactured Home Subdivision -means 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) was completed before the initial effective date of the floodplain management regulations adopted by the community.
- (122)** Existing Structure - A wireless support structure, erected prior to the application for an eligible facilities request, collocation or substantial modification under this ordinance that is capable of supporting the attachment of wireless facilities. The term includes but is not limited to, electrical transmission towers, buildings and water towers. The term shall not include any utility pole.
- (123)** Explosives Manufacturing - Manufacturing of a chemical compound, mixture, or device the primary or common purpose of which is to function by explosion. This term includes but is not limited to dynamite, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniting cord, igniters, and display fireworks, but does not include hand-loaded small arms ammunition.
- (124)** Fall Zone - The area in which a wireless support structure may be expected to fall in the event of a structural failure as measured by engineering standards.
- (125)** 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.
- (126)** Farmer's Market - A retail establishment primarily engaged in the sale of fresh fruits, vegetables and similar perishable goods.
- (127)** Flea Market - Buildings or open areas in which booths or sales areas are provided for rent by various unrelated individuals to sell a

- variety of merchandise. This does not include yards sales, rummage sales, or farmer's markets.
- (128)** Flood Insurance - means the insurance coverage provided under the National Flood Insurance Program.
- (129)** Flood Insurance Rate Map (FIRM) - means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.
- (130)** Flood Insurance Study (FIS) - means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.
- (131)** Flood Prone Area - see "Floodplain"
- (132)** Flood Zone - means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.
- (133)** Flood or Flooding - means 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/or (2) the unusual and rapid accumulation or runoff of surface waters from any source.
- (134)** Floodplain - Any land area susceptible to be inundated by water from the base flood. As used in this ordinance, the term refers to that area designed as subject to flooding from the base flood (100-year flood) on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the planning department.
- (135)** Floodplain Administrator - is the individual appointed to administer and enforce the floodplain management regulations.
- (136)** Floodplain Development Permit - means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.
- (137)** Floodplain Management - means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
- (138)** Floodplain Management Regulations - means this ordinance and other zoning ordinances, subdivision regulations, building

- codes, health regulations, special purpose ordinances, and other applications of police power. This term describes Federal, State or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.
- (139)** Floodproofing - means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.
- (140)** 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. As used in this chapter, the term refers to that area designated as a floodway on the "Flood Boundary and Floodway Map" prepared by the U.S. Department of Housing and Urban Development, a copy of which is on file in the planning department.
- (141)** Footcandle - A measure of illumination on a surface that is one foot from a uniform source of light of one candle and equal to one lumen per square foot.
- (142)** Freeboard - means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effect of urbanization of the watershed. The Base Flood Elevation (BFE) plus the freeboard establishes the "Regulatory Flood Protection Elevation".
- (143)** Freestanding Sign - Any permanent sign which is affixed in or upon the ground, supported by one or more structural members, with air space between the ground and the sign face.
- (144)** Functionality Dependent Facility - means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.
- (145)** Gated Community - A development that is enclosed within a geographical area by restrictive gates.
- (146)** Gate - A crossbar, door, or other obstructive device which is utilized for the purpose of restricting, controlling, or obstructing entry or exit by motor vehicles or pedestrians to or from a private roadway.

- (147) Governmental Sign - A sign erected and maintained pursuant to and in discharge of any governmental functions, or required by law, ordinance or other governmental regulation.
- (148) Grade - The level of the site at the property line located at the closest distance to the sign.
- (149) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (150) Halfway House - A home for not more than nine person who have demonstrated a tendency toward alcoholism, drug abuse, mental illness, or antisocial or criminal conduct, together with not more than two person providing supervision and other services to such persons, the eleven of whom live together as a single housekeeping unit.
- (151) Handicapped or Inform Home - A residence within a single dwelling unit for at least six but not more than nine persons who are physically or mentally handicapped or inform, together with not more than two persons providing care or assistance to such person, all living together as a single housekeeping unit. Person residing in such homes, including the aged and disabled, principally need residential care rather than medical treatment.
- (152) 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).
- (153) Hazardous Waste Management Facility - means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.
- (154) Height of Sign - Refer to measurement standards in [Chapter 16 Article II Section 2](#).
- (155) High Impact Land Use - For the purposes of this ordinance, means any and all of the Category 1, Category 2, and Category 3 uses listed in [Chapter 13](#).
- (156) High Quality Water (HQW) Zones -means, for the Coastal Counties, areas within 575 feet of High Quality Waters; and for the remainder of the state, areas within one mile and draining to HQW's.
- (157) High Quality Waters - means 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-14(c).
- (158) Highest Adjacent Grade (HAG) - means the highest natural elevation of the ground surface.

- (159)** Highway Sign - A sign directing attention to a business, commodity, service or entertainment which is conducted, sold or offered on premises other than the premises upon which the sign is located.
- (160)** Historic Structure - means any structure that is:
- (a)** listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
  - (b)** 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;
  - (c)** individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or
  - (d)** certified as contributing to the historical significance of a historic district designated by the County.
- (161)** Holiday Decorations - Signs or displays including lighting which are a nonpermanent installation celebrating national, state, and local holidays or holiday seasons.
- (162)** Home Occupation - An accessory use of a dwelling unit for gainful employment which: is clearly incidental and subordinate to the use of the dwelling unit; is carried on within or from accessory buildings from the main dwelling unit and does not alter or change the exterior character or appearances of the dwelling; is located in a residential district; is created and operated as a sole proprietorship.
- (163)** Illegal Sign - Any sign placed without proper approval or permits as required by this Ordinance at the time of sign placement. Illegal sign shall also mean any sign placed contrary to the terms or time limits of any permit and any nonconforming sign which has not been brought into compliance with any applicable provisions of this Ordinance.
- (164)** Illuminated Sign - A permanent sign for which an artificial source of light is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing or radiating signs.
- (165)** Immediate Family - A person's parents, spouse, children, and siblings, including the parent's spouse. Includes step children and adopted children and their spouses.



- (166)** Impervious Surface - Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land.
- (167)** Industrial - Use engaged in the manufacturing, and basic processing of materials or products predominantly from extracted or raw materials, or previously prepared materials, including processing, fabrication, assembly, treatment, packaging, storage, sales, and distribution of such products.
- (168)** Industrial Development (Re: watershed regulations only) - 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.
- (169)** Ingress/Egress - The point where vehicles or pedestrians enter and exit a development.
- (170)** Instructional Signs - A permanent sign clearly intended for instructional purposes, as determined by the Administrator, shall not be included in the permitted sum of the sign area of identification wall signs, provided such sign is not larger than necessary to serve the intended instructional purpose, and such sign is not in a location, nor includes design characteristics, that constitute or serve the purposes of an identification sign.
- (171)** Junk/Scrap Yards - An outdoor establishment primarily engaged in the collection, sorting, outdoor storage and/or distribution of recyclable scrap and waste materials including automobiles, cans, steel containers, cast iron, appliances, construction materials, and other ferrous metals.
- (172)** Kennel - A commercial operation that: (i) provides food and shelter and care of animals for purposes not primarily related to medical care (a kennel may or may not be run by or associated with a veterinarian), or (ii) engages in the breeding of animals for sale.
- (173)** Key Box - A secure, tamperproof device with a lock operable only by a fire department, police department, or emergency services department master key, and containing building entry keys and other such devices that may be required for access in an emergency.
- (174)** Lake or Natural Watercourse - means 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.
- (175)** Land-disturbing Activity - means any use of the land by any person in residential, industrial, education, 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.
- (176)** Landfill - A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.
- (177)** Landowner or Owner - The holder of the title in fee simple. Absent evidence to the contrary, the County may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.
- (178)** Large Wind Energy System - A wind energy conversion system consisting of one or more wind turbine(s), a tower(s), and associated control or conversion electronics, which has a rated capacity of more than 20 kW.
- (179)** Legislative Decision - The adoption, amendment, or repeal of a regulation under this Title or applicable local act. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of Article 1- of NCGS 160D.
- (180)** Legislative Hearing - A Hearing to solicit public comment on a proposed legislative decision.
- (181)** Length of Frontage - The measurement purposes, the length of any primary or secondary frontage as defined in [Chapter 16 Article II Section 3](#), shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Administrator or Planning Commission as clearly unrelated to the frontage criteria. For buildings with two or more frontages, the length and allowable sign area shall be calculated separately for each such frontage. The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.
- (182)** Licensee - means a person in whose name a license to operate a sexually oriented business has been issued, as well as the individual listed as an applicant on the application for a license; and in the case of an employee, a person in whose name a license has been issued authorizing employment in a sexually oriented business.
- (183)** Local Government - means 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.

- (184)** Logo, Logogram, or Logotype - An emblem, letter, character, pictograph, trademark, or symbol used to represent any firm, organization, entity, or product.
- (185)** 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.
- (186)** Lot Area - The total area circumscribed by the boundaries of a lot, except that: (i) when the legal instrument creating a lot shows the boundary of the lot extending into public street right-of-way, then the lot boundary for purposes of computing the lot area shall be street right-of-way line, or if the right-of-way line cannot be determined, a line running parallel to and 30 feet from the center of the traveled portion of the street, and (ii) in a residential district, when a private road that served more than three dwelling units is located along any lot boundary, then the lot boundary for purposes of computing the lot area shall be inside boundary of the traveled portion of that road.
- (187)** Lowest Adjacent Grade (LAG) - means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.
- (188)** Lowest Floor - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited 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 ordinance.
- (189)** Major Mountain Ridge - A ridge with an elevation higher than 3000 feet above mean sea level and an elevation 500 feet or more above the elevation of an adjacent valley floor including all land within 100 feet below the elevation of any portion of such line or surface along the crest.
- (190)** Major Variance (re: watershed regulations) - A variance that results in any one or more of the following:
- (a)** the complete waiver of a management requirement; or
  - (b)** the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard.
- (191)** Manufactured Home or Mobile Home - A structure as defined in NCGS 143-145(7)

- (192)** Manufactured Home Park - means the rental of any site or tract of land upon which three (3) or more manufactured homes occupied for dwelling or sleeping purposes are located. Leases of a term longer than ten (10) years shall be constructed as a sale of property. In determining the term of proposed lease, periods that may add to the original term by options to renew or extend shall be included. Any sale of land within the manufactured home park shall comply with the Watauga County Ordinance to Govern Subdivision and Multi-unit Structures. For purposes of this ordinance, the term "mobile home" may be substituted for "manufactured home."
- (193)** Market Value means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.
- (194)** Marquee - A permanent roof-like shelter extending from part or all of a building face and constructed of some durable material which may or may not project over a public right-of-way.
- (195)** Marquee Sign - A permanent sign painted on or attached to or supported by a marquee.
- (196)** Massage - means the manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- (197)** Massage Business - means any establishment or business wherein massage is practiced, including establishments commonly known as health clubs, physical culture studios, massage studios, or massage parlors.
- (198)** Mean Sea Level - means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.
- (199)** Minor Variance (re: watershed regulations) - A variance that does not qualify as a major variance.
- (200)** Modifications - Any structural changes from the original configuration (new or existing), change from manual to electric, change of electronic control operation or alterations requiring a permit.
- (201)** Modular Home - A dwelling unit constructed to accordance with the standards as set forth in the state building code applicable to

- site-built homes and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on permanent foundation. Among other possibilities, a modular home may consist of two sections transported to the site in a manner similar to a mobile home (except that the modular home meets the county building code applicable to site built homes), or a series of panels or room sections transported on a truck or erected or joined together on the site.
- (202)** Monopole – A single, freestanding pole-type structure supporting one or more antennas. For the purposes of this Ordinance, a monopole is not a tower or a utility pole.
- (203)** Motor Sports Facility – A facility, track or course open to the general public or accessed by more than five (5) simultaneous riders outside of the owner’s immediate family upon which motor sports racing, racing practice or motor sports related activity is conducted and may include paved or dirt tracks, spectator seating/standing areas, concession areas, restrooms, parking facilities, and broadcast platforms or booths.
- (204)** Multi-Family Development - Three or more dwelling units intended for residential occupancy contained within one building or a Planned Unit Development.
- (205)** Mural - A picture on an exterior surface of a structure. A mural is a sign only if it is related by language, logo, or pictorial depiction to the advertisement of any product or service or the identification of any business.
- (206)** Natural Erosion - means the wearing away of the earth’s surface by water, wind, or other natural agents under natural environmental conditions undisturbed by man.
- (207)** Neon Sign - A sign with tubing that is internally illuminated by neon or other electrically charged gas.
- (208)** New Construction - means structures for which the “start of construction” commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.
- (209)** Nonconforming lot of record - A lot described by a plat or a deed that was recorded prior to the effective date of local regulations (or their amendments) that does not meet the minimum lot-size or other development requirements of these rules.
- (210)** Nonconforming Sign - A sign which was validly installed under laws or ordinances in effect at the time of its installation, but which is in conflict with the current provisions of this Ordinance.

- (211)** Nonconforming Situation - A situation that occurs when, on the effective date of this chapter, any existing lot or structure or use of an existing lot or structure does not conform to one or more of the regulations applicable to the district in which the lot or structure is located. Among other possibilities, a non-conforming situation may arise because a lot does not meet minimum acreage requirements, because structures exceed maximum height limitations, because the relationship between existing buildings and the land (in such matters as density and setback requirements) is not in conformity with this chapter, or because land or buildings are used for purposes made unlawful by this chapter.
- (212)** Nonconforming Use - A nonconforming situation that occurs when property is used for a purpose or in a manner unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use). The term also refers to the activity that constitutes the use made of the property. (For example, all activity associated with operating a retail clothing store in a residentially zoned area constitutes a nonconforming use).
- (213)** Non-Encroachment Area - means 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 (1) foot as designated in the Flood Insurance Study report.
- (214)** Non-residential Development - All development other than residential development, agriculture and silviculture.
- (215)** Nude Model Studio - means any place where a person who appears semi-nude, in a state of nudity, or who displays "specified anatomical areas" and is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. Nude Model Studio shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure: (a) that has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; and (b) where in order to participate in a class a student must enroll at least three days in advance of the class; and (c) where no more than one nude or semi-nude model is on the premises at any one time.
- (216)** Nudity or a State of Nudity - means the showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or



- cleavage with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of the covered male genitals in a discernibly turgid state.
- (217)** Nursing Home – A facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the operator.
- (218)** Official Maps or Plans - Any maps or plans officially adopted by the County Commissioners as a guide to the development of the County.
- (219)** Off-Premises Sign - Any sign normally used for promoting an interest other than that of a business, individual, products, or service available on the premises where the sign is located.
- (220)** On-Premises Sign - Any sign used for promoting a business, individual, product or service available on the premises where the sign is located.
- (221)** Ordinance Administrator – The Watauga County Department of Planning and Inspections.
- (222)** Ordinary Maintenance - Ensuring that wireless facilities and wireless support structures are kept in good operating condition. Ordinary maintenance includes inspections, testing and modifications that maintain functional capacity and structural integrity; for example, the strengthening of a wireless support structure's foundation or of the wireless support structure itself. Ordinary maintenance includes replacing antennas of a similar size, weight, shape and color and accessory equipment within an existing equipment compound and relocating the antennas to different height levels on an existing monopole or tower upon which they are currently located. Ordinary maintenance does not include substantial modifications.
- (223)** Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (224)** Parking Space - A portion of the vehicle accommodation area set aside for the parking of one vehicle.
- (225)** Person - means 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.
- (226)** Person Conducting land-Disturbing Activity - means any person who may be held responsible for violation unless expressly provided

otherwise by this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.

- (227)** Person Responsible for the Violation - means:
- (a)** the developer or other person who has or holds himself out as having financial or operation control over the land-disturbing activity; or
  - (b)** the landowner or person in possession or control of the land that has directly or indirectly allowed the land-disturbing activity, or benefited from it or failed to comply with a duty imposed by any provision of this Ordinance, the Act, or any order adopted pursuant to this Ordinance or the Act.
- (228)** Phase of Grading - means one of two types of grading: rough or fine.
- (229)** Planned Unit Development (PUD) - The planned unit development is a permitted use designed to provide for developments incorporating a single type or a variety of related uses which are planned and developed as a unit. Such development may consist of individual lots or common building sites. Common land must be an element of the plan related to affecting the long-term value of the entire development.
- (230)** Planning Board - Any board or commission established pursuant to NCGS 160D-301.
- (231)** Plat - A map or plan of a parcel of land which is to be, or has been, subdivided.
- (232)** Post-FIRM - means construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map.
- (233)** Pre-FIRM - means construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map.
- (234)** Primary and Secondary Frontage - The frontage of any building or site shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units. For multi-tenant buildings, the portion of such building that is owned, or leased by a single tenant, shall be considered a building unit. The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units. The secondary frontage shall include frontages containing secondary public entrances to the building or building units, and all walls facing a public street or primary parking area not designated as the primary frontage.
- (235)** Principally Above Ground - means that at least 51% of the actual cash value of the structure is above ground.

- (236) Private Driveway - A roadway serving three (3) or fewer lots, building sites or other divisions of land and not intended to be public ingress or egress.
- (237) Private Streets - Internal streets that are not owned or maintained by North Carolina Department of Transportation and that are owned and maintained by an entity responsible for upkeep and maintenance, such as a homeowners association, community group, property management company, or similar organization.
- (238) Processing - Any technique designed to change the physical, chemical, or biological character or composition of any material so as to render it safe for transport; amenable to recovery, storage or recycling; safe for disposal; or reduced in volume or concentration.
- (239) Projecting Sign - A permanent sign which projects from and is supported by a wall or parapet of a building with the display surface of the sign in a plane perpendicular to or approximately perpendicular to the wall. See also [Canopy sign](#).
- (240) Propane - A heavy flammable gaseous alkane C<sub>3</sub>H<sub>8</sub>, found in crude petroleum and natural gas, also known as LP Gas.
- (241) Propane, Gasoline or Fuel Oil Bulk Storage Facilities - A facility whose primary purpose is the storage, distribution, mixing or transfer of flammable or combustible liquids or gases received by or transferred by tank vessel, pipelines, tank car, piping, or portable tank or container. This definition shall not include filling stations used solely for distribution to individual consumers.
- (242) Protected Area - The area adjoining and upstream of the critical area of WS-IV watersheds. The boundaries of the protected area are defined as within five miles of and draining to the normal pool elevation of the reservoir or to the ridgeline of the watershed; or within 10 miles upstream and draining to the intake located directly in the stream or river or to the ridgeline of the watershed.
- (243) Public Outdoor Recreation Area - A tract of land owned by a government agency or a non-profit community group intended for use for active or passive recreation. This does not include similarly owned land intended for conservation.
- (244) Public Safety and/or Nuisance - means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

- (245)** Quarry/Stone Crusher – A place from which dimension stone, rock, construction aggregate, riprap, sand, gravel, or slate is excavated from the ground and/or processed for use.
- (246)** Quasi-judicial Decision – A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificate of appropriateness, and appeals of administrative determinations. Decisions on the approval of subdivision plats and site plans are quasi-judicial in nature if the regulation authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.
- (247)** Recovered Material – A material that has known recycling potential, can be feasibly recycled, and has been diverted or removed from the solid waste stream for sale, use, or reuse.
- (248)** Recreational Vehicle (RV) - means 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.
- (249)** Recycling Facility – A building or structure used for the indoor collection, separation, storage and/or processing of recovered materials including non-ferrous metals and may include a time-limited outdoor material collection area. It does not include a thrift store, antique or secondhand store.
- (250)** Reference Level - is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone AI-A30, AE, A, A99 or AO.

- (251)** Regulatory Flood Protection Elevation - means the "Base Flood Elevation" plus the "Freeboard". In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus one (1) foot of freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.
- (252)** Religious Facility - A facility operated by religious organizations for worship, religious activity or instruction, and related accessory uses on the same site including living quarters and/or child care operations. Solo cemeteries are excluded.
- (253)** Remedy a Violation - means to bring the structure or other development into compliance with State and community 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 ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.
- (254)** Replacement Pole - Pole of equal proportions and of equal height or such other height that would not constitute a substantial modification to an existing structure in order to support wireless facilities or to accommodate collocation. Requires removal of the wireless support structure it replaces.
- (255)** Replacement Value - The cost to restore a structure to its previously existing condition as computed by an appraisal which has been conducted by an appraiser holding a North Carolina State Certified General Real Estate Appraisal License and conducted in compliance with generally accepted practices within the appraisal community.
- (256)** Residence, Duplex - A two-family residential use in which the dwelling units share a common wall (including without limitation the wall of an attached garage or porch) and in which each dwelling unit has living space on the ground floor and a separate, ground floor entrance.
- (257)** Residence, Multi-Family - A residential use consisting of a building containing three or more dwelling units. For purposes of this definition, a building includes all dwelling units that are

- enclosed within that building or attached to it by a common floor or wall (even the wall of an attached garage or porch).
- (258)** Residence, Single-Family Detached - A residential use consisting of a single detached building containing one dwelling unit and located on a lot or tract.
- (259)** Residence, Two-Family - A residential use consisting of a building containing two dwelling units. If two dwellings units share a common wall, even the wall of an attached garage or porch, the dwelling units shall be considered to be located in one building.
- (260)** Residential Development - Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc., and their associated outbuildings such as garages, storage buildings, gazebos, etc., and customary home occupations.
- (261)** Residential Subdivisions - A collection of land parcels designated and platted (mapped) exclusively for residential development.
- (262)** Revolving or Rotating Sign - An Animated Sign.
- (263)** Right of Way - A strip of land designated by the owner or other authority or acquired by other over which other person may legally pass, and on which may be constructed a road or utilities.
- (264)** Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- (265)** Road, County Standard, Private - A road constructed and dedicated in accordance with provisions as set forth in Chapter 18 Article VI, Section 2, with provisions for private maintenance.
- (266)** Road, State Standard, Public - A dedicated and accepted public right-of-way for vehicular traffic on which is constructed a road which meets the specifications of North Carolina Department of Transportation, (See [Chapter 18 Article VI, Section 2](#)).
- (267)** Road - All private ways used to provide motor vehicle access to (i) two or more lots or (ii) two or more distinct areas or buildings in unsubdivided developments.
- (268)** Roof Sign - Any sign erected upon a roof, parapet, or roof-mounted equipment structure and extending above a roof, parapet, or roof-mounted equipment structure of a building or structure.
- (269)** Rummage Sales - A sale by a non-profit organization where individual members bring personal property to be sold in order to raise funds for the organization.
- (270)** Salvage Yard - means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.
- (271)** Sediment - means 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.
- (272)** Sedimentation - means 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.
- (273)** Semi-Nude or in a Semi-Nude Condition - means the showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.
- (274)** Sewage Treatment Systems -
- (a)** Individual Systems. Sewage treatment and disposal systems designed to serve a single connection utilizing the soil for the subsurface disposal of partially treated or treated sewage effluent. Individual systems with a design capacity of less than 3,000 gallons per day will be designed and approved by the Appalachian District Health Department. Individual systems with a design capacity of 3,000 gallons per day or more will be designed by a professional engineer and approved by the designated state agency or the Appalachian District Health Department, whichever is applicable. Individual systems may be shared upon approval of the appropriate agency.
  - (b)** Non-Discharge Systems. Sewage treatment and disposal systems designed to serve multiple connections utilizing the soil for the subsurface disposal of partially treated or treated sewage effluent. Non-Discharge systems will be approved by the designated state agency.
  - (c)** NPDES Systems. Sewage treatment and disposal systems designed to serve multiple connections discharging into surface waters of the state and subject to the National Pollutant Discharge Elimination System (NPDES) permit program. NPDES systems include those that are owned and operated by the County, a municipality, a sanitary district, a property owners association, utility company and any connections thereto. NPDES Systems will be approved by the designated state agency.
- (275)** Sexual Encounter Center - means a business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration:
- (a)** physical contact in the form of wrestling or tumbling between

- persons of the opposite sex; or
- (b) activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
- (276) Sexually Oriented Business - means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, or sexual encounter center.
- (277) Sexually Oriented Devices - means without limitation any artificial or simulated specified anatomical area or other device or paraphernalia that is designed principally for specified sexual activities but shall not mean any contraceptive device.
- (278) Sign - Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof. A sign shall not include any architectural or landscape features that may also attract attention.
- (279) Sign Face - An exterior display surface of a sign including nonstructural trim exclusive of the supporting structure.
- (280) Sign Permit - A permit issued by the land-use administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.
- (281) Siltation - means 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.
- (282) Site - All the contiguous ground area legally assembled into one development location or individual lot defined as a permanent parcel (lot of record), multiple lots of record, or a portion of a lot of record.
- (283) Site Plan - A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The site plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the site plan review. A site plan approval based solely upon application of objective standards is an administrative decision and a site plan approval based in whole or

- in part upon the application of standards involving judgment and discretion is a quasi-judicial decision. A site plan may also be approved as part of a conditional zoning decision.
- (284)** Small Wind Energy System - A wind energy conversion system consisting of a single wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 20 kW. Multiple systems located on agricultural farms as defined in the Watauga County High Impact Land Use Ordinance are also considered small wind energy systems even if the aggregate kW exceeds 20, provided the primary intent is to generate power to reduce on-site consumption.
- (285)** Solid Waste Disposal Facility - means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).
- (286)** Solid Waste Disposal Site - means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.
- (287)** Special Event Sign - A temporary sign advertising or pertaining to any annual or seasonal event of interest to, open to, or available to, the general public.
- (288)** Special Events - Circuses, fairs, carnivals, festivals, or other types of special events that (i) run for longer than one day but not longer than two weeks, (ii) are intended to or likely to attract substantial crowds, and (iii) are unlike the customary or usual activities generally associated with the property where the special event is to be located.
- (289)** Special Flood Hazard Area (SFHA) - means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year. as determined in Article 3, Section B of this ordinance.
- (290)** Special Use Permit - A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits or special exceptions.
- (291)** Specified Anatomical Areas - means less than completely and opaquely covered: human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or

human male genitals in a discernibly turgid state, even if completely and opaquely covered.

- (292)** Specified Criminal Activity - means any of the following offenses:
- (a)** prostitution or promotion of prostitution; dissemination of obscenity; sale, distribution or display of harmful material to a minor; sexual performance by a child; possession or distribution of child pornography; public lewdness; indecent exposure; indecency with a child; engaging in organized criminal activity; sexual assault; molestation of a child; gambling; or distribution of a controlled substance; or any similar offenses to those described above under the criminal or penal code of other states or countries;
  - (b)** for which:
    - (1)** less than two years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;
    - (2)** less than five years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
    - (3)** less than five years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two or more misdemeanor offenses or combination of misdemeanor offenses occurring within any 24-month period.
  - (c)** The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant or a person residing with the applicant.
- (293)** Specified Sexual Activities - means human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; or fondling or other erotic touching of human genitals, pubic regions, buttocks, or female breasts.
- (294)** Stable - A building in which horses or other livestock are kept for commercial use including boarding, hire, and sell.
- (295)** 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 placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the 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.
- (296)** Storm Drainage Facilities - means the system of inlets, conduits, channels, ditches and appurtenances which serve to collect and convey storm water through and from a given drainage area.
- (297)** Storm Water Runoff - means the surface flow of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- (298)** Storm water collection system - Any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A storm water collection system does not include vegetated swales, swales stabilized with armoring and/or alternative methods where natural topography prevents the use of vegetated swales (subject to case-by-case review, curb outlet systems or pipes used to carry drainage underneath built-upon surfaces that are associated with development controlled by the provisions of 15A NCAC 2H. 1003 (c)(1).
- (299)** Structure - means a walled and roofed building, a manufactured home, or a gas, liquid or liquefied gas storage tank that is principally above ground.
- (300)** Subdivider - Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.
- (301)** Subdivision - A "subdivision" shall include all divisions of a tract of land into two or more lots, building sites, (including buildings constructed for rental purposes) or other divisions when any one or more of those divisions are created for the purpose whether immediate or future, of sale or building development, and shall include all divisions of land involving the dedication of a new street or a change in existing streets; provided, however, that the following shall not be included within this definition nor be subject to the regulations prescribed by this ordinance:
- (a)** The combination or recombination of portions of previously platted lots where the total number of lots is not increased

and the resultant lots are equal to or exceed the standards of the county as shown in this ordinance, and documented with a recorded plat or a map attached to recorded deed(s).

- (b)** The division of land into parcels greater than (10) acres where no street right-of-way dedication is involved.
  - (c)** The public acquisition by purchase of strips of land for the widening or opening of streets.
  - (d)** The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved, and where the resultant lots are equal to or exceed the standards of the county as shown in this ordinance.
  - (e)** The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, nieces, nephews and stepchildren by any method of transfer except where the parties contemplate development for resale, and where the resultant lots are equal to or exceed the standards of the county as shown in this ordinance.
  - (f)** The division of land by court ordered/approved division except where the parties contemplate development for resale.
- (302)** Subsidiary - means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (303)** Substantial Damage - means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred, See definition of "substantial improvement".
- (304)** Substantial Enlargement of a Sexually Oriented Business - means the increase in floor areas occupied by the business by more than twenty-five percent (25%), as the floor areas exist on the date this ordinance takes effect.
- (305)** Substantial Improvement - means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the 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:
- (a)** any correction of existing violations of State or community health, sanitary, or safety code specifications which have



been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (306)** Substantial Modification - The mounting of a proposed wireless facility or wireless facilities on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the following criteria:
- (a) increases the existing vertical height of the wireless support structure by
    - (1) more than ten percent (10%), or
    - (2) the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater;
  - (b) adds an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure more than twenty (20) feet, or more than the width of the wireless support structure at the level of the appurtenance, whichever is greater (except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable);
  - (c) increases the square footage of the existing equipment compound by more than 2,500 square feet.
- (307)** Temporary Emergency, Construction, or Repair Residence - A residence (which may be a mobile home) that is:
- (a) located on the same lot as a residence made uninhabitable by fire, flood, or other natural disaster and occupied by the person displaced by such disaster, or
  - (b) located on the same lot as a residence that is under construction or undergoing substantial repairs or reconstruction and occupied by the person intending to live in such permanent residence when the work is completed, or
  - (c) located on a nonresidential construction site and occupied by persons having construction or security responsibilities over such construction site.
- (308)** Temporary Sign - A sign utilized for a limited time which is not permanently anchored or secured to a building or the ground and may be easily moved from one location to another. Examples include air-activated motion signs, balloon signs, banner signs, yard signs, feather flag signs, portable message center signs, snipe signs, and sidewalk signs.

- (309)** Ten-Year Storm - means the storm water runoff resulting from precipitation 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.
- (310)** Tower - A lattice-type structure, guyed or freestanding, that supports one or more antennas.
- (311)** Tract, erosion control regulations - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (312)** Tract - A lot. The term tract is used interchangeably with the term lot, particularly in the context of subdivisions, where one "tract" is subdivided into several "lots."
- (313)** Transfer of Ownership or Control of a Sexually Oriented Business - means and includes any of the following:
- (a)** the sale, lease, or sublease of the business;
  - (b)** the transfer of securities which constitute a controlling interest in the business, whether by sale, exchange, or similar means; or
  - (c)** the establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.
- (314)** Travel Trailer - A structure that (i) is intended to be transported over the streets and highways (either as a motor vehicle or attached to or hauled by a motor vehicle) and (ii) is designed for temporary use as sleeping quarters but that does not satisfy one or more of the definitional criteria of a mobile home.
- (315)** Twenty-five Year Storm - means the storm water runoff resulting from precipitation 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 for the watershed of interest under average antecedent wetness conditions.
- (316)** Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (317)** Undertaken - means 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.
- (318)** Unit - A structure or portion of a structure which is a single, habitable dwelling or single place of business.
- (319)** Unzoned Commercial Area - A site outside of municipal and county zoning jurisdiction which is within 660 feet of the nearest edge of the primary highway right of way and is actually used for commercial or industrial purposes.

- (320)** Use - The activity or function that actually takes place or is intended to take place on a lot.
- (321)** Utility Facilities - Any above-ground structures or facilities (other than buildings, unless such buildings are used as storage incidental to operation of such structures or facilities) owned by a governmental entity, a nonprofit organization, a corporation, or any entity defined as a public utility for any purpose by the appropriate provision of state law and used in connection with the production, generation, transmission, delivery, collection, or storage of water, sewage, solid waste, electricity, gas, oil or electronic signals. Excepted from this definition are utility lines and supporting structures.
- (322)** Utility Pole - A structure owned and/or operated by a public utility, municipality, electric membership corporation or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephone, cable television, or electricity, or to provide lighting.
- (323)** Variance - is a grant of relief from the requirements of this ordinance.
- (324)** Vehicle Sign - A sign permanently or temporarily attached to or placed on a vehicle or trailer.
- (325)** Velocity - means 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.
- (326)** Vested Right - The right to undertake and complete the development and use of property under the terms and conditions of an approval secured as specified in G.S. 160D-108 or under common law.
- (327)** Visible - Capable of being seen without visual aid by a person of normal acuity.
- (328)** Wall Sign - A sign permanently attached to or painted on the wall of a building or structure in a plane parallel or approximately parallel to the plane of said wall.
- (329)** Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- (330)** Water Supply Systems -
- (a)** Individual Systems. A well, spring, stream or other source used to supply a single connection.

- (b) Community Systems. A water system serving two (2) or more connections and not qualifying as a public water supply (PWS) under North Carolina regulations.
- (c) Public Systems. A water system owned and/or operated by the county, any municipality, water district, property owner's association, or utility company that qualifies as a public water supply (PWS) under North Carolina regulations.
- (331) Water Surface Elevation (WSE) - means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of riverine areas.
- (332) Water Tower - A water storage tank, or a standpipe or an elevated tank situated on a support structure, originally constructed for use as a reservoir or facility to store or deliver water.
- (333) Watercourse - means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.
- (334) Wholesale Sales - On-premises sales of goods primarily to customers engaged in the business of reselling the goods.
- (335) Wind Turbine Height - The height above grade to the tip of the turbine blade when it reaches its highest elevation.
- (336) Window Sign - A sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is intended to be viewable from the exterior (beyond the sidewalk immediately adjacent to the window), including signs located inside a building but visible primarily from the outside of the building.
- (337) Window, Area of - The area of a single window includes all of the window panes in an area that is separated by mullions, muntins, or other dividers which are less than 3 inches wide.
- (338) Wireless Facility or Wireless Facilities - The set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, base stations, power supplies, cabling and associated equipment necessary to provide wireless telecommunications services.
- (339) Wireless Support Structure - A freestanding structure, such as a monopole or tower, designed to support wireless facilities. This definition does not include utility poles.
- (340) Wooded Area - An area of contiguous wooded vegetation where trees are at a density of at least one six-inch or greater caliper tree per 325 square feet of land and where the branches and leaves form a contiguous canopy.

- (341)** Working Days - Days the Watauga County Administrative offices are open for business.
- (342)** Yard Sales - An occasional sale (no more than two (2) in a twelve (12) month period) held for the purpose of disposing of personal property. The term yard sale shall include attic sales, garage sales and patio sales.
- (343)** Yard Setback - A required open space on a lot adjoining a lot line, containing only landscaping or other uses. (front) A yard extending along the full width of a front line between side lot lines and from the front line to the front building line in depth, and the face of the building which is paralleled to a public road. (rear) A yard extending across the full width of the lot and lying between the rear lot line and the nearest line of the building. (side) A yard lying between the side line of the lot and nearest line of the building and extending from the front yard to the rear yard, or in the absence of either of such front or rear yards, to the front or rear lot lines.
- (344)** Zoning Map Amendment or Rezoning - An amendment to a zoning regulation for the purpose of changing the zoning district that is applied to a specified property or properties. The term also includes (i) the initial application of zoning when land is added to the territorial jurisdiction of a local government that has previously adopted zoning regulations and (ii) the application of an overlay zoning district or a conditional zoning district. The term does not include (i) the initial adoption of a zoning map by a local government, (ii) the repeal of a zoning map and readoption of a new zoning map for the entire planning and development regulation jurisdiction, or (iii) updating the zoning map to incorporate amendments to the names of zoning districts made by zoning text amendments where there are no changes in the boundaries of the zoning district or land uses permitted in the district.
- (345)** Zoning Permit - A permit issued by the zoning officer that authorizes the recipient to make use of property in accordance with the requirements of this ordinance.

## **CHAPTER 8 CONTROL OF SOIL EROSION AND SEDIMENTATION**

These regulations are enacted under the delegation of authority by the NC Sedimentation Control Commission, and pursuant to [N.C.G.S. 113A, Article 4](#), and consist of the model ordinance developed by the Commission, including local additions.

### **Article I Title**

This chapter may be cited as the Watauga County Soil Erosion and Sedimentation Control Ordinance.

### **Article II Purpose**

This chapter is adopted for the purposes of:

- (A) 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; and
- (B) establishing procedures through which these purposes can be fulfilled.

### **Article III Scope and Exclusions**

#### **Section 1. Geographical Scope of Regulated Land-Disturbing Activity.**

This chapter shall apply to land-disturbing activity within the territorial jurisdiction of the County and as allowed by agreement between local governments, the extent of annexation or other appropriate legal instrument or law.

#### **Section 2. Exclusions from Regulated Land-Disturbing Activity.**

Notwithstanding the general applicability of this chapter to all land-disturbing activity, this chapter shall not apply to the following types of land-disturbing activity:

- (A) Activities, including the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture undertaken on agricultural land for the



production of plants and animals useful to man, including, but not limited to:

- (1) forage and sod crops, grain and feed crops, tobacco, cotton, and peanuts.
  - (2) dairy animals and dairy products.
  - (3) poultry and poultry products.
  - (4) livestock, including beef cattle, llamas, sheep, swine, horses, ponies, mules, and goats.
  - (5) bees and apiary products.
  - (6) fur producing animals.
  - (7) mulch, ornamental plants, and other horticultural products. For purposes of this section, "mulch" means substances composed primarily of plant remains or mixtures of such substances.
- (B)** An Activity undertaken on forestland for the production and harvesting of timber and timber products and conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality (Best Management Practices), as adopted by the North Carolina Department of Agriculture and Consumer Services. If land-disturbing activity undertaken on forestland for the production and harvesting of timber and timber products is not conducted in accordance with standards defined by the Forest Practice Guidelines Related to Water Quality, the provisions of this ordinance shall apply to such activity and any related land-disturbing activity on the tract.
- (C)** An activity for which a permit is required under the Mining Act of 1971, Article 7 of Chapter 74 of the N.C. General Statutes.
- (D)** A land-disturbing activity over which the State has exclusive regulatory jurisdiction as provided in N.C.G.S. 113A-56(a).
- (E)** An activity which is essential to protect human life during an emergency.
- (F)** Activities undertaken to restore the wetland functions of converted wetlands to provide compensatory mitigation to offset impacts permitted under Section 404 of the Clean Water Act.
- (G)** Activities undertaken pursuant to Natural Resources Conservation Service standards to restore the wetlands functions of converted wetlands as defined in Title 7 Code of Federal Regulations § 12.2

### **Section 3. Plan Approval Requirement for Land-Disturbing Activity.**

No person shall undertake any land-disturbing activity subject to this ordinance without first obtaining an erosion and sedimentation control plan (hereinafter "Plan") approval therefor from the County.

### **Section 4. 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.

### **Section 5. Plan Approval Exceptions.**

Notwithstanding the general requirement to obtain a Plan approval prior to undertaking land-disturbing activity, a Plan approval shall not be required for land-disturbing activity that does not exceed 21,780 square feet in surface area. In determining the area, lands under one or diverse ownership being developed as a unit will be aggregated.

## **Article IV Mandatory 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:

### **Section 1. Buffer Zone**

- (A) Standard Buffer. 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity.
  - (1) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
  - (2) Buffer Measurement. Unless otherwise provided, the width of a buffer zone is measured horizontally from the edge of the water to the nearest edge of the disturbed area, with the 25 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (B) Trout Buffer. 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 twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Commission may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal.

- (1) Projects On, Over or Under Water. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (2) Trout Buffer Measurement. The 25-foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank to the nearest edge of the disturbed area.
- (3) Limit on Land Disturbance. Where a temporary and minimal disturbance has been permitted as an exception to the trout buffer, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent (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 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
- (4) Limit on Temperature Fluctuations. No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations in the trout waters, as set forth in 15 NCAC 2B.0211 "Fresh surface Water Classification and Standards."

## **Section 2. Graded Slopes and Fills.**

The angle for graded slopes and fills shall be no greater than the angle that can be retained by vegetative cover or other adequate erosion control devices or structures. In any event, slopes left exposed will, within 21 calendar days of completion of any phase of grading, be planted or otherwise provided with temporary or permanent ground cover, devices, or structures sufficient to restrain erosion. The angle for graded slopes and fills must be demonstrated to be stable. Stable is the condition where the soil remains in its original configuration, with or without mechanical constraints.

## **Section 3. Fill Material.**

Unless a permit from the Department's Division of 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 twelve (12) inches, and any materials which would cause the site to be regulated as a landfill by the State of North Carolina.

#### **Section 4. Ground Cover.**

Whenever land-disturbing activity that will disturb more than one acre is undertaken on a tract, the person conducting the land-disturbing activity shall install erosion and sedimentation control devices and practices that 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 [Article VII Section 2 \(E\)](#) of this chapter, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development, whichever period is shorter.

#### **Section 5. Prior Plan Approval.**

No person shall initiate any land-disturbing activity that will disturb more than one acre on a tract unless, thirty (30) or more days prior to initiating the activity, a Plan for the activity is filed with and approved by the County or unless for land-disturbing activity of more than a half acre but less than an acre the requirement for such plan had been waived as specified in Article V. The County will attempt to review plans as quickly as possible. The initiation of land-disturbing activities shall not be restricted when the plan is approved and permit issued in less than 30 days.

The County shall forward to the Director of the Division of Water Resources a copy of each Plan for a land-disturbing activity that involves the utilization of ditches for the purpose of de-watering or lowering the water table of the tract.

The land-disturbing activity shall be conducted in accordance with the approved erosion and sedimentation control plan.

### **Article V Erosion and Sedimentation Control Plans**

#### **Section 1. Plan Submission.**

A Plan shall be prepared for all land-disturbing activities subject to this chapter whenever the proposed activity will disturb more than one-half acre on a tract. For land-disturbing activity of a half-acre or more but less than one acre, the Watauga County Department of Planning and Inspection may

waive the submission of an erosion control plan if, upon site inspection a determination is made that the site does not have the potential to cause erosion or off-site damage. A plan is required for all land-disturbing activity of one acre or more. Three (3) copies of the Plan shall be filed with the County; a copy shall be simultaneously submitted to the Watauga County Soil and Water Conservation District at least 30 days prior to the commencement of the proposed activity.

## **Section 2. Financial Responsibility and Ownership.**

Plans may 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 attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of (1) the person financially responsible, (2) the owner of the land, and (3) any 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 ordinance, or rules or orders adopted or issued pursuant to this ordinance. Except as provided in [sections \(2\)](#) or [\(10\)](#) of this article, if the applicant is not the owner of the land to be disturbed, the draft erosion and sedimentation control plan must include the owner's written consent for the applicant to submit a draft erosion and sedimentation control plan and to conduct the anticipated land-disturbing activity.

If the applicant is not the owner of the land to be disturbed and the anticipated land-disturbing activity involves the construction of utility lines for the provision of water, sewer, gas, telecommunications, or electrical service, the draft erosion and sedimentation control plan may be submitted without the written consent of the owner of the land, so long as the owner of the land has been provided prior notice of the project.

## **Section 3. Environmental Policy Act Document.**

Any Plan submitted for a land-disturbing activity for which an environmental document is required by the North Carolina Environment 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-day time limit for review of the Plan pursuant to this ordinance shall not begin until a complete environmental document is available for review.

**Section 4. Content.**

The Plan required by this section shall contain architectural or engineering drawings, maps, assumptions, calculations, and narrative statements as needed to adequately describe the proposed development of the tract and the measures planned to comply with the requirements of this ordinance. Plan content may vary to meet the needs of specific site requirements. Detailed guidelines for Plan preparation may be obtained from the County on request.

**Section 5. Soil and Water Conservation District Comments.**

The District shall review the Plan and submit any comments and recommendations to the County within 20 days after the District received the Plan, or within any shorter period of time as may be agreed upon by the District and the County. Failure of the District to submit its comments and recommendations within 20 days or within any agreed-upon shorter period of time shall not delay final action on the Plan.

**Section 6. Timeline for Decisions on Plans.**

The County will review each complete Plan submitted to them and within 30 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. Failure to approve, approve with modifications, or disapprove a complete Plan within 30 days of receipt shall be deemed approval. The County will review each revised Plan submitted to them and within 15 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. Failure to approve, approve with modifications, or disapprove a revised Plan within 15 days of receipt shall be deemed approval.

**Section 7. Approval.**

The County shall only approve a Plan upon determining that it complies with all applicable State and local regulations for erosion and sedimentation control. Approval assumes the applicant's compliance with the federal and state water quality laws, regulations and rules. The County shall condition approval of Plans upon the applicant's compliance with federal and state water quality laws, regulations and rules. The County may establish an expiration date, not to exceed three (3) years, for Plans approved under this ordinance.

### **Section 8. Disapproval for Content.**

The County may disapprove a Plan or draft Plan based on its content. A disapproval based upon a Plan's content must specifically state in writing the reasons for disapproval.

### **Section 9. Other Disapprovals.**

The County shall disapprove an erosion and sedimentation control plan if implementation of the plan would result in a violation of rules adopted by the Environmental Management Commission to protect riparian buffers along surface waters. The County may disapprove an erosion and sedimentation control plan or disapprove a transfer of a plan under section (10) of this article upon finding that an applicant or a parent, subsidiary, or other affiliate of the applicant:

- (A) 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 N.C.G.S. 113A, Article 4 and has not complied with the notice within the time specified in the notice.
- (B) Has failed to pay a civil penalty assessed pursuant to said Article 4 or a local ordinance adopted pursuant to said Article by the time the payment is due.
- (C) Has been convicted of a misdemeanor pursuant to N.C.G.S. 113A-64(b) or any criminal provision of a local ordinance adopted pursuant to N.C.G.S. 113A, Article 4.
- (D) Has failed to substantially comply with State rules or local ordinances and regulations adopted pursuant to said [Article V](#).

In the event that an erosion and sedimentation control plan or a transfer of a plan is disapproved by the County pursuant to section (9) of this article, the local government shall so notify the Director of the Division of Energy, Mineral, and Land Resources within 10 days of the disapproval. The County shall advise the applicant or the proposed transferee and the Director in writing as to the specific reasons that the plan was disapproved. Notwithstanding the provisions of [Article XVI](#), the applicant may appeal the local government's disapproval of the plan directly to the Commission.



For purposes of this subsection, an applicant's record or the proposed transferee's record may be considered for only the two years prior to the application date.

### **Section 10. Transfer of Plan.**

The County administering an erosion and sedimentation control program may transfer an erosion and sedimentation control plan approved pursuant to this section without the consent of the plan holder to a successor-owner of the property on which the permitted activity is occurring or will occur as provided in this subsection.

- (A)** The County may transfer a plan if all of the following conditions are met:
  - (1)** The successor-owner of the property submits to the local government a written request for the transfer of the plan and an authorized statement of financial responsibility and ownership.
  - (2)** The County finds all of the following:
    - (a)** The plan holder is one of the following:
      - (i.)** A natural person who is deceased.
      - (ii.)** A partnership, limited liability corporation, corporation, or any other business association that has been dissolved.
      - (iii.)** A person who has been lawfully and finally divested of title to the property on which the permitted activity is occurring or will occur.
      - (iv.)** A person who has sold the property on which the permitted activity is occurring or will occur.
    - (b)** The successor-owner holds title to the property on which the permitted activity is occurring or will occur.
    - (c)** The successor-owner is the sole claimant of the right to engage in the permitted activity.
    - (d)** There will be no substantial change in the permitted activity.
- (B)** The plan holder shall comply with all terms and conditions of the plan until such time as the plan is transferred.
- (C)** The successor-owner shall comply with all terms and conditions of the plan once the plan has been transferred.
- (D)** Notwithstanding changes to law made after the original issuance of the plan, the County may not impose new or different terms and

conditions in the plan without the prior express consent of the successor-owner. Nothing in this subsection shall prevent the County from requiring a revised plan pursuant to G.S. 113A-54.1(b).

### **Section 11. Notice of Activity Initiation.**

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.

### **Section 12. Preconstruction Conference.**

When deemed necessary by the approving authority a preconstruction conference may be required.

### **Section 13. Display of Plan Approval.**

A Plan approval issued under this article shall be prominently displayed until all construction is complete, all permanent sedimentation and erosion control measures are installed, and the site has been stabilized. A copy of the approved plan shall be kept on file at the job site.

### **Section 14. Required Revisions.**

After approving a Plan, if the County either upon review of such Plan or on inspection of the job site, determines that a significant risk of accelerated erosion or off-site sedimentation exists, the County shall require a revised Plan. Pending the preparation of the revised Plan, work shall cease or shall continue under conditions outlined by the appropriate authority. If following commencement of a land-disturbing activity pursuant to an approved Plan, the County determines that the Plan is inadequate to meet the requirements of this ordinance, the County may require any revision of the Plan that is necessary to comply with this ordinance.

### **Section 15. Amendment to a Plan.**

Applications for amendment of a 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 County, the land-disturbing activity shall not proceed except in accordance with the Plan as originally approved.

**Section 16. 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.

**Section 17. Self-Inspections.**

The landowner, the financially responsible party, or the landowner's or the financially responsible party's agent shall perform an inspection of the area covered by the plan after each phase of the plan has been completed and after establishment of temporary ground cover in accordance with G.S. 113A-57(2). The person who performs the inspection shall maintain and make available a record of the inspection at the site of the land-disturbing activity. The record shall set out any significant deviation from the approved erosion control plan, identify any measures that may be required to correct the deviation, and document the completion of those measures. The record shall be maintained until permanent ground cover has been established as required by the approved erosion and sedimentation control plan. The inspections required by this subsection shall be in addition to inspections required by G.S. 113A-61.1.

Where inspections are required by this section and G.S. 113A-54.1(e), the following apply:

- (A)** The person who performs the inspection shall make a record of the site inspection by documenting the following items:
  - (1)** all of the erosion and sedimentation control measures, practices and devices, as called for in a construction sequence consistent with the approved erosion and sedimentation control plan, including but not limited to sedimentation control basins, sedimentation traps, sedimentation ponds, rock dams, temporary diversions, temporary slope drains, rock check dams, sediment fence or barriers, all forms of inlet protection, storm drainage facilities, energy dissipaters, and stabilization methods of open channels, have initially been installed and do not significantly deviate (as defined in [Section 17 \(A\)\(5\)](#) of this Rule) from the locations, dimensions and relative elevations shown on the approved erosion and sedimentation plan. Such documentation shall be accomplished by initialing and dating each measure or practice shown on a copy of the approved erosion and

- sedimentation control plan or by completing, dating and signing an inspection report that lists each measure, practice or device shown on the approved erosion and sedimentation control plan. This documentation is required only upon the initial installation of the erosion and sedimentation control measures, practices and devices as set forth by the approved erosion and sedimentation control plan or if the measures, practices and devices are modified after initial installation;
- (2)** the completion of any phase of grading for all graded slopes and fills shown on the approved erosion and sedimentation control plan, specifically noting the location and condition of the graded slopes and fills. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
  - (3)** the location of temporary or permanent ground cover, and that the installation of the ground cover does not significantly deviate (as defined in [Section 17\(A\)\(5\)](#) of this Rule) from the approved erosion and sedimentation control plan. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report;
  - (4)** that maintenance and repair requirements for all temporary and permanent erosion and sedimentation control measures, practices and devices have been performed. Such documentation shall be accomplished by completing, dating and signing an inspection report (the general storm water permit monitoring form may be used to verify the maintenance and repair requirements); and
  - (5)** any significant deviations from the approved erosion and sedimentation control plan, corrective actions required to correct the deviation and completion of the corrective actions. Such documentation shall be accomplished by initialing and dating a copy of the approved erosion and sedimentation control plan or by completing, dating and signing an inspection report. A significant deviation means an omission, alteration or relocation of an erosion or sedimentation control measure that prevents the measure from performing as intended.
- (B)** The documentation, whether on a copy of the approved erosion and sedimentation control plan or an inspection report, shall include the name, address, affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection.

- Any relevant licenses and certifications may also be included. Any documentation of inspections that occur on a copy of the approved erosion and sedimentation control plan shall occur on a single copy of the plan and that plan shall be made available on the site. Any inspection reports shall also be made available on the site.
- (C) The inspection shall be performed during or after each of the following phases of a plan:
- (1) installation of perimeter erosion and sediment control measures;
  - (2) clearing and grubbing of existing ground cover;
  - (3) completion of any phase of grading of slopes or fills that requires provision of temporary or permanent ground cover pursuant to G.S. 113A-57(2);
  - (4) completion of storm drainage facilities;
  - (5) completion of construction or development; and
  - (6) quarterly until the establishment of permanent ground cover sufficient to restrain erosion or until the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved and the agency that approved the plan has been notified. If the financially responsible party has conveyed ownership or control of the tract of land for which the erosion and sedimentation control plan has been approved, the new owner or person in control shall conduct and document inspections quarterly until the establishment of permanent ground cover sufficient to restrain erosion.

### **Article VI Basic Control Objectives**

An erosion and sedimentation control Plan may be disapproved if the Plan fails to address the following control objectives:

#### **Section 1. 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.

#### **Section 2. Limit Time of Exposure.**

All land-disturbing activities are to be planned and conducted to limit exposure to the shortest feasible time.

### **Section 3. 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.

### **Section 4. Control Surface Water.**

Surface water runoff originating upgrade of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

### **Section 5. Control Sedimentation.**

All land-disturbing activity is to be planned and conducted so as to prevent off-site sedimentation damage.

### **Section 6. Manage Storm Water Runoff.**

When the increase in the velocity of storm water runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, a Plan is to 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.

## **Article VII Design and Performance Standards**

### **Section 1. Non-High Quality Water Zones.**

Except as provided in [Section 2\(B\)](#) of this Article, erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten-year storm. Runoff rates shall be calculated using the procedures in the USDA, Soil Conservation Service's "National Engineering Field Manual for Conservation Practices", or other acceptable calculation procedures.

### **Section 2. HQW Zones.**

In High Quality Water (HQW) zones the following design standards shall apply:

- (A) Limit on Uncovered Area. Uncovered areas in HQW zones shall be limited at any time to a maximum total area of twenty acres within

the boundaries of the tract. 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 Director.

- (B) Maximum Peak Rate of Runoff Protection. Erosion and sedimentation control measures, structures, and devices within HQW zones shall be planned, designed and constructed to provide protection from the runoff of the twenty-five year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil 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.
- (C) Settling Efficiency. 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 millimeter) size soil particle transported into the basin by the runoff of that two year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil 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.
- (D) Grade. Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one 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.
- (E) Ground Cover. 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.

## **Article VIII Storm Water Outlet Protection**

### **Section 1. Intent.**

Stream banks and channels downstream from any land disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land disturbing activity.



## **Section 2. Performance standard.**

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:

- (A)** the velocity established by the Maximum Permissible Velocities Table set out within this subsection; or
- (B)** the velocity of the ten-year storm runoff in the receiving watercourse prior to development.

If condition (A) or (B) of this Paragraph 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%.

### **Maximum Permissible Velocities Table**

The following is a table for maximum permissible velocity for storm water discharges in feet per second (F.P.S.) and meters per second (M.P.S.):

| <u>Material</u>                        | F.P.S. | M.P.S. |
|--|--------|--------|
| Fine sand (noncolloidal)               | 2.5    | .8     |
| Sandy loam (noncolloidal)              | 2.5    | .8     |
| Silt loam (noncolloidal)               | 3.0    | .9     |
| Ordinary firm loam                     | 3.5    | 1.1    |
| Fine gravel                            | 5.0    | 1.5    |
| Stiff clay (very colloidal)            | 5.0    | 1.5    |
| Graded, loam to cobbles (noncolloidal) | 5.0    | 1.5    |
| Graded, silt to cobbles (Colloidal)    | 5.5    | 1.7    |
| Alluvial silts (noncolloidal)          | 3.5    | 1.1    |
| Alluvial silts (colloidal)             | 5.0    | 1.5    |
| Coarse gravel (noncolloidal)           | 6.0    | 1.8    |
| Cobbles and shingles                   | 5.5    | 1.7    |
| Shales and hard pans                   | 6.0    | 1.8    |

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.

### **Section 3. Acceptable Management Measures.**

Measures applied alone or in combination to satisfy the intent of this section are acceptable if there are no objectionable secondary consequences. The County recognizes that the management of storm water 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, while not exhaustive, are to:

- (A) Avoid increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;
- (B) Avoid increases in storm water discharge velocities by using vegetated or roughened swales and waterways in place of closed drains and high velocity paved sections;
- (C) Provide energy dissipators at outlets of storm drainage facilities to reduce flow velocities to the point of discharge;
- (D) Protect watercourses subject to accelerated erosion by improving cross sections and/or providing erosion-resistant lining; and
- (E) Upgrade or replace the receiving device structure, or watercourse such that it will receive and conduct the flow to a point where it is no longer subject to degradation from the increased rate of flow or increased velocity.

### **Section 4. Exceptions.**

This rule shall not apply where it can be demonstrated to the County that storm water discharge velocities will not create an erosion problem in the receiving watercourse.

### **Article IX 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 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.

### **Article X 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.

### **Article XI Operations in Lakes or Natural Watercourses**

Land disturbing activity in connection with construction in, on, over, or under a lake or natural watercourse shall minimize the extent and duration of disruption of the stream channel. Where relocation of a stream forms an essential part of the proposed activity, the relocation shall minimize unnecessary changes in the stream flow characteristics.

### **Article XII Responsibility for 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.

### **Article XIII Additional Measures**

Whenever the County determines that significant erosion and 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.

## **Article XIV Existing Uncovered Areas**

### **Section 1. Applicability**

All uncovered areas existing on the effective date of this ordinance which resulted from land-disturbing activity, exceed one acre, are subject to continued accelerated erosion, and are causing off-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.

### **Section 2. Written Notice**

The County shall serve upon the landowner or other person in possession or control of the land a written notice to comply with the Act, this ordinance, a rule or order adopted or issued pursuant to the Act by the Commission or by the County. The notice to comply shall be sent by registered or certified mail, return receipt requested, or other means provided in GS 1A-1, Rule 4. 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.

### **Section 3. Right to Require Plan.**

The County reserves the right to require preparation and approval of a Plan in any instance where extensive control measures are required.

### **Section 4. Future Planned Reservoir.**

This rule shall not require ground cover on cleared land forming the future basin of a planned reservoir.

## **Article XV Fees**

The County may establish a fee schedule for the review and approval of plans. In establishing the fee schedule, the County shall consider the administrative and personnel costs incurred for reviewing the plans and for related compliance activities.

## **Article XVI Plan Appeals**

### **Section 1. Disapprovals**

Except as provided in [Section 2](#) of this Article, the appeal of a disapproval or approval with modifications of a plan shall be governed by the following provisions:

- (A) The disapproval or modification of any proposed plan by the County shall entitle the person submitting the plan to a public hearing if such person submits written demand for a hearing within 15 days after receipt of written notice of disapproval or modifications.
- (B) A hearing held pursuant to this section shall be conducted by the Watauga County Planning Board within thirty (30) days after the date of the written appeal or request for a hearing.
- (C) The Planning Board shall make recommendations to the Board of Commissioners within seven (7) days after the date of the hearing on any plan.
- (D) The Board of Commissioners will render its final decision on any plan within five (5) days of receipt of the recommendations from the agency conducting the hearing.
- (E) If the Board of Commissioners upholds the disapproval or modification of a proposed plan following the hearing, the person submitting the plan shall then be entitled to appeal the County's decision to the Commission as provided in G.S. 113A-61(c) and 15A NCAC 4B .0118(d)

### **Section 2. Other Disapprovals**

In the event that a plan is disapproved pursuant to [Article V Section 9](#) of this Chapter, the applicant may appeal the County's disapproval of the plan directly to the Commission.

## **Article XVII Inspections and Investigations**

### **Section 1. Inspection.**

Agents, officials, or other qualified persons authorized by the County will 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 sedimentation resulting from land-disturbing activity. Notice of the right to inspect shall be included in the certificate of approval of each Plan.

**Section 2. Willful Resistance, Delay or Obstruction.**

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.

**Section 3. Notice of Violation.**

If the County determines 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 GS 1A-1, Rule 4. The notice shall specify a date by which the person must comply with the Act, or this ordinance, 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. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties for a continuing violation as provided in G.S. 113A-64 and this chapter.

**Section 4. Investigation.**

The County 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.

**Section 5. Statements and Reports.**

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

**Article XVIII Stop Orders**

Wherever land-disturbing activity is being undertaken in a manner which is in violation of this chapter, the Watauga County Department of Planning and Inspection may order the work that is in violation to be immediately stopped. The stop order shall be in writing and directed to the person responsible for the violation, and shall state the specific work to be stopped,

the specific reasons for the stoppage, and the conditions under which the work may be resumed. Appeals from a stop order shall be made as prescribed in [Article XVI](#) of this chapter. Pending the ruling on the appeal, no further work may take place in violation of a stop order. Violation of a stop order constitutes a misdemeanor.

In addition, in accordance with N.C.G.S. 160D-404(b), the Watauga County Building Inspectors are authorized to issue stop orders for building permits where violations of this ordinance are taking place in connection with construction authorized by the building permit.

### **Article XIX Revocation of Grading Permits**

The Watauga County Department of Planning and Inspections may revoke and require the return of any permit by giving written notice to the permit holder, stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application or plans and specifications, for refusal or failure to comply with the requirements of any applicable State or local laws or local ordinances or regulations, or for false statements or misrepresentations made in securing the permit. A permit mistakenly issued in violation of an applicable State or local law or local ordinance or regulation also may be revoked.

### **Article XX Building Permits**

No permits for any building or structure shall be issued upon any land requiring submission of a soil erosion control plan and issuance of a grading permit until such plan is submitted and permit issued.

### **Article XXI Security Required**

The applicant for a permit may, prior to commencing any land-disturbing activity, be required to file with Watauga County an improvement security in the form of an escrow account, surety bond, irrevocable letter of credit, or other undertaking satisfactory to the County Attorney, in an amount deemed sufficient by the Watauga County Department of Planning and Inspections, to cover all costs of protection or other improvements required to establish protective cover on the site in conformity with this chapter. Such security shall remain in force until the improvements are completed in accordance with the approved plan and said improvements are finally inspected and approved as set out in paragraph below.

Upon completion of the improvements as required by this chapter, written notice thereof shall be given by the applicant to the Department of Planning and Inspections and the Department shall cause an inspection of the



improvements to be made and, if approved, shall within 30 days of the date of notice authorize in writing the release of the security given provided that the improvements have been made in accordance with the approved plan and this chapter.

The security shall be forfeited upon violation of this chapter and shall be used to establish protective cover on the site. Any monies in excess of the cost of establishing protective cover shall be refunded.

## **Article XXII Penalties**

### **Section 1. Civil Penalties.**

- (A) Civil Penalty for a Violation. Any person who violates any of the provisions of this chapter, or rule or order adopted or issued pursuant to this chapter, or who initiates or continues a land-disturbing activity for which a Plan is required except in accordance with the terms, conditions, and provisions of an approved Plan, is subject to a civil penalty. The maximum civil penalty amount that the County may assess per violation is five thousand dollars (\$5,000.00). A civil penalty may be assessed from the date of the violation. Each day of a continuing violation shall constitute a separate violation. When the person has not been assessed any civil penalty under this subsection for any previous violation, and that person abated continuing environmental damage resulting from the violation within 180 days from the date of the notice of violation, the maximum cumulative total civil penalty assessed under this subsection for all violations associated with the land-disturbing activity for which the erosion and sedimentation control plan is required is twenty-five thousand dollars (\$25,000).]
- (B) Civil Penalty Assessment Factors. The governing body of the County shall determine the amount of the civil penalty based upon the following factors:
- (1) the degree and extent of harm caused by the violation,
  - (2) the cost of rectifying the damage,
  - (3) the amount of money the violator saved by noncompliance,
  - (4) whether the violation was committed willfully, and
  - (5) the prior record of the violator in complying or failing to comply with this chapter.
- (C) Notice of Civil Penalty Assessment. The governing body of the County shall provide notice of the civil penalty amount and basis for assessment to the person assessed. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4. A notice of assessment by the County shall direct the violator to

- either pay the assessment, contest the assessment within 30 days by filing a petition for hearing with the County (as directed by procedures within the local ordinances or regulations adopted to establish and enforce the erosion and sedimentation control program), or file a request with the Sedimentation Control Commission for remission of the assessment within 60 days of receipt of the notice. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the North Carolina General Statutes and a stipulation of the facts on which the assessment was based.
- (D) Final Decision: The final decision on contested assessments shall be made by the Board of Commissioners in accordance with this ordinance.
  - (E) Appeal of Final Decision. Appeal from the final decision of the Board of Commissioners shall be to the Superior Court of the county where the violation occurred. Such appeals must be made within 30 days of the final decision of the Board of Commissioners.
  - (F) Collection. If payment is not received within 60 days after it is due, the County may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court of the county where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due. An assessment that is not contested is due when the violator is served with a notice of assessment. An assessment that is contested is due at the conclusion of the administrative and judicial review of the assessment.
  - (G) Credit of Civil Penalties. The clear proceeds of civil penalties collected by the County under this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Penalties collected by the County may be diminished only by the actual costs of collection. The collection cost percentage to be used shall be established and approved by the North Carolina Office of State Budget and Management on an annual basis, based upon the computation of actual collection costs by each County for the prior fiscal year.  
[In any event, the cost percentage shall not exceed twenty percent (20%) of penalties collected.]

## **Section 2. 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 a 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 as provided in G.S. § 113A-64.

### **Article XXIII Injunctive Relief**

#### **Section 1. Violation of Local Program.**

Whenever the Board of Commissioners has reasonable cause to believe that any person is violating or threatening to violate any ordinance, rule, regulation or order adopted or issued by the County or any term, condition, or provision of an approved 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 the county in which the violation is occurring or is threatened.

#### **Section 2. Abatement of Violation.**

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.

### **Article XXIV Restoration After Non-Compliance**

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 authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter.

### **Article XXV Effective Date**

February 20, 2019

## **CHAPTER 9 FLOOD DAMAGE PREVENTION**

### **Article I Statutory Authorizations, Findings of Fact, Purpose, & Objectives**

#### **Section 1. Statutory Authorization.**

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Part 2, Article 9 of Chapter 160D; and Part 121, Article 6 of Chapter 153A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Therefore, the Board of Commissioners of Watauga County, North Carolina, enacts the following:

#### **Section 2. Findings of Fact.**

- (A) The flood prone areas within the jurisdiction of Watauga 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 effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

#### **Section 3. Statement of Purpose.**

- (A) It is the purpose of this chapter to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:
- (B) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- (C) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (D) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

- (E) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
- (F) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

#### **Section 4. Objectives.**

- (A) The objectives of this chapter are to:
- (B) protect human life, safety, and health;
- (C) minimize expenditure of public money for costly flood control project;
- (D) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (E) minimize prolonged business losses and interruptions;
- (F) minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (G) help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (H) ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

### **Article II General Provisions**

#### **Section 1. Lands To Which This Ordinance Applies.**

This chapter shall apply to all Special Flood Hazard Areas within the jurisdiction of Watauga County and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

#### **Section 2. Basis For Establishing The Special Flood Hazard Areas.**

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Watauga County most recently officially adopted by FEMA and the State of NC version of such maps, which are adopted by reference and declared to be a part of this chapter. The initial Flood Insurance Rate Maps are as follows for the jurisdictional areas at the initial date: Watauga County Unincorporated Area, dated June 18, 1980.

**Section 3. Establishment Of Floodplain Development Permit.**

A Floodplain Development Permit shall be required in conformance with the provisions of this chapter prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section B of this Article.

**Section 4. Compliance.**

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this chapter and other applicable regulations.

**Section 5. Abrogation and Greater Restrictions.**

This ordinance 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.

**Section 6. Interpretation.**

In the interpretation and application of this ordinance, 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.

**Section 7. Warning and Disclaimer of Liability.**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Watauga County or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

## **Article III Administration**

### **Section 1. Designation of Floodplain Administrator.**

The Director or other authorized staff of the Watauga County Department of Planning and Inspections, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of this chapter.

### **Section 2. Floodplain Development Application, Permit and Certification Requirements.**

- (A) Application Requirements.** Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:
- (1)** A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:
    - (a)** the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
    - (b)** the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in [Article II, Section 2](#), or a statement that the entire lot is within the Special Flood Hazard Area;
    - (c)** flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in [Article II, Section 2](#);
    - (d)** the boundary of the floodway(s) or non-encroachment area(s) as determined in [Article II, Section 2](#);
    - (e)** the Base Flood Elevation (BFE) where provided as set forth in [Article II, Section 2](#); [Article III, Section 3](#); or [Article IV, Section 4](#);
    - (f)** the old and new location of any watercourse that will be altered or relocated as a result of proposed development; and



- (g) the certification of the plot plan by a registered land surveyor or professional engineer as determined to be necessary by the Floodplain Administrator.
- (2) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:
    - (a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
    - (b) Elevation in relation to mean sea level to which any non-residential structure in Zone AE or A will be floodproofed; and
    - (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
  - (3) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures,
  - (4) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
    - a) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and
    - b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with [Article IV, Section 2\(D\)\(3\)](#) when solid foundation perimeter walls are used in Zones A, AE, and A I-30.
  - (5) Usage details of any enclosed areas below the lowest floor.
  - (6) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
  - (7) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.
  - (8) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of [Article IV, Section 2, \(F\)](#) and [\(G\)](#) of this chapter are met.

- (9) A description of proposed watercourse alteration or relocation, when applicable, including 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 (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.
- (B) Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:
- (1) A description of the development to be permitted under the floodplain development permit.
  - (2) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in [Article II, Section 2](#).
  - (3) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.
  - (4) The Regulatory Flood Protection Elevation required for the protection of all public utilities.
  - (5) All certification submittal requirements with timelines.
  - (6) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
  - (7) The flood openings requirements, if in Zones A, AE or AI - 30.
  - (8) Limitations of below BFE enclosure uses (if applicable). (i.e., parking, building access and limited storage only).
- (C) Certification Requirements.
- (1) Elevation Certificates
    - (a) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level, The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
    - (b) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of

the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

- (c) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (2)** Floodproofing Certificates. If non-residential floodproofing is used to meet the Regulatory Flood Protection Elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate

data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (3) If a manufactured home is placed within Zone A, AE, or AI-3D and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of [Article IV, Section 2\(C\)\(2\)](#).
- (4) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified 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 shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.
- (5) Certification Exemptions. The following structures, if located within Zone A, AE or AI -30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:
  - a) Recreational Vehicles meeting requirements of [Article IV, Section 2\(F\)\(1\)](#);
  - b) Temporary Structures meeting requirements of [Article IV, Section 2\(G\)](#); and
  - c) Accessory Structures less than 150 square feet meeting requirements of [Article IV, Section 2\(H\)](#).

### **Section 3. Duties and Responsibilities of the Floodplain Administrator.**

- (A) The Floodplain Administrator shall perform, but not be limited to, the following duties:
- (B) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

- (C) Review all proposed development within Special Flood Hazard Areas to assure that all necessary Local, State and Federal permits have been received.
- (D) 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 (FEMA).
- (E) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.
- (F) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of [Article IV, Section 6](#) are met.
- (G) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (H) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (I) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (J) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of [Article III, Section 2\(C\)](#) and [Article IV, Section 2\(B\)](#).
- (K) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), 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 article.
- (L) When Base Flood Elevation (BFE) data has not been provided in accordance with the provisions of [Article II, Section 2](#), obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to

- [Article IV, Section 4\(B\)\(2\)](#), in order to administer the provisions of this ordinance.
- (M)** When Base Flood Elevation (BFE) data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of [Article IV, Section 2](#), obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.
  - (N)** When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the Base Flood Elevation (BFE), advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file,
  - (O)** Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.
  - (P)** Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain 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 ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.
  - (Q)** Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor
  - (R)** Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and 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 floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.
- (S)** Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain 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.
  - (T)** Follow through with corrective procedures of [Article III, Section 4.](#)
  - (U)** Review, provide input, and make recommendations for variance requests.
  - (V)** Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with the provisions of Article II, Section 2 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.
  - (W)** Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

#### **Section 4. Corrective Procedures.**

- (A)** Violations to be Corrected: When the Floodplain 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 cited in such notification.
- (B)** 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 Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:
  - (1)** that the building or property is in violation of the floodplain management regulations;
  - (2)** that a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) 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 Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.
- (C) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of this chapter, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred-eighty (180) calendar days. Where the Floodplain 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.
- (D) Appeal: Any owner who has received an order to take corrective action may appeal the order to the Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the Clerk to the Board of Adjustment within thirty (30) days following issuance of the final binding order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.
- (E) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the Board of Adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

### **Section 5. Variance Procedures.**

- (A) The Board of Adjustment as established by Watauga County, 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 Chapter 7A of the North Carolina General Statutes.
- (C) Variances may be issued for:
- 1) 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 that the variance is the minimum

- necessary to preserve the historic character and design of the structure;
- 2) functionally dependent facilities if determined to meet the definition as stated in [Chapter 7](#), provided provisions of [Article III, Section 5\(I\)\(2\)](#), [\(3\)](#), and [\(5\)](#) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
  - 3) any other type of development, provided it meets the requirements of this Section.
- (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 as defined in Chapter 7 as a functionally dependent facility, 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 program for that area;
  - 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 floodwaters 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 the 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 and objectives of this chapter.
- (G)** Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.
  - (H)** The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.
  - (I)** Conditions for Variances:
    - (1)** Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.
    - (2)** Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.
    - (3)** Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief
    - (4)** Variances shall only be issued prior to development permit approval.
    - (5)** 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, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

## **Article IV Provisions For Flood Hazard Reduction**

### **Section 1. General Standards.**

In all Special Flood Hazard Areas the following provisions are required:

- (A)** All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and 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 and 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 to the Regulatory Flood Protection Elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches.
- (E)** All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (F)** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters 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.
- (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)** Nothing in this chapter shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this chapter.

- (J)** New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or flood proofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (K)** All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.
- (L)** All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (M)** All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (N)** All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 IJ~S~C. 1334.
- (O)** When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.
- (P)** When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest Base Flood Elevation (BFE) shall apply.

## **Section 2. Specific Standards.**

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in [Article II, Section 2](#), or [Article IV, Section 5](#), the following provisions, in addition to the provisions of [Article IV, Section 1](#), are required:

- (A)** Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in [Chapter 7](#) of this Title.
- (B)** Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-

residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in [Chapter 7](#). Structures located in A, AE, and AI -30 Zones may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection 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 floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in [Article III, Section 2\(C\)](#), along with the operational plan and the inspection and maintenance plan.

**(C) Manufactured Homes.**

- (1)** New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in [Chapter 7](#).
- (2)** Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143~143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.
- (3)** All enclosures or skirting below the lowest floor shall meet the requirements of [Article IV, Section 2\(D\)](#).
- (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 Floodplain Administrator and the local Emergency Management Coordinator.

- (D)** Elevated Buildings. Fully enclosed area of new construction and substantially improved structures below the lowest floor:
- (1)** shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;
  - (2)** shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and
  - (3)** shall include, in Zones A, AE, and AI-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:
    - (a)** A minimum of *two* flood openings on different sides of each enclosed area subject to flooding;
    - (b)** The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
    - (c)** If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
    - (d)** The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
    - (e)** Flood openings may be equipped with screens, louvers, or other coverings or devices. provided they permit the automatic flow of floodwaters in both directions; and
    - (f)** Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.
- (E)** Additions/Improvements.
- (1)** Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination



with any interior modifications to the existing structure are:

- (a) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
  - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (2) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.
- (3) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (a) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
  - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (F) Recreational Vehicles. Recreational vehicles shall either:
- (1) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
  - (2) meet all the requirements for new construction.
- (G) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:
- (1) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

- (2) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
  - (3) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);
  - (4) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and
  - (5) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.
- (H) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
- (1) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
  - (2) Accessory structures shall not be temperature-controlled;
  - (3) Accessory structures shall be designed to have low flood damage potential;
  - (4) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (5) Accessory structures shall be firmly anchored in accordance with the provisions of [Article IV, Section 1\(A\)](#);
  - (6) All service facilities such as electrical shall be installed in accordance with the provisions of [Article IV, Section 1\(D\)](#); and
  - (7) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of [Article IV, Section 2\(D\)\(3\)](#),

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with [Article III, Section 2\(C\)](#).

### **Section 3. Reserved.**

#### **Section 4. Standards For Floodplains Without Established Base Flood Elevations.**

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in [Article II, Section 2](#), where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to the provisions of [Article IV, Section 1](#), shall apply:

- (A)** No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (B)** The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:
  - (1)** When Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in [Article IV, Sections 1 and 2](#).
  - (2)** When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of [Article IV, Sections 2 and 6](#).
  - (3)** All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference in accordance with [Article II, Section 2](#) and utilized in implementing this chapter.
  - (4)** When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in [Chapter 7](#). All other applicable provisions of [Article IV, Section 2](#) shall also apply.

### **Section 5. Standards For Riverine Floodplains With Base Flood Elevations But Without Established Floodways or Non-Encroachment Areas.**

Along rivers and streams where Base Flood Elevation (BFE) data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

- (A) Standards of [Article IV, Sections 1](#) and [2](#); and
- (B) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

### **Section 6. Floodways and Non-Encroachment Areas.**

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Article II, Section 2. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in [Article IV, Sections 1](#) and [2](#), shall apply to all development within such areas:

- (A) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:
  - (1) it is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
  - (2) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment

- (B) If [Article IV, Section 6\(A\)](#) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this chapter.

## **Article V Legal Status Provisions**

### **Section 1. Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance.**

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted April 1, 1987 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of Watauga County enacted on April 1, 1987, as amended, which are not reenacted herein are repealed.

The date of the initial Flood Damage Prevention Ordinance for Watauga County is June 10, 1980; said ordinance repealed and replaced April 1, 1987. Amended December 3, 2009 and February 18, 2014.

## **CHAPTER 10 FOSCOE GRANDFATHER ZONING**

### **Article I Purpose, Authority and Jurisdiction**

#### **Section 1. Purpose.**

The zoning regulations and districts as herein set forth are being adopted in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote good health and the general welfare; to provide adequate light and air, to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations are being made with reasonable consideration, among other things, to the character of the district and their peculiar suitability for particular uses, with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the community, and with the goal of preserving the rural environment of the Foscoe-Grandfather Community.

#### **Section 2. Authority.**

The provisions of this chapter are enacted under authority granted by the General Assembly of North Carolina. (General Statute 160D, Article 7 and other pertinent statutes and amendments thereto.)

#### **Section 3. Jurisdiction.**

The regulations set forth in this ordinance shall be applicable to all land within the boundaries of the Foscoe-Grandfather Community as established and amended by the Watauga County Board of County Commissioners.

### **Article II General Provisions**

#### **Section 1. Application.**

The regulations set forth in this chapter shall apply to all land, every building and every use of land and/or buildings except bona fide farms as defined in N.C.G.S. 160D-903 within the boundaries of the Foscoe-Grandfather Community.

## **Section 2. New Uses or Construction.**

After the effective date of these regulations, all new construction and the moving, altering and enlarging of existing structures shall conform to the use, area and bulk regulations for the district in which it is, or is to be, located.

## **Section 3. Conforming Uses.**

After the effective date of these regulations, existing structures, or the use of land or structures which conform to the regulations for the district, may be continued, provided that any structural alteration or change in use shall conform with the regulation herein specified for the district in which it is located.

## **Section 4. Nonconforming Uses.**

After the effective date of these regulations, existing structures, or the uses of land or structures which would be prohibited under the regulations for the district in which it is located (if they existed on the initial adoption date of these regulations), shall be considered as nonconforming. Nonconforming structures or uses may be continued provided they conform to the following provisions:

- (A) Continuing the Use of Nonconforming Land**
  - (1) Extensions of Use.** Nonconforming uses of land shall not hereafter be enlarged or extended in any way.
  - (2) Change of Use.** Any nonconforming use of land may be changed to conforming use or with the approval of the Board of Adjustment to any use more in character with the uses permitted in the district.
- (B) Continuing the Use of Nonconforming Buildings**
  - (1) Extensions of Use.** Nonconforming buildings and nonconforming uses of buildings shall not hereafter be enlarged except when such enlargement or extension is in compliance with subparagraph [\(B\)\(6\)](#) below.
  - (2) Change of Use.** If no structural alterations or enlargements are made, any nonconforming building or use of buildings may be changed (with the approval of Board of Adjustment) to any use more in character with uses permitted in the district. In permitting such change, the Board of Adjustment may require appropriate conditions and safeguards in accordance with the provisions of this ordinance.



- (3) Cessation of Use. If active operations are discontinued for a continuous period of six months with respect to a nonconforming use of building, such building or buildings shall thereafter be occupied and used only for a conforming use.
- (4) Repair and Alteration. Normal maintenance and repair in a building occupied by a nonconforming use is permitted provided it does not extend the nonconforming use.
- (5) Damage or Destruction. If a building occupied by a nonconforming use or a nonconforming building is destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, such building may not be restored for any nonconforming use.
- (6) Nonconforming features of buildings may be extended into the yard (setback) which is being violated by the nonconforming feature(s). However, the addition shall not be more than fifty (50) percent of the existing gross floor area and shall not extend further than the existing building line and in no case shall the addition be closer than five (5) feet to the property line. Additional screening shall be required for commercial uses if adjacent to residential uses. Additional screening shall be defined as a six (6) foot high opaque fence or an evergreen tree a minimum six (6) feet in height planted on four (4) foot centers.

### **Section 5. Open Space Requirements.**

No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this chapter shall be included as a part of a yard or other open space required under this chapter for another building or structure.

### **Section 6. Reduction of Lot and Yard Areas Prohibited.**

No yard or lot existing at the time of passage of these regulations shall be reduced in size or area below the minimum requirements set forth herein. Yards and lots created after the effective date of these regulations shall meet at least the minimum requirements established by these regulations.

### **Section 7. Projections into Public Rights-of-way.**

No signs or other structures shall project beyond the curb line of any street or other public way.

## **Section 8. Interpretation of District Boundaries.**

When uncertainty exists with respect to the boundaries or districts as shown on the Official Zoning Map, the following rules shall apply:

- (A) Delineation. District boundary lines indicated as approximately following property lines, lot lines, the center line of streets, alleys, railroads, easements, other rights-of-way, and creeks, streams, or other water channels, shall be constructed to follow such lines.
- (B) Official Zoning Map. In the absence of specified distances on the map, dimensions or distances shall be determined by scaling the distance on the Official Zoning Map

## **Article III Official Zoning Map**

### **Section 1. Zoning Map.**

The boundaries of each zoning district are shown on a map entitled "Foscoe Grandfather Community Official Zoning Map" which is hereby made a portion of this chapter.

## **Article IV Administration and Enforcement**

### **Section 1. Administration and Enforcement.**

The Watauga County Department of Planning and Inspections (hereinafter referred to as Zoning Official) shall administer and enforce this chapter.

- (A) Violations. If the Zoning Official shall find that any of the provisions of this chapter are being violated, s/he shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it within ten (10) days. S/he shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of addition, alterations, or structural changes thereto; the discontinuance of any illegal work being done; and shall take any other action authorized by this chapter to insure compliance with, or to prevent violation of, its provisions.
- (B) Remedies and Penalties. [Chapter 5](#) of this Title shall apply.

## **Section 2. Permit Process.**

- (A) Zoning Permits. No building or other structures shall be erected, moved, added to, or structurally altered without a zoning permit therefore, issued by the Zoning Official. No building permit shall be issued except in conformity with the provisions of this chapter.
- (B) Application for Zoning Permit. All applications for building permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of buildings already existing, if any; and location and dimensions of the proposed building or alteration. The application shall include such other information as lawfully may be required by the Zoning Official including a description of all existing or proposed buildings or alterations; existing or proposed uses of the buildings and land; the number of families, housekeeping units, or rental units the buildings are designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this chapter. One copy of the plans shall be returned to the applicant by the Zoning Official after s/he shall have marked such copy either as approved or disapproved and attested to the same by his/her signature on such copy. The second copy of these plans, similarly marked, shall be retained by the Zoning Official.
- (C) Zoning Permit for New, Altered, or Nonconforming Uses
- (1) It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or any part thereof which may be hereafter created, erected, changed, converted, (or wholly or partly altered or enlarged as to its use or structure) until a zoning permit shall have been issued therefore by the Zoning Official stating that the proposed use of the building or land conforms to the requirements of this chapter.
  - (2) No permit for the erection, alteration, moving, or repair of any building shall be issued until an application has been made for a zoning permit in connection therewith. Such zoning permit shall be issued in conformity with the provisions of this ordinance upon the satisfactory completion of the work.
  - (3) A temporary zoning permit may be issued by the Zoning Official for a period not to exceed six (6) months during alterations or construction for partial occupancy of a building pending its completion, or for bazaars, carnivals, and revivals,

provided that such temporary permit shall require such conditions and safeguards as will protect the safety of the occupants and the public.

- (4) The Zoning Official shall maintain a record of all zoning permits and copies shall be furnished upon request to any responsible and interested person.
- (5) The Failure to obtain the necessary zoning permit shall be a violation of this chapter and shall be punishable under [Chapter 5](#) of this Title.
- (D) Construction and Use to be as Stated on Zoning Permits. Zoning permits issued on the basis of plans and applications approved by the Zoning Official authorize only the use, arrangement, and construction set forth in such approved plans and applications. Any use, arrangement, or construction at variance with that authorized shall be deemed a violation of this chapter, and shall be punishable as provided by [Chapter 5](#).

### **Section 3. Right of Appeal.**

If the zoning permit is denied, the applicant may appeal the action of the Zoning Official to the Board of Adjustment.

### **Article V District Regulations**

For the purpose of this ordinance, the Foscoe-Grandfather Community is hereby divided into four districts:

Rural District

Rural/Residential District

Highway District

Light Industrial Conditional District

### **Section 1. Rural District.**

The Rural District is established as a district in which the principal use of land is for low density residential and agricultural purposes. The regulations of this district are intended to protect the agricultural sections of the community from an influx of uses likely to render them undesirable for farms and future development; to insure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at sufficiently low densities to insure a healthful

environment; and to protect the Watauga River and tributaries from degradation.

**(A) Permitted Uses**

- (1) Land which is used solely for bona fide farming activities.
- (2) Construction or placement of single or two-family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential;
- (3) Placement of manufactured housing units in approved residential parks or legally platted subdivision: included are additions to these units and accessory buildings provided that the principal use remains residential;
- (4) Construction or placement of and/or addition to single or two-family dwelling units or manufactured housing units outside legally platted subdivisions or residential parks as permitted, provided that the principal use remains residential;
- (5) Conduct of a home occupation in or on the premises of single family dwelling where the dwelling is the original use of the property;
- (6) Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);
- (7) Installation of sign(s) on a non-residential site (on-premise sign) in accordance with the Watauga County Sign Regulations.
- (8) Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of this chapter.

**(B) Special Uses**

- (1) Multi-family and clustered dwellings and manufactured home parks (also subject to review under the Subdivisions and Multi-Unit Structures regulations and the Watauga County Manufactured Home Parks regulations respectively);
- (2) Schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings or facilities.

**(C) Dimensional Requirements**

Minimum required lot area for single and two-family dwellings – One (1) acre (43,560 square feet). Any lot in a residential subdivision recorded prior to June 15, 1973, or otherwise made exempt from subdivision regulation by official action of Watauga County to “grandfather” the development, shall not be subject to

the lot size or yard requirements of this chapter. However, in no case shall any structures be built closer than five (5) feet to a property line. Setbacks from stream banks required by this chapter shall apply to said developments. Preexisting recorded residential lots less than one acre may be used provided that all other requirements of the chapter can be met. In addition to one (1) acre minimum lot size, pursuant to High Quality Waters rules set forth by NC Division of Environmental Quality, all other land uses are subject to a maximum density standard of twelve (12) percent impervious surface (built-upon area), or higher density with approved storm water controls installed, if an erosion control plan due to one (1) acre or more of land-disturbing activity is required.

Minimum required mean lot width for each dwelling unit – 100 feet.

Minimum required depth of front yard – 30 feet.

Minimum required width of any side yard – 15 feet.

Minimum required depth of rear yard – 15 feet.

Off-street parking if applicable shall be provided as required in [Article VI, Section 3](#) of this chapter.

Maximum height of structure (not including chimneys, steeples, antennas, etc.) – 40 feet, measured from entrance grade, as measured under the NC Building Code. One (1) floor may be below entrance grade (basement).

## **Section 2. Rural/Residential District.**

The Rural/Residential District is established as a more restricted, yet similar district to the Rural District. The principal use of land is for low density conventional residential structures.

### **(A) Permitted Uses**

- (1)** Construction or placement of single family units in legally-platted subdivision as permitted; included are additions to these units and accessory buildings, provided that the principal use remains residential,
- (2)** Construction or placement of and/or addition to single family dwelling outside legally platted subdivisions as permitted, provided that the principal use remains residential;

- (3) Conduct of a home occupation in or on the premises of single family dwelling where the dwelling is the original use of the property;
  - (4) Churches and affiliated uses (standards regarding parking, driveway access, stormwater control, and buffer areas are applicable);
  - (5) Installation of sign(s) on a non-residential site (on-premise sign) in accordance with the Watauga County Sign regulations.
  - (6) Continued use of any land, structure, or development as it legally existed and was occupied on the effective date of these regulations.
- (B) Special Uses**
- (1) multi-family and clustered dwellings (also subject to review under the Watauga County Subdivisions and Multi-Unit Structures regulations);
  - (2) schools, public utility facilities, fire stations, recreational facilities (including golf courses, but not including driving ranges or miniature courses) and public buildings.
  - (3) public utility buildings and facilities if such use is essential for the service of the immediate area and provided that:
  - (4) all buildings shall be located at least 35 feet from any lot line.
  - (5) fences and/or other appropriate safety devices are installed to protect the public safety and welfare.
  - (6) no vehicles or equipment are stored, maintained or repaired on premises
  - (7) all structures are in keeping with the residential character of the neighborhood.
  - (8) adequate landscaping, screening and/or buffering shall be provided to insure compatibility with the neighborhood.
  - (9) Radio and television transmitting stations and studios provided that:
  - (10) such facilities shall be housed in structures which are in keeping with the character of the residential neighborhood.
  - (11) No structure shall be located within 35 feet of any lot line.
- (C) Dimensional Requirements**
- Minimum requirements for lot area, yards, parking, and building height are as described for the [Rural District](#) or as established in [Article VI](#).

### **Section 3. Highway District.**

The Highway District is located on the major thoroughfare. It is intended to provide offices, personal services, and retailing of durable and convenience



goods for the community. Because the commercial uses are subject to public view and are important to the economy, they should have an appropriate appearance, ample parking, controlled traffic movement and suitable landscaping.

**(A) Permitted Uses**

- (1) all uses permitted within the Rural District;
- (2) non-residential uses which are not subject to a special use permit as shown below or are prohibited by this chapter, except industrial uses which are permitted only in the industrial conditional district. These uses are subject to a site plan review and must comply with the standards of Article VI.

**(B) Special Uses**

- (1) multi-family and clustered dwellings and manufactured home parks as described for the Rural District;
- (2) other uses as described for the Rural District, also hospitals, police stations, libraries, circuses, carnivals, fairs, flea markets, and temporary uses;

Standards for Flea Markets

- (a) Site Plan Information: A site plan, drawn to scale, shall be submitted which legibly indicates the following:
    - (i.) Boundary survey;
    - (ii.) Hours and frequency of operation;
    - (iii.) Location and dimensions of individual booths and sale areas;
    - (iv.) Off-street parking (vendor and customer);
    - (v.) Screening, if applicable.
  - (b) Off-street parking: Off-street parking will be required at one (1) space per 200 sq. ft. of commercial area used for display and sales of two (2) per booth or individual display area, whichever is greater. All parking facilities shall be provided with on-site drainage in accordance with Article VI, Section 6(C).
  - (c) Screening/buffering: shall be provided as specified in [Article VI](#).
  - (d) Signs: One (1) freestanding directory sign shall be allowed provided such sign does not exceed 50 sq. ft. In addition each vendor may have a four (4) square foot attached sign.
  - (e) Applicant shall submit a written statement setting forth the method and frequency of maintenance, repair, refuse collection and disposal along with the site plan.
- (3)** Combination of residential and non-residential uses;

- (4) Non-residential uses which consist of multiple units, are greater than 5000 square feet in size, or are deemed by the Zoning Official to be potentially detrimental to the community as follows:
- (a) Could materially endanger the public health or safety, or
  - (b) Could substantially injure the value of adjoining or abutting property, or
  - (c) May not be in harmony with the area in which it is to be located, or
  - (d) May not be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the County.

**(C) Dimensional Requirements**

Minimum required lot area is one-half (1/2) acre. Preexisting recorded lots less than one-half may be used provided all other requirements of the ordinance can be met. However, if an erosion control plan is required pursuant to 15NCAC, Chapter 4, the minimum lot area for single family dwellings is one (1) acre; all other land uses are subject to a maximum density standard of twelve (12%) percent impervious surface (built upon area). Higher Density (than 12% built upon area) will be permitted if stormwater control systems utilizing wet detention ponds are installed, operated, and maintained which control the runoff from all built upon areas generated from one inch of rainfall. Specifications for detention ponds shall be established by the NC Division of Environmental Quality. (High Quality Waters rules)

Minimum yard requirements for residential structures shall be as established for the [Rural District](#). Yard requirements for nonresidential structures are established in [Article VI, Section 4](#).

Building Height. Same as [Article V, Section 1\(C\)](#).

Off-Street parking, if applicable, shall be provided as required in [Article VI, Section 3](#).

**Section 4. Light Industrial Conditional Zoning District.**

The Industrial District is established as a district in which the principal use of land is for industries and certain other land use functions which can be operated in a relatively clean and quiet manner, and industries which are not

obnoxious to adjacent residential or business districts. The regulations are designed to prohibit the use of land for heavy industry which should be properly segregated and to prohibit any other use which would substantially interfere with the development of industrial establishments in the district.

**(A) Rezoning & Permitted Uses**

Pursuant to [Chapter 5, Article XIV](#), tracts may be zoned Light Industrial Conditional District upon petition/application of all of the owners of the subject tracts, and approval by the Board of Commissioners, for any of the following land uses:

- (1) Manufacturing and/or assembly
- (2) Machine shop/welding
- (3) Furniture repair if paint/refinishing booth is included
- (4) Brewery/distillery/winery
- (5) Commercial warehouses, but not "mini-storage" warehouses, which are permitted in the Highway District
- (6) Trucking/distribution terminal
- (7) Building material and lumber storage

**(B) Prohibited Uses**

Uses defined as Category 1 and 2 High Impact Land Uses in [Chapter 13](#) of this Title are industrial, and are prohibited.

**(C) Conditional Uses**

All land uses are conditional and must comply with the Site Plan Review Standards, as well as any other conditions agreed upon by the Board of Commissioners and applicant(s).

**(D) Dimensional Requirements**

Minimum requirements for lot area, yards, parking, and building height are as described for the Highway District or as established pursuant to [Article VI](#).

**Section 5. Accessory Uses.**

- (A)** Sections 1, 2, 3, and 4 of this article describe permitted and special uses for each district. Whenever an activity is conducted in conjunction with another principal use and the former use (i) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (ii) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential

- subdivision or multi-family development and would be regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a special use permit.
- (B)** For purposes of interpreting Subsection A:
- (1)** A use may be regarded as incidental or insubstantial if it is incidental or insubstantial in and of itself or in relation to the principal use,
  - (2)** To be “commonly associated” with a principal use it is not necessary for an accessory use to be connected with such principal use more times than not, but only that the association of such accessory use with such principal use takes place with sufficient frequency that there is common acceptance of their relatedness.
- (C)** Without limiting the generality of Subsection A and B, the following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:
- (1)** Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities of a commercial nature, so long as such activities do not fall within the definition of a home occupations.
  - (2)** Hobbies or recreational activities of non-commercial nature.
  - (3)** The renting out of one or two rooms within a single-family residence (which one or two rooms do not themselves constitute a separate dwelling unit) to not more than two persons who are not part of the family that resides in the single-family dwelling.
  - (4)** Yard sales or garage sales, so long as such are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.
- (D)** Without limiting the generality of Subsections A and B, the following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.
- (1)** Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.
  - (2)** Parking outside a substantially enclosed structure of more than four motor vehicles between the front building line of the principal building and the street on any lot used for single or two-family residences.

## **Article VI Site Plan Review**

All non-residential uses are subject to the standards described in this section. Compliance with the standards shall be determined through a site plan review by the Zoning Official. Standards are as follows:

### **Section 1. Sign Regulations**

Placement of signs is regulated by the [Watauga County Sign regulations](#) with the following exceptions:

- (A) new off-premises signs are prohibited;
- (B) the setbacks for new on-premises signs shall be located beyond the right-of-way of Highway 105 and 10 feet from side property lines; and
- (C) pre-existing non-conforming on-premises signs shall be permitted to remain until the use of the property is changed or the occupancy of the use is changed. Signs must be brought into compliance with the ordinances at that time.
- (D) pre-existing off-premise signs shall be permitted to remain in their present location, however once moved from that location, the off-premise sign shall be considered a new off-premise sign.
- (E) off-premise signs shall not be re-established after damage or destruction by an act of nature in excess of sixty (60) percent of its replacement value at the time of the damage or destruction.

### **Section 2. Buffer Areas**

- (A) Buffer areas shall be established in order to create the impression of spatial separation between adjacent land uses. The purpose of this separation is to lessen possible adverse effects of land uses upon each other and to provide within development planted/green areas so as to maintain the rural character of the community. Buffer requirements are as follows.
- (B) Where a commercial or multi-family use is proposed adjacent to a single family residential use, side and rear yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet as

maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.

- (C)** Where a commercial or multi-family use is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, permanent ground cover such as grasses shall be established.
- (D)** Wall, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved as part of the conditional use permit. Considerations include but are not limited to:
  - (1)** Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.
  - (2)** Installation of supplemental vegetation and/or site features may be required at the time of Site Plan review, if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.
- (E)** Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height. Where evergreen hedges are proposed, a temporary fence should be built to provide screening until the evergreens are of sufficient height.
- (F)** The recipient of any zoning or conditional-use permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by the ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of

dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

### **Section 3. Parking Standards**

All development shall be provided with adequate parking facilities to handle the expected number of automobiles for that site. Spaces shall be provided as follows; use classifications for buildings are the same as those definitions use in the N.C. Building Code.

#### **(A) Required Spaces**

- (1)** Assembly, business, and mercantile buildings shall be provided with parking spaces as follows:
  - (a)** one space per 300 square feet of floor space in buildings of under 11,000 square feet; and
  - (b)** one space per 200 square feet of floor space in buildings 11,000 square feet and greater.
- (2)** Factory and industrial buildings shall be provided with 1.5 spaces per three employees, computed on the total employment.
- (3)** Institutional buildings shall be provided with one space per five person identified in the building's occupant load figures.
- (4)** Residential buildings shall be provided with 1.5 spaces per bedroom.

Parking spaces shall be calculated as being 162 square feet each, broken down to 9 by 18 feet. Once the total required square footage has been determined as required by (1) through (4), developers shall be permitted to increase the numbers of spaces by downsizing some for use by smaller automobiles. Total space requirements of (1) through (4) shall, however, be met in any case. Paving is not required, unless required by Subdivisions and Multi-Unit Structures regulations. 4" compacted crusher-run or DOT-approved ABC stone is adequate.

#### **(B) Loading/Unloading Space**

Loading/unloading space for non-residential uses shall consist of one (1) space at least three hundred (300) square feet in size for



each five thousand (5000) square feet of gross floor area. A minimum of one (1) loading/unloading space is required, regardless of floor area square footage.

**(C) Location and Buffering of Parking**

In order to preserve the rural environment, developers are encouraged to place parking and loading/unloading areas at the rear or side of buildings. ("Front" is defined as the face of the building which is paralleled to a public road or a county standard road as defined in the Watauga County Subdivisions and Multi-Unit Structures regulations. By this definition, buildings on multiple public road or county standard road frontage would have multiple "front yards".) In any event, parking areas which are exposed to a public road or county standard road shall include a ten (10) foot buffer strip along the front. At a minimum, such strips shall be grassed and/or mulched and shall be planted with low growing trees, or shrubs no more than twenty (20) feet apart. Incentive to place parking areas to the side or rear of buildings is provided in the form of lessened front yard setback requirements. ([See Article VI, Section 4](#))

**Section 4. Yard Requirements – Highway and Industrial Districts**

- (A) Front Yard** (side or rear parking) – 20 feet from edge of road right-of-way.
- (B) Front Yard** (front parking) – 40 feet from edge of right-of-way (includes buffer strip).
- (C) Side and rear yards** – 30 feet or 15 feet depending upon use of adjacent property (see buffer area requirements)

**Section 5. Driveway Connections**

Driveway access to Highway 105 shall be limited to two (2) per development; one (1) is preferred. Channelization will be required (unless waived by Watauga County) as part of driveway and parking lot design so that the driveway(s) can be specifically located. Use of the entire frontage as a single driveway connection is prohibited.

NC DOT "Policy on Street and Driveway Access to North Carolina Highways" requires County site plan approval prior to DOT review and approval of driveway connection applications. No building permit, however, shall be issued unless DOT has issued a driveway connection permit or has indicated in writing that a permit can be issued.

## **Section 6. Drainage, Erosion Control, Storm Water Management**

- (A) Natural Drainage. To the extent practicable, all development shall conform to the natural contours of the land and natural and pre-existing man-made drainage way shall remain undisturbed.
- (B) Erosion Control. All developments which involve one-half (1/2) acre or more of grading (land-disturbing activity) shall comply with the requirements of the Watauga County Erosion Control regulations. All developments which involve less than one-half (1/2) acre of land-disturbing activity shall take adequate measures to prevent sediment from being washed off-site or into waterways during construction, and shall restore permanent vegetative ground cover within 120 days of the date the site is first disturbed. This 120 day period may be extended by Watauga County in the event of inclement weather.
- (C) Storm Water Management. All developments shall be constructed and maintained so that adjacent properties are not reasonably burdened with surface waters as a result of such developments. More specifically:
  - (1) No development may be constructed or maintained so that such development unreasonable impedes the natural flow of water from higher adjacent properties across such development, thereby unreasonably causing substantial damage to such higher adjacent properties; and
  - (2) No development may be constructed or maintained so that surface waters from such development are unreasonably collected and channeled onto lower adjacent properties at such locations or at such volumes as to cause substantial damage to such lower adjacent properties.

## **Section 7. Stream Protection, Flood Plain Protection**

- (A) Stream Protection. A minimum vegetative buffer of 50 feet shall be maintained between the top of the banks of Watauga River and Boone Fork Creek and new built upon areas. A minimum vegetative buffer of 40 feet shall be maintained between the top of the banks of Valley Creek, Moody Mill Creek, Spice Bottom Creek and tributaries to the five (5) named streams and new built upon areas. New developments large enough to warrant an erosion control plan pursuant to the Watauga County Erosion Control regulations shall also maintain a 25 foot undisturbed area adjacent to the top of the banks of designated trout streams and their tributaries as required by the N.C. Sedimentation Pollution Control Act of 1973 as amended (all of the named streams are designated). The

undisturbed area is not required for smaller developments. However erosion control measures approved by the Department of Planning and Inspections shall be installed and maintained within the required buffer until permanent vegetation is established. The Zoning Official shall keep lists/map of stream classifications on file.

The buffers (and undisturbed areas, if applicable) may be penetrated by driveways/stream crossings, which are necessary to access property. Under those circumstances, the penetration and any land disturbing activity shall be kept to a minimum and approved erosion control measures shall be installed and maintained. The requirements for buffers or undisturbed areas does not preclude the construction, when necessary, of storm drainage facilities such as detention ponds.

Streams are perennial streams as depicted by a solid blue line on USGS 7 1/2 minute scale topographic sheets. Top of stream bank is the nearest point at the top of the natural stream channel which is the beginning point of an imaginary horizontal line that forms a 90 degree angle with an imaginary vertical line perpendicular to the stream at the low water line. (see diagram) Often, it appears that streams have multiple banks. In most cases, the top of the bank for purposes of this ordinance will be the bank closest to the water's edge.

Built-upon area means that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc.

- (B)** Flood Plain Protection. In addition to the requirements of stream classifications, development adjacent to the Watauga River shall comply with the Watauga County Flood Damage Prevention regulations. Dredging or filling activity in or adjacent to the Watauga River, Boone Fork Creek, or other wetland areas potentially requires a Section 404 permit from the U.S. Army Corps of Engineers. The Zoning Official shall inform developers of this potential. It is the responsibility of the developer to contact the Corps of Engineers.

## **CHAPTER 11 INSTALLATION AND MAINTENANCE OF ELECTRONIC ACCESS GATES FOR GATED COMMUNITIES**

### **Article I Authority and Purpose**

These regulations are enacted pursuant to the general police powers granted to Watauga County by North Carolina Gen. Stat. §153A-121, N.C. Gen. Stat. §160D-1104, and Section 503 of the 2009 North Carolina State Fire Prevention Code, as amended periodically. The purpose of these regulations is to establish rules and standards for the installation of electronic access gates for gated communities in order to provide for the safe and efficient ingress and egress for fire, law enforcement, and other emergency personnel.

### **Article II Requirements**

New and existing, when applicable, gated communities shall comply with the following requirements:

- (A) All streets in the gated community must be private streets.
- (B) The location of the gate(s) shall comply with [Article III](#) of this chapter and the North Carolina State Fire Prevention Code, as applicable.
- (C) The gates shall be maintained in working order and inspected as needed.
- (D) Gates pre-existing to the adoption of these regulations shall not be affected by this chapter provided they are maintained and in working order. If such gates are replaced or modified, they shall conform to the requirements of [Article III, parts C through K](#), of this chapter and the North Carolina State Fire Prevention Code as applicable.
- (E) Applicants shall adhere to [Article IV](#) regarding the process for obtaining approval for gates.

### **Article III Gate Development Specifics**

- (A) Entrance gates shall be located a minimum of 40' from the adjacent public road right-of-way to allow for emergency vehicle clearance at entry.
- (B) Combined entry and exit ways shall provide a minimum unobstructed width of twenty (20) feet. Entry and exit ways separated by landscape medians, guard houses, or other obstructions shall provide a minimum unobstructed width of twelve (12) feet. Entry and exit ways shall have a minimum unobstructed vertical clearance of not less than thirteen feet six inches (13'6").

- (C) It shall be determined if the gates are to be manual or electrical in operation. All electrical vehicular gates shall be provided with access control using a Radio Transceiver for public safety and authorized users. This transceiver will allow emergency vehicles to open the gate from a mobile or portable radio, and must be pre-approved by Watauga County.
- (D) All electrical vehicular gates shall be provided with a fail-open device in the event of power failures unless secondary power is provide by battery back-up or generator. During a power failure, the gates will open and remain open. These devices should restore the gate(s) to the closed position after the power is restored. Any residential gated communities consisting of three (3) or less dwelling units are not subject to this requirement.
- (E) Gates need to be opened for appropriate personnel to enter the community during an emergency. A fire service recognized/approved dual key activating switch or padlock shall be installed to allow emergency personnel access through vehicular gates.
- (F) An approved dual key lock box containing cards, keys, pass codes and operating instructions shall be provided at each entrance gate.
- (G) Gates shall be designed so that when fully opened do not obstruct the path of travel for vehicles or pedestrians, whether emergency and non-emergency. Gates shall remain fully open during an emergency event, when activated by responding agency, until reset. A 'Hold Open' code must be included in design and functioning of the gate.
- (H) If there are two or more gates in any single development, all gates shall be operated in the same fashion.
- (I) Gate activation shall not be altered or placed out of service without prior notification to the Watauga County Fire Marshal's Office, Watauga County Planning and Inspections Department and the Local Fire Department.
- (J) Each entrance gate shall be provided with an "override" feature to allow the gate(s) to remain open so that multiple fire apparatus can enter without having to wait for intermittent opening of the gate(s).
- (K) Each entrance gate shall be equipped with a manual override feature so as to permit opening during power failures or other emergency.

#### **Article IV Application and Approval Process**

- (A) The applicant shall submit a detailed plan, including but not limited to, scaled drawings showing the location of the gates, turn radius, dimensions of the gates, pavement, sidewalks, curbs, etc. Information such as topography lines, vegetation, site triangles, etc. shall also be included with the submittal.

- (B) The applicant shall submit these plans for review by the Planning & Inspections Department, who shall forward the plans to the Sheriff's Department, Fire Marshal's Office, EMS, and Local Fire Department for approval.
- (C) The Department of Planning & Inspections shall verify approval by the agencies listed in [Section B.](#) of the gate plan prior to issuance of a permit.
- (D) All property owners shall notify the Watauga County Emergency Services Department of any gate access code changes prior to such changes taking effect.
- (E) All gated communities applying for a permit to install a gate shall acknowledge that if the affected properties gate fails to operate in its intended operational capacity, and such failure results in damage to the gate or constitutes the responding emergency agency to alter normal entrance procedures, the responding agency, mutual aid departments and Watauga County shall not be held liable for damages incurred.

#### **Article V Maintenance**

Gates subject to this chapter shall be kept in their original working order and shall be repaired and/or replaced in the event they are disabled and/or damaged. It shall not be the responsibility of the County to maintain these gates. Gates subject to this chapter shall be monitored annually by the Local Fire Department and verified by the Watauga County Fire Marshal's Office every three (3) years of their operation or as deemed appropriate by the Watauga County Fire Marshal's Office.

#### **Article VI Modifications**

Any gate (new or existing) altered outside the scope of their original installation and/or permitting, will be considered a modification. Notification and plans for modification shall be submitted to the Watauga County Office of Planning and Inspections for review and decision upon compliance with this chapter.

## **CHAPTER 12 HEIGHT OF STRUCTURES**

WHEREAS, the Board of Commissioners of Watauga County are concerned about the health, safety and general welfare of the general public; and

WHEREAS, the fire departments of Watauga County together with other appropriate agencies have stated that structures higher than forty (40) feet are hazardous to the people in them in case of fire or other disasters; and

WHEREAS, the Watauga County Planning Board and Board of Soil and Water Conservation have requested the Board of Commissioners of Watauga County to exercise its ordinance making power to protect the fragile lands of Watauga County in order to promote the general welfare and safety of the citizens of Watauga County and the people who might visit the County; and

WHEREAS, the Board of Commissioners are authorized to enact ordinances for safety and general welfare by North Carolina General Statute 153A-121;

NOW, THEREFORE, the Watauga County Board of Commissioners have enacted the following:

### **Article I Regulation of Height of Structures**

No building or structure intended for dwelling use may be constructed, reconstructed, or remodeled with a vertical height of more than 40 feet. For purposes of calculating vertical height, the applicant may elect to use either of the following two methods:

- (A) 40 feet measured vertically from the highest point of the roof to the highest point of finished grade within 6 feet horizontally of an exterior wall, or
- (B) 40 feet measured vertically from the average height of the highest roof surface to the "grade plane" as defined in the NC Residential Code and NC Building Code.

Excluded from this ordinance are the following:

- (1) Water, radio, television, or telephone towers or any equipment for the transmission of electricity or communications, or both.
- (2) Structures which are slender in nature and minor vertical projections of a parent building including chimneys, flag poles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires or windmills, provided that part of the structure



which is higher than 40 feet is no intended for human habitation.

**Article II Permits**

In the event any person, partnership, or corporation requests a building permit for a structure that is in violation of this ordinance the Watauga County Planning and Inspections Department shall deny the issuance of a building permit.

## **CHAPTER 13 HIGH IMPACT LAND USES**

### **Article I Introduction**

#### **Section 1. General Purpose.**

The following regulations of High Impact Land Uses (HILU) are adopted for the purpose of promoting the health, safety and general welfare of the citizens of Watauga County, and to promote the peace and dignity of the county; the Watauga County Commissioners hereby establish certain criteria relating to high impact land uses. These uses by their very nature produce objectionable levels of noise, odors, vibrations, fumes, light, smoke, and other impacts upon the lands adjacent to them. These standards shall allow for the placement and growth of such uses, while maintaining the health, safety, and general welfare standards of established residential and commercial areas in Watauga County.

#### **Section 2. Legal Authority.**

These regulations are enacted under the general ordinance authority granted to counties by the General Assembly of North Carolina. (General Statutes 153A-121 *et seq.*, and other pertinent statutes and amendments thereto).

#### **Section 3. Territorial Coverage.**

Pursuant to NCGS § 153A-122, this chapter shall apply to all areas of unincorporated Watauga County which are not within the extraterritorial planning jurisdictions of any municipalities. All municipalities, their respective corporate limits, and extra-territorial jurisdiction shall be exempted from the chapter, unless they choose to adopt this chapter or some form thereof. This chapter does not apply to Watauga County owned and operated solid waste facilities or container sites.

### **Article II Regulated Land Uses**

#### **Section 1. Regulated Uses.**

This chapter applies to the following High Impact Land Uses:

- (A) Category 1. Asphalt Plants, Cement Mixing Facilities, Quarries/Stone Crushers, Chemical Manufacturing, Chemical Storage Facilities, Explosives Manufacturing, and Explosives Storage

- Facilities, Chip Mills, and Electricity Generating Facilities (excluding Wind and Solar Power Farms), Motor Sports Facilities.
- (B) Category 2. Automotive Graveyards, Propane, Gasoline, or Fuel Oil Bulk Storage Facilities, and Junk/Scrap Yards.
- (C) Category 3. Electric Substations, Commercial/Industrial Development with aggregate building footprint 50,000 square feet or greater, Recycling Facilities, and Solar Power Farms. (Note: Wind Power Farms are regulated by separate Watauga County Ordinance.)

## **Section 2. Regulations and Standards Imposed.**

- (A) Parking Space Requirements. Adequate parking facilities shall be provided to accommodate the type and intensity of vehicles likely to frequent High Impact Land Uses. Standards for specific land uses are as follows:
- (1) Retail uses shall provide a minimum of three (3) spaces per 1,000 square feet of floor area for buildings up to 10,000 SF in size, and (5) spaces per each 1,000 square feet of floor area in excess of 10,000 square feet.
  - (2) Overnight accommodations shall provide a minimum of one and one-half (1.5) spaces per bedroom.
  - (3) Factory, Industrial and Commercial (other than specified in (1) and (2) above) uses shall provide one and one-half (1.5) spaces per three employees computed on the total employment.
- Parking spaces shall be at least nine (9) by eighteen (18) feet. Accessible spaces shall be provided in accordance with NC Building Code requirements. The Ordinance Administrator may permit deviations from the preceding specified standards based upon the expected parking needs of the establishment while recognizing the desire to limit excess parking area.
- (B) Building Height Limits. In order to allow for adequate fire protection, no building shall exceed a height of forty (40) feet, measured as defined by the Watauga County Height of Structures regulations.
- (C) Outdoor Lighting Standards. High Impact Land Uses shall use outdoor lighting that does not create a nuisance on adjacent property, roadways, or pollute the night sky. These objectives are easily accomplished by choosing good quality, shielded fixtures.
- (1) All parking lot lighting shall use full cutoff lighting fixtures;
  - (2) Wall-packs and floodlights shall be either full cutoff design or have shields such that they do not put any light above the

horizon and will be mounted to not shine on roadways and neighboring properties. Use of floodlights is discouraged;

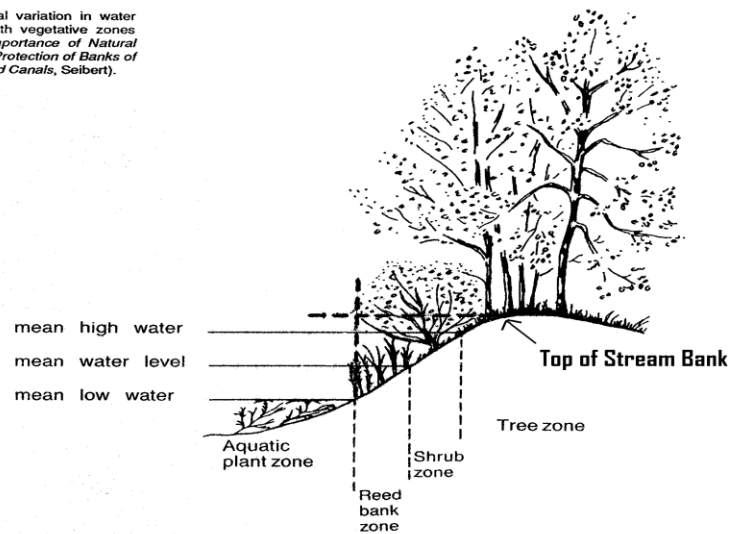
- (3) Typical pole-mounted "dusk-to-dawn" security lights shall use reflecting "sky caps" instead of clear plastic refractors;
- (4) Building façade lighting shall not shine above the facades; and
- (5) For buildings required by the NC Building Code to have plans prepared by a design professional, the lighting levels shall be determined as defined by the Recommended Practices of the Illuminating Engineering Society of North America, or other recognized lighting publication. All other buildings comply with the requirement by virtue of compliance with (1) through (4) of this section.

**(D)** Setbacks Required.

- (1) Category 1 & Category 2 High Impact Land Uses shall be set back 200 feet from side and rear property lines.
- (2) Category 3 High Impact Land Uses shall be set back 100 feet from side and rear property lines.
- (3) Where High Impact Land Uses adjoin each other, the required setbacks along common boundary lines for each High Impact Use may be reduced as follows:
  - (a) Category 1 & Category 2 High Impact Land Uses – 50 feet;
  - (b) Category 3 High Impact Land Uses – 25 feet.
- (4) Category 1 & 2 High Impact Land Uses shall be set back 200 feet from the edge of travelled area (stone or paved) of all public roads, unless spacing requirements (subsection F) apply. In no instance shall such setbacks be less than 20 feet from any recorded right of way or NCDOT property boundary.
- (5) High Impact Land Uses shall be set back from all perennial waters indicated by blue lines on the most recent versions of USGS 1:24,000 (7.5 minute) scale topographic maps as follows:  
There shall be a 100 foot vegetative buffer (measured from the top of the stream bank as indicated below) for all "blue line" streams; the 30 feet closest to the top of the stream bank being undisturbed and 70 feet managed vegetation.

Publicly accessible walkways may be allowed within the managed vegetation area.

Typical variation in water level correlated with vegetative zones (modified from: *Importance of Natural Vegetation for the Protection of Banks of Streams, Rivers and Canals*, Seibert).



- (6)** No part of a yard provided around any building or structure for the purpose of complying with the provisions of this chapter shall be included as a part of a yard required under this chapter for any other building or structure.
- (E)** Landscape Buffers Required. Each High Impact Land Use shall be effectively buffered by landscaping which lessens the visual impact of the development at road grade level and from all sides with non-High Impact Uses in place and increases the buffering of noise and particulate matter. Each applicant shall submit a landscape plan which describes in detail how the above objectives will be met. The Ordinance Administrator may reasonably require adjustments and/or alterations to any proposed landscape plan necessary to comply with the provisions of this chapter.
- (1)** Category 1 & Category 2 Landscape Buffers. All Category 1 & Category 2 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for screening effect:
- (a)** Deciduous trees – three (3) per 100 lineal feet of property boundary line; and
  - (b)** Evergreen trees – six (6) per 100 lineal feet of property boundary line; and
  - (c)** Shrubs – ten (10) per 100 lineal feet of property boundary line.

**(2)** Category 3 Landscape Buffers. All Category 3 High Impact Land Uses shall be buffered utilizing the following combination of landscape material designed for aesthetic effect:

**(a)** Deciduous/Evergreen trees – four (4) per 100 lineal feet of property boundary line; and

**(b)** Shrubs – ten (10) per 100 lineal feet of property boundary line.

Opaque fencing made from conventional material or masonry walls and existing healthy trees and shrubs may be used in combination with a reduced number of required trees and shrubs when landscape buffer objectives are met and plans are approved by the Ordinance Administrator.

**(3)** Plant material shall be inspected and approved prior to planting and must meet the following minimum size requirements:

**(a)** Deciduous trees shall be a minimum of 6 feet tall with a 1 ½ -inch caliper measured six inches above grade upon planting;

**(b)** Evergreen trees shall be a minimum of 6 feet tall upon planting;

**(c)** Shrubs shall be a minimum of 1 foot tall upon planting.

**(F)** Spacing Requirements.

**(1)** Category 1 & Category 2 High Impact Land Uses may not be established within 1,500 feet of a public or private Educational Facility, NC licensed Child Care Facility, NC licensed Assisted Living Facility, NC licensed Nursing Home, Public Outdoor Recreation Area, or Religious Facility. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage area utilized by Category 1 or 2 Land Uses, to the nearest property line of the above-listed facilities.

**(2)** Category 1 High Impact Land Uses may not be established within 750 feet of a dwelling. In order to establish required spacing, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building, structure, or outdoor storage area utilized by a Category 1 Land Use, to the nearest property line of a dwelling.

**(3)** Category 1 High Impact Land Uses may not be established within 1,500 feet of the right-of-way line of a roadway

designated by NCDOT as a NC Scenic Byway or within 1,500 feet of the Blue Ridge Parkway.

Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the spacing requirements of this Section.

- (G) Driveway Connection Permit Required:** A driveway connection permit issued by NC Department of Transportation shall be obtained. A Traffic Impact Analysis shall be required from the applicant under the following circumstances, unless the Ordinance Administrator and NCDOT concur that one is unnecessary:
- (1)** The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500 feet; or
  - (2)** The development proposes access onto a public road that does not have a paved width of at least 18 feet; or
  - (3)** The development proposes access to a public road with current NCDOT traffic counts that are 85% of capacity shown in the most recent Watauga County Comprehensive Transportation Plan and based upon ITE trip generation rates is projected to generate 1,500 or more weekday trips; or
  - (4)** The Ordinance Administrator determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system or determines that there are safety concerns with the driveway location and design. If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system, the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the County in which the time for the improvement is specified, the improvement shall be completed prior to issuance of a certificate of occupancy.
- (H) Federal and State Permits:** The developer shall obtain all applicable Federal and State Permits as a condition of issuance of a HILU Special Use Permit. Failure to obtain said permits shall result in revocation of the conditional Special Use Permit.

### **Article III Pre-Existing High Impact Land Uses**

#### **Section 1. Grandfathering of Pre-existing High Impact Land Uses.**

Any High Impact Land Use existing upon the date of adoption of these regulations which does not conform to the requirements of These regulations may continue so long as the use is not discontinued for more than One



Hundred Eighty (180) days. In cases where repair or renovation is necessary to re-occupy a vacant building, a permit for such construction must be obtained within one hundred eighty (180) days of last occupancy and repairs must proceed continuously to completion. A High Impact Land Use shall not be deemed to be discontinued during such time as the owner or operator thereof has temporarily suspended operations solely due to the seasonal nature of the business.

- (A) Expansion. Grandfathered nonconforming High Impact Land Uses may be expanded provided the degree of nonconformity is not increased. In addition, the expansion shall comply with the standards of [Article II](#), and the pre-existing development shall comply with the standards of Article II to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to [Article IV](#).
- (B) Reconstruction. In cases of damage to grandfathered nonconforming buildings to the extent of seventy-five percent (75%) or less of the replacement value, repairs may be made, provided the original building footprint is maintained. When such damage exceeds seventy-five percent (75%) of the replacement value, repairs may be made only if the original building footprint is maintained and the standards of [Article II](#) are met to the extent physically practicable as determined by the Ordinance Administrator, and upon issuance of a Special Use Permit pursuant to [Article IV](#).  
Compliance with a requirement of this chapter is not physically practicable if compliance cannot be achieved without adding land to the lot where the nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation. Mere financial hardship caused by the cost of meeting requirements does not constitute grounds for finding that compliance is not physically practicable.

## **Section 2. New High Impact Land Uses Regulated.**

After the effective date of this chapter all new High Impact Land Uses as well as any pre-existing High Impact Land Uses which are moved, altered or enlarged shall conform to the regulations contained in this chapter except as set forth in [Article III, Section 1](#).

### **Section 3. Pre-existing Regulated Land Uses.**

After the effective date of this chapter, new permits or approvals for any of the protected land uses listed in [Article II, Section 2 \(F\)](#) Spacing Requirements shall not have the effect of creating new non-conformities for any lawfully existing High Impact Land Use.

### **Article IV Permit Required**

#### **Section 1. Permitting Process.**

- (A) Special Use Permit Required. No use subject to this chapter shall be established, reconstructed or expanded, and no building used or occupied without a Special Use Permit having been issued pursuant to [Chapter 3](#).
- (B) Applications for Special Use Permits. All applications for Special Use permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the exact sizes and locations on the lot of any buildings already existing; the location and dimensions of the proposed building or alteration; and compliance with the standards of [Article II](#). The application shall include such other information as may reasonably be required by the Ordinance Administrator, including a description of all existing or proposed buildings or alterations; existing and proposed uses of the buildings and land; conditions existing on the land parcel; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of, this chapter.
- (C) Administrator to Maintain Permit Records. The Ordinance Administrator shall maintain a record of all Special Use Permits and copies shall be furnished upon request to any interested person.
- (D) Building Permit. No permit required under the North Carolina State Building Code Shall be issued for any activity for which a HILU Special Use Permit is required until the Special Use Permit has been issued.

#### **Section 2. Permit Expiration.**

A HILU Special Use Permit shall expire if a Building Permit or High Impact Land Use Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

**Section 3. High Impact Land Use Occupancy Permit.**

- (A)** The Ordinance Administrator shall issue a High Impact Land Use Occupancy Permit certifying that all requirements of this ordinance have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- (B)** A High Impact Land Use Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Special Use Permit and shall be issued or denied within ten (10) days after the construction or structural alterations of the building, provided all ordinance requirements are met.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this chapter shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

## **CHAPTER 14 MANUFACTURED HOME PARKS**

### **Article I Authority and Purpose**

Pursuant to the authority granted to counties in North Carolina General Statute 153A-121 and for the purpose of establishing minimum standards for the design and construction of manufactured home parks in order to protect and promote the health, safety, and general welfare of the public, the Board of Commissioners of Watauga County enact the following.

### **Article II Health Department Review**

Unless connecting to public or community water and sewer systems, each proposed manufactured home park shall be reviewed and approved by AppHealthCare (health department) for well and septic system design and usage. Applicants are advised to work simultaneously with the County Department of Planning and Inspections and AppHealthCare to devise plans for proposed parks.

### **Article III Preliminary Site Plan Submission**

No person, firm, or corporation shall commence construction or alteration of a manufactured home park within Watauga County without first securing the approval of a preliminary site plan from the Watauga County Planning Board. One (1) copy of said site plan shall be submitted to the Department of Planning and Inspections at least ten (10) working days prior to the regular monthly meeting of the Planning Board to allow for staff review and placement on the meeting agenda. Subsequent to staff review but prior to the Board meeting, the developer shall submit eight (8) copies of the preliminary site plan.

#### **Section 1. Preliminary Site Plan Specifications.**

The preliminary site plan shall be drawn at a scale of not less than one hundred (100) feet to the inch on sheets 18 x 24 inches and shall include the following:

- (A) Items specified by AppHealthCare.
- (B) Sketch vicinity map of the park's location.
- (C) Landscaping, buffering, open space plans.
- (D) Designated parking areas.
- (E) AppHealthCare certificate indicating approval of the plan.

### **Article IV Park Development Standards**

The standards of the AppHealthCare approval shall be met. In addition, the following standards shall apply:

- (A)** Minimum setbacks:
  - (1)** from right-of-way of roads bordering park 20 feet.
  - (2)** from right-of-way of roads inside park 10 feet, but at least 15 feet from the edge of the road travel surface.
  - (3)** between all manufactured homes and attachments thereto including porches, decks, storage areas, etc. - 25 feet.
  - (4)** from exterior property line - 20 feet.
- (B)** Parking space sufficient to accommodate at least two (2) automobiles shall be constructed for each manufactured home space.
- (C)** Roads within manufactured home parks shall be constructed to either NC DOT standards or "county standards" as defined in the Watauga County Subdivisions and Multi-Unit Structures regulations as amended from time-to-time, with the exception that right-of-way may be reduced to thirty (30) feet.
- (D)** A minimum of four hundred (400) square feet of common open space per lot shall be required. Common open space shall be exclusive of road right-of-way, parking areas, or any areas set aside for solid waste collection or utility equipment.
- (E)** A twenty-five (25) foot-wide buffer shall be provided around the perimeter of the park. The purpose of the buffer is to create the impression of spatial separation between parks and adjacent land uses without eliminating visual contact. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one-half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low-growing shrubs, bushes, and/or trees shall be placed at ten (10) foot intervals.  
 Plantings within buffer areas shall be staggered unless topography is prohibitive. No planting shall be placed in a public road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.  
 In combination with or in lieu of a buffer, the following may be provided: A ten (10) foot-wide screening strip shall be provided around the perimeter of the park. The purpose of screening is to eliminate visual contact between the park and adjacent land uses. Screening shall consist of plantings of evergreen trees at ten (10)

foot intervals. Such trees shall meet the height and caliper standards described in this section for buffer areas.

- (F) Maximum permissible density for a manufactured home park is six (6) spaces per acre.

### **Article V Individual Manufactured Homes Within a Park**

Individual manufactured homes within a park shall be set-up, connected to utilities, and tied down in compliance with the State of North Carolina Regulations for Manufactured Homes and shall be inspected for compliance by the Planning and Inspections Department in order to be approved for permanent electrical power.

Prior to performing any individual manufactured home inspections, the Planning and Inspections department shall confirm compliance with this and all other applicable regulations. Such regulations may include (when applicable) but are not limited to Soil Erosion and Sedimentation Control, Flood Damage Prevention, Structures Located on Land Adjacent to National Park Service Land.

### **Article VI Applicability to Existing Manufactured Home Parks**

All manufactured home parks in operation on the effective date of this chapter shall not be affected by this chapter, except for expansions or additions, which must comply.

### **Article VII Registration**

It shall be the duty of the owner of a manufactured home park to keep an accurate register containing a record of all manufactured homes, owners, and occupants of the park. Said information shall be reported annually to the Watauga County Tax Supervisor in accordance with NCGS 105-316.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

## **CHAPTER 15 SEXUALLY ORIENTED BUSINESSES**

**REGULATIONS REQUIRING THE DISPERSING OF SEXUALLY ORIENTED BUSINESSES AND LIMITING THEM TO SPECIFIED PLACES; PRESCRIBING DEFINITIONS OF SEXUALLY ORIENTED BUSINESSES; PROVIDING FOR LICENSING AND REGULATION OF SEXUALLY ORIENTED BUSINESSES AND EMPLOYEES; AND PROVIDING FOR ADDITIONAL MISCELLANEOUS REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES.**

**WHEREAS**, the Watauga County Board of Commissioners enacted on September 10, 1999 an Ordinance establishing a moratorium on Sexually Oriented Businesses in Watauga County pursuant to North Carolina General Statute 160A-181.1 (superseded by 160D-902 in 2020) expressly authorizing county regulation of sexually oriented businesses, being authority in addition to that contained in North Carolina General Statutes 153A-45 and 153A-121; and

**WHEREAS**, the Watauga County Planning Board and staff of the Department of Planning and Inspections have studied the secondary impacts of sexually oriented businesses and conducted a public hearing, all of which is a matter of record; and

**WHEREAS**, sexually oriented businesses require special supervision from the public safety agencies of the County in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of the County; and

**WHEREAS**, the Planning Board has found by study of impacts in other counties and municipalities that sexually oriented businesses are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

**WHEREAS**, the concern over sexually transmitted diseases is a legitimate health concern of the County which demands reasonable regulation of sexually oriented businesses in order to protect the health and well-being of the citizens; and

**WHEREAS**, licensing is a legitimate and reasonable means of accountability to ensure that operators and employees of sexually oriented businesses comply with reasonable regulations and to ensure that operators



do not allow their establishments to be used improperly or as places of illegal sexual activity or solicitation; and

**WHEREAS**, there is convincing documented evidence that sexually oriented businesses, because of their very nature, have a deleterious effect on the existing uses, including but not limited to businesses, schools, daycare facilities, religious institutions, parks and rural fire departments around them and the surrounding residential areas adjacent to them, causing increased crime and the downgrading of property values; and

**WHEREAS**, it is recognized that sexually oriented businesses, due to their nature, have serious objectionable operational characteristics, particularly when they are located in close proximity to each other, thereby downgrading the quality of life in the adjacent area; and

**WHEREAS**, family-oriented tourism is an important aspect of the local economy that would be negatively affected by increased crime and downgraded quality of life resulting from sexually oriented businesses; and

**WHEREAS**, the Board of Commissioners desires to minimize and control these adverse effects and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life; preserve the property values and character of surrounding neighborhoods; and

**WHEREAS**, the Board of Commissioners has determined that locational criteria alone do not adequately protect the health, safety, and general welfare of the people of this County; and

**WHEREAS**, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment, but to enact a content neutral ordinance which addresses the secondary effects of sexually oriented businesses; and

**WHEREAS**, it is not the intent of the Board of Commissioners to condone or legitimize the distribution of obscene material, and the Board recognizes that state and federal law prohibits the distribution of obscene materials and expects and encourages state law enforcement officials to enforce state obscenity statutes against any such illegal activities in the County.

**THEREFORE**, pursuant to the authority granted by the Constitution and the legislature of the State of *NORTH CAROLINA*, BE IT ENACTED BY THE BOARD OF COMMISSIONERS OF WATAUGA COUNTY, NORTH CAROLINA, February 22, 2000:

## **Article I Purpose and Findings**

### **Section 1. Purpose.**

It is the purpose of this chapter to regulate sexually oriented businesses in order to promote the health, safety, morals, and general welfare of the citizens of the County, and to establish reasonable and uniform regulations to prevent the deleterious location and concentration of sexually oriented businesses within the County. The provisions of this chapter have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials. Similarly, it is not the intent nor effect of this chapter to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. Neither is it the intent nor effect of this ordinance to condone or legitimize the distribution of obscene material.

### **Section 2. Findings.**

Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the Board, and on findings incorporated in the cases of *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986), *Young v. American Mini Theatres*, 426 U.S. 50 (1976), and *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560 (1991), and on studies in other communities including, but not limited to, Horry County and Myrtle Beach, S.C.; Richland County, S.C.; Charlotte-Mecklenburg County, N.C.; Winston Salem-Forsyth County, N.C.; Broward County, Florida; St. Johns County, Florida; Kansas City, Missouri; and also on findings from the Report of the Attorney General's Working Group On The Regulation Of Sexually Oriented Businesses, (June 6, 1989, State of Minnesota), the Board finds:

- (A) Sexually oriented businesses lend themselves to ancillary unlawful and unhealthy activities, the control of which elsewhere presents challenges to the operators of such establishments. Further, there is presently no mechanism in this County to make the owners of such

- establishments responsible for the activities that would occur on their premises.
- (B)** Certain employees of sexually oriented businesses defined in this chapter as adult theatres and cabarets engage in higher incidence of certain types of illicit sexual behavior than employees of other establishments.
  - (C)** Sexual acts, including masturbation, and oral and anal sex, occur at sexually oriented businesses, especially those which provide poorly lit, overly crowded private or semi-private areas, booths or cubicles for viewing films, videos, or live sex shows.
  - (D)** Offering and providing such space encourages such activities, which creates unhealthy conditions.
  - (E)** Persons frequent certain adult theatres, adult arcades, and other sexually oriented businesses for the purpose of engaging in sex within the premises of such sexually oriented businesses.
  - (F)** At least 50 communicable diseases may be spread by activities occurring in sexually oriented businesses, including, but not limited to, syphilis, gonorrhea, human immunodeficiency virus infection (HIV-AIDS), genital herpes, hepatitis B, Non A, Non B amebiasis, salmonella infections and shigella infections.
  - (G)** The surgeon general of the United States in his report of October 22, 1986, has advised the American public that AIDS and HIV infection may be transmitted through sexual contact, intravenous drug abuse, exposure to infected blood and blood components, and from an infected mother to her newborn.
  - (H)** According to the best scientific evidence, AIDS and HIV infection, as well as syphilis and gonorrhea, are principally transmitted by sexual acts.
  - (I)** Sanitary conditions in some sexually oriented businesses are unhealthy, in part, because the activities conducted there are unhealthy, and, in part, because of the unregulated nature of the activities and the failure of the owners and the operators of the facilities to self-regulate those activities and maintain those facilities.
  - (J)** Numerous studies and reports have determined that semen is found in the areas of sexually oriented businesses where persons view "adult" oriented films.
  - (K)** The findings noted in (A) through (J) raise substantial governmental concerns.
  - (L)** Sexually oriented businesses have operational characteristics which should be reasonably regulated in order to protect those substantial governmental concerns.
  - (M)** A reasonable licensing procedure is an appropriate mechanism to place the burden of that reasonable regulation on the owners and the operators of the sexually oriented businesses. Further, such a

- licensing procedure will place a heretofore nonexistent incentive on the operators to see that the sexually oriented business is run in a manner consistent with the health, safety and welfare of its patrons and employees, as well as the citizens of the County. It is appropriate to require reasonable assurances that the licensee is the actual operator of the sexually oriented business, fully in possession and control of the premises and activities occurring therein.
- (N) Prohibition of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in curbing the illegal and unsanitary sexual activity occurring in adult theatres.
  - (O) Requiring licensees of sexually oriented businesses to keep information regarding current employees and certain past employees will help reduce the incidence of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments.
  - (P) The disclosure of certain information by those persons ultimately responsible for the day-to-day operation and maintenance of the sexually oriented business, where such information is substantially related to the significant governmental interest in the operation of such uses, will aid in preventing the spread of sexually transmitted diseases.
  - (Q) It is desirable in the prevention of the spread of communicable diseases to obtain a limited amount of information regarding employees who may engage in the conduct which this ordinance is designed to prevent or who are likely to be witnesses to such activity.
  - (R) The fact that an applicant for an adult use license has been convicted of a sexually related crime leads to the rational concern that the applicant may engage in that conduct in contravention of this chapter.
  - (S) The barring of such individuals from the management of adult uses for a period of years serves as a deterrent to and prevents conduct which leads to the transmission of sexually transmitted diseases.
  - (T) The general welfare, health, morals and safety of the citizens of the County will be promoted by the enactment of this chapter.

### **Article II Classification**

Sexually oriented businesses are classified as follows:

- (A) adult arcades;
- (B) adult bookstores, adult novelty stores, or adult video stores;
- (C) adult cabarets;
- (D) adult motels;

- (E) adult motion picture theaters;
- (F) adult theaters;
- (G) escort agencies;
- (H) nude model studios; and
- (I) sexual encounter centers.

### **Article III License Required**

#### **Section 1. Unlawful Operation and Employment Without License**

It is unlawful:

- (A) For any person to operate a sexually oriented business without a valid sexually oriented business license issued by the County Official pursuant to this chapter.
- (B) For any person who operates a sexually oriented business to employ a person to work for the sexually oriented business who is not licensed as a sexually oriented business employee by the County Official pursuant to this chapter.
- (C) For any person to obtain employment with a sexually oriented business without having secured a sexually oriented business employee license pursuant to this chapter.
- (D) For any person who operates a sexually oriented business to allow any person to perform or participate in any contest or exhibition who does not have a valid and current sexually oriented business employee license pursuant to this chapter.

#### **Section 2. Application.**

An application for any license must be made on a form provided by the County Official.

#### **Section 3. Qualified Applicant.**

All applicants must be qualified according to the provisions of this chapter. The application may request and the applicant shall provide such information (including fingerprints) as to enable the County Official to determine whether the applicant meets the qualifications established in this chapter.

#### **Section 4. Signatures.**

If a person who wishes to operate a sexually oriented business is an individual, the person must sign the application for a license as applicant. If a person who wishes to operate a sexually oriented business is other than an individual,

each individual who has a financial percent or greater interest in the business must sign the application for a license as applicant. Each applicant must be qualified under the following Section and each applicant shall be considered a licensee if a license is granted.

### **Section 5. Application Contents.**

The completed application for a sexually oriented business license shall contain the following information and shall be accompanied by the following documents:

- (A)** If the applicant is:
  - (1)** an individual, the individual shall state his/her legal name and any aliases and submit proof that he/she is 21 years of age;
  - (2)** a partnership, the partnership shall state its complete name, and the names of all partners, whether the partnership is general or limited, and a copy of the partnership agreement, if any;
  - (3)** a corporation, the corporation shall state its complete name, the date of its incorporation, evidence that the corporation is in good standing under the laws of its state of incorporation, the names and capacity of all officers, directors and principal stockholders, and the name of the registered corporate agent and the address of the registered office for service of process.
- (B)** If the applicant intends to operate the sexually oriented business under a name other than that of the applicant; he or she must state 1) the sexually oriented business's fictitious name and 2) submit the required registration documents.
- (C)** Whether the applicant, or a person residing with the applicant, has been convicted of a specified criminal activity as defined in this chapter, and, if so, the specified criminal activity involved, the date, place, and jurisdiction of each.
- (D)** Whether the applicant, or a person residing with the applicant, has had a previous license under this chapter or other similar sexually oriented business regulations from another city or county denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied, suspended or revoked, as well as the date of the denial, suspension or revocation, and whether the applicant or a person residing with the applicant has been a partner in a partnership or an officer, director or principal stockholder of a corporation that is licensed under this chapter whose license has previously been denied, suspended or revoked, including the name and location of the sexually oriented business for which the permit was denied,

- suspended or revoked as well as the date of denial, suspension or revocation.
- (E)** Whether *the applicant or a person residing with the applicant* holds any other licenses under this chapter or other similar sexually oriented business regulations from another city or county and, if so, the names and locations of such other licensed businesses.
  - (F)** The single classification of license for which the applicant is filing.
  - (G)** The location of the proposed sexually oriented business, including a legal description of the property, street address, and telephone number(s), if any.
  - (H)** The applicant's mailing address and residential address.
  - (I)** A recent photograph of the applicant(s).
  - (J)** The applicant's driver's license number, Social Security number, and/or his/her state or federally issued tax identification number.
  - (K)** A sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared, but it must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.
  - (L)** A current certificate and straight-line drawing prepared within thirty (30) days prior to application by a registered land surveyor accurately depicting the property lines and the structures containing any existing sexually oriented businesses within 1500 feet of the property to be certified; the property lines of any established religious institution/synagogue, school, public park or recreation area, nursing home, daycare establishment, or fire department, within 1500 feet of the property to be certified and the location of all residential structures within 660 feet of the property to be certified. For purposes of this Section, a use shall be considered existing or established if it is in existence at the time an application is submitted.
  - (M)** If an applicant wishes to operate a sexually oriented business, other than an adult motel, which shall exhibit on the premises, in a viewing room or booth of less than one hundred fifty (150) square feet of floor space, films, video cassettes, other video reproductions, or live entertainment which depict specified sexual activities or specified anatomical areas, then the applicant shall comply with the application requirements set forth in [Article XII](#).

## **Section 6. Employee Application.**

Before any applicant may be issued a sexually oriented business employee license, the applicant shall submit on a form to be provided by the County Official the following information:

- (A) The applicant's name or any other name (including "stage" names) or aliases used by the individual;
- (B) Age, date, and place of birth;
- (C) Height, weight, hair and eye color;
- (D) Present residence address and telephone number;
- (E) Present business address and telephone number;
- (F) Date, issuing state and number of driver's permit or other identification card information;
- (G) Social Security number; and
- (H) Proof that the individual is at least twenty-one (21) years of age.

## **Section 7. Additional Requirements.**

Attached to the application form for a sexually oriented business employee license as provided above, shall be the following:

- (A) A color photograph of the applicant clearly showing the applicant's face, and the applicant's fingerprints on a form provided by the sheriff's department. Any fees for the photographs and fingerprints shall be paid by the applicant.
- (B) A statement detailing the license history of the applicant for the five (5) years immediately preceding the date of the filing of the application, including whether such applicant previously operated or is seeking to operate, in this or any other county, city, state, or country has ever had a license, permit, or authorization to do business denied, revoked, or suspended, or had any professional or vocational license or permit denied, revoked, or suspended. In the event of any such denial, revocation, or suspension, state the name, the name of the issuing or denying jurisdiction, and describe in full the reason for the denial, revocation, or suspension. A copy of any order of denial, revocation, or suspension shall be attached to the application.
- (C) A statement whether the applicant has been convicted of a specified criminal activity as defined in this ordinance and, if so, the specified criminal activity involved, the date, place and jurisdiction of each.



## **Article IV Issuance of License**

### **Section 1. Investigation.**

Upon the filing of said application for a sexually oriented business employee license, the application shall be referred to the appropriate county departments for an investigation to be made on such information as is contained on the application. The investigation process shall be completed within thirty (30) calendar days from the date the completed application is filed. After the investigation, the County Official shall issue a license, unless he/she determines by a preponderance of the evidence that one or more of the following findings is true, whereupon the application must be denied:

- (A) The applicant has failed to provide information reasonable necessary for issuance of the license or has falsely answered a question or request for information on the application form;
- (B) The applicant is under the age of twenty-one (21) years;
- (C) The applicant has been convicted of a "specified criminal activity" as defined in this ordinance;
- (D) The sexually oriented business employee license is to be used for employment in a business prohibited by local or state law, statute, rule or regulation, or prohibited by a particular provision of this chapter; or
- (E) The applicant has had a sexually oriented business employee license revoked by the County Official or comparable license in any jurisdiction within two (2) years of the date of the current application. If the sexually oriented business employee license is denied, the temporary license previously issued is immediately deemed null and void. Denial, suspension, or revocation of a license issued pursuant to this subsection shall be subject to appeal as set forth in Article VIII.
- (F) Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

### **Section 2. Annual Renewal.**

A license granted pursuant to Section 1 shall be subject to annual renewal upon the written application of the applicant received not less than thirty (30) calendar days before the license expires and a finding by the County that the applicant has not been convicted of any specified criminal activity as defined in this ordinance or committed any act during the existence of the previous license, which would be grounds to deny the initial license

application. The renewal of the license shall be subject to the payment of the fee as set forth in Article V.

### **Section 3. Approval/Denial.**

Within 30 calendar days after receipt of a completed sexually oriented business application, the County Official shall approve or deny the issuance of a license to an applicant. The County Official shall approve the issuance of a license to an applicant unless he determines by a preponderance of the evidence that one or more of the following findings is true, whereupon the application must be denied:

- (A) An applicant is under twenty-one (21) years of age.
- (B) An applicant or a person with whom applicant is residing is overdue in payment to the County of taxes, fees, fines, or penalties assessed against or imposed upon him/her in relation to any business.
- (C) An applicant has failed to provide information reasonably necessary for issuance of the license or has falsely answered a question or request for information on the application form.
- (D) An applicant or a person with whom the applicant is residing has been denied a license by the County Official to operate a sexually oriented business within the preceding twelve (12) months or whose license to operate a sexually oriented business has been revoked within the preceding twelve (12) months.
- (E) An applicant or a person with whom the applicant is residing has been convicted of a specified criminal activity defined in this ordinance.
- (F) The premises to be used for the sexually oriented business have not been approved by the health department, fire marshal's office, and the planning and inspections department as being in compliance with applicable laws and ordinances.
- (G) The license fee required by this ordinance has not been paid.
- (H) An applicant of the proposed establishment is in violation of or is not in compliance with any of the provisions of this chapter.
- (I) Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to the address shown on the application.

### **Section 4. Posted License.**

The license, if granted shall state on its face the name of the person or persons to whom it is granted, the expiration date, the address of the sexually oriented business and the classification for which the license is issued pursuant to [Article II](#). All licenses shall be posted in a conspicuous place at or near the

entrance to the sexually oriented business so that they may be easily read at any time.

### **Section 5. Timeline for Review.**

The health department, fire marshal's office, and the planning and inspections department shall complete their certification that the premises is in compliance or not in compliance within twenty (20) days of receipt of the application by the County Official.

### **Section 6. License Classification.**

A sexually oriented business license shall be issued for only one classification as found in [Article II](#).

### **Article V Fees**

Every application for a sexually oriented business license (whether for a new license or for renewal of an existing license) shall be accompanied by a \$1000.00 non-refundable application and investigation fee.

In addition to the application and investigation fee required above, every sexually oriented business that is granted a license (new or renewal) shall pay to the County Official an annual non-refundable license fee of \$ 1000.00 within thirty (30) days of license issuance or renewal.

Every application for a new sexually oriented business employee license shall be accompanied by \$ 250.00 non-refundable application, investigation, and license fee.

In addition to the application and investigation fee required above, every sexually oriented business employee that is granted a license shall pay to the County Official an annual non-refundable license fee of \$150.00 within thirty (30) days of license issuance or renewal.

All license applications and fees shall be submitted to the County Official.

### **Article VI Inspection**

An applicant or licensee shall permit representatives of the Sheriff's Department, Health Department, Fire Marshal's Office, Planning and Inspections Department, or other County departments or agencies to inspect

the premises of a sexually oriented business for the purpose of insuring compliance with the law.

A person who operates a sexually oriented business or his agent or employee commits a misdemeanor if he refuses to permit such lawful inspection of the premises at any time.

### **Article VII Expiration of License**

Each license shall expire one year from the date of issuance and may be renewed only by making application as provided in [Article III](#). Application for renewal shall be made at least thirty (30) days before the expiration date, and when made less than thirty (30) days before the expiration date, the license will expire.

When the County Official denies renewal of a license, the applicant shall not be issued a license for one year from the date of denial.

### **Article VIII Suspension**

The County Official shall suspend a license for a period not to exceed thirty (30) days if he/she determines that a licensee or an employee of a licensee has:

- (A) violated or is not in compliance with any section of this chapter;
- (B) refused to allow an inspection of the sexually oriented business premises as authorized by this chapter.

Each such determination and denial shall be documented in writing, a copy of which shall be mailed to the applicant by first class mail to address shown on the application.

### **Article IX Revocation**

#### **Section 1. Previous Suspension**

The County Official shall revoke a license if a cause of suspension in [Article VIII](#) occurs and the license has been suspended within the preceding twelve (12) months.

## **Section 2. Evidence.**

The County Official shall revoke a license if he/she determines by a preponderance of the evidence that one or more of the following findings is true that:

- (A) a licensee gave false or misleading information in the material submitted during the application process;
- (B) a licensee has allowed possession, use, or sale of controlled substances on the premises;
- (C) a licensee has allowed prostitution on the premises;
- (D) a licensee operated the sexually oriented business during a period of time when the licensee's license was suspended;
- (E) except in the case of an adult motel, a licensee has allowed any act of sexual intercourse, sodomy, oral copulation, masturbation, or other sex act to occur in or on the licensed premises; or
- (F) a licensee is delinquent in payment to the County or State for any taxes or fees past due.

Each such revocation under Section 1 or 2 shall be documented in writing, a copy of which shall be mailed to the licensee by first class mail to the address shown on the license.

## **Section 3. Length of Revocation.**

When the County Official revokes a license, the revocation shall continue for one (1) year, and the licensee shall not be issued a sexually oriented business license for one (1) year from the date the revocation became effective.

## **Section 4. Judicial Review.**

After denial of an application, or denial of a renewal of an application, or suspension or revocation of any license, the applicant or licensee may seek judicial review of such administrative action in any court of competent jurisdiction.

## **Article X Transfer of License**

A licensee shall not transfer his/her license to another, nor shall a licensee operate a sexually oriented business under the authority of a license at any place other than the address designated in the application.

## **Article XI Location of Sexually Oriented Businesses**

### **Section 1. Residential Structures.**

A person commits a misdemeanor if that person operates or causes to be operated a sexually oriented business within 660 feet of any residential structure.

### **Section 2. Non-Residential Structures.**

A person commits a misdemeanor if the person operates or causes to be operated a sexually oriented business within 1500 feet of:

- (A) A church, synagogue, mosque, temple or building which is used primarily for religious worship and related religious activities;
- (B) A public or private educational facility including but not limited to child day care facilities, nursery schools, preschools, kindergartens, elementary schools, private schools, intermediate schools, junior high schools, middle schools, high schools, vocational schools, secondary schools, continuation schools, special education schools, junior colleges, and universities; school includes the school grounds, but does not include facilities used primarily for another purpose and only incidentally as a school.
- (C) A public park or recreational area which has been designated for park or recreational activities including but not limited to a park, playground, nature trails, swimming pool, reservoir, athletic field, basketball or tennis courts, pedestrian/bicycle paths, wilderness areas, or other similar public land within the county which is under the control, operation, or management of the county park and recreation authorities;
- (D) A fire department
- (E) An entertainment business which is oriented primarily towards children or family entertainment; or
- (F) A licensed premises, licensed pursuant to the alcoholic beverage control regulations of the State.

### **Section 3. Proximity to Existing Sexually Oriented Business.**

A person commits a misdemeanor if that person causes or permits the operation, establishment, substantial enlargement, or transfer of ownership or control of a sexually oriented business within 1500 feet of another sexually oriented business.

**Section 4. Highway.**

A person commits a misdemeanor if that person causes or permits the operation or establishment of a sexually oriented business on any road in Watauga County other than a federal aid primary system highway as designated by the federal government.

**Section 5. Existing Sexually Oriented Business**

A person commits a misdemeanor if that person causes or permits the operation, establishment, or maintenance of more than one sexually oriented business in the same building, structure, or portion thereof, or the increase of floor area of any sexually oriented business in any building, structure, or portion thereof containing another sexually oriented business.

**Section 6. Measurement to Property Line.**

For the purpose of [Section 2](#) of this Article, measurement shall be made in a straight line, without regard to the intervening structures or objects, from the nearest portion of the building or structure used as the part of the premises where a sexually oriented business is conducted, to the nearest property line of the premises of a use listed in [Section 2](#). Presence of a city, county or other political subdivision boundary shall be irrelevant for purposes of calculating and applying the distance requirements of this Section.

**Section 7. Measurement to Structure.**

For purposes of [Section 1](#) & [3](#) of this Article, the distance between a residence and a sexually oriented business or between two sexually oriented businesses shall be measured in a straight line, without regard to the intervening structures or objects or political boundaries, from the closest exterior wall of the structure in which each residence or business is located.

**Section 8. Applicably to Other Ordinances.**

Nothing herein is intended to or shall be construed to preempt, modify, or repeal any other land use regulation applicable to any property or its use in the County, but instead this Ordinance is intended to and shall be in addition thereto.

## **Article XII Additional Regulations For Adult Motels**

### **Section 1. Adult Motel.**

Evidence that a sleeping room in a hotel, motel, or a similar commercial establishments has been rented and vacated two or more times in a period of time that is less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this ordinance.

### **Section 2. Penalties.**

A person commits a misdemeanor if, as the person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented license, he rents or sub-rents a sleeping room to a person and, within ten (10) hours from the time the room is rented, he rents or sub-rents the same sleeping room again.

### **Section 3. Word Interpretation.**

For purposes of Section 2 of this Article, the terms "rent" or "sub-rent" mean the act of permitting a room to be occupied for any form of consideration.

## **Article XIII Regulation Pertaining To Exhibition of Sexually Explicit Films, Videos or Live Entertainment**

### **Section 1. Requirements.**

A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor space, a film, video cassette, live entertainment, or other video reproduction which depicts specified sexual activities or specified anatomical areas, shall comply with the following requirements:

- (A) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the permit will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or



- architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale or with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises to an accuracy of plus or minus six (6") inches. The County may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
- (B)** The application shall be sworn to be true and correct by the applicant.
  - (C)** No alteration in the configuration or location of a manager's station may be made without the prior approval of the County.
  - (D)** It is the duty of the licensee of the premises to ensure that at least one licensed employee is on duty and situated in each manager's station at all times that any patron is present inside the premises.
  - (E)** The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment. If the premises has two or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
  - (F)** It shall be the duty of the licensee to ensure that the view area specified in (E) remains unobstructed by any doors, curtains, partitions, walls, merchandise, display racks or other materials and, at all times, to ensure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted in the application filed pursuant to [\(A\)](#).
  - (G)** No viewing room may be occupied by more than one person at any time.
  - (H)** Regardless of the square footage of the premises or any section thereof, each sexually oriented business other than an adult motel shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than five (5.0) foot-candles as measured at the floor level.
  - (I)** No licensee shall allow openings of any kind to exist between viewing rooms or booths.
  - (J)** No person shall make or attempt to make an opening of any kind between viewing booths or rooms.

- (K) The licensee shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.
- (L) The licensee shall cause all floor coverings in viewing booths to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (M) The licensee shall cause all wall surfaces and ceiling surfaces in viewing booths to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty eight (48") inches of the floor.

### **Section 2. Maintenance.**

It shall be the duty of the licensee to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

### **Section 3. Penalties.**

A person having a duty under Section 1 or 2 above commits a misdemeanor if he knowingly fails to fulfill that duty.

## **Article XIV Additional Regulations**

### **Section 1. For Escort Agencies.**

- (A) An escort agency shall not employ any person under the age of 21 years.
- (B) A person commits an offense if the person acts as an escort or agrees to act as an escort for any person under the age of 21 years.

### **Section 2. For Nude Model Studios.**

- (A) A nude model studio shall not employ any person under the age of 21 years.
- (B) A person under the age of 21 years commits an offense if the person appears semi-nude or in a state of nudity in or on the premises of a nude model studio. It is a defense to prosecution under this subsection if the person under 21 years was in a restroom not open to public view or visible to any other person.
- (C) A person commits an offense if the person appears in a state of nudity, or knowingly allows another to appear in a state of nudity in an area of a nude model studio premises which can be viewed from the public right of way.

- (D) A nude model studio shall not place or permit a bed, sofa, or mattress in any room on the premises, except that a sofa may be placed in a reception room open to the public.

### **Section 3. Concerning Public Nudity.**

- (A) It shall be a misdemeanor for a person who knowingly and intentionally, in a sexually oriented business, appears in a state of nudity or depicts specified sexual activities.
- (B) It shall be a misdemeanor for a person who knowingly or intentionally in a sexually oriented business appears in a semi-nude condition unless the person is an employee who, while semi-nude, shall be at least ten (10) feet from any patron or customer and on a stage at least two feet from the floor.
- (C) It shall be a misdemeanor for an employee, while semi-nude in a sexually oriented business, to solicit any pay or gratuity from any patron or customer or for any patron or customer to pay or give any gratuity to any employee, while said employee is semi-nude in a sexually oriented business.
- (D) It shall be a misdemeanor for an employee, while semi-nude, to touch a customer or the clothing of a customer.

### **Article XVII Prohibition Against Youth in a Sexually Oriented Business**

A person commits a misdemeanor if the person allows a person under the age of 21 years on the premises of a sexually oriented business.

### **Article XVIII Prohibition Of Sale or Consumption of Alcohol**

Sale or consumption of alcohol on the premises of sexually oriented business shall be prohibited. Violations shall be a misdemeanor.

### **Article XIX Exterior Portions of Sexually Oriented Businesses**

#### **Section 1. Visibility.**

It shall be unlawful for an owner or operator of a sexually oriented business to allow the merchandise or activities of the establishment to be visible from a point outside the establishment.

## **Section 2. Exterior Appearance.**

Except as permitted by Article XIX, it shall be unlawful for the owner or operator of a sexually oriented business to allow the exterior portion of the sexually oriented business to have flashing lights, or any words, lettering, photographs, silhouettes, drawings, or pictorial representations of any manner.

## **Section 3. Parking**

One (1) parking space per one hundred (100) square feet of gross floor area shall be provided upon the premises immediately adjoining the structure housing the sexually oriented business.

- (A) Parking spaces shall be not less than nine (9) feet in width and eighteen (18) feet in length.
- (B) Aisle width between rows of parking spaces shall be not less than twelve (12) feet in width (to accommodate maneuvering and one-way traffic) where angled parking spaces are used and not less than twenty-four (24) feet (to accommodate maneuvering and two-way traffic) where perpendicular parking spaces are used.
- (C) Handicapped parking spaces shall be provided in accordance with the North Carolina State Building Code.

## **Section 4. Lighting.**

All parking areas and exterior entrance/exits shall be fully illuminated with night-lighting to deter criminal activities.

## **Section 5. Buffering.**

Perimeter buffer areas shall be established in order to create spatial separation and to lessen the possible adverse impacts upon adjacent land uses.

- (A) Side and rear yard setbacks of thirty (30) feet shall be observed for buildings or parking. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of planting of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six (6) feet high and one (1") inch caliper (trunk diameter at chest height) at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the

road right-of-way. Lists of recommended plantings are available from the Planning and Inspection Department.

- (B)** Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved by County Official. Considerations include but are not limited to:
- (1)** Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.
  - (2)** Installation of supplemental vegetation and/or site features may be required if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.

## **Section 6. Maintenance**

The sexually oriented business licensee shall be responsible for proper maintenance of parking and buffer areas required by this ordinance.

## **Section 7. Penalties.**

Any violation of this Section shall be a misdemeanor.

### **Article XX Signage**

It shall be a misdemeanor for the owner or operator of any sexually oriented business or any other person to erect, construct, or maintain any sign for the sexually oriented business other than as permitted in the sign regulations of Watauga County.

Primary signs shall contain no photographs, silhouettes, drawings, or pictorial representations in any manner, and may contain only the name of the enterprise.

### **Article XXI Hours of Operation**

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of eleven o'clock (11:00) P.M. and eight o'clock (8:00) A.M. on weekdays and Saturdays, or during the period from eleven o'clock (11:00) P.M. Saturday until eight o'clock (8:00) A.M. Monday.

### **Article XXII Exemptions**

It is a defense to prosecution under [Article XIV Section 2](#) that a person appearing in a state of nudity did so in a modeling class operated:

- (A) by a proprietary school, licensed by the State of North Carolina; a college, junior college, or university supported entirely or partly by taxation;
- (B) by a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or
- (C) in a structure:
  - (1) which has no sign visible from the exterior of the structure and no other advertising that indicates a nude person is available for viewing; and
  - (2) where, in order to participate in a class a student must enroll at least three (3) days in advance of the class; and
  - (3) where no more than one nude model is on the premises at any one time.

### **Article XXIII Injunction**

A person who operates or causes to be operated a sexually oriented business without a valid license or in violation of this chapter is subject to a suit for injunction as well as prosecution for criminal violations. Pursuant to NC General Statute 14-4, each violation of any requirement of this chapter shall be a crime, which shall be punishable by a fine of \$500.00 or thirty (30) days imprisonment. Each day any such violation continues or occurs in is a separate offense or violation.

Notwithstanding the foregoing, licensing decisions including issuance, revocation, and suspension, based upon violations of this chapter, shall be made by the County Official based upon a preponderance of the evidence.

## **CHAPTER 16 SIGNS**

### **Article I Purpose and Legislative Intent**

The purpose of this chapter is to provide for the public health, safety and welfare pursuant to the general ordinance authority granted to counties by the General Assembly of North Carolina. (NCGS §153A-121 *et seq.* and other pertinent statutes and amendments thereto). By enacting this chapter it is the County's intent to:

- (A)** To promote the creation of an attractive visual environment that promotes a healthy economy by:
  - (1)** Permitting businesses to inform, identify, and communicate effectively; and
  - (2)** Directing the general public through the use of signs while maintaining attractive and harmonious application of signs on buildings and sites.
- (B)** To protect and enhance the physical appearance of the community in a lawful manner that recognizes the rights of property owners by:
  - (1)** Encouraging the appropriate design, scale, and placement of signs.
  - (2)** Encouraging the orderly placement of signs on buildings while avoiding regulations that are so rigid and inflexible that all signs in a series are monotonously uniform.
  - (3)** Assuring that the information displayed on a sign is clearly visible, conspicuous, legible and readable so that the sign achieves the intended purpose.
- (C)** To foster public safety along public and private streets within the community by assuring that all signs are in safe and appropriate locations.
- (D)** To have administrative review procedures that is the minimum necessary to:
  - (1)** Balance the community's objectives and regulatory requirements with the reasonable advertising and way finding needs of businesses.
  - (2)** Allow for consistent enforcement of the Sign regulations.
  - (3)** Minimize the time required to review a sign application.
  - (4)** Provide flexibility as to the number and placement of signs so the regulations are more responsive to business needs while maintaining the community's standards.

## **Article II Measurement Standards**

### **Section 1. Determining Sign Area and Dimensions.**

- (A)** For a wall sign which is framed, outlined, painted or otherwise prepared and intended to provide a background for a sign display, the area and dimensions shall include the entire portion within such background or frame.
- (B)** For a wall sign comprised of individual letters, figures or elements on a wall or similar surface of the building or structure, the area and dimensions of the sign shall encompass a regular geometric shape (rectangle, circle, trapezoid, triangle, etc.), or a combination of regular geometric shapes, which form, or approximate, the perimeter of all elements in the display, the frame, and any applied background that is not part of the architecture of the building.
- (C)** When separate elements are organized to form a single sign, but are separated by open space, the sign area and dimensions shall be calculated by determining the geometric form, or combination of forms, which comprises all of the display areas, including the space between different elements.
- (D)** Minor appendages to a particular regular shape, as determined by the Administrator, shall not be included in the total area of a sign.
- (E)** For a freestanding sign, the sign area shall include the frame, if any, but shall not include:
  - (1)** A pole or other structural support unless such pole or structural support is internally illuminated or otherwise so designed to constitute a display device, or a part of a display device.
  - (2)** Architectural features that are either part of the building or part of a freestanding structure, and not an integral part of the sign, and which may consist of landscaping, building or structural forms complementing the site in general.
- (F)** When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and are part of the same sign structure, the sign area shall be computed as the measurement of one of the two faces. When the sign has more than two display surfaces, the area of the sign shall be the area of largest display surfaces that are visible from any single direction.
- (G)** In the event of a dispute in determining the area or dimensions of any sign, a negative decision of the Administrator may be appealed to the Board of Adjustment.



## **Section 2. Determining Sign Height.**

- (A) The height of a freestanding sign shall be measured from the base of the sign or supportive structure at its point of attachment to the ground, to the highest point of the sign. A freestanding sign on a man-made base, including a graded earth mound, shall be measured from the grade of the nearest pavement or top of any pavement curb.
- (B) Clearance for freestanding and projecting signs shall be measured as the smallest vertical distance between finished grade and the lowest point of the sign, including any framework or other embellishments.

## **Section 3. Determining Building Frontages and Frontage Lengths.**

- (A) Building Unit - The building unit is equivalent to the tenant space. The frontage of the tenant space on the first floor shall be the basis for determining the permissible sign area for wall signs.
- (B) Primary and Secondary Frontage - The frontage of any building unit shall include the elevation(s) facing a public street, facing a primary parking area for the building or tenants, or containing the public entrance(s) to the building or building units.
  - (1) The primary frontage shall be considered the portion of any frontage containing the primary public entrance(s) to the building or building units.
  - (2) The secondary frontage shall include those frontages containing secondary public entrances to the building or building units, and all building walls facing a public street or primary parking area that are not designated as the primary building frontage by subsection (A) above.

## **Section 4 . Length of Building Frontage.**

- (A) The length of any primary or secondary building frontage as defined in [Chapter 7](#) shall be the sum of all wall lengths parallel, or nearly parallel, to such frontage, excluding any such wall length determined by the Administrator as clearly unrelated to the frontage criteria.
- (B) For buildings with two or more frontages, the length of the wall and allowable sign area shall be calculated separately for each such building frontage.
- (C) The building frontage for a building unit shall be measured from the centerline of the party walls defining the building unit.

## **Article III Signs Permitted**

### **Section 1. Residential Subdivisions**

- (A) Residential Subdivision and Multi-Family Development signs shall be limited to 50 square feet.
- (B) Signs advertising home occupations shall be limited to 6 square feet.
- (C) Temporary signs shall be limited to a total of 16 square feet per parcel.

### **Section 2. Unzoned Commercial Areas.**

- (A) Signs located in unzoned commercial areas shall be as described, located and designed in Article IV.
- (B) Temporary signs shall be limited to a total of 32 square feet per parcel.
- (C) Highway signs shall be as described, located and designed in Article IV Section 7.

## **Article IV Development Standards**

### **Section 1. Wall Signs.**

- (A) The basic allowance for wall signs shall be limited to 1.5 square feet of sign area for each lineal foot of building or tenant frontage.
- (B) Each tenant may have multiple wall signs as long as the total wall sign area does not exceed the basic allowance established for wall signs.
- (C) The wall sign or signs shall not be greater than 80% of the length of the tenant space or the length of the building frontage for single tenant buildings.
- (D) The area of any wall sign may be increased by 25% when the building is setback at least 200 feet from the public right-of-way.
- (E) Additional wall sign area is permitted for a secondary frontage (see Definitions) which shall be equal to 100% of the primary sign area allowance.
- (F) The following additional wall signs may be permitted:
  - (1) Projecting Signs - In addition to the allowances for wall signs, projecting signs are permitted when designed and placed for the purpose of identifying the businesses for a pedestrian walking along the same side of the street as the business they seek or under a continuous rain canopy projecting from the building. Projecting signs shall have a maximum area of 16 square feet; the bottom of the sign shall be a minimum of

8 feet above the sidewalk; the sign shall not project more than 4 feet from the wall; and adjacent projecting signs shall not be closer than 20 feet.

- (2) Building Directory – In addition to the allowances for wall signs, a directory sign may be permitted up to a maximum of 16 square feet for the purpose of identifying first floor tenants that do not have outside building frontage or upper floor tenants.
- (G) Additional Wall Signs for Multiple Story Buildings – An additional building sign is permitted on each of the building’s primary and secondary frontages according to the following:
  - (1) For a building with two floors, the area of any wall sign may be increased by 25% for each eligible wall.
  - (2) This additional permitted sign area may be increased by 10% for each additional building floor.
  - (3) The sign must be placed at the height for which the bonus has been granted.

## **Section 2. Freestanding signs.**

- (A) One freestanding sign is permitted for each 200 feet of primary road frontage with a maximum of 3 freestanding signs per parcel.
- (B) The permitted area of each freestanding sign shall not exceed 50 square feet except for: Properties entitled to more than one freestanding sign based on primary frontage. In this instance the sign area of a single sign may be increased to a maximum area of 100 or 150 square feet in lieu of erecting a second or third sign.
- (C) No portion of a freestanding sign shall be in, or project over, the public right-of-way.
- (D) The maximum height of a freestanding sign shall be 35 feet in height above the road grade or natural grade level, whichever is higher.

## **Section 3. Electronic Message Center/Changeable Copy Signs.**

- (A) Changeable copy by non-electronic means may be utilized on any permitted sign.
- (B) Only one EMC sign is permitted on each road on which the development fronts.
- (C) EMCs may not contain or display flashing, intermittent, or moving lights, including animated or scrolling advertising.
- (D) EMCs are permitted provided that the copy does not change more than once every 8 seconds.
- (E) Copy changes must be accomplished within a one second interval.

- (F) EMCs are required to have automatic dimming capability that adjusts the brightness to the ambient light at all times of the day and night.
- (G) EMCs may not exceed 50% of the total sign area permitted.

#### **Section 4. Instructional signs.**

Instructional or “way-finding” signs shall be permitted in addition to all other signs when they are of such size and location that satisfy the intended instructional purpose and based on their size, location, and intended purpose will not constitute additional advertising. Instructional signs may include the name of the business and logos.

#### **Section 5. Window Signs.**

Permanent window signs shall not exceed 25% of the area of a window and the total area of all window signs, including both permanent and temporary, shall not exceed 50% of the window area.

#### **Section 6. Temporary Signs.**

- (A) In addition to the signs permitted in [Article III](#), temporary signs related to Special Events are allowed on private property for a time period not to exceed 30 days. Such signs are permitted on and off-premises.
- (B) In addition to the signs permitted in [Article III](#), temporary signs related to a single event for commercial enterprises are allowed on private property for a time period not to exceed 30 days, with a limit of 4 events per calendar year. Such signs are permitted on-premises only.
- (C) Temporary signs containing any message are allowed on private property during an election period subject to the area limitations stated herein. An election period begins on the 30<sup>th</sup> day before the beginning date of one-stop early voting and ends ten days after any election conducted under federal, state, county, or city laws or ordinances in which residents of Watauga are entitled to vote, including elections or votes regarding selection or recall of any federal, state, county or city officials, any ballot questions, referendum, constitutional amendments, or advisory vote.
- (D) Temporary sign(s) located in residential subdivisions may not exceed a total area of 16 square feet per parcel.
- (E) Temporary sign(s) located in unzoned commercial areas may not exceed a total area of 32 square feet per parcel.
- (F) Temporary signs located on property offered for sale or lease are allowed for time periods exceeding those listed herein provided

such signs are promptly removed following the sale or lease closing date. All signs are subject to the area limitations stated in this Section.

- (G)** No temporary signs may be illuminated.
- (H)** All temporary signs must be secured to prevent them from becoming a hazard to pedestrians, vehicles or adjacent property during high winds.
- (I)** Temporary directional signs are allowed off-premises for a time period not to exceed 60 days as a navigational aid to specific destination(s).

### **Section 7. Highway Signs.**

- (A)** Highway signs shall not exceed 300 square feet in area. This square footage includes both sign face and border.
- (B)** Highway signs shall:
  - (1)** Be located outside the right-of-way of all roads, or 35 feet from the center line if there is no recorded right-of-way, provided that on corner lots no part of a highway sign may be located within a triangular area formed by the street right-of-way lines and a line connecting them at points 50 feet from the right-of-way intersection.
  - (2)** Be located only in "Unzoned Commercial Areas" as defined in the North Carolina DOT Outdoor Advertising Manual and spaced as set forth in said manual except that new "side-by-side" signs shall be prohibited. This paragraph shall be applicable on all streets/roads in Watauga County which are not within the jurisdiction of a municipality.
  - (3)** Be located not closer than 100 feet to a pre-existing residential structure on an adjoining lot. This does not prevent the owner of a residence from placing a highway sign on the same lot as the residence provided that the placement of such sign complies with subparagraph "b" above.
  - (4)** Not exceed 35 feet in height above the street/road grade level.
  - (5)** Not exceed a width of 30 feet.
  - (6)** Be located in such a way that they maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the National Electric Code and local electric utilities' requirements.
  - (7)** Be located only on primary highway systems (i.e. 105, 221, 321, and 421) with evidence of NCDOT approval.
  - (8)** Not be located on designated scenic byways.

- (C) No existing highway sign may be converted to, or replaced with, a digital billboard.
- (D) No new locations for digital billboards shall be permitted.
- (E) Only one highway sign shall be permitted per parcel.

## **Article V Non-Conforming Signs**

### **Section 1. General Provisions.**

- (A) Nonconforming signs shall be maintained in good condition pursuant to Article VII.
- (B) A Nonconforming sign shall not be altered, modified or reconstructed except:
  - (1) When such alteration, modification or reconstruction would bring such sign into conformity with these regulations;
  - (2) When the existing use has new ownership which results in a change in the name or logo of the use or business on the property, and such change complies with subsection (4) below;
  - (3) When the space is re-occupied by a similar use and the new occupant requires no external building or site renovation, and such change complies with subsection (4) below;
  - (4) Any alteration, modification or reconstruction permitted in this section shall be limited to the replacement of a sign panel, replacing individual letters and logos within the same area or repainting a sign face, and does not permit changes to the structure, framing, erection or relocation of the sign unless such changes conform to subsection (1) above.
- (C) Nonconforming highway signs for which there is in effect a valid NCDOT permit may be repaired or reconstructed without limitation so long as the square footage of the sign face is not increased.
- (D) A nonconforming sign shall be removed upon verification that the use to which such non-conforming sign refers has been abandoned for more than 180 consecutive days.

### **Article VI Sign Review Procedures.**

- (A) A sign permit shall be required for all permanent signage.
- (B) All sign permit applications shall be reviewed for compliance with these regulations and the North Carolina State Building Code within 10 business days from the time a completed application has been accepted by the Administrator.
- (C) All appeals and variances regarding the sign ordinance shall be heard by the Board of Adjustment in accordance with [Chapter 3](#).

## **Article VII Supplemental Considerations**

### **Section 1. Construction Standards.**

The construction, erection, safety and maintenance of all signs shall comply with the North Carolina State Building Code and all of the following:

- (A) Signs shall be structurally sound and located so as to pose no reasonable threat to pedestrian or vehicular traffic.
- (B) All permanent freestanding signs shall have self-supporting structures erected on, or permanently attached to, concrete foundations.
- (C) If possible, signs should not be in locations that obscure architectural features such as pilasters, arches, windows, cornices, etc.
- (D) Signs shall not be in locations that interfere with safe vehicular and pedestrian circulation or public safety signals and signs.
- (E) No signs shall be erected, constructed or maintained so as to obstruct any fire escape, required exit, window, or door opening used as a means of egress.
- (F) Signs shall be structurally designed in compliance with ANSI and ASCI standards. All electric signs shall be constructed according to the technical standards of UL or other certified testing laboratory.
- (G) Signs may be illuminated – by external or internal means -- provided that:
  - (1) The brightness and intensity shall not be greater than necessary to meet reasonable needs of the business or use served;
  - (2) Light sources shall be shielded from all adjacent buildings and streets; and
  - (3) The lighting shall not create excessive glare to pedestrians and/or motorists, and will not obstruct traffic control or any other public informational signs.

### **Section 2. Maintenance.**

- (A) All signs shall be maintained in accordance with the following:
- (B) The property owner shall maintain signs in a condition appropriate to the intended use and to all County standards.
- (C) The property owner has a continuing obligation to comply with all building code requirements.
- (D) If the sign is deemed by the Administrator to be in an unsafe condition, the owner of the business shall be immediately notified in writing, and shall, within 48 hours of receipt of such notification, respond to the county with a plan to correct the unsafe condition,

remove the unsafe sign, or cause it to be removed. If after 30 days, the unsafe condition has not been corrected through repair or removal, the Administrator may cause the repair or removal of such sign, at the expense of the property owner or lessee. If the total costs are not paid in full within 60 days of the repairs or removal, the amount owed shall be certified as an assessment against the property of the sign owner, and lien upon that property, together with an additional 10 percent penalty for collection as prescribed for unpaid real estate taxes.

- (E) In cases of emergency, the Administrator may cause the immediate removal of a dangerous or defective sign without notice.
- (F) Whenever any sign, either conforming or nonconforming to these regulations, is required to be removed for the purpose of repair, re-lettering or repainting, the same may be done without a permit or without any payment of fees provided that all of the following conditions are met:
  - (1) There is no alteration or remodeling to the structure or the mounting of the sign itself;
  - (2) There is no enlargement or increase in any of the dimensions of the sign or its structure; and
  - (3) The sign is accessory to a legally permitted or nonconforming use.

### **Section 3. Exempt from these Regulations.**

The following shall be exempt from regulation under this Ordinance:

- (A) Government Signs.
- (B) Works of Art.
- (C) Holiday Decorations, when displayed during the appropriate time of the year.
- (D) Flags, except feather flags.
- (E) Building markers.

### **Section 4. Prohibited Signs.**

The following signs are prohibited in the County:

- (A) Abandoned Signs.
- (B) Animated Signs.
- (C) Signs containing any words or symbols that would cause confusion because of their resemblance to highway traffic control or direction signals.
- (D) Signs located on trees, utility poles, public benches or any other form of public property or within any public right-of-way unless explicitly permitted by the regulations.



- (E) Off-Premises temporary signs, other than those explicitly permitted by [Article IV Section 6](#).
- (F) Any signs placed on public property without consent or placed in violation of local, state, or federal requirements.

### **Article VIII Jurisdiction**

The provisions of this chapter shall be applicable only to unincorporated areas of Watauga County which are not included in the extraterritorial jurisdiction of a municipality. The Valle Crucis Historic District and Foscoe-Grandfather Community have additional regulations concerning allowable signage.

## **CHAPTER 17 STRUCTURES LOCATED ON LAND ADJACENT TO NATIONAL PARK SERVICE LAND**

WHEREAS, the Board of Commissioners are concerned with protecting National Parks Service Lands from encroachment which could damage the unique scenic importance of such lands; and

WHEREAS, the economy of Watauga County is partially dependent upon maintaining the quality of such scenic lands; and

WHEREAS, the Board of Commissioners are authorized to enact ordinances to promote the general welfare generally by N.C.G.S. 153A-121 and specifically to regulate the location of buildings, structures, etc. by N.C.G.S. 160D;

NOW, THEREFORE, the Watauga County Board of Commissioners do enact the following:

### **Article I Regulation of Location of Structures**

No building or structure which is located upon land which is adjacent to National Park Service Land shall be located closer than fifteen (15) feet to the Park Service property line.

### **Article II Permit**

Prior to issuance of a building permit for structure(s) located upon land adjacent to National Park Service Land, National Park Service personnel, upon notification by the County Department of Planning and Inspection, shall determine said property line and shall establish the required fifteen(15) foot setbacks within fifteen(15) days of the application for a building permit.

### **Article III Jurisdiction and Effective Date**

This chapter shall be applicable within all areas of Watauga County not within the jurisdiction of a municipality and shall be effective upon enactment.

## **CHAPTER 18 SUBDIVISION AND MULTI-UNIT STRUCTURES**

### **Article I Title**

This chapter is known and may be cited as the Subdivisions and Multi-Unit Structures Regulations for Watauga County, North Carolina

### **Article II Authority and Enactment Clause**

The County Commissioners of the County of Watauga, pursuant to the authority conferred by Chapter 160D, Article 8, of the General Statutes of the State of North Carolina, do hereby enact into law these Articles and Sections.

### **Article III Jurisdiction and Purpose**

#### **Section 1. Jurisdiction**

On and after the date of adoption, these regulations shall govern each and every subdivision of land and/or multi-unit structure within Watauga County (hereinafter referred to as the "County") and outside the jurisdiction of any incorporated municipality. However, this ordinance may also regulate territory within the subdivision regulation jurisdiction of any municipality whose governing body by resolution agrees to such regulation provided, however, that any such municipal governing body may, upon written notice, withdraw its approval of these County Regulations, and those regulations shall not have further effect within the municipality's jurisdiction 30 days after the day the County receives the written notice. (N.C.G.S. 153A-122)

#### **Section 2. Purpose**

The purpose of these subdivision regulations is to guide and regulate the subdivision of land and/or multi-unit structures within the county in order to preserve the public health, safety, and welfare. The regulations included herein are designed to insure an adequately planned street system and to avoid hazardous conditions; to avoid overcrowding of the land and extreme concentration of population; to secure safety from fire, panic, and other dangers; to provide for adequate water and sewage systems, schools, parks and playgrounds; to insure against flood damage and soil erosion; to facilitate an orderly system for the design, layout, and use of the land; to insure the proper legal description and monumentation of subdivided land; and to provide for the re-subdivision of large land parcels.

## **Article IV Planning Board Review and Legal Status Provisions**

### **Section 1. Planning Board Review and Approval.**

Pursuant to N.C.G.S. 160D, Article 8 unless otherwise noted, no real property within the jurisdiction of this chapter shall be subdivided and offered for sale or a plat thereof recorded until a preliminary and final plat have been reviewed and approved by the Watauga County Planning Board as provided hereinafter. Plans of group developments for housing, commercial, industrial, or other uses, or for any combination of uses shall be submitted in the same manner as other plats for review by the Planning Board.

### **Section 2. Exemptions.**

- (A) 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 the local government as shown in its subdivision regulations.
- (B) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- (C) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (D) The division of a tract in single ownership whose entire area is no greater than 2 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 the local government, as shown in its subdivision regulations.
- (E) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
- (F) The division of land solely among members of the same family, which shall include all lineal descendants or ancestors plus brothers, sisters, aunts, uncles, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, nieces, nephews and stepchildren by any method of transfer except where the parties contemplate development for resale, and where the resultant lots are equal to or exceed the standards of the county as shown in this chapter.

### **Section 3. Building Permits.**

Approval of the final plat by the Planning Board shall be required before issuance of any building permit for a structure to be erected in a subdivision, except in Planned Unit Developments, or up to two (2) may be issued in any

subdivision to the owner/developer only, when the owner is also the developer.

#### **Section 4. Recording of Plats.**

No subdivision plat of land within the County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Watauga County Planning Board or Staff, and until this approval is entered in writing on the face of the plat by the designated representative of the County Planning Board.

#### **Section 5. Duty of Register of Deeds.**

The Register of Deeds shall not file or record a plat of a subdivision of land located within the territorial jurisdiction of the County that has not been approved in accordance with these provisions, nor shall the Clerk of Superior Court order or direct the recording of a plat if the recording would be in conflict with this section. No subdivision plat of land within a Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of Watauga County's Watershed Protection regulations. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with the watershed protection regulations.

#### **Section 6. Relationship to Effective Changes in the Chapter.**

It is not intended that this chapter will in any way repeal, annul, or interfere with any valid permits or approvals which were legally issued under previous ordinances for the use or development of land or structures. In addition, future changes in this chapter shall not repeal, annul, or interfere with any valid permits or approvals issued pursuant to this chapter prior to said changes. This provision shall include approved master plans for phased developments. If the density in the approved master plan is not increased, any plats and extensions thereof shall be subject to the regulations under which the original master plan was approved.

## **Article V Procedures For Review and Approval of Subdivisions**

### **Section 1. Plat Required on Any Subdivision of Land.**

Pursuant to N.C.G.S. 160D-803, a final plat shall be prepared, approved, and recorded pursuant to the provisions of this chapter whenever any subdivision of land takes place. Prior to recording, such plat shall be approved pursuant to Article V. To secure such approval, the subdivider shall follow the procedures established in this Article as applicable.

### **Section 2. Submission of Preliminary Plat.**

A preliminary plat meeting the requirements of this ordinance shall be submitted for review and shall be approved by the Planning Board before any improvements or land disturbing activities are made in a subdivision. One(1) copy of this plat, plus at least one-half plat fee shall be submitted to the Planning Staff at least two (2) weeks before the meeting of the Planning Board at which time it is to be reviewed. One week prior to the meeting and subsequent to staff review, an electronic version of the plat shall be provided to the Planning Staff; eight (8) full-size copies shall be submitted no later than 9:00 AM the day of the Planning Board meeting, unless deemed unnecessary by the Planning Staff.

A Developer Authorization Form ([Appendix M](#)) must accompany the Preliminary Plat application when the application is made by person(s) other than the land owner(s).

The Planning Staff shall provide that the following agencies be given an opportunity to make recommendations as appropriate concerning an individual subdivision plat before the plat is approved: AppHealthCare, Department of Transportation, County Board of Education, County Fire Marshal. The Planning Staff shall transmit copies of the plat to those agencies and others upon their request.

The Planning Board shall review the preliminary plat and identify any changes required in order that the subdivision may comply with the provisions of this ordinance. The Planning Board shall take formal action on the preliminary plat at the first regular meeting date (Normally the 3rd Monday evening of each month) after receipt of the plat. Within five (5) days after its action on the plat, the Staff shall notify the subdivider by letter indicating the action taken.

After receiving approval of the preliminary plat by the Planning Board and the erosion control plan by the staff (and not before that time), the subdivider may proceed to construct the proposed road and other

improvements in accordance with the requirements of this chapter and as shown on the approved preliminary plat.

- (A) Fees. The developer shall pay a review fee of an amount specified from time to time by the Watauga County Commissioners. At least half of said fee shall be paid at the time of submission of the preliminary plat (the fee shall be paid before the plat will be placed on the Planning Board meeting agenda); the remainder, if any, shall be paid at submission of the final plat.
- (B) For a planned unit development the developer shall pay a review fee at the rate provided above for each structure in the development. No fees are required for master plan review.

### **Section 3. Specifications for Preliminary Plat.**

The preliminary plat shall be at a scale of one-hundred (100) feet to one (1) inch or larger and shall be on a sheet, 18" x 24". However, if the size and shape of the property is such that a sheet 18" x 24" will not accommodate the entire tract, a sheet not larger than 24" x 36" may be used, and in unusual circumstances may be at a scale of no smaller than 1"=200'. In addition, the developer shall provide an electronic version of the plat.

The following information shall be required as applicable:

- (A) A sketch vicinity map showing the relationship of the proposed subdivision with the surrounding area.
- (B) The location of existing property lines, streets, buildings, water courses, transmission lines, sewers, bridges, and water mains, city and county lines (if adjoining) and any public utility easements.
- (C) Boundaries of the tract shown with distances and approximate acreage.
- (D) Evidence of access right-of-way from state road.
- (E) Names of adjoining property owners and/or subdivisions.
- (F) Zoning classification, if any, both on the land to be subdivided and on adjoining land.
- (G) Proposed streets, street names, rights-of-way, roadway widths, approximate grades, curve radiuses, and proposed drainage facilities.
- (H) Other proposed rights-of-way or easements showing locations, widths and purposes.
- (I) Proposed lot lines, lot numbers, and approximate area. Statement that all lots will comply with the Subdivision Regulations.
- (J) Proposed minimum building set back lines.
- (K) Proposed utility layouts (sewer, water, electricity) showing connections to existing systems or plans for central water system or

- package sewage system, or designation for individual water and sewage.
- (L) Proposed parks, open spaces, or any other public areas.
  - (M) Name of owner, developer, engineer and registered surveyor.
  - (N) Title, date, north point, and graphic scale.
  - (O) Statement of intended use of the lots (single or multi-family).
  - (P) Evidence of N.C.D.O.T. driveway connection permit shall be submitted prior to commencement of construction.
  - (Q) When an area covered in the plan includes or abuts a water area (stream, river or lake) the following additional information is required:
    - (1) Relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance rate maps.
    - (2) Any proposed dock lines beyond which no dock structure may be constructed.
    - (3) Methods of providing ingress and egress from uplands to water area.
    - (4) Names of the owners of the water area.
  - (R) A soil erosion control plan (3 copies) shall be submitted to the Planning Staff. Grading shall not commence until the erosion control plan is reviewed and approved by the Planning Staff and the Soil and Water Conservation District and a grading permit is issued. See Appendix B - D for further detail.
  - (S) If road (s) are to be "county standard", the developer shall maintain the road(s) until such time as a property owners association assumes maintenance. Prior to final plat approval, the developer shall comply with Article VI, Section 2(A)(1) concerning recording of property owners association road maintenance provisions.

#### **Section 4. Minor Subdivisions.**

- (A) Procedures set forth here for handling applications for approval of minor subdivisions are intended to simplify processing of routine small subdivisions with due regard to protection of the public interest.
- (B) For the purpose of these regulations, a minor subdivision is defined as any subdivision requiring no variances and consisting of not more than ten (10) lots. One phase of a phased development cannot be considered a minor subdivision unless the entire development is not more than 10 lots.
- (C) After January 1, 2006, all new divisions of land shall comply with all of the requirements of this ordinance, with the exception of the following: The division of one (1) lot or tract out of a larger tract will be allowed provided 1) the new lots meet the size, dimensional,



- and setback requirements of this or any applicable ordinance; 2) no public street or road dedication or change in existing public streets or road is involved; 3) the original lot or tract was created prior to January 1, 2006 and is over ten (10) acres in size; or 4) if the original tract is less than ten (10) acres, it shall have been created prior to June 15, 1973, or be otherwise exempt from this ordinance; 5) only one (1) such division shall be allowed from the original tract without total compliance with this ordinance.
- (D)** The Watauga County Planning Staff shall review the preliminary plat of each minor subdivision and shall find that it either is or is not a minor subdivision and shall find that it either does or does not meet the requirements of this ordinance. Said findings shall be stated in writing and recorded in the records of the Planning Board. Based upon said findings the Staff shall either approve, not approve, or approve conditionally the proposed minor subdivision.
- (E)** A decision by the Planning Staff shall be made within fifteen days of submission of the proposed minor subdivision to the Staff and the decision of the Staff is subject to appeal by the subdivider to the Planning Board which must act on appeals at its next regular meeting.
- (F)** A final plat shall be submitted to the Watauga County Planning Staff for consideration and approval before the conveyance of any of the property or the recording of the plat.
- (G)** The County may require only a plat for recordation for the division of a tract or parcel of land in single ownership if all of the following criteria are met:
- (1)** The tract or parcel to be divided is not exempted under Article IV, Section 2. (i.e. no resultant tract is 10 acres or more)
  - (2)** No part of the tract or parcel to be divided has been divided under this subsection in the 10 years prior to division.
  - (3)** The entire area of the tract or parcel to be divided is greater than five acres.
  - (4)** After division, no more than three lots results from the division.
  - (5)** After the division, all resultant lots comply with all of the following:
    - a)** Any lot dimension size requirements of the applicable land-use regulations, if any.
    - b)** The use of the lots is in conformity with the applicable zoning requirements, if any.
    - c)** A permanent means of ingress and egress is recorded for each lot.

## **Section 5. Phased Developments.**

If a developer proposes that a subdivision (including PUD's) will be constructed in phases, the following procedure shall apply.

- (A)** A master plan showing the entire proposed subdivision and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the Planning Board for approval.
- (B)** Each phase of development shall be preceded by submission and approval of a preliminary plat as outlined in Section 3 unless such plat submission is waived by the Planning Board. The master plan may be submitted prior to or simultaneously to submission of the preliminary plat for the first phase of development.
- (C)** As each phase is completed, a final plat must be submitted and approved for that phase as outlined in Sections 6 and 7.
- (D)** Approval of the master plan need not be renewed unless density increases are proposed.

## **Section 6. Submission of Final Plat.**

Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, and will necessitate the resubmission of the preliminary to the Planning Board for consideration, except in the case of preliminary plats for Planned Unit Developments, which do not expire. One (1) copy of this plat, plus plat fee, if any remains unpaid, shall be submitted to the Planning Staff at least two (2) weeks before the meeting of the Planning Board at which time it is to be reviewed. One week prior to the meeting and subsequent to staff review, one electronic copy shall be provided to the Planning Staff; eight (8) full size copies of the plat shall be submitted no later than 9:00 AM day of the Planning Board meeting. Roads and lots shall be clearly marked in the field upon submission of the final plat.

- (A) Final Plat.** The final plat shall be drawn on reproducible mylar. The final plat shall constitute only that portion of the approved preliminary sketch plan which the subdivider proposes to record provided that such portion conforms to all requirements of this ordinance. All final plats shall be on sheets with overall measurements of 18" x 24" and shall be on a scale no smaller than 1" = 100'. In addition, the developer shall provide one electronic version of the plat.

The final plat shall show as applicable:

- (1)** A sketch vicinity map showing the location of the subdivision in relation to the surrounding area.

- (2)** The right-of-way lines and easements of all streets and roads, and access right-of-way to state road.
- (3)** Lot lines and lot numbers showing bearings and distances, and lot sizes. All dimensions should be to the nearest one-hundredth (0.01) of a foot and angles to the nearest minute.
- (4)** Minimum building setback lines. (Show typical lot setback; not required of all lots.)
- (5)** Relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance maps.
- (6)** Sufficient data to determine readily and reproduce on the ground the location, bearing and length of every street line, lot line, boundary line, and block line whether curved or straight.
- (7)** Accurate location and description of all monuments and markers and block tie lines.
- (8)** The names and locations of adjoining subdivisions and streets, and the location and ownership of adjoining un-subdivided property, including water areas.
- (9)** Title, date, name, and location of subdivision, graphic scale, and true north point.
- (10)** Name of owner, developer, surveyor, engineer and land planner.
- (11)** Reservations for easements, and areas to be dedicated to public use or sites for other than residential use shall be shown on the plat with notes stating their purposes.
- (12)** One of the following statements:
  - a)** Drinking water source to be individual or shared wells (not a community or public water supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by App HealthCare for septic system.
  - b)** Drinking water source to be a public water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by AppHealthCare for septic system.
  - c)** Drinking water source to be a community water system (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be septic tanks. Individual lots have/have not been approved by AppHealthCare for septic system.
  - d)** Drinking water source to be individual or shared wells (not a community or public water system). Wastewater disposal method to be NPDES sewer (name system if to

be connected to existing system, or indicate proposed new system).

**e)** Drinking water source to be a public water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be NPDES sewer (name system if to be connected to existing system, or indicate proposed new system).

**f)** Drinking water source to be a community water supply (name system if to be connected to existing system, or indicate proposed new supply). Wastewater disposal method to be NPDES sewer (name system if to be connected to existing system, or indicate proposed new system).

**(13)** Location and size of culverts/ drainage facilities.

**(14)** Density in units per acre if PUD.

**(15)** Variances granted, if any.

**(16)** Reference shall be made on final plat to deed book and page number of recorded Restrictive Covenants and/or Road Maintenance Agreement.

**(B)** The following certificates shall be shown on the final plat as applicable:

**(1)** Certificate of Ownership and Dedication

I (We) hereby certify that I am (we are) the owner(s) of the property shown and described here on, that the property is within the regulatory jurisdiction of Watauga County, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish all lots, and dedicate all streets, alleys, walks, parks, easements, right-of way, and other open spaces to public or private use as noted.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
OWNER

**(2)** Certificate of Accuracy

The undersigned surveyor, being duly sworn, deposes and says that the plat upon which this certificate appears was prepared in accordance with N.C.G.S.47-30 as amended, is in all respects correct according to the best of his knowledge and belief, and was prepared from an actual survey made by him on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, with maximum \_\_\_\_\_ linear error of \_\_\_\_\_ of closure of \_\_\_\_\_ and a maximum field error of angular closure of \_\_\_\_\_.



county to assure completion of all required improvements in case of default.

DATE \_\_\_\_\_ WATAUGA COUNTY AUTHORIZED REPRESENTATIVE \_\_\_\_\_

**(5) Certificate of Approval of Recording.**

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of Watauga County, North Carolina, with the exception of such variances, if any, as are noted in the Minutes of the Planning Board and are recorded on the plat and that it has been approved by the Watauga County Planning Board at their regular meeting of \_\_\_\_\_ for recording in the office of the County Register of Deeds.

DATE \_\_\_\_\_ WATAUGA COUNTY AUTHORIZED REPRESENTATIVE \_\_\_\_\_

**(6) Certificate of Approval of Recording.**

(watershed; can be combined with (5) or (10))

I certify that the plat shown here on complies with the Watershed Protection regulations and is approved by the Watauga County Planning Board or Staff (choose which is applicable) for recording in the Register of Deeds Office.

DATE \_\_\_\_\_ WATAUGA COUNTY AUTHORIZED REPRESENTATIVE \_\_\_\_\_

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

**(7) Certificate of Approval and Acceptance of Dedications**

I, \_\_\_\_\_, the Authorized Representative of Watauga County, North Carolina, do certify that Watauga County approved of this plat or map and has accepted the dedication of the streets, easements, right-of-way, and public parks shown thereon, but assume no responsibility to open or maintain the same until, in the opinion of the governing body of Watauga County it is in the public interest to do so.

DATE \_\_\_\_\_ WATAUGA COUNTY AUTHORIZED REPRESENTATIVE \_\_\_\_\_

**(8) Certification of Approval of N.C.D.O.T Division of Highways**

NCDOT DIVISION OF HIGHWAYS  
PROPOSED SUBDIVISION ROAD

CONSTRUCTION STANDARDS CERTIFICATION  
APPROVED \_\_\_\_\_

DISTRICT ENGINEER

DATE \_\_\_\_\_

(or as otherwise specified by D.O.T.)

**(9) Certificate of Exemption**

I hereby certify that the plat shown here on is exempt from the Watauga County Subdivision Regulations pursuant to Section \_\_\_\_\_ of the regulations. No approval is required.

\_\_\_\_\_  
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

**(10) Certificate of Approval of Minor Subdivision**

I hereby certify that the subdivision plat shown hereon has been found to comply with the Subdivision Regulations of Watauga County, North Carolina. It has been approved as a minor subdivision as defined in Section \_\_\_\_\_ of the Subdivision Regulations for recording in the office of the County Register of Deeds.

\_\_\_\_\_  
DATE WATAUGA COUNTY AUTHORIZED REPRESENTATIVE

(NOTE: Authorized representatives shall be the Director of Planning and Inspections and Planner/Property Development Coordinator, and in their absence, the Chair and Vice Chair of the Planning Board.)

**Section 7. Approval of Final Plat.**

Upon receipt of the final plat, the Planning Board and Staff shall review it for compliance with the provisions of the ordinance. The Planning Board may approve the plat in whole or in part, or subject to modifications. Failure of the Planning Board to take formal action on the final plat after receipt of the plat at least two (2) weeks prior to the regular meeting date(3rd Monday evening of each month) shall be deemed approval of submitted plat. (The regular meeting may be postponed, but for no more than one (1) week). The approval of the final plat by the Planning Board shall be on the condition that such plat be recorded in the office of the Register of Deeds within one (1) year after such approval. The original tracing of the final shall be made available by the subdivider for authentication when the Planning Board takes final action approving the plat.

**Section 8. Advisory Opinion.**

A subdivider is encouraged to submit a sketch to the Planning Staff prior to submission of a preliminary plat if s/he wishes to ascertain the feasibility of development of his property.

## **Article VI General Requirements and Minimum Standards of Design**

### **Section 1. General Requirements.**

The subdivider shall observe the following general requirements and principles of land subdivision.

- (A) Suitability of Land.** Land which has been determined by the Watauga County Planning Board on the basis of engineering and/or other studies prepared by licensed professionals to pose an ascertainable danger to life or property by reason of its unsuitability for the use proposed shall not be platted for that purpose, unless and until the subdivider has taken the necessary measures to correct said conditions and to eliminate said dangers.
- (1)** Land subject to flooding may be considered unsuitable for building development. The decision by the Planning Board shall be based on flooding history of the area and survey information furnished by Federal Emergency Management Agency (FEMA) as delineated on the Watauga County Floodway Boundary and Flood Rate Insurance Maps. Subdivision developments shall comply with the Watauga County Flood Damage Prevention regulations.
  - (2)** Generally, property which has a natural cross slope of fifty (50) percent or more is considered unfeasible for subdivision development. Any variance beyond a fifty (50) percent slope shall require the approval of the Planning Board. See Appendix H for method of defining average cross slope.
- (B) Conformity to Existing Plans.** All proposed subdivisions shall conform to any adopted plans for the county and to any applicable regulations of any existing county zoning regulations. Whenever a tract to be subdivided embraces any part of a state maintained road, as designated on any officially adopted plan, such part of such public right-of-way shall be platted by the subdivider in the location and at the width indicated by said plan and provisions of this ordinance.
- (C) Driveway Connection Permit.** A driveway connection permit issued by NC Department of Transportation shall be obtained. A Traffic Impact Analysis shall be required from the applicant under the following circumstances, unless the Planning Staff and NCDOT concur that one is unnecessary:
- (1)** The development proposes to have access to any public road at a location where sight distance in any direction along the road is less than 500 feet; or
  - (2)** The development proposes access onto a public road that does not have a paved width of at least 18 feet; or



- (3) The development proposes access to a public road with current NCDOT traffic counts that are 85% of capacity shown in the most recent Watauga County Comprehensive transportation Plan and based upon ITE trip generation rates is projected to generate 1,500 or more weekday trips; or
- (4) The Planning Staff determines that the proposed project will have a potential negative impact on the public road system due to the size of the project or existing transportation system or determines that there are safety concerns with the driveway location and design. If a traffic impact analysis is performed and that analysis concludes that improvements are required to the transportation system, the applicant may be required to complete those improvements in connection with the project as a condition of issuing a permit. Unless an agreement is executed by the County in which the time for the improvement is specified, the improvement shall be completed prior to issuance of final plat approval.
- (D) Coordination and Continuation of Streets. The proposed street layout within a subdivision shall be coordinated with the existing street system of the surrounding area and where possible, existing principal streets shall be extended.
- (E) Access to Adjacent Properties. Where, in the opinion of the Planning Board it is necessary to provide for street access to an adjoining property, proposed streets shall be extended by dedication to the boundary of such property and a temporary turnaround shall be provided. This provision shall apply only to roads which will be state maintained (dedicated to the public).
- (F) Access Right-of-Way. Where a right-of-way, less than forty-five (45) feet, which provides access to property proposed for subdivision had been granted prior to June 15, 1973, and the developer presents proof in writing that s/he cannot feasibly obtain a forty-five (45) foot right-of-way to the property then s/he may be permitted to develop the property provided s/he secure at least a thirty (30) foot right-of-way into the property proposed for subdivision. If the right-of-way is less than thirty (30) feet, the Planning Board may grant a variance for development provided that the road width will meet county standards. Less-than-county-standard-width may be permitted under extreme circumstances in the judgment of the Planning Board, provided the access right-of-way is no greater than 300 feet in length and there are no view obstructions from either end of the access. Roads providing access to subdivisions shall meet the same standard as the roads within the subdivision unless a variance specifying otherwise is granted by

- the Planning Board. In all cases where less than a forty-five (45) foot right of-way is used for access to a subdivision, this fact shall be contained in the disclosure statement and shown on the final plat as specified in Article V, Section 6. For purposes of this section, access road shall not include any state-maintained road. When an access road passes by an existing structure, the subdivision developer shall make efforts to protect the structure(s) from visual, noise, stormwater and other impacts potentially caused by the access road.
- (G)** Large Tracts or Parcels. Where land is subdivided into larger parcels than ordinary building lots, such parcels should be arranged so as to allow for the opening of future streets and logical further re-subdivisions.
  - (H)** Marginal Access Streets. Where a tract of land to be subdivided adjoins a principal arterial street or a major arterial street, the subdivider may be required to provide a marginal access street parallel to the arterial street or reverse frontage on a minor street for the lots to be developed adjacent to the arterial. Where reverse frontage is established, private driveways shall be prevented from having direct access to the expressway.
  - (I)** Lots. All lots shall front, except as provided in Article VI, Section 3(F), with a minimum of forty (40) feet on a dedicated through street; thirty (30) feet on cul-de-sacs. Double frontage lots shall be encouraged where terrain necessitates double frontage for reasonable access to property.
  - (J)** Street Names. Proposed streets which are obviously in alignment with existing streets shall be given the same name. In assigning new names, the provisions of the Ordinance Establishing Names For Public And Private Roads In Watauga County shall apply. Street names shall be subject to the approval of the Watauga County Emergency Services Department.
  - (K)** Name of Subdivision. The name of a subdivision shall not duplicate nor closely approximate the name of an existing subdivision within the county.
  - (L)** Natural Assets. In any subdivision due consideration will be given to preserving natural features such as trees, ponds, streams, rivers, lakes and for any historical sites which are of value not only to the subdivision but to the county as a whole.
  - (M)** Erosion Control. In order to prevent soil erosion and sedimentation of streams, springs, flat water bodies, or other drainage networks, the subdivider shall retain the natural vegetation cover wherever possible. Further, land cleared of the natural vegetation shall be reseeded or replanted with an appropriate vegetative cover which shall be approved by the Planning Staff and Soil and Water

Conservation District. In all cases of street construction, or land disturbing activity of one half (1/2) acre or more, the subdivider shall comply with the Watauga County Soil Erosion Control Regulations. In addition, the grading plan and specifications controlling execution of land-disturbing activities shall adhere to the following standards:

- (1) Maximum cut slopes shall be 2H:1V.
- (2) Maximum fill slopes shall be 2H:1V.
- (3) Innovative designs exceeding the slope standards specified herein may be approved when accompanied by a site-specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering. All grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures as applicable.

Also see Appendix B-D for further detail.

**(N)** Storm Water Drainage. The subdivider shall provide an adequate drainage system for the proper drainage of all surface water. The design of such a system shall be subject to the approval of the Planning Staff.

- (1) No surface water shall be channeled or directed into a sanitary sewer.
- (2) Where feasible, the subdivider shall connect to an existing storm drainage system.
- (3) Where an existing storm drainage system cannot feasibly be extended to the subdivision, a surface drainage system shall be designed to protect the proposed development and adjoining property from water damage.

**(O)** Proposed Water and Sewage Systems. The preliminary subdivision plat must be accompanied by satisfactory evidence as to the proposed method and system of water supply and sanitary sewage collection and disposal.

- (1) Where the system is to be connected to the system owned and operated by the Towns of Boone, Blowing Rock, Beech Mountain, Seven Devils, or any associated sanitary district, or any sanitary facility of Watauga County, but not constructed by the municipalities or county, the preliminary subdivision plat shall be accompanied by a letter of approval from the proper official representing the owner of the existing system to which the proposed system is to be connected. After preliminary approval but prior to installation of a public water or sewer system, the developer shall present to the Planning Board plans for the proposed system, prepared by a registered engineer and approved by the proper official

representing the owner of the system to which the proposed system is to be connected, and by the designated state agency.

- (2) Where community water/sewer systems are proposed, the preliminary plat shall be accompanied by a letter of approval from the proper official of the designated state agency or AppHealthCare, whichever is applicable. The developer shall note the type of systems to be utilized on the preliminary and final plat and shall record with the Watauga County Register of Deeds an instrument setting forth provisions for the establishment of a property owner's association for the purpose of assessing dues for maintenance of the community systems by purchasers of property which will be served within the development. The developer shall maintain community systems at least until such time that the property owner's association assumes maintenance.
- (3) Where the proposed system does not contemplate the use of facilities owned and operated by any of the above, the developer shall note on the preliminary and final plat that each lot shall have an individual water supply and sewage disposal facility to be approved by the AppHealthCare. The developer shall note further which lot(s) have or have not received prior approval for septic tank use by AppHealthCare.
- (P) Cemeteries: Where a subdivision plat encompasses an existing cemetery - whether active or abandoned - the subdivider shall provide permanent access to the cemetery.

## **Section 2. Design Standards for Streets.**

The design standards for subdivision streets shall meet either the minimum construction standards for secondary roads as required by the N.C. Department of Transportation or the minimum construction requirements for county standard roads. When state standards are to be met, the developer shall submit proposed road specifications for the approval of the local Department of Transportation office prior to submitting a preliminary plat. It is recommended that subdivision roads be constructed to meet D.O.T. requirements in all areas where terrain is suitable for D.O.T. approval.

- (A) County Standard Roads. County standards may be utilized under the following conditions:
  - (1) Prior to the recording of the final plat, the developer shall record a Declaration of Restrictions and/or approved Road Maintenance Agreement having provisions for the establishment of a property owner's association for the purpose of assessing dues for road maintenance. The

developer shall maintain the road at least until such time that the property owner's association assumes maintenance.

- (2) County standard roads shall be maintained to the original graveled or paved width.
  - (3) The Planning Staff may perform periodic inspections to insure that the roads are being maintained to the required width.
- (B) Design Requirements for County Standard Roads.**
- (1) Right-of-Way Width. Right of way width for County standard roads shall be not less than forty-five (45) feet.
  - (2) Width of Road. Graded width of road bed including ditch and shoulder areas shall have a minimum width of twenty five (25) feet. This amount may be reduced pursuant to Article VI, Section 2(B)(4)
  - (3) Stoned or Paved Area. Road travel area may be either stoned or paved, and shall have a minimum width of twenty (20) feet.
    - (a) Where stone is used, it shall be "crusher-run" or DOT approved "ABC" stone compacted to a minimum of four (4) inches. In locations where soil conditions require additional stone to attain a stable road bed, the developer shall add the required amount of stone before attaining approval of the final plat.
    - (b) If the developer elects to pave county standard roads, s/he shall meet requirements of the State Department of Transportation pertaining to stone base and top surface.
    - (c) In the case of roads which were approved and for which construction began prior to the adoption of the 20-foot width requirement on May 15, 2012 the Planning Board may allow 18-foot road width provided the Board determines the following:
      - (i.) the subject road received a preliminary plat approval prior to May 15, 2012, and
      - (ii.) the road was substantially completed to the formerly-required 18 foot width, and
      - (iii.) it is impractical from an engineering or environmental perspective to increase the width to 20 feet. Examples include, but are not limited to: 1) underground utilities have been placed in the road right-of-way, 2) cut and fill slopes have been stabilized and additional grading would unnecessarily affect the slopes, and 3) the subject road

segment is the final segment of an existing road.

- (4) Shoulder Areas and Ditches.** Shoulder area on cut side shall be a minimum of four (4) feet in width and shall provide a drainage ditch of adequate size to accommodate storm water run-off based on terrain and location. Shoulder width on fill side shall be a minimum width of three (3) feet. In locations where cuts are required on both sides of the road, drainage ditches and shoulders shall occupy approximately three and one-half (3 1/2) feet wide on each side. The Planning Staff may recommend shoulder design which differs from the above during site inspection and depending upon terrain and cut and fill. In addition, the staff may approve a reduction in shoulder area on the ditch side of up to one and one-half (1 1/2) feet where the road is paved and "roll type" curb and gutter is used. The total reduction in shoulder area could be three (3) feet if there is a ditch on both sides. This reduction is dependent upon adequacy of this design to handle runoff as calculated by the erosion control plan.
- (5) Road Grades.** Maximum grade shall be fifteen (15) percent. A variance up to eighteen (18) percent may be granted by the Planning Board in extreme cases where terrain prohibits a lesser grade to attain access to a nearby area, if in the opinion of the Planning Board such variance will not create a hazardous or destructive condition. In no case shall a variance be granted for road grades exceeding eighteen (18) percent. In addition, for any road containing grade(s) exceeding fifteen (15) percent, the entire road network shall be paved unless deemed unnecessary by the Planning Board in considering the variance. The Planning Board may require the placement of safety barriers on curves of such roads. The Planning Board shall also require a slope stake road profile for roads (or portions of roads where practical) with grade(s) fourteen (14) to eighteen (18) percent subsequent to preliminary plat approval. Certification of road grade by a NC licensed surveyor shall be required when deemed necessary by the Planning Board or Staff.
- (6) Culverts and Drainage.** Culverts shall be of adequate size to discharge storm water from any given area depending upon terrain and location. Minimum culvert size shall be eighteen (18) inches (may be reduced at the discretion of the Planning Staff) inside diameter and shall be located and installed as recommended by the project engineer or as recommended by the Planning Staff.

- (a) Culverts may be made of any NCDOT approved material and design and shall be installed on a constant grade of a sufficient degree to insure proper drainage and a minimum danger of becoming clogged with debris or mud.
  - (b) All culverts shall have a minimum cover of twelve (12) inches of well compacted earth. The first six (6) inches of earth surrounding the culvert shall be free of stones larger than two (2) inches square.
- (7) Curve Radius. All curves in county standard roads shall have a radius of no less than thirty five (35) feet.
- (8) Bridges. Proposed bridges which will be part of a county standard road or bridges used by more than one house, townhouse or duplex shall be constructed and maintained in accordance with AASHTO HB-17 and designed to accommodate two (2) lanes of traffic unless a variance for a one (1) lane bridge is granted by the Planning Board. Factors to be considered by the Board in deciding upon such variances are: (1) environmental impact of a one (1) lane bridge as opposed to a two (2) lane bridge; (2) density (number of houses to be served by bridge); (3) traffic flow (one lane bridges should not be placed so as to cause traffic to back up onto a major thoroughfare). In any event, bridges serving more than one house, townhouse or duplex shall be permitted and constructed to meet NC Department of Transportation specifications, except that the width may be reduced to twenty (20) feet. Confirmation that bridges meet such specifications may be provided by either Department of Transportation engineer or a registered private engineer. In addition, one-lane bridges shall include gravel or paved turnouts on each side of the bridge(s) to provide access to the water body for fire-fighting equipment where feasible. Developers proposing bridges should request an advisory opinion from the Planning Staff to assist in designing appropriate and adequate bridges. Private bridges shall be maintained by the developer or property owners association. Suggested maintenance procedures are found in Appendix I. It is recommended that these or similar procedures be adopted as an annual procedure.
- (9) Cul-de-sacs. Turn-around right-of-way width shall be a minimum of one hundred (100) feet in diameter for round-design cul-de-sacs; the travel surface shall be a minimum of seventy (70) feet in diameter. Provided, however, that if terrain prevents construction of a round-design cul-de-sac,

"tee" and "y" types of turn-arounds may be constructed; right-of-way shall be forty-five (45) feet in width; travel surface shall be twenty (20) feet. See Appendix K for drawings.

- (10) Turnarounds.** County standard roads shall be provided with turnarounds located as near as practical to the first 1000 foot point and each 1000 foot point thereafter, but not to vary by more than 100 feet longer. Road right-of-way shall be established so as to encompass turnarounds.
- (11) Property Lines - - Concerning County Standard Roads.** Roads which are to have a forty-five (45) foot right-of-way may also have the property line located along and with the centerline of the road with a twenty-two and one-half (22 1/2) foot road right-of-way measured from the centerline to each side of the road. If this method is used, it shall be clearly indicated on the plats and incorporated in all deed conveyances. If the developer elects, s/he may place property line(s) twenty-two and one-half (22 1/2) feet from the centerline of the road(s) thereby providing a forty-five (45) foot right-of way.
- (a)** Property line markers (iron rod, granite, or concrete monument) shall be placed on the side property lines at a point measured twenty-two and one-half (22 1/2) feet from the center of the road where a forty-five (45) foot right-of-way is provided.
- (b)** The minimum building set-back distance from the road abutting the front of the property shall be forty (40) feet from the center of a forty-five (45) foot right-of-way. This will place the structure 17 1/2 feet behind the right-of-way line.
- (12) Designation of Road Status.** All roads shown on the preliminary and final plats shall be clearly noted as to which roads are county standard and which are constructed to meet N.C. Department of Transportation requirements.
- (a)** It is permissible to have both county standard and state approved roads within a subdivision. It is suggested that for a subdivision of substantial size with a main entrance road entering from an existing state road which will have a length of one thousand (1000) feet or more and may be extended in the foreseeable future, the entrance road should be constructed to meet N.C. Department of Transportation standards. This plan is suggested in order to insure mail delivery, state road maintenance and school bus service to a closer proximity of property owners located on county



standard roads which may intersect the new public road.

- (b) Construction of a county standard road intersecting an existing state road with the intention of connecting and serving a new state approved road is prohibited.
- (13) Disclosure. The developer shall comply with N.C.G.S.136-102.6 which provides for a Disclosure Statement from the developer to the purchaser setting forth the status (whether public or private) of the road on which the property is located. The disclosure statement shall also fully disclose the party or parties upon whom responsibility for maintenance of such roads shall rest.

### **Section 3. Design Standards for Lots.**

The lot size, width, depth, shape and orientation, shall be appropriate for the location and terrain of the subdivision and for the type of development and use contemplated.

#### **(A) Lot Area.** (SEE ALSO TABLE 1)

- (1) Lots served by public/community water and NPDES sewer shall have an area of at least eight thousand (8000) square feet.
- (2) Lots served by NPDES sewer but individual water shall have an area of at least ten thousand (10,000) square feet.
- (3) Lots served by individual sewer shall have an area of at least twenty-one thousand, seven hundred eighty (21,780) square feet (one-half acre). These requirements shall be increased on the recommendation of the Appalachian District Health Department based on site investigations or percolation rates and subsoil conditions.
- (4) Lots located within drinking water supply watersheds shall comply with the size requirements specified for WS-I, WS-II, WS-III, or WS-IV found in the Watauga County Watershed Protection regulations.
- (5) Individual lots within townhouse developments or townhome conversions must include an individual dwelling, together with front and rear yards or rights to yards in common areas, but are otherwise exempt from minimum lot area and setback requirements.

TABLE 1 - LOT AREA REQUIREMENTS

|                                 | PUBLIC/COMMUNITY WATER, NPDES & NON-DISCHARGE SEWER SYTEMS | PUBLIC/COMMUNITY WATER, INDIVIDUAL SEWER SYSTEMS | INDIVIDUAL WATER INDIVIDUAL SEWER SYSTEMS | INDIVIDUAL WATER NPDES SEWER SYSTEMS |
|---------------------------------|--|--|---|--------------------------------------|
| Minimum Lot area in square feet | 8,000  | 21,780   | 21,780                                    | 10,000                               |
| Minimum Lot width in feet       | 75-average 40-street line**                                | 75-average 40-street line                        | 75-average 40-street line                 | 75-average 40-street line            |
| Minimum lot depth in feet       | 125-average  | 125-average                                      | 125-average                               | 125-average                          |
| Density in units per acres      | 5.4 (conventional)<br>6.155 (PUD***)                       | 2 (conventional)<br>2.261 (PUD***)               | 2 (conventional)<br>2.261 (PUD***)        | 4.3 (conventional)<br>4.924 (PUD***) |

\*\* Street line width for cul-de-sacs may be 30 feet.

\*\*\* Multiply gross area by figures shown here. These figures have 15% deduction for roadways built in. These figures do not apply where the average cross slope is 30% or greater.

NOTES:

- a)** PUDs served by shared individual sewer systems (see definitions) shall be permitted density of 4.522 units per acre (this figure has 15% roadway deduction built it); density permitted where average cross slope exceeds 30% shall be 4 units per acre.
- b)** Minimum lot size requirements may exceed those shown above if subdivision is located in areas of the County affected by the following state and local regulations:
  - (i.)** Valle Crucis Historic District
  - (ii.)** Foscoe-Grandfather Zoning
  - (iii.)** Watershed Protection
  - (iv.)** High Quality Waters (HQW)
- c)** Outstanding Resource Waters (ORW) Setback: 15 feet from side and rear property lines; 40 feet from center of 45 foot right-of-way.
- d)** AppHealthCare regulations require that 1 unit = 2 bedrooms for individual sewer systems.
- e)** Minimum lot areas are exclusive of road right-of-way.
- f)** Formula for units per acre: #units divided by total acres. Example: 10 units on 2 acres =  $10/2 = 5$  units per acre.

- g)** Except as set forth as follows in Subsection (F), A residential lot, meeting the minimum standards of this ordinance, or being a lot which was established prior to June 15, 1973, may accommodate a single residence, a duplex, or a single residence and a detached secondary residence such as a garage apartment, provided there are no more than two (2) units.
- (B)** Lot Width. All lots shall have an average width of seventy-five (75) feet and a minimum width at the street line of forty (40) feet, thirty (30) feet on a cul-de-sac.
- (C)** Lot Depth. All lots shall have an average depth of at least one hundred twenty-five (125) feet.
- (D)** Orientation of Lot Lines. Side lot lines are encouraged to be designed substantially at right angles or radial to street lines depending upon terrain.
- (E)** Panhandle Lots. The Planning Board or Staff may approve panhandle lots where it is impractical to serve an isolated lot by a state or county standard road. The frontage of the panhandle lot shall have a minimum width of thirty-five (35) feet which will provide an access strip between two standard lots to the isolated building site. The area of such strip shall be excluded in computing the lot area and the length of said strip shall not exceed three-hundred (300) feet. If the panhandle widens to seventy (70) feet or more, it shall be included in the acreage calculation.
- (F)** Access to Lots. All lots within a subdivision shall have direct vehicular access to state or county standard roads, provided however that access to a maximum of three (3) lots (each lot containing no more than one residential unit) may be provided through use of a shared private driveway. A shared private driveway shall not exceed eighteen (18) percent grade, shall be contained within a 20 foot or greater right-of-way, and shall have a 35 foot minimum curve radii. Driveway travel area may be either stoned or paved and shall have a minimum width of ten (10) feet with a vertical clearance of not less than 13 feet 6 inches. The travel area must be designed to support the loads imposed by fire apparatus and provide all weather driving capabilities. Driveways that exceed 1,000 feet in length shall have an approved pullout area with a minimum width of 10 feet and minimum length of 40 feet to allow for two-way traffic. Shared driveways shall be constructed at the time of final plat submission. There shall be no obstructions within the right-of-way of shared driveways. The developer shall record with the Watauga County Register of Deeds an instrument setting forth provisions for maintenance of the shared driveway and shall maintain the driveway at least until such

time that the maintenance is assumed by others. The provisions of this subsection are applicable to shared driveways serving more than one subdivision, or a subdivision and property outside of the subdivision. Decisions of the staff may be reviewed by the Planning Board upon written appeal submitted to the Clerk to the Planning Board within thirty (30) days of the staff decision.

- (G) Building Setback Lines. The minimum building setback distance shall be as stipulated in Table 2. Structures subject to setback requirements may be completed without regard to older, more stringent setback requirements found in older subdivisions. Building setbacks shall be measured from the property line to any part of the structure above ground, including eaves and overhangs, but not including walkways or driveway/parking areas. The owner or contractor shall certify compliance with setbacks prior to inspection of the building footings.

TABLE 2 - BUILDING SETBACK REQUIREMENTS

| <u>Type of Setback</u>  | <u>Amount of Setback</u>  |
|---|---|
| 1. Distance from center of right-of-way on Highways 321,421,221,105,194.<br>(includes all frontages on multiple frontage lots)  | 80 feet, but shall in all cases be at least 15 feet from the street right-of-way line.  |
| 2. Distance from center of right-of-way on all other streets.<br>(includes all frontages on multiple frontage lots)   | 45 feet, or 40 feet per Section 71.0312.  |
| 3. Distance from cul-de-sac right-of-way.   | 15 feet   |
| 4. Distance from side property line.  | 15 feet   |
| 5. Distance from rear property line.<br>(If rear property line does not front on a road)  | 15 feet   |
| 6. Distance (horizontal) from a stream, river or lake.  | To be determined by Watauga County Flood Damage Prevention Ordinance or other applicable regulations including but not limited to High Quality Waters, Outstanding Resource Waters, and Watershed Protection. |
| 7. Pre-existing Situations. Setback requirements contained herein are not applicable to structures and lots lines which pre-existed this ordinance and/or pre-existed the subdivision of land upon which the structure are located. The setbacks contained herein shall apply to any new or rebuilt structures located on the subject land. |   |

## **Section 4. Design Standards for Easements.**

Easements shall be provided as follows:

- (A) Utility Easements. Easements for underground or above ground utilities shall be provided where necessary across lots or preferably centered on rear or side lot lines and shall be at least ten (10) feet in width.
- (B) Drainage Easements. Where a subdivision is traversed by a stream or drainage way, a minimum easement of fifteen (15) feet shall be provided conforming to the lines of such stream.

## **Article VII Planned Unit Development**

### **Section 1. Definition.**

A "planned unit development" (PUD) is a tract of land under single, corporate, firm, partnership, or association ownership which is planned and developed as an integral unit. It is established in a single development operation or a definitely programmed series of development operations according to an approved master development plan and a preliminary site plan.

### **Section 2. Purpose.**

It is the objective of this Article to encourage PUD proposals that exhibit such special qualities or concepts that they may deviate from standard requirements. These regulations are established in order that each PUD proposal will be evaluated on its own merits. It is recognized that some proposals or concepts will be more successful than others and the approval of a specific proposal in one situation does not mean that a similar proposal would be acceptable in other circumstances. It is also recognized that only through ingenuity, imagination, and high quality design can residential or commercial developments be produced which are in keeping with the intent of this article but which are not constrained by the strict application of conventional use and dimensional requirements of the subdivision regulations.

### **A Voluntary Alternate Procedure**

Use of the PUD procedure is not mandatory for the development of any site or area. Rather, this process will provide a voluntary alternate development procedure which has one or more of the advantages listed below.

- (a) Permit creative approaches to the development of residential or commercial land, reflecting changes in the technology of land development.

- (b) Accomplish a more desirable environment than would otherwise be possible, by providing for a variety of housing types, designs and arrangements.
  - (c) Provide for an efficient use of land which can result in smaller networks of utilities and streets and reduce development costs.
  - (d) Enhance the appearance of neighborhoods through the preservation of natural features, and the provision of recreational and open space areas.
  - (e) Provide an opportunity for new approaches to home ownership.
  - (f) Provide an environment of stable character compatible with surrounding residential and natural areas.
- (A) Minimum Requirements.
- (1) The normal lot size, setbacks and frontage requirements are hereby waived for lots or building sites within the planned unit development, provided that the spirit and intent of this article are complied with in the total development plan, as determined by the Planning Board. Compliance with the buffering and screening requirements found in Appendix J along the perimeter of a PUD is required.
  - (2) Height limitations: All buildings shall comply with the Watauga County Height of Structures regulation or the NC Ridge Law, whichever is applicable.
  - (3) All streets providing access to a PUD and streets within a PUD shall be constructed to at least County standards regarding right-of-way and width, and must be paved.
  - (4) Every dwelling unit shall have access to a public or private street, walkway or other area dedicated to common use, and there shall be provision for adequate vehicular circulation to all development properties, in order to ensure acceptable levels of access for emergency vehicles.
  - (5) Every planned unit development shall provide at least two (2) off-street parking spaces per dwelling unit and commercial/office parking and loading space according to the following schedule.
    - (a) Parking space for commercial/office shall consist of one (1) off-street parking space for each two hundred (200) square feet of gross floor area for operations designed to attract and serve customers and clients on the premises; one (1) space for each four

hundred (400) square feet of gross floor area for operations designed to attract little or no customer or client traffic other than employees of the operation; one and one half (1.5) spaces per bedroom for hotels, motels, and inns; one and one half (1.5) spaces per three employees for industrial and warehouse uses.

- (b)** Parking spaces shall be a minimum of nine feet by eighteen feet (9' x 18') in size.
- (c)** Loading/unloading space for commercial/office uses shall consist of one (1) space at least three hundred (300) square feet in size for each five thousand (5000) square feet of gross floor area.
- (d)** Parking and loading areas for all multi-unit buildings shall be accessible to fire department apparatus through the use of fire lanes or other means of access approved by the County Fire Marshal /Emergency Management Office.
- (e)** Grading and erosion control shall be undertaken in accordance with Article VI, Section 1(M).

**(B)** Land Development Standards. Subject to the provisions set forth herein, residential, office, commercial, or mixed use PUD's are permitted uses. Common land must be an essential element of the PUD, provided in lieu of standard individual lots. A minimum of thirty - three percent (33%) of the total land area must be permanently dedicated as any combination of common space, open space or green space. Road and parking areas and buildings shall not be included in common land for purposes of this subsection; areas designated for septic drain fields and repair areas and well buffers shall be included. Also included, for example, are outdoor recreation areas and no-wall structures such as picnic shelters.

- (1)** Residential Uses. Residential units within a PUD may include single family detached or attached units, townhouse developments, garden apartments, patio homes, and other type residential units. Condominium, cooperative, individual, municipal, or any other type of ownership development may be recorded, and the plan shall be approved as a preliminary and final plat according to the requirements of the subdivision regulations.

- (2) Non-Residential Uses. Non-residential uses (commercial and office) within residential PUD's shall not constitute the primary use in the PUD, and non-residential uses shall be carefully designed to complement the residential uses within the PUD. Commercial/office PUD's are permitted, and are subject to the same requirements as residential PUD's including the preceding subsection.
  - (3) Privacy. Each development shall provide reasonable visual and acoustical privacy for all dwelling units. Fences, insulation, walkways, barriers, and landscaping shall be used, as appropriate, for the protection and aesthetic enhancement of property and the privacy of its occupants.
  - (4) Perimeter Requirements. The standards of Appendix J shall apply.
- (C) Density. The density which may be constructed within the Planned Unit Development shall be determined by dividing the gross project area minus fifteen percent (15%) of the total (to account for roadways) by the required lot area per unit which is required on Table 1 for conventional subdivisions, and modified by the increases in density permitted under this Section. Density (units per acre) may be increased (see Table 1) if the character of the development and/or amenities incorporated in the development warrant such increases provided that in no case shall the density increase cause the density of the Planned Unit Development to be more than thirty-three percent (33%) in excess of the density which would be achieved under standard subdivision regulations.
- (1) Limits Upon Density Increases. If the Planning Board finds that any of the following conditions would be created by an increase in density, it may either deny an application for increase in density, or limit the increase in density by an amount sufficient to avoid the creation of any of the following conditions:
    - (a) Inconvenient or unsafe access to the development.
    - (b) Traffic congestion in streets adjoining the development.
    - (c) An excessive burden imposed on parks, recreational areas, schools, and other public facilities which serve or are proposed to serve the development.
  - (2) Denial of Density Increases. The increases in density shall not apply where the average cross slope is thirty



(30) percent or greater. See Appendix H for method of determining average cross slope.

**(D)** Conveyance and Maintenance of Common Land. Conveyance and maintenance of common land, common elements, open space, green space, recreational areas and other facilities owned in common shall be in accordance with the Unit Ownership Act (Chapter 47-A of the North Carolina General Statutes), the Condominium Act (Chapter 47-C), the Planned Community Act (Chapter 47-F) and/or any other applicable state or federal law.

**(E)** Improvements

**(1)** Circulation Facilities. The arrangement of public and common ways for pedestrian and vehicular circulation in relation to other existing or planned streets in the area, together with provisions for street improvements, shall be in compliance with standards set forth in Article VI, Section 2(B)(3)&(4) (unless a variance for one lane traffic has been granted). Upon application by the developer and good cause shown, the Planning Board may permit changes or alterations of such standards which are consistent with the spirit and intent of this section.

**(2)** Utilities. Whenever reasonably possible, all Planned Unit Developments shall provide for underground installation of utilities (including electricity and telephone) in both public ways and private extensions thereof. Provisions shall be made for acceptable design and construction of storm water facilities including grading, gutters, piping, treatment of turf to handle storm waters and erosion prevention. Utilities and maintenance of facilities shall be in accordance with the requirements and regulations of the appropriate governmental authority having jurisdiction thereof.

A planned unit development application shall not be approved unless adequate assurance is given that public or community water and sanitary sewer service will be available, except that upon application by the developer and good cause shown, the Planning Board may modify or waive this requirement provided such action is consistent with the spirit and intent of this section.

**(3)** Pedestrian Circulation. Any pedestrian circulation system and its related walkways shall be insulated as completely and as reasonably as possible from the

vehicular street system in order to provide separation of pedestrian and vehicular movement. This shall include where deemed to be necessary by the Planning Board pedestrian underpass or overpass in the vicinity of schools, playgrounds, local shopping areas, and other neighborhood uses which generate a considerable amount of pedestrian traffic.

**(F) PUD Reviewed As Subdivision.**

It is the intent of this regulation that subdivision review be carried out as an integral part of the review of a Planned Unit Development under the Section. The plans required under this Section must be submitted in a form which substantially will satisfy requirements of these regulations for the preliminary and final plat approvals. The plans may also be subject to review by the County Board of Adjustment if the PUD is proposed in a zoned area. Approval of a Special Use Permit for a PUD by the Board of Adjustment shall constitute preliminary plat approval; Planning Board approval of preliminary plat(s) is not required. The Planning Board shall approve all final plats. The Planning Staff has the authority to approve final plats consisting of up to ten (10) lots or buildings. The Planning Board shall approve all other final plats.

- (1) Phased Developments.** If the proposed PUD is to be developed in phases, the developer shall submit a master plan as specified in Article V Section 5 of this chapter.
- (2) Advisory Opinion.** Prior to formal master plan or a preliminary plat submission, the developer is encouraged to submit a sketch plan of the PUD to the Planning Staff in order to obtain an advisory opinion of the project's feasibility.

**Section 3. Affordable Housing PUD.**

It is the objective of this section to encourage the provision of housing that is affordable to low and moderate income households. These regulations are established in support of Watauga County's adopted Affordable Workforce Housing policy (See [Appendix "L"](#)) and provide a voluntary alternative procedure to encourage development of housing affordable to all income levels, particularly first time home buyers.

The following are definitions of the words or terms utilized in this Section:

**Affordable Dwelling Unit.** A dwelling unit that is offered for sale or rent at a total monthly mortgage or rental price (including utilities) which is no

greater than 1/12 of 30% of the Area Median Income as established annually by the United States Department of Housing and Urban Development, adjusted for assumed household size based on unit size. The assumed household size shall be (2) persons in a one bedroom unit, (3) persons in a two bedroom unit, and (4) persons in units containing three or more bedrooms.

Affordable Housing PUD. A Planned Unit Development, as defined by [Article VII Section 1](#), in which 51% or more of the included dwelling units meet the definition of an Affordable Dwelling Unit.

**(A)** Minimum Requirements.

The minimum requirements for development of an Affordable Housing PUD shall be as established in Article VII, Section 2(A), with the exception of the following:

- (1)** Streets within an Affordable Housing PUD shall be constructed in accordance with Article VI, Section 2(B)(3). The right-of-way shall not be less than thirty (30) feet.
- (2)** Affordable Dwelling Units within an Affordable Housing PUD shall provide one (1) off-street parking space per unit.
- (3)** When an Affordable Housing PUD contains both Affordable Dwelling Units and market rate housing, the Affordable Dwelling Units shall be intermixed with the market rate units.
- (4)** When an Affordable Housing PUD contains both Affordable Dwelling Units and market rate housing, the general exterior design and appearance of the Affordable Dwelling Units shall be compatible with the market rate units.

**(B)** Land Development Standards.

The land development standards for an Affordable Housing PUD shall be as established in Article VII, Section 2(B).

**(C)** Density.

The density which may be constructed within an Affordable Housing PUD shall be determined by the capacity of the proposed water and sewer systems, provided that the proposed density does not result in the any of the following conditions:

- (1)** Inconvenient or unsafe access to the development.
- (2)** Traffic congestion in the streets adjoining the development.
- (3)** An excessive burden imposed on parks, recreation areas, schools and other public facilities which serve or are proposed to serve the development.

**(D)** Conveyance and Maintenance of Common Land.

Conveyance and maintenance of common land within an Affordable Housing PUD shall be as established in Article VII, Section 2(D).

**(E) Improvements.**

Required improvements within an Affordable Housing PUD shall be as established in Article VII, Section 2 (E).

**(F) Procedure.**

Applications for an Affordable Housing PUD shall be reviewed by Planning Board or Board of Adjustment in accordance with Article VII, Section 2(F). In addition:

- (1)** Applications containing Affordable Dwelling Units shall be processed with priority over others.
- (2)** Highest priority for processing shall be given to applications involving partnerships with a community land trust or other non-profit organization responsible for ensuring long-term retention of affordable housing.
- (3)** The County shall waive review fees associated with Affordable Housing PUDs meeting the criteria established herein.
- (4)** If market rate housing units are included within an Affordable Housing PUD constructed in phases or over a time period exceeding 12 months, a proportional amount of Affordable Dwelling Units must be completed concurrently with the market rate housing units.
- (5)** An agreement in a form approved by the County must be recorded with the Register of Deeds requiring Affordable Dwelling Units which are provided under this section to remain as affordable housing for the life of the project. This agreement shall be a covenant running with the land, binding on the assigns, heirs and successors of the applicant.

## **Article VIII Installation of Permanent Reference Points and Improvements**

### **Section 1. Permanent Reference Points.**

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with N.C.G.S. 89C and N.C.G.S. 47-30, which provide regulations for surveyors for the mapping of subdivisions. Additionally, the following requirements shall be met:

- (A) Block Tie Lines.** Each block shall have adequate tie line(s) showing bearing and distance between one established point on each side of the road.
- (B) Certificate.** A certificate signed by the surveyor meeting the requirements of N.C.G.S. 47-30 et. seq. for proof upon oath that

the plat is in all respects correct, written as shown in Article V, Section 6(B)(2).

## **Section 2. Installation of Improvements.**

Prior to the approval of the final plat, the subdivider shall have complied with the following requirements.

- (A) Streets and Storm Drainage Facilities. All streets and storm drainage facilities in the subdivision shall be constructed in accordance with specifications and standards of the State Department of Transportation, Division of Highways, or the Watauga County Road Standards.
- (B) Water Lines. Where public water is reasonably accessible, the subdivider shall connect with the public supply and shall provide water mains and a suitable water connection to each lot. Where a public water supply is not reasonably accessible, the subdivider may provide for connection to a community system, establishment of a new public or community system, or for shared or individual wells. Water source shall be noted on the final plat.
- (C) Sanitary Sewers. Where a public sanitary sewer system is reasonably accessible, the subdivider shall connect with the public system and shall provide a connection for each lot. Where a public sanitary sewer system is not accessible, the subdivider may provide for connection to an existing private system, establishment of a new private system, or for shared or individual septic systems. Sewage disposal method shall be noted on the final plat.
- (D) Installation at time of Final Plat. In the event that any public or community utilities are not installed at the time of final plat approval, bond or other security guarantee may be required by the Planning Board as specified in Article VIII, Section 3.

## **Section 3. Deferment of Improvements.**

Where it is in the best interest of all parties concerned to defer the installation or completion of some required improvement, and in accordance with N.C.G.S. 160D-804.1, the Planning Board may approve the final plat if the subdivider posts a bond with surety or other guarantees satisfactory to the County Commissioners in an amount equal to the estimated cost of the deferred improvements plus twenty (20) percent. Such guarantees shall assure either the performance of the specified work or payment of the specified sum to the County if such improvements have not been installed within the time specified on the final plat. At least fifty percent (50%) of the required improvements shall be completed prior to submission of a request for approval of a performance guarantee by a subdivider.

## **ARTICLE IX - Regulation Of Multi-Unit Structures**

### **Section 1. Definition.**

A "multi-unit" structure is a building containing three (3) or more separate and independent dwellings, offices, or commercial establishments (excluding hotels/motels). This definition shall apply whether the building and/or individual units contained within are for sale, lease, or rent.

An "Affordable Housing Multi-Unit Structure" is a multi-unit structure containing at least (3) dwelling units, 51% or more of which are offered for sale or rent at a total monthly mortgage or rental price (including utilities) which is no greater than 1/12 of 30% of the Area Median Income as established annually by the United States Department of Housing and Urban Development, adjusted for assumed household size based on unit size. The assumed household size shall be (2) persons in a one bedroom unit, (3) persons in a two bedroom unit, and (4) persons in units containing three or more bedrooms.

### **Section 2. Purpose.**

The purpose of this article is to provide for a site plan review of multi-unit structures in order to regulate density, parking/loading, building setbacks, and other public health, safety, and general welfare concerns.

### **Section 3. Application of Article.**

This Article shall apply to any multi-unit construction which consists of one (1) building only. Any multi-unit development consisting of two (2) or more building sites or any townhouse development regardless of the number of buildings, shall comply with Article VII (Planned Unit Development) of this Ordinance, including phased developments where each phase consists of one (1) building only.

### **Section 4. Standards of Design.**

The developer shall observe the following standards of design.

**(A) Density.**

The number of units per acre allowed shall depend upon the availability of public/community water and sewer facilities and shall be determined as described in Article VII, Section 2(C) and depicted on Table 1. If no roadway is to be constructed, the same method of calculating density shall be used, except that the gross area will not be required to be reduced by fifteen (15) percent. A minimum of

thirty three percent (33%) of the total land area must be permanently dedicated as any combination of common space, open space or green space. Road and parking areas and buildings shall not be included in common land for purposes of this subsection; areas designated for septic drain lines and repair areas and well buffers shall be included. Also included, for example, are outdoor recreation areas and no-wall structures such as picnic shelters.

For Affordable Housing Multi-Unit Structures, the number of units per acre allowed shall depend upon the capacity of proposed water and sewer system(s), provided that the proposed density does not result in the any of the following conditions:

- (1) Inconvenient or unsafe access to the development.
- (2) Traffic congestion in the streets adjoining the development.
- (3) An excessive burden imposed on parks, recreation areas, schools and other public facilities which serve or are proposed to serve the development.

**(B)** Off-Street Parking/Loading.

The provisions of Article VII, Section 2(A) shall apply. At a minimum, parking areas shall be graveled. For Affordable Multi-Unit Structures, one (1) required off-street parking space may be eliminated for each Affordable Dwelling Unit provided. Additional parking reductions may be allowed when development:

- (1) Is an adaptive re-use of previously developed property, or
- (2) Is located within 1 mile of Appalachian State University or other major employment center, or
- (3) Is located on an established AppalCart Route, or
- (4) Has transit service or other acceptable alternative transportation provided by the developer.

**(C)** Streets and Private Drives.

All multi-unit structures shall front on a state maintained road or a county standard road as defined in this chapter. A private drive may be used to provide access to one three (3) unit structure.

**(D)** Height Requirements.

All multi-unit structures shall comply with the Watauga County Height of Structures regulation or the North Carolina Ridge Law, whichever is applicable. Building height will be determined by the Watauga County Building Inspector.

**(E)** Building Setback Requirements.

Building setbacks shall conform with Table 2 (Article VI, Section 3), unless superseded by Appendix J.

**(F)** Utilities.

Developers of multi-unit structures are encouraged to provide public/community water and sewer facilities whenever feasible.

Developers are also encouraged to provide underground electric and telephone lines where feasible.

**(G) Buffers.**

It is the intent of this chapter to promote high quality multi-unit developments which do not create a nuisance, aesthetic or otherwise, for existing adjacent residential areas. Therefore, the provisions of Appendix J shall apply.

**Section 5. Submission of Site Plans.**

Developers of proposed multi-unit structures which will be regulated by this Article shall submit a site plan to the Planning Staff. If the proposed structure contains ten (10) or less units, the Staff shall approve or disapprove said plan. If the proposed structure contains eleven (11) or more units, or the developer is requesting a variance, the Planning Board shall approve or disapprove said plan. Construction may begin upon such approval. Site plans shall show how the requirements of the preceding Section 4 will be met. Specifically, site plans shall include as applicable:

- (A)** A sketch vicinity map showing the relationship of the proposed development with the surrounding area.
- (B)** The location of existing and platted property lines, streets, buildings, water courses, transmission lines, sewers, bridges, culverts, and drain pipes, water mains, city and county line (if adjoining) and any public utility easements.
- (C)** Boundaries of the tract shown with distances and approximate acreage.
- (D)** Names of adjoining property owners or subdivisions.
- (E)** Zoning classification, if any, both on the land to be developed and on adjoining land.
- (F)** Proposed streets, street names, rights-of-way, roadway widths, approximate grades and proposed drainage facilities.
- (G)** Other proposed rights-of-way or easements showing locations, widths and purposes.
- (H)** Proposed building set back lines.
- (I)** Proposed utility layouts (sewer, water, electricity showing connections to existing systems or plans for central water system or package sewage system, or designation for individual water and sewage.
- (J)** Proposed parks, open spaces, or any other public areas.
- (K)** Name of owner, developer, engineer and registered surveyor.
- (L)** Title, date, north point and graphic scale.
- (M)** When an area covered by the plan includes or abuts a water area (stream, river or lake) the following additional information is required:



- (1) Relationship with floodway and flood plain as delineated by the county floodway boundary and flood insurance rate maps.
  - (2) Any proposed dock lines beyond which no dock structure may be constructed.
  - (3) Methods of providing ingress and egress from uplands to water area.
  - (4) Names of the owners of the water area.
- (N) Grading and erosion control shall be undertaken in accordance with Article VI, Section 1(M).

### **Section 6. Inspections.**

Prior to issuance of an Inspection Certificate for a final building inspection, the Planning Staff shall conduct a site inspection to assure that the multi-unit structure meets the requirements of this Article. The developer of a multi-unit structure shall pay an inspection fee (in addition to purchase of a building permit) in the same amount per structure as is assessed for Planned Unit Developments.

### **Section 7. Building Permits.**

No permits for any building or structures will be issued upon any land requiring approval as a subdivision under the conditions set forth herein, unless a final plat is recorded, except as set forth elsewhere in this chapter.

Should any Federal or State regulation or statute incorporated herein by reference or otherwise referred to herein, be changed or amended, or should either require or mandate a different procedure or change or impose new, different or additional requirements, then, in that event, this ordinance shall be deemed to have been amended without further action to have complied with such new, additional or amended requirements.

## **Appendix A Guide For Sub-Division Development In Watauga County**

1. Evaluate your property for either sub-dividing or planned unit development (resorts, clusters, time-shares, condominiums, townhouses, apartments, etc.) suitability.
2. Evaluate your capital outlay for road(s) and other improvement and environmental protection measures.
3. Consult the Department of Planning and Inspections at (828)265-8043 to ascertain the legal aspects and requirements for any such projects.
4. Consult a licensed surveyor and/or professional engineer for project drawings and layout.
5. Maintain close contact with those persons contracted for the planning phase of the project so as to have a working knowledge of the project.
6. Solicit bids and/or contract a grading contractor to complete all planned construction.
7. The developer will be responsible for environmental protection measures during development and also will be financially responsible for all work on the project.
8. Present a finished development that complies with all local and state ordinances concerning land use and also one that is appealing to the consumer.
9. In working with the Watauga County Ordinance to Govern Subdivisions and Multi-Unit Structures, the Watauga County Soil Erosion and Sedimentation Control Ordinance and the Watauga County Building Inspectors and Fire Marshal, those persons responsible for each area will assist you in the construction stages of development.
10. Obtain copies of the following additional regulations from the Department of Planning and Inspections as needed:

Flood Damage Prevention.  
 N.C. Ridge Law.  
 the Height of Structures.  
 Mobile Home Parks.  
 Subdivision Regulations for Recreational Vehicle Parks.  
 Valle Crucis Historic District.  
 Foscoe Grandfather Zoning.  
 Watershed Protection.

## **Appendix B Guidelines For Developing Erosion and Sediment Control Plans**

### **Section 1. Introduction.**

Extensive amounts of sediment are produced from grading streets and roads in the mountain sections of North Carolina when erosion control measures are not properly designed and installed. Irreversible damage to land, streams and lakes is occurring from acceleration of development in this area. This is offered as a minimal guideline, but the developer must keep in mind that the Sediment and Pollution Control Act and the Watauga County Soil Erosion and Sedimentation Control regulations are performance oriented and s/he must do whatever is necessary to prevent off-site damage.

This guide is developed to assist planners and developers to protect land and streams from sedimentation as required by the Watauga County Soil Erosion and Sedimentation Control regulations.

Said regulations require that an erosion control plan be prepared and its measures installed where one-half acre or more is disturbed by grading. This also applies to all subdivision roads and any land disturbing activity which causes off-site erosion damage regardless of acreage.

The practices in this guide, when properly installed and maintained, are methods used in the past that have minimized erosion and sedimentation and meet the mandatory standards required by the Sedimentation Pollution Control Act of 1973 and the Watauga County Soil Erosion and Sedimentation Control regulations. The mandatory standards are listed on the following page.

### **Section 2. Mandatory Standards For Land Disturbing Activity**

No land disturbing activity subject to this article shall be undertaken except in accordance with the following mandatory requirements:

#### Buffer Zone

- (A)** 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 twenty-five percent (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 twenty-five

- (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the county may approve plans which include land-disturbing activity along trout waters when the duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.
- (B)** 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 percent of the strip nearer the land-disturbing activity containing natural or artificial means of confining visible siltation.
- (C)** The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.
- (D)** Where a temporary and minimal disturbance is permitted as an exception by Chapter 8 of this Title, land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of 10% of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.
- (E)** No land-disturbing activity shall be undertaken with a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B.0211 "Fresh Surface Water Classification and Standards", in these waters.
- (1)** Graded Slopes and Fills -The grading plan and specifications controlling execution of land disturbing activities shall adhere to the following standards:
- a)** Maximum cut slopes shall be 2H:1V.
- b)** Maximum fill slopes shall be 2H:1V.
- Innovative designs exceeding the slope standards specified herein may be approved when accompanied by a site-specific subsurface investigation, report and recommendation performed by a registered professional engineer competent in geotechnical engineering. All grades shall be sloped to drain surface water away from buildings, pavements, slopes and structures, as applicable.
- Slopes left exposed will, within 15 working days or 30 calendar days of completion of any phase of grading, whichever period is shorter, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

- (2) 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 Chapter 8, provisions for a ground cover sufficient to restrain erosion must be accomplished within 15 working days or 90 calendar days following completion of construction or development whichever period is shorter.
- (3) Prior Plan Approval - No person shall initiate any land-disturbing activity on a tract if more than one-half acre is to be uncovered unless, thirty or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with and approved by Watauga County, or unless for land-disturbing activity or more than a half acre but less than an acre the requirement for such plan had been waived as specified in Chapter 8. The County will attempt to review plans as quickly as possible. The initiation of land-disturbing activities shall not be restricted when the plan is approved and permit issued in less than 30 days.

### **Section 3. Design and Performance Standards**

- (A) Except as provided in Chapter 8 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, Soil 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 Director.

- (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 Soil 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 Soil 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.

#### **Section 4. Planning and Design Considerations to Control Erosion and Sedimentation**

The following list of considerations, activities, and techniques of development within Watauga County should all be taken into account during the planning phase of a development:

- A. Reducing the Potential for Off-site Sediment Damage
- B. Location of Roads
- C. Soil Types and Properties
- D. Buffer Zones
- E. Construction Techniques
- F. Sequence of Construction and Time of Soil Exposure
- G. Seasonal Construction Scheduling
- H. Clearing and Grubbing
- I. Stream Crossings and Stream Protection
- J. Road Grades and Side Ditches
- K. Road Cut & Fill Slopes
- L. Underground Seepage or Wetlands
- M. Culvert Placement and Sizing
- N. Borrow and Waste Areas
- O. Utility Placement
- P. Roadbed Stabilization
- Q. Floodplain/Floodway
- R. Specifications Guide for Application of Temporary Seeding
- S. Permanent Vegetation
- T. Specifications Guide for Permanent Planting of Vegetation on Road and Right-of-Way

When planning for the considerations listed above, minimum acceptable standards must be adhered to. These standards have been established to control erosion and sedimentation during construction, and also to control erosion during the life-time operation of roads built in Watauga County.

## Appendix C Erosion and Sedimentation Plan Checklist

### EROSION and SEDIMENTATION CONTROL PLAN PRELIMINARY REVIEW CHECKLIST

The following items shall be incorporated with respect to specific site conditions, in an erosion & sedimentation control plan:

NPDES Construction Stormwater General Permit NCG010000

- \_\_\_\_\_ Designation on the plans where the 7 or 14 day ground stabilization requirements apply per Section II.B.2 of the permit.
- \_\_\_\_\_ Design of basins with one acre or more of drainage area for surface withdrawal as per Section II.B.4 of the permit.

LOCATION INFORMATION

- \_\_\_\_\_ Project location & labeled vicinity map (roads, streets, landmarks)
- \_\_\_\_\_ North arrow and scale
- \_\_\_\_\_ Identify River Basin.
- \_\_\_\_\_ Provide a copy of site located on applicable USGS quadrangle and NRCS Soils maps if it is in a River Basin with Riparian Buffer requirements.

GENERAL SITE FEATURES (Plan elements)

- \_\_\_\_\_ Property lines & ownership ID for adjoining properties
- \_\_\_\_\_ Existing contours (topographic lines)
- \_\_\_\_\_ Proposed contours
- \_\_\_\_\_ Limits of disturbed area (provide acreage total, delineate limits, and label). Be sure to include all access to measures, lots that will be disturbed, and utilities that may extend offsite.
- \_\_\_\_\_ Planned and existing building locations and elevations
- \_\_\_\_\_ Planned & existing road locations & elevations, including temporary access roads
- \_\_\_\_\_ Lot and/or building numbers
- \_\_\_\_\_ Hydrogeologic features: rock outcrops, seeps, springs, wetland and their limits, streams, lakes, ponds, dams, etc. (include all required local or state buffer zones and any DWQ Riparian Buffer determinations)
- \_\_\_\_\_ Easements and drainageways, particularly required for offsite affected areas. Include copies of any recorded easements and/or agreements with adjoining property owners.
- \_\_\_\_\_ Profiles of streets, utilities, ditch lines, etc.
- \_\_\_\_\_ Stockpiled topsoil or subsoil locations
- \_\_\_\_\_ If the same person conducts the land-disturbing activity & any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land-disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of Waste Management. If the land-disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities and must be permitted either through the Sedimentation Pollution Control Act as a one-use borrow site or through the Mining Act.
- \_\_\_\_\_ Location and details associated with any onsite stone crushing or other processing of material excavated. If the affected area associated with excavation, processing, stockpiles and transport of such materials will comprise 1 or more acres, and materials will be leaving the development tract, a mining permit will be required.
- \_\_\_\_\_ Required Army Corps 404 permit and Water Quality 401 certification (e.g. stream disturbances over 150 linear feet)

EROSION & SEDIMENT CONTROL MEASURES (on plan)

- \_\_\_\_\_ Legend (provide appropriate symbols for all measures and reference them to the construction details)
- \_\_\_\_\_ Location of temporary measures
- \_\_\_\_\_ Location of permanent measures
- \_\_\_\_\_ Construction drawings and details for temporary and permanent measures. Show measures to scale on plan and include proposed contours where necessary. Ensure design storage requirements are maintained through all phases of construction.
- \_\_\_\_\_ Maintenance requirements for measures
- \_\_\_\_\_ Contact person responsible for maintenance

SITE DRAINAGE FEATURES

- \_\_\_\_\_ Existing and planned drainage patterns (include off-site areas that drain through project and address temporary and permanent conveyance of stormwater over graded slopes)
- \_\_\_\_\_ Method used to determine acreage of land being disturbed and drainage areas to all proposed measures (e.g. delineation map)
- \_\_\_\_\_ Size, pipe material and location of culverts and sewers
- \_\_\_\_\_ Soil information: type, special characteristics
- \_\_\_\_\_ Soil information below culvert storm outlets

- \_\_\_\_\_ Name and classification of receiving water course or name of municipal operator (only where stormwater discharges are to occur)

STORMWATER CALCULATIONS

- \_\_\_\_\_ Pre-construction runoff calculations for each outlet from the site (at peak discharge points). Be sure to provide all supporting data for the computation methods used (rainfall data for required storm events, time of concentration/storm duration, and runoff coefficients).
- \_\_\_\_\_ Design calculations for peak discharges of runoff (including the construction phase & the final runoff coefficients for the site)
- \_\_\_\_\_ Design calcs for culverts and storm sewers (include HW, TW and outlet velocities)
- \_\_\_\_\_ Discharge and velocity calculations for open channel and ditch flows (easement & rights-of-way)
- \_\_\_\_\_ Design calcs for cross sections and method of stabilization for existing and planned channels (include temporary linings). Include appropriate permissible velocity and/or shear stress data.
- \_\_\_\_\_ Design calcs and construction details for energy dissipaters below culvert and storm sewer outlets (include stone/material specs & apron dimensions). Avoid discharges on fill slopes.
- \_\_\_\_\_ Design calcs and dimension of sediment basins (note current surface area and dewatering standards as well as diversion of runoff to the basins). Be sure that all surface drains, including ditches and berms, will have positive drainage to the basins.

VEGETATIVE STABILIZATION

- \_\_\_\_\_ Area & acreage to be stabilized with vegetation
- \_\_\_\_\_ Method of soil preparation
- \_\_\_\_\_ Seed type & rates (temporary & permanent)
- \_\_\_\_\_ Fertilizer type and rates
- \_\_\_\_\_ Mulch type and rates (include mulch anchoring methods to be used)

NOTE: Plan should include provisions for groundcover in accordance with NPDES Construction Stormwater General Permit NCG010000 and permanent groundcover for all disturbed areas within 15 working days or 90 calendar days (whichever is shorter) following completion of construction or development.

FINANCIAL RESPONSIBILITY/OWNERSHIP FORM

- \_\_\_\_\_ Completed, signed & notarized FR/O Form
- \_\_\_\_\_ Accurate application fee payable to NCDENR (\$65.00 per acre rounded up the next acre with no ceiling amount)
- \_\_\_\_\_ Certificate of assumed name, if the owner is a partnership
- \_\_\_\_\_ Name of Registered Agent (if applicable)
- \_\_\_\_\_ Copy of the most current Deed for the site. Please make sure the deed(s) and ownership information are consistent between the plan sheets, local records and this form.
- \_\_\_\_\_ Provide latitude & longitude (in decimal degrees) at the project entrance.

NOTE: For the Express Permitting Option, inquire at the local Regional Office for availability.

NARRATIVE AND CONSTRUCTION SEQUENCE

- \_\_\_\_\_ Narrative describing the nature & purpose of the construction activity
- \_\_\_\_\_ Construction sequence related to erosion and sediment control (including installation of critical measures prior to the initiation of the land-disturbing activity & removal of measures after areas they serve are permanently stabilized). Address all phases of construction and necessary practices associated with temporary stream bypasses and/or crossings.
- \_\_\_\_\_ Bid specifications related only to erosion control



## Appendix D Ownership/Financial Responsibility Form

### FINANCIAL RESPONSIBILITY/OWNERSHIP FORM SEDIMENTATION POLLUTION CONTROL ACT

No person may initiate any land-disturbing activity on one or more acres as covered by the Act before this form and an acceptable erosion and sedimentation control plan have been completed and approved by the Land Quality Section, N.C. Department of Environmental Quality. Submit the completed form to the appropriate Regional Office. (Please type or print and, if the question is not applicable or the e-mail and/or fax information unavailable, place N/A in the blank.)

**Part A.**

1. Project Name \_\_\_\_\_
2. Location of land-disturbing activity: County \_\_\_\_\_ City or Township \_\_\_\_\_  
Highway/Street \_\_\_\_\_ Latitude \_\_\_\_\_ Longitude \_\_\_\_\_
3. Approximate date land-disturbing activity will commence: \_\_\_\_\_
4. Purpose of development (residential, commercial, industrial, institutional, etc.): \_\_\_\_\_
5. Total acreage disturbed or uncovered (including off-site borrow and waste areas): \_\_\_\_\_
6. Amount of fee enclosed: \$ \_\_\_\_\_.
7. Has an erosion and sediment control plan been filed? Yes \_\_\_\_\_ No \_\_\_\_\_ Enclosed \_\_\_\_\_
8. Person to contact should erosion and sediment control issues arise during land-disturbing activity:  
Name \_\_\_\_\_ E-mail Address \_\_\_\_\_  
Telephone \_\_\_\_\_ Cell # \_\_\_\_\_ Fax # \_\_\_\_\_
9. Landowner(s) of Record (attach accompanied page to list additional owners):  

|                         |                        |            |
|-------------------------|------------------------|------------|
| Name                    | Telephone              | Fax Number |
| Current Mailing Address | Current Street Address |            |
| City State Zip          | City State Zip         |            |
10. Deed Book No. \_\_\_\_\_ Page No. \_\_\_\_\_ Provide a copy of the most current deed.

**Part B.**

1. Company (ies) or firm(s) who are financially responsible for the land-disturbing activity (Provide a comprehensive list of all responsible parties on an attached sheet.) *If the company or firm is a sole proprietorship the name of the owner or manager may be listed as the financially responsible party.*  

|                         |                        |
|-------------------------|------------------------|
| Name                    | E-mail Address         |
| Current Mailing Address | Current Street Address |
| City State Zip          | City State Zip         |

Telephone \_\_\_\_\_ Fax Number \_\_\_\_\_

- 2. (a) If the Financially Responsible Party is not a resident of North Carolina, give name and street address of the designated North Carolina Agent:

Name \_\_\_\_\_ E-mail Address \_\_\_\_\_

Current Mailing Address \_\_\_\_\_ Current Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax Number \_\_\_\_\_

- (b) If the Financially Responsible Party is a Partnership or other person engaging in business under an assumed name, **attach a copy of the Certificate of Assumed Name**. If the Financially Responsible Party is a Corporation, give name and street address of the Registered Agent:

Name of Registered Agent \_\_\_\_\_ E-mail Address \_\_\_\_\_

Current Mailing Address \_\_\_\_\_ Current Street Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone \_\_\_\_\_ Fax Number \_\_\_\_\_

The above information is true and correct to the best of my knowledge and belief and was provided by me under oath (This form must be signed by the Financially Responsible Person if an individual or his attorney-in-fact, or if not an individual, by an officer, director, partner, or registered agent with the authority to execute instruments for the Financially Responsible Person). I agree to provide corrected information should there be any change in the information provided herein.

Type or print name \_\_\_\_\_ Title or Authority \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

I, \_\_\_\_\_, a Notary Public of the County of \_\_\_\_\_

State of North Carolina, hereby certify that \_\_\_\_\_ appeared personally before me this day and being duly sworn acknowledged that the above form was executed by him.

Witness my hand and notarial seal, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Seal

Notary \_\_\_\_\_

My commission expires \_\_\_\_\_

## **Appendix E Preliminary Plat Checklist**

FOR SUBDIVISION RECORD \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

NAME OF SUBDIVISION \_\_\_\_\_

LOCATION \_\_\_\_\_

OWNER \_\_\_\_\_

LAND PLANNER \_\_\_\_\_ ADDRESS \_\_\_\_\_

SURVEYOR \_\_\_\_\_ ADDRESS \_\_\_\_\_

### CHECKLIST

1. Surveyor shall submit CHECKLIST with signed certification stating that plat complies with Subdivision Regulations.
2. Vicinity map embracing subdivision and surrounding area.
3. SCALE: 1" = 100' or larger. In EXTREME cases may be 1" = 200'. One (1) electronic copy of plat.
4. Name of subdivision and owner.
5. North point, graphic scale, date.
6. Boundaries of the tract shown with distances and approximate acreage.
7. Names of adjoining property owners or subdivisions.
8. The locations of existing sewers and water facilities and other utilities if any.
9. The locations of existing streets, easements, bridges, culverts, watercourses, etc.
10. Name, location and approximate dimensions of proposed streets, easements, parks and reservations, lot lines, etc.
11. Proposed lot lines, building lines and approximate area.
12. Lot numbers, if any.
13. Types of proposed utilities shown or described.
14. Proposed minimum building setbacks (typical section).
15. Location of existing water areas/floodway if applicable as delineated by the county floodway boundary and flood insurance rate maps.
16. Upon approval of Preliminary Plat, 3 copies of a sufficient soil erosion plan shall be submitted to the planning staff.

17. This plat conforms to general requirements and minimum design standards.
18. Evidence of NCDOT driveway connection permit.
19. Evidence of access right-of-way.
20. Statement of average cross slope if applicable.

COMMENTS:

## **Appendix F Final Plat Checklist**

FOR SUBDIVISION RECORD \_\_\_\_\_ DATE SUBMITTED \_\_\_\_\_

PRELIMINARY APPROVAL DATE \_\_\_\_\_

NAME OF SUBDIVISION \_\_\_\_\_

LOCATION \_\_\_\_\_

OWNER \_\_\_\_\_ ADDRESS \_\_\_\_\_ TEL. \_\_\_\_\_

ENGINEER \_\_\_\_\_ ADDRESS \_\_\_\_\_ TEL. \_\_\_\_\_

SURVEYOR \_\_\_\_\_ ADDRESS \_\_\_\_\_ TEL. \_\_\_\_\_

### CHECKLIST

1. Submitted to the Planning Staff within 18 months of preliminary approval and two (2) weeks prior to the scheduled meeting of the Planning Board.
2. Eight (8) copies of final plat. One reproducible (Sepia) and seven paper copies. One (1) electronic copy of plat.
3. A sketch vicinity map showing location in relation to the surrounding area.
4. SCALE: 1" = 100' or larger.
5. Names, right-of-way, lines and easements of streets and roads.
6. Minimum building setback lines when applicable.
7. Lot lines, numbers, and/or tract numbers.
8. Reservations, easements, public areas, of sites for other than residential use with explanation of purpose.
9. North point, graphic scale, date.
10. Location and description of monuments.
11. Names and location of adjoining subdivisions and streets and the location and ownership of adjoining unsubdivided property.
12. Conforms to general requirements and minimum design standards.
13. Required improvements have been made or \$\_\_\_\_\_ bond posted.
14. Required certificate for Recordation.
15. Location of existing water Areas/Floodway if Boundary and Flood Insurance Rate Maps.

16. Types of proposed utilities shown or statement that individual lots have or have not been approved for septic tank use by AppHealthCare.
17. Density in units per acre.
18. Culvert/drainage facility location and size.
19. Variances granted, if any.

ON-SITE FIELD INSPECTION (DATE) \_\_\_\_\_

PERSONS MAKING INSPECTION \_\_\_\_\_

COMMENTS:

## **Appendix G Subdivision Specifications Checklist**

1. Plat fee paid.
2. Variance requested in writing.
3. Bond to be submitted.
4. Meets floodplain regulations.
5. Acceptable average cross slope.
6. Roads:
  - (a) State
  - (b) County. If County then:
    - \_\_\_\_\_ Meets criteria permitting county standards.
    - \_\_\_\_\_ Meets right-of-way requirements.
    - \_\_\_\_\_ Meets road bed requirements.
    - \_\_\_\_\_ Sufficient drainage provided.
    - \_\_\_\_\_ Meets grade requirements.
    - \_\_\_\_\_ Meets curve radius requirements.
    - \_\_\_\_\_ Sufficient turnarounds provided.
    - \_\_\_\_\_ Meets bridge requirements.
  - (c) Access road meets right-of-way requirements.
7. Lots:
  - \_\_\_\_\_ Meet frontage requirements.
  - \_\_\_\_\_ Meet area requirements.
  - \_\_\_\_\_ Panhandles used.
  - \_\_\_\_\_ Meet access requirements.
  - \_\_\_\_\_ Private drives used.
8. Meets building setback requirements.
9. Sufficient erosion control plan submitted.
10. Property owners association rules established.
11. Compliance with other applicable local regulations (zoning, etc.).

## Appendix H Method of Defining Slope

The chief source of information for determination of slope is a contour map. The contour map supplies the necessary data for using the following formula to determine the average slope of a parcel:

$$S = \frac{.0023 \times I \times L}{A}$$

Where .0023 is a conversion factor, of square feet to acres, "I" is the contour interval (or the distance between adjacent contour lines on the map) in feet, "L" is the total length of the contour lines within the subject parcel, and "A" is the area in acres of the subject parcel.

- Step 1. Determine "I", the contour interval, by examining the interval, using the key on the map. For purposes of this example, an interval of five feet is used. (To achieve accuracy within one percent, the contour interval must be 10 feet or less).
- Step 2. Determine "L", the total length of the contour lines within the subject area, by tracing each line with a planimeter or similar device and converting to feet. In this example, "L" is 1,000 feet.
- Step 3. Determine "A", area (in acres) from the development plans or permit application. In this example, "A" is 5 acres.
- Step 4. Determine "S" by using the equation:

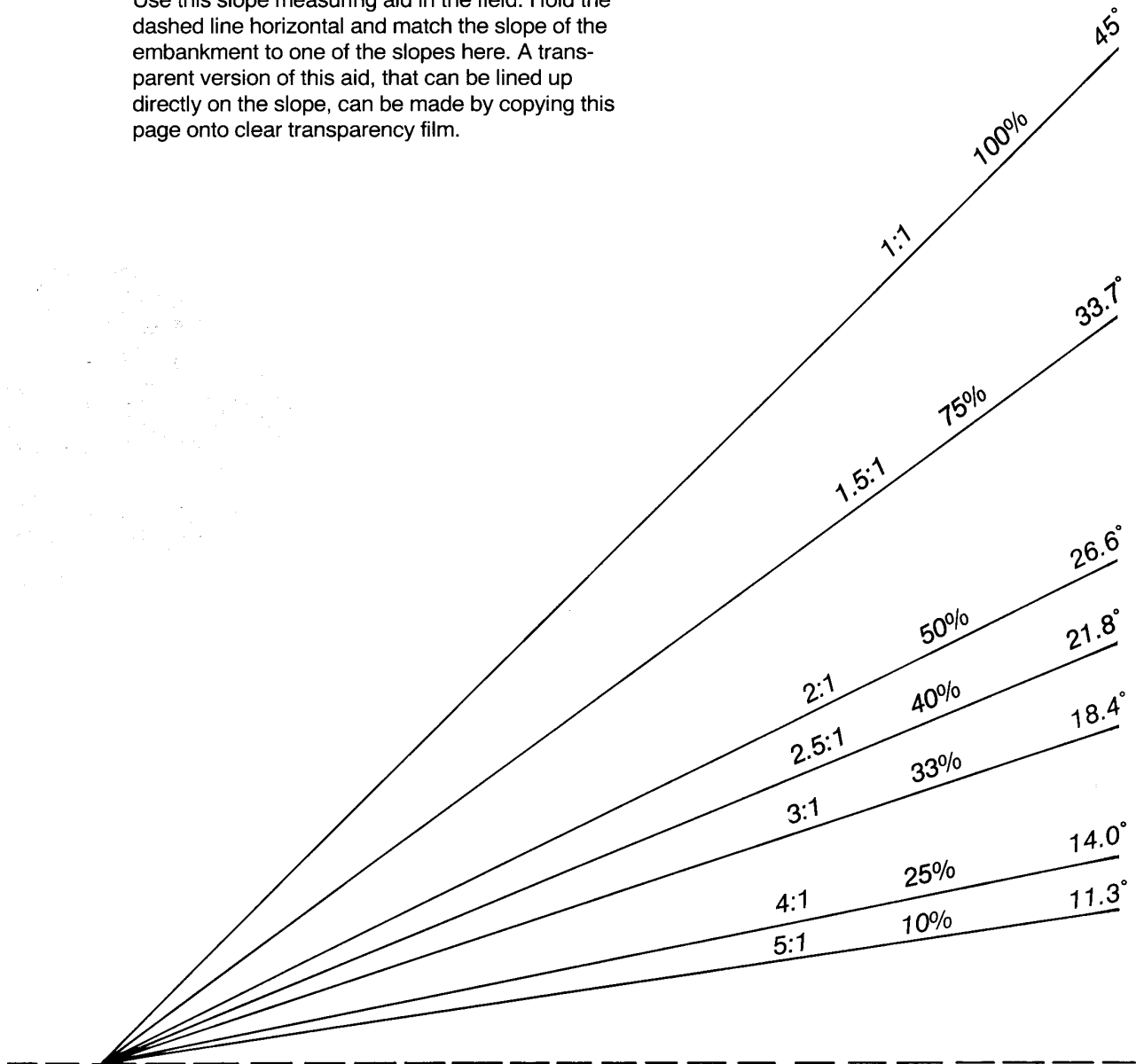
$$S = \frac{.0023 \times 5 \times 1,000}{5} = 2.3 \text{ percent average slope}$$

NOTE: Other methods of calculating average cross slope - using computer mapping/GIS technology - may be acceptable.



## Slope Measurement

Use this slope measuring aid in the field. Hold the dashed line horizontal and match the slope of the embankment to one of the slopes here. A transparent version of this aid, that can be lined up directly on the slope, can be made by copying this page onto clear transparency film.



## **Appendix I Minor Bridge Maintenance Checklist**

- (A) Bridge Approach**
- (1)** Check Signs on both ends of bridge.  
Warning and Information Signs (straighten, clean, and cut weeds).  
Bridge End Markers (clean and visible).  
Check Guard Rails along approach (repair and straighten).
  - (2)** Clear Weed, Brush, and Overhanging Limbs.  
Require clear visibility of bridge.  
Police and clean area around bridge.  
Remove all debris from site.
- (B) Side Ditches and Stream Channel**
- (1)** Clear side ditches of all brush, weeds and debris.
  - (2)** Clear debris and obstructions from stream channel through full width of R.O.W.
  - (3)** Eliminate all brush growing under the bridge.
- (C) Erosion of Bridge Approach**
- (1)** At gutter line on shoulder - fill any eroded areas.
  - (2)** At gutter line, build (if needed) paved channel to carry water to side ditch at non-erosive velocity.
  - (3)** Check shoulders for erosion signs - fill and tamp erosion channels.
- (D) Condition of Approach Road Traffic Lanes**
- (1)** Fill all ruts.
  - (2)** Check transition from road to bridge - must be smooth.
  - (3)** Build short bituminous ramp to provide transition in difficult cases.
- (E) Bridge Structure**
- (1) Cleaning Deck**  
Clean all dirt, gravel, trash and debris from deck. Clear all gutters and all drainage outlets.  
Remove any obstructions causing ponding of water. Direct deck drains away from all structural components.
  - (2) Deck Maintenance (Wood Decks)**  
Check transverse planking for breaks, rotting, or any weakness. Replace individual planks if needed. Check longitudinal "tread" planks for damage, excessive wear, breaks, shattering, looseness or rot. Replace damaged planks - re-nail old planks if required. Pull any protruding nails and replace.
  - (3) Deck Maintenance (Concrete Decks)**  
Clean, check depth, and flush all open cracks. Dry such cracks and fill totally with liquid asphalt or other such sealing

compound. Make notes on any system of patterned crack and report them to road supervisor. For small shrinkage cracks (those not fully opened) check with road supervisor about a spray coat sealant. Pop-outs, surface deterioration, or chuck holes in deck must be cleaned thoroughly and packed smooth with bituminous road surface mixture. Provide a mechanical "lock" to hold patch in place. Eliminate "low" spots to prevent water ponding.

**(F)** Expansion Joints

Deck expansion joints should be identified and cleaned. Remove dirt, gravel, debris and other obstructions from expansion joint opening. Do this when bridge is cool so joint is as wide open as possible. For open expansion joint slot, fill the opening with an elastic joint sealer compound or a special compressible composite joint filler. For plate covered joint slot, clean the sliding surface of any obstructions and treat sliding surface if necessary to make it free operating.

**(G)** Bridge Structural Components

**(1)** Truss Bridges

Clear debris from truss joints, flanges of truss members, or any pockets that have collected debris, gravel or dirt.

**(2)** Girders and Beams

Clear any debris found on flanges or on any bracing occurring on the structure.

**(3)** Handrails and Curbs

Repair any bent, broken, or missing parts of the bridge handrail or curbs.

**(4)** Bearing Devices

Bearing devices are points where bridge structure is attached to the substructure (piers, abutments, or other supports). Identify the "fixed" and movable bearings. Clear all dirt, disintegrated concrete, debris of any kind which collects around the bearings - fixed or movable. Especially clear any obstruction that would prevent movable support from being able to function. Once cleared, spray with oil to prevent rusting and to assist movement.

**(H)** Substructure

**(1)** Abutments

Note cracking of main wall or wing wall. Assess serious movement of any part of the abutment. Report out-of-plumb components and any serious deterioration of the abutment. Note any erosion of stream that may undermine the abutment, and eliminate cause. Fill and tamp any rodent holes along base of the abutment and its wing walls.

**(2) Piers**

Note and correct any water drainage on pier or the pier cap. Note any cracks or deterioration of pier. Repair where possible. Check for undermining of pier foundation and correct cause if possible. Check pier for "plumb-ness" or any signs of movement.

*Source: Minor Maintenance Manual For County Bridges, Highway Extension and Research Project for Indiana Counties and Cities, Purdue University, 1984.*

## **Appendix J Buffering and Screening**

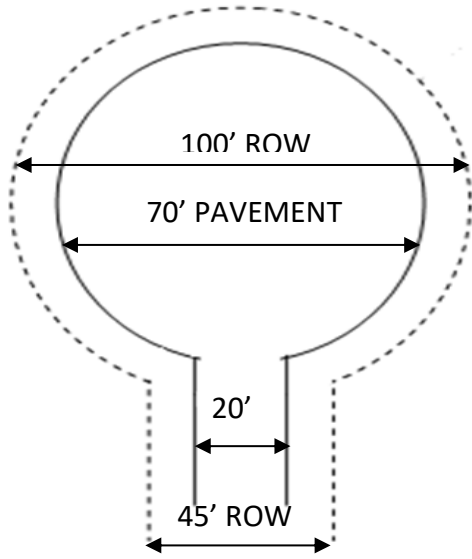
- (A)** Where a PUD is proposed adjacent to a single family residential use, side and rear yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk diameter 6 inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) at maturity. Where utility easements conflict with this height requirement, the requirement may be lessened at the discretion of the Planning Staff. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.
- (B)** Where a PUD is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and none half (1-1/2) inch caliper for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity, unless reduced by staff due to utility easements. In addition, permanent ground cover such as grasses shall be established.
- (C)** Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved as part of a permit. Considerations include but are not limited to:
- (1)** Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms and or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.
  - (2)** Installation of supplemental vegetation and/or site features may be required at the time of site plan review, if existing

vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.

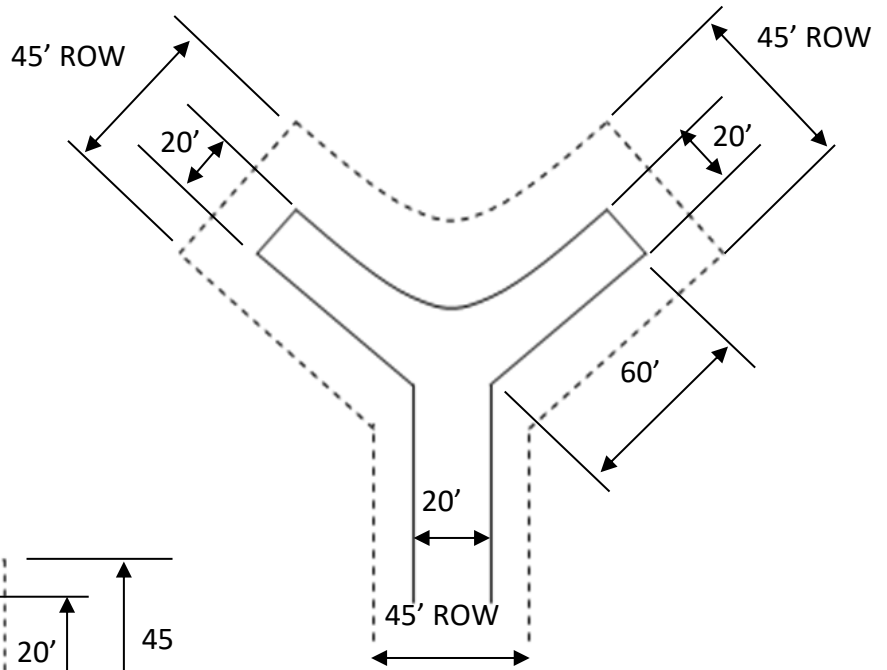
- (D)** Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height.

### Appendix K Fire Apparatus Access Roads

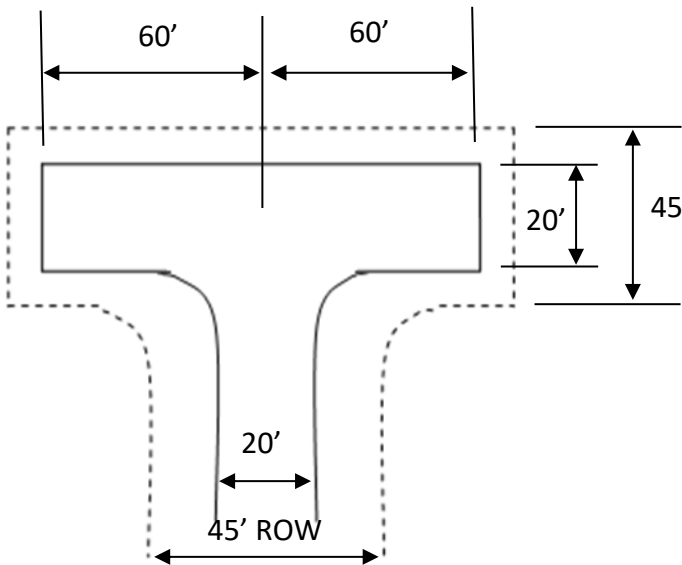
- - - - - Right of Way  
\_\_\_\_\_ Travel Surface



**CUL-DE-SAC**



**60' Y**



**120' HAMMER HEAD**

(Drawings not to scale)

## **Appendix L Affordable Workforce Housing Policy**

### **Section 1. Background.**

The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing. An estimated 12 million renter and homeowner households now pay more than 50 percent of their annual income on housing. The lack of affordable housing is a significant hardship for low-income and working households and prevents them from meeting other basic needs, such as food, clothing, transportation and medical care.

Availability of housing for all income levels is critical for balanced and healthy growth of the County. Employers seeking to locate in Watauga County need to first attract and then maintain a workforce. A key component to workforce recruitment and retention is affordable and centrally located housing. Job satisfaction becomes more of a challenge when workers can only find affordable housing by living far from their jobs and enduring long commutes.

### **Section 2. Policy.**

The county will seek to work with the developers and nonprofit housing organizations to provide for affordable units in developments and ensure that such units are compatible with other homes in the development. Affordable units should include both units for sale and units for rent. Developers should promote a design criterion that disperses affordable homes throughout a development and encourages a variety of housing types.

### **Section 3. Streamlined Permitting Process.**

Improved coordination of the permitting process at the state and local levels could result in lower housing costs. The permitting process often involves dealing with city, county and state approval boards, all of which require a variety of permits and approvals (i.e. – fire protection, sewer hookup, plumbing, environmental, road construction, electrical, building, etc.). Often the various levels of governmental authorities do not have effective communication and co-approval systems, which cause unnecessary delays, increase construction costs and ultimately hinder affordable housing.



**Section 4. Density.**

Real estate of all types flourishes best in livable communities that offer a high quality of life at a reasonable cost. Livable communities offer a variety of affordable housing choices, good schools, quality public services, open space, and a strong employment base. One of the most challenging aspects to promoting these essential livable community elements is density. Building at higher densities in the appropriate locations is vital to provide greater choice and affordability in housing.

**Section 5. Employer-Assisted Housing.**

Employer-assisted housing (EAH) refers to benefits that enable employees to purchase homes or secure affordable rental housing, often within designated neighborhoods located near the workplace. Benefits can take a number of forms, including grants or forgivable loans for down payments and closing costs, reduced-cost financing, and matched savings plans. Providing an EAH benefit can help employers reduce turnover, leading to lower training and hiring costs. In addition, EAH can increase loyalty and morale, support bottom-line business goals, and strengthen links with the local community.

**Appendix M Developer Authorization Form**

For projects being developed by person(s) other than land owner(s)

Name of Project: \_\_\_\_\_

Land Owner(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Developer(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The above-named Developer(s) is/are authorized to submit the subject project to Watauga County for development approval on behalf of the above-named Land Owner(s).

Land Owner(s) Signature

Date

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **CHAPTER 19 REGULATION OF RECREATIONAL VEHICLE SUBDIVISIONS**

### **Article I Authority and Enactment Clause**

The County Commissioners of the County of Watauga, pursuant to the authority conferred by Chapter 160D-Article 8 and Chapter 130 Section 17 of the General Statutes of the State of North Carolina, enact into law these Articles and Sections.

### **Article II Jurisdiction and Purpose**

#### **Section 1. Jurisdiction.**

On and after the date of adoption, these regulations shall govern each and every subdivision of land to be developed and sold for use by recreational vehicles within Watauga County (hereinafter referred to as the "county") and outside the subdivision regulation jurisdiction of any incorporated municipality. As used herein the term "sell", in addition to its standard meaning, shall also mean the rental or lease of any real property, the term of which or any pre-existing renewal thereof shall total twelve months or more.

#### **Section 2. Purpose.**

The purpose of these regulations for recreational vehicle subdivisions is to guide and regulate the subdivision of land within the county in order to preserve the public health, safety and welfare. The regulations included herein are designed to insure an adequately planned street system and to avoid sharp curves, hazardous intersections; to secure safety from fire, panic, and other dangers; to provide for adequate water and sewage systems; to facilitate an orderly system for the design, layout, and use of the land; to insure the proper legal description and monumenting of subdivided land; and to provide for the resubdivision of large land parcels.

#### **Section 3. Permits.**

- (A) No person shall operate a recreational vehicle subdivision within the County of Watauga unless s/he holds a valid certification from the Health Department in the name of such a person for the specific recreational vehicle subdivision. Final plat approval will be made by

the Planning Board provided all requirements of this chapter are met.

- (B) Recreational Vehicle Permanent Occupancy Prohibited.**
- (1)** No recreational vehicle shall be used as permanent place of abode, dwelling or business.
  - (2)** Any action toward removal of wheels of a recreational vehicle except for temporary purposes of repair is hereby prohibited.
  - (3)** No recreational vehicle shall be anchored or permanently affixed in a flood plain area.
- (C)** No person shall construct, alter or extend any recreational vehicle subdivision within the County of Watauga until the following has been obtained:
- (1)** Proper certification from the Health Department,
  - (2)** Final plat approval from the Watauga County Planning Board, and
  - (3)** A building permit from the Building Inspector.

### **Article III Planning Board Review**

No real property within the jurisdiction of this chapter shall be subdivided and offered for sale or a plat thereof recorded until a preliminary and final plan has been reviewed and approved by the Planning Board as provided hereinafter.

### **Article IV Procedures For Review And Approval Of Subdivisions**

#### **Section 1. Submission of Preliminary Plan to Planning Board.**

A preliminary plan meeting the requirements of these regulations shall be submitted for review and shall be approved by the Planning Board before any improvements are made in a subdivision. Two copies of this plan shall be submitted to the Planning Staff at least ten (10) working days before the meeting of the Planning Board at which time it is to be reviewed. One of these copies shall be transmitted to the Health Department for recommendations concerning water and sewerage systems.

After receiving approval of the preliminary plan by the Planning Board (and not before that time), the subdivider may proceed to construct improvements in accordance with the requirements of the regulations and as shown on the approved preliminary plan, and to prepare and submit the final plat. The subdivider shall submit the final plat to the Planning Board within eighteen (18) months from the approval of the preliminary plan.

## **Section 2. What the Preliminary Plat Shall Show.**

The preliminary plat shall be drawn at a scale of not less than one hundred (100) feet to the inch on sheets 18 x 24 inches and shall show the following on one (1) or more sheets:

- (A)** A sketch vicinity map showing the relationship between the proposed subdivision and the surrounding area.
- (B)** The name of the RV subdivision, the names and addresses of the owner(s) and designer.
- (C)** Date, approximate north arrow and scale.
- (D)** The boundary line of the tract with bearings and distances drawn to scale.
- (E)** The locations of existing and platted property lines, streets, buildings, water courses, railroads, bridges, water mains, sewers, culverts, drain pipes, and utility easements, both in the proposed recreational vehicle park and on land immediately adjoining 100 feet in all directions and the names of adjoining subdivisions or the names of owners of record of adjoining parcels of unsubdivided land.
- (F)** The names, proposed location and dimension of proposed streets, alleys, driveways, entrances, exits, walkways, easements, recreation areas, and other spaces, reservations, proposed lot lines, lot and block numbers with approximate dimensions, and parking lines within the park. This information should be graphical only, not requiring detailed computations of field work above that required to obtain the above information.
- (G)** Plans and proposed location of a service building consisting of toilet and shower facilities if required by Health Department.
- (H)** Plans of proposed utility layouts (sewer lines, septic tank drainfields, water line and storm drainage) showing feasible connections to existing and proposed utility systems.
- (I)** Where public water or public sewer is not available, a written statement from the Health Department shall be submitted with the recreational vehicle subdivision preliminary plan indicating that the recreational vehicle subdivision has adequate land area and suitable soil characteristics and topography to accommodate the proposed methods of water supply and sewage disposal.
- (J)** Location and number of garbage receptacles.
- (K)** Plan for electric lighting.
- (L)** Plan showing measures to be taken to prevent soil erosion and off-site sedimentation damage.

### **Section 3. Submission of Final Plat to Planning Board.**

Prior to the submission of the final plat all improvements proposed and approved on the preliminary plat shall be completed to meet the requirements. Unless a final plat is submitted to the Planning Board within eighteen (18) months from the date on which the preliminary plat was approved, such action on the preliminary plat shall become void and of no effect, unless prior to the expiration of said time the Planning Board extends the time for good cause shown. A final plat meeting the requirements of these regulations shall be submitted least ten (10) working days prior to the meeting of the Planning Board at which it is to be considered. Copies of the plat shall be distributed in the same manner as copies of the preliminary plan.

### **Section 4. What the Final Plat Shall Show.**

The final plat shall be drawn upon a reproducible material such as linen or mylar on sheets of 18 x 24 inches in size to a scale of not less than one inch equals one hundred (100) feet. It shall contain the following:

- (A) A vicinity map showing the location of the subdivision in relation to the surrounding area.
- (B) The name of the recreational vehicle subdivision, the names and addresses of the owner(s) and the engineer or registered surveyor who prepared the plat.
- (C) Date, north arrow, and scale.
- (D) The boundary line of the tract with bearings and distances drawn to scale.
- (E) The names, location and dimensions of streets, alleys, driveways, entrances, exits, walkways, easements, recreation areas, parks and other open spaces, reservations, lot lines, lot and block numbers with accurate bearings and distances, and parking lines within the park. The information shall be drawn accurately with details, computations, and fieldwork completed with all lot corners established on the ground with an iron pin or other permanent marker.
- (F) If the RV subdivision is located in a flood plain area, developer shall submit to the Planning Board with the final plat a workable evacuation plan in accordance with the Flood Damage Prevention regulations.

**Section 5. Approval of Final Plat by Planning Board and Recording Thereof.**

Upon receipt of the final plat, the Planning Board shall review it for compliance with the provisions of this ordinance. The Planning Board may approve the plat in whole or in part, or subject to modifications. Failure of the Planning Board to take formal action on the final plat after receipt of the plat at least ten (10) working days prior to the next regular Board meeting shall be deemed approval of the submitted plat. The approval of the final plat by the Planning Board shall be on condition that such plat be recorded in the Office of the Register of Deeds within thirty (30) days after such approval.

The subdivider shall pay a review fee, as determined from time to time by the Board of Commissioners.

**Section 6. The Following Certificates Shall Be Shown On The Final Plat.**

**(A) Certificate of Ownership and Dedication**

I (we) hereby certify that I am (we are) the owner(s) of the property shown and described hereon that I (we) hereby adopt this plan of subdivision with my (our) free consent, establish all lots, and dedicate all streets, alleys, walks parks, easements, right-of-ways, and other open spaces to public or private use as the same shown herein.

\_\_\_\_\_ DATE \_\_\_\_\_ OWNER

**(B) Certificate of the Approval of Water and Sewage System**

I hereby certify that the water supply and sewage disposal systems installed to serve the subdivision entitled \_\_\_\_\_ fully meets the requirements of the AppHealthCare, and are hereby approved as shown.

\_\_\_\_\_ DATE \_\_\_\_\_ AppHealthCare Authorized Official

**(C) Certificate of Approval of Recording**

I hereby certify that the subdivision plat shown hereon has been found to comply with the Recreational Vehicle Subdivision Regulations of Watauga County, North Carolina, with the exception of such variances, if any, as noted in the minutes of the Planning Board and recorded on the plat and that it has been approved by

the Watauga County Planning Board at their regular meeting of \_\_\_\_\_ for recording in the Office of the County Register of Deeds.

\_\_\_\_\_  
DATE Watauga County Authorized Representative

**(D)** Surveyors Certificate  
NORTH CAROLINA  
WATAUGA COUNTY

\_\_\_\_\_ being duly sworn says the plat shown hereon is in all respects correct to the best of his knowledge and belief and was prepared from an actual field survey supervised by him and completed \_\_\_\_\_.

\_\_\_\_\_  
REGISTERED LAND SURVEYOR NO.

Subscribed and sworn to before me this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

**Section 7. Appeal by Developer.**

If either a preliminary or final plat is not approved by the Planning Board the subdivider may appeal his case to the Superior Court of Watauga County within 30 days.

**Section 8. Feasibility Plan.**

A subdivider may submit a sketch to the Ordinance Administrator prior to submission of a preliminary plan if s/he wishes to ascertain the feasibility of development of his/her property.

**Section 9. Minor Subdivisions.**

**(A)** Procedures set forth herein for handling applications for approval of minor subdivisions are intended to simplify processing of routine small subdivision with due regard to protection of the public interest.



- (B) For the purpose of these regulations, a minor subdivision is defined as any subdivision requiring no variances and consisting of not more than ten (10) lots.
- (C) In lieu of the procedures set forth in this ordinance, the subdivider may receive preliminary approval for any minor subdivision through procedures set forth as follows:
  - (1) The Ordinance Administrator shall review the preliminary plat of each minor subdivision and shall find that it either is or is not a minor subdivision and that it either does or does not meet the requirements of these regulations. Said findings shall be stated in writing and recorded in the records of the Planning Board. Based upon said findings the Department shall either approve, not approve, or approve conditionally the proposed minor subdivision.
  - (2) A decision by the Administrator shall be made within fifteen (15) days of submission of the proposed minor subdivision and the decision of the administrator is subject to appeal in writing by the subdivider to the Planning Board, which must act on appeals at its next regular meeting provided said written appeal is filed with the Planning Board or their designee ten (10) working days prior to said meeting.
- (D) A final plat shall be submitted to the Watauga County Planning Board for their consideration and approval before the conveyance of any of the property or the recordation of the plat.
- (E) After approval, the Subdivision Plat shall be recorded with the Watauga County Register of Deeds within thirty (30) days.

## **Article V Environmental, Open Space and Access Requirements**

### **Section 1. Environmental, Open Space and Access Requirements.**

- (A) General Requirements. Conditions of soil, groundwater level, drainage and topography shall not create hazards to the property or the health or safety of the occupants.
- (B) Floodplain Development. Recreational Vehicle Subdivisions may be permitted to develop in designated floodplain areas but not permitted in the floodway. Developer shall indicate the floodplain and floodway on the plat and evacuation plans shall be established and submitted to the Planning Board for approval consideration prior to approval of final plat. Any improvements shall meet the applicable requirements of the Watauga County Flood Damage Prevention Regulations.
- (C) Soil and Ground Cover Requirements. All ground areas in all parts of every Recreational Vehicle Subdivision shall be paved or covered

- with stone screenings or other solid material or protected with a vegetative growth that is capable of preventing soil erosion and of eliminating objectionable dust.
- (D)** Required Separation Between Recreational Vehicles. Recreational vehicles shall be separated from each other and from other structures by at least 20 feet. Any accessory structure such as attached awnings or individual storage facilities shall, for the purposes of this separation requirement, be considered to be part of the recreational vehicle.
- (E)** Required Recreation Area. In all Recreational Vehicle Subdivisions there shall be at least one recreation area which shall be easily accessible from all recreational vehicle spaces. A minimum of twenty percent (20%) of the total lot area of the park shall be dedicated for open, undeveloped recreational use.
- (F)** Required Setbacks from Public Streets. All recreational vehicles shall be located at least 30 feet from the right-of-way of a public street or highway.
- (G)** RV Subdivision Street System
- (1)** General Requirements. All parking areas shall be provided with safe and convenient vehicular access from abutting public streets or roads to each recreational vehicle space. All roads shall be constructed to meet the requirements of the county standard roads as specified in the Watauga County Subdivision Regulations, with the exception of the road right-of-way which may be 30 feet.
- (2)** Access. Access to recreational vehicle subdivisions shall be designed to minimize congestion and hazards at their entrance and exit and to allow free movement of traffic on adjacent streets. All traffic into and out of the parking areas shall be through such entrances and exits.
- (3)** Off-Street Parking and Maneuvering Space. Each lot in a recreational vehicle subdivision shall provide one vehicle parking space in addition to the space occupied by the towing vehicle (if any). Sufficient maneuvering space shall be provided so that parking, loading or maneuvering of recreational vehicles incidental to parking shall not necessitate the use of any public street, sidewalk, or right-of-way or any private grounds not part of the recreational vehicle subdivision.
- (4)** Traffic Signs. For safety purposes, traffic signs shall be erected designating traffic flow and speed limits. Such signs shall be constructed of permanent material and shall conform substantially to acceptable traffic speeds and sign applications in semi-congested areas.

## **Section 2. Miscellaneous Requirements.**

- (A) Supervision and Continued Maintenance. The person to whom a permit is issued shall be the responsible party for operation and maintenance of the recreational vehicle subdivision in compliance with these regulations and shall further provide adequate supervision to maintain the recreational vehicle subdivision, its facilities and equipment in good repair and in a clean and sanitary condition at all time until at such time an Owners Association shall assume responsibilities as designated by the Developer.
- (B) Owners Association Agreement and Declaration of Restrictions for Recreational Vehicle Subdivisions. Prior to approval of the final plat the subdivider/developer shall submit to the County Planning Board copies of an Owners Association Agreement and Declaration of Restrictions, Conditions, Easements, Covenants, Liens and Charges. Said Agreement shall provide that membership in the Owners Association shall be appurtenant to ownership of land in the subdivision and that the Association is empowered to assess the members for their respective portion of costs of continued maintenance, including but not restricted to road and all utilities, grounds and other improvements and property owned by the Association and the payment of taxes.

### **Article VI Effective Date.**

These regulations shall be in full force and effect from and after June 7, 1982.

The foregoing regulations were initially adopted at meetings of Watauga County Board of Commissioners at Boone, North Carolina, on May 18 and June 7, 1982.

## **CHAPTER 20 VALLE CRUCIS HISTORIC DISTRICT**

### **Article I General Provisions**

#### **Section 1. Purposes.**

The Watauga County Board of County Commissioners, mindful of the historic significance of the Valle Crucis community and in furtherance of the protection of the public health, safety, morals and general welfare, enacts this chapter for the following purposes:

- (A) To preserve and protect the heritage of the Valle Crucis community in Watauga County.
- (B) To protect and conserve individual properties within the Valle Crucis community that embody important elements of Valle Crucis' and Watauga County's social, economic, cultural, political or architectural history.
- (C) To promote the conservation of the Valle Crucis Historic District for the education, pleasure and enrichment of the Valle Crucis community, Watauga County and the State of North Carolina.
- (D) To foster civic beauty and amenity within the Valle Crucis Historic District.
- (E) Contribute to the improvement of the general health and welfare of the residents of the Valle Crucis Historic District and Watauga County.

#### **Section 2. Legislative Authority.**

This chapter is enacted pursuant to Chapter 160D, Article 9, Part 4 as amended, North Carolina General Statutes, for the purposes enunciated therein.

The regulations contained in this chapter are made with reasonable consideration, among other things, as to the character of the District and its peculiar suitability for particular uses and with a view to conserving the value and integrity of buildings and encouraging the most appropriate use of land throughout the District.

## **Article II Historic District and Historic Preservation Commission**

### **Section 1. Historic District Established.**

The Valle Crucis Historic District is hereby established.

The boundaries of the Historic District are as shown on the map entitled "Map of the Valle Crucis Historic District". This map, together with all lawfully adopted explanatory matters shown thereon or therewith, is hereby adopted by reference and declared to be a part of this chapter.

### **Section 2. Application of Regulations.**

No building, structure, or land shall hereafter be used or occupied and no building, structure or part hereof shall be hereafter erected, reconstructed, moved, demolished, located or the exterior structurally altered except in conformity with regulations set out herein for the District.

### **Section 3. Exemption of Bonafide Farms and Public Schools.**

This ordinance shall not be applicable to bonafide farms, as set forth in NCGS 160D-903, but any use of farm property for non-farm purposes is subject to the regulation. Bona fide farm purposes include production of crops, fruits, vegetables, ornamental and flowering plants, dairy, poultry, and all other forms of agricultural products having a domestic or foreign market. Sections 4 and 5 shall not be applicable to public schools.

### **Section 4. Area, Height and Placement Standards.**

Standards governing minimum lot area and width, required yards and maximum height shall be as shown below:

|                          | Residential Uses | All Other Uses |
|--------------------------|------------------|----------------|
| Minimum Lot Size         | 21,780 Sq. Ft.   | 21,780 Sq. Ft. |
| Minimum Lot Width        | 75'              | 75'            |
| Minimum Required Yards:  |                  |                |
| Front (Edge of Pavement) | 50'              | 50'            |
| Side                     | 15'              | 30'            |
| Rear                     | 20'              | 20'            |
| Maximum Building Height  | 30'              | 30'            |

Additional requirements may also be applicable for some development (e.g. development consisting of more than one unit)

### **Section 5. Performance Standards.**

All land uses subject to this ordinance shall comply with the performance standards defined herein.

#### **(A) Buffer Zones**

Where a commercial or multi-family use is proposed adjacent to a single family residential use, a side yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer zone and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no less than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk measured six (6) inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department. Where commercial or multi-family use is proposed adjacent to commercial or multi-family use the same requirements apply with the exception of the low growing shrubs.

The recipient of any permit, or his successor, shall be responsible for maintaining all common areas, improvements of facilities required by this ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

**(B)** Parking

All uses other than single-family residential shall have at least two (2) off-street parking spaces per dwelling unit or as follows.

- (1)** Parking space for commercial uses shall consist of one (1) off street parking space for each two hundred (200) square feet of gross floor area.
- (2)** Bed and breakfasts, hotels, motels, or and commercial use of this nature shall have parking based on one and one half (1-1/2) parking spaces per bedroom (fractions shall be rounded up to next whole number).
- (3)** Loading/unloading space for commercial uses shall consist of one (1) space at least three hundred (300) square feet in size for each five thousand (5000) square feet of gross floor area. A minimum of one (1) loading/unloading space is required regardless of floor area square footage.

**(C)** Screening of Parking

Parking and loading/unloading areas shall be located at the rear or side of buildings. ("Front" is defined as the face of the building that is parallel to a public road. By this definition, buildings or multiple public road frontage lots would have multiple "front yards" thereby limiting the location of parking areas to the remaining side or rear yards.) Side-yard parking areas that are exposed to a public road shall be screened so as to eliminate visual contact from the road(s). Such screening shall consist of a ten (10) foot wide planting of evergreen trees at ten (10) foot intervals. The trees shall be at least four (4) feet high at planting (2" caliper) and shall reach a height of no less than twenty (20) feet at maturity.

**(D)** Density

Any proposed development consisting of more than one unit shall comply with the Watauga County Subdivisions and Multi-Unit Structures regulations, Articles VIII and X as applicable as well as any additional or stricter requirements imposed by this ordinance. However, the maximum overall density shall not exceed one (1) unit per acre. The goal sought by this standard is the reservation of perpetual open (green) space. To that end, an impervious surface ratio of twelve (12) percent is established. Impervious surface is defined as surfaces that do not absorb water. They consist of all buildings, parking areas, driveways, road, sidewalks, and any areas of concrete, gravel or asphalt. The impervious

surface ratio is applicable to any new commercial building regardless of the number of units.

**(E)** Signage

In order to maintain the rural historic character of the District, signs must be limited in size and number. Therefore, off-premises advertising signs are prohibited.

On-premises signs are limited as follows:

- (1)** Signs shall not be placed within a public road right-of-way.
- (2)** Signs located fifteen (15) feet to twenty five (25) feet from the centerline of a road shall be limited to ten (10) square feet in size.
- (3)** Signs located twenty five (25) to thirty five (35) feet from the centerline of a road shall be limited to twenty (20) square feet in size.
- (4)** Signs located thirty five (35) feet or more from the centerline of a road shall have a maximum size of thirty two (32) square feet.
- (5)** Each establishment is limited to a maximum of two signs (one (1) detached and one (1) attached). However, in a situation where a detached sign is not visible from both directions due to topography or other obstruction, two (2) detached signs may be permitted and shall have a maximum size of ten (10) square feet each.
- (6)** The maximum height of detached signs is ten (10) feet measured from the ground.
- (7)** Signs shall not be internally illuminated – i.e. translucent plastic signs prohibited.
- (8)** Where street or site lighting does not provide sufficient illumination, signs may be externally illuminated by low level, shielded stationary bulbs installed in compliance with North Carolina Statutes §136-32.2. Sign lighting shall be turned off by 11 pm.

**(F)** Lighting

Lighting of nonresidential land uses must be controlled in both height and intensity to maintain rural character. Under no circumstances may the light level at the lot line exceed 0.2 foot candles, measured at ground level. To achieve this, luminaries shall be shielded to prevent light shining beyond the lot lines onto neighboring properties or public roads. Where there is a mix of residential and commercial uses, light standards are restricted to a maximum of twenty (20) feet in height. In addition, all lighting (except for security purposes) should be turned off between 11 pm



and 6 am. Exceptions will be granted for those businesses that are operating during these hours.

**(G)** Placement of Buildings

Buildings should be sited so that obstruction of views from the public roads will be minimized. This can be achieved by taking advantage of topographic changes or existing vegetation.

**(H)** Facades

It is particularly important that new construction meet minimum design criteria in order that it may blend with the surroundings. New construction throughout the District should be compatible with surrounding properties, in terms of formal characteristics such as height, massing, roof shapes and window proportions.

Where new construction is contiguous with or within 100' of existing historic buildings, building height and exterior materials shall be harmonious with those of adjacent properties. In the interests of maintaining a sense of history, vertical siding shall be discouraged, and synthetic siding should imitate the character and dimensions of traditional clapboards. Masonry block buildings should be faced in an appropriate material, such as horizontal wooden siding or brick of a consistent traditional red color (not "used" brick or any varieties doctored to appear old), and have pitched roofs.

## **Section 6. Historic Preservation Commission.**

There is hereby established the Valle Crucis Historic Preservation Commission (hereafter referred to as the Commission) to consist of five members appointed by the Watauga County Board of Commissioners. Members of the Commission shall serve without compensation.

**(A)** Tenure

Initially members shall be appointed for staggered terms with one member being appointed for one year, two members for two years and two members for three years. Thereafter, all appointments shall be for a term of three years.

**(B)** Qualifications

Three (3) members of the Commission shall be resident property owners of the Historic District, two (2) shall be members of the Valle Crucis Community Council and residents of Watauga County, and the majority of the members shall have special interest, experience or education in history or architecture.

**(C) Meetings**

The Commission shall establish a meeting time and shall meet monthly and more or less often as it shall determine and require. All meetings of the Commission shall be open to the public and reasonable notice of the time and place thereof shall be given to the public. All meetings shall conform to the North Carolina Open Meeting Law. (See North Carolina General Statutes 143, Article 33C).

**(D) Attendance at Meetings**

Any member of the Commission who misses more than three consecutive regular meetings or more than half of the regular meetings in a calendar year shall lose status with the Commission and shall be replaced or reappointed by the Watauga County Board of County Commissioners.

Absence due to sickness, death or emergencies of like nature shall be recognized as approved absences and shall not affect a member's status on the Commission, except in the event of long illness or other such cause for prolonged absence a member shall be replaced.

**(E) Rules of Procedure**

The Commission shall adopt and publish Rules of Procedure for the conduct of its business.

**(F) Annual Report**

An annual report shall be prepared and submitted by February 1<sup>st</sup> of each year to the Board of County Commissioners. Such report shall include a comprehensive review of the activities, problems, and actions of the Commission as well as any budget requests or recommendations.

**(G) Meeting Minutes**

The Commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolution, findings, recommendations and actions.

The minutes of the Commission shall be a public record.

**Section 7. Commission Powers.**

The Commission shall seek to promote, enhance and preserve the character of the Valle Crucis Historic District, provided however that the Commission shall not require the reconstruction of individual or original buildings or structures or portion thereof.

The Commission is authorized and empowered to undertake such action as is reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this Ordinance and Chapter 160D of the General Statutes of the State of North Carolina including but not limited to the following:

- (A)** Undertake an inventory of properties of historical, prehistorical, architectural, and/or cultural significance.
- (B)** Recommend to the governing board areas to be designated by ordinance as "Historic Districts" and individual structures, buildings, sites, areas, or objects to be designated by ordinance as "Landmarks."
- (C)** Acquire by any lawful means the fee or any lesser included interest, including options to purchase, to properties within established districts or to any such properties designated as landmarks to hold, manage, preserve, restore, and improve such properties, and to exchange or dispose of the property by public or private sale, lease or otherwise, subject to covenants or other legally binding restrictions that will secure appropriate rights of public access and promote the preservation of the property.
- (D)** Restore, preserve, and operate historic properties.
- (E)** Recommend to the governing board that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a landmark, be revoked or removed for cause.
- (F)** Conduct an educational program regarding historic properties and districts within its jurisdiction.
- (G)** Cooperate with the State, federal, and local governments in pursuance of the purposes of this Part. The governing board or the commission, when authorized by the governing board, may contract with the State, or the United States of America, or any agency of either, or with any other organization provided the terms are not inconsistent with State or federal law.
- (H)** Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (I)** Prepare and recommend the official adoption of a preservation element as part of the local government's comprehensive plan.
- (J)** Review and act upon proposals for alterations, demolitions, or new construction within historic districts, or for the alteration or demolition of designated landmarks, pursuant to this Part.

- (K) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate.

### **Section 8. Certificate of Appropriateness.**

(A) Required

No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement or other appurtenant features) nor above ground utility structure shall be erected, altered, restored, moved or demolished within the Valle Crucis Historic District until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Valle Crucis Historic Preservation Commission.

For purposes of this chapter, "exterior features" include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior features" mean the style, material, size, and location of all such signs. Such "exterior features" may include important landscape and natural features of the District. Such a Certificate of Appropriateness must be issued by the Commission prior to the issuance of a building permit intended for the purposes of constructing, altering, moving or demolishing structures.

The Certificate of Appropriateness may be issued subject to reasonable conditions necessary to carry out the purposes of this chapter.

A Certificate of Appropriateness shall be required whether or not a building permit is required.

Any building permit or other such permit not issued in conformity with this chapter shall be invalid.

(B) Required Procedures

The following procedures shall be observed in the submission, review, action and administration of applications for approval of Certificates of Appropriateness:

**(1)** Applications Submitted to Department of Planning and Inspections

An application for a Certificate of Appropriateness shall be obtained from and, when completed, filed with the County Department of Planning & Inspections.

Application for Certificates of Appropriateness shall be considered by the Commission at its next regular meeting provided they have been filed, complete in form and content, at least twenty eight (28) calendar days before the regularly scheduled meeting; otherwise consideration shall be deferred until the following meeting.

**(2)** Contents of Application

The Commission shall require data as are reasonably necessary to determine the nature of the application. An application for a Certificate of Appropriateness shall not be considered complete until all required data are submitted.

Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

**(3)** Notification of Commission

Upon the receipt of an application, the Department of Planning & Inspections shall notify the Commission at least fourteen calendar days before its regularly scheduled meeting of the contents of the application and its conformance to the provisions of this chapter.

**(4)** Notification of Property Owners and Commission Action on Application

Decisions on Certificates of Appropriateness are quasi-judicial and shall follow the procedure of NCGS 160D-406, including notification of property owners and conduct of an evidentiary hearing. The Commission shall apply the Review Criteria contained in this chapter as well as the "Rural Historic District Standards for Valle Crucis, NC" to aid in making the decision.

**(5)** Reasons for Commission Actions to Appear in Minutes and Written Decision

The Commission shall cause to be entered into the minutes of its meeting the reasons for its actions whether it be approval, approval with modifications or denial. A written decision shall

be prepared and signed by the Commission Chair and delivered to the applicant within a reasonable time.

**(6)** Time for Review

All applications for certificates of appropriateness shall be reviewed and acted upon within a reasonable time, not to exceed 180 days from the date the application for a certificate of appropriateness is filed, as defined by the commission's rules of procedure. As part of its review procedure, the commission may view the premises and seek the advice of the Division of Archives and History or such other expert advice as it may deem necessary under the circumstances.

**(7)** Submission of New Applications

If the Commission determines that a Certificate of Appropriateness should not be issued, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration or moving.

**(8)** Interior Arrangement Not Considered

The Commission shall not consider interior arrangement, except as set forth in N.C.G.S. 160D-947(b).

**(9)** Certain Changes Not Prohibited

Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Valle Crucis Historic District which does not involve a substantial change in design, material, or outer appearance thereof nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the Watauga County Building Inspector shall certify in writing to the Commission as required by his/her duty to protect the public safety because of its unsafe or dangerous condition.

**(10)** Delay in Demolition of Buildings Within the District

- (a)** An application for a certificate of appropriateness authorizing the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within the district may not be denied, except as provided in subsection (b) of this section. However, the effective date of such a certificate may be delayed for a period of

up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the preservation commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition or removal. If the preservation commission or planning board has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the preservation commission or planning board for a period of up to 180 days or until the governing board takes final action on the designation, whichever occurs first.

- (b)** An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the preservation commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

**(11) Appeal of Decision**

An appeal may be taken to the Superior Court of Watauga County, pursuant to N.C.G.S. 160D-1402.

**(12)** Compliance

Compliance with the terms of the Certificate of Appropriateness shall be enforced by the Watauga County Department of Planning and Inspections.

Failure to comply with a Certificate of Appropriateness shall be a violation of this chapter.

To ensure continued compliance with the provisions of this chapter, each approved Certificate of Appropriateness shall expire 12 months from the date on which final action was taken to approve the application, unless otherwise identified in the certificate, if the alteration, construction, demolition, relocation, or removal has not been initiated. Time extensions may be granted in accordance with the Commission's Rules of Procedure.

Nothing contained in this chapter shall prohibit, impair or limit in any way the power of Watauga County to prevent the construction, reconstruction, alteration, or removal of building structures, appurtenant fixtures or outdoor signs in the Historic District in violation of the provisions of this chapter.

**(13)** Review Criteria**(a)** Intent

It is the intention of these regulations to insure, in so far as possible, that buildings or structures in the Valle Crucis Historic District shall be in harmony with other buildings or structures located therein. However, it is not the intention of the regulations to require the reconstruction or restoration of individual or original buildings or prohibit demolition or removal of the same or to impose architectural styles of particular historic periods. In considering new construction, the Commission shall encourage contemporary design that is harmonious with the character of the District.

In granting a Certificate of Appropriateness, the Commission shall take into account the historic or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that



structure, as well as the effect of such changes or additions upon other structures in the vicinity.

**(b) Exterior Form and Appearance**

The following criteria should be considered, when relevant, by the Commission in reviewing applications for Certificates of Appropriateness:

- (i.)** New construction and alteration should reflect the atmosphere, existing landscape characteristics and appearance of the District.
- (ii.)** New buildings should have a definite relationship to existing buildings; that is, they should be compatible but not imitative.
- (iii.)** Wood, brick and stone are traditional building materials in the District and should be employed whenever possible, as should metal roofs.
- (iv.)** Remodeling and alterations to buildings should be in the style of the existing building and be compatible in size, scale, color and material.
- (v.)** Double-wide mobile homes are preferred. All mobile homes should be placed on permanent solid masonry foundations, unpierced except for required access and ventilation openings. The chassis and towing bar should be removed.
- (vi.)** If cinder blocks are used in the foundations, the surface should be treated with masonry paint or other suitable material.
- (vii.)** Outbuildings should be compatible with the main building and with the rural atmosphere of the District.
- (viii.)** Native plant materials should be used in landscaping around buildings.
- (ix.)** Signs should reflect good taste in size and materials.

**Article III Nonconformities**

**Section 1. Classification.**

Any building, structure or use of land existing at the time of enactment of this ordinance or any amendment thereto which was lawful but would be

prohibited, regulated or restricted by such enactment or amendment is a nonconformity.

### **Section 2. Repair, Reconstruction, Expansion, Reinstatement.**

It is the intent of this chapter to permit nonconformities to continue until they are removed or cease. Such continuance shall include routine maintenance and repair, reconstruction in case of total or partial destruction, and expansion, provided that such expansion meets all other requirements of this chapter (yard requirements, Certificate of Appropriateness, etc.). A nonconforming use shall not be reinstated after discontinuance for a period of one (1) year unless the Historic Preservation Commission finds that such reinstatement will not have a detrimental effect upon the District.

### **Section 3. Nonconforming Lots.**

In the District, structures may be erected, occupied and used on separate, nonconforming lots of record, in accord with all other requirements applying in the District.

## **Article IV Public Buildings**

As set forth in N.C.G.S 160D-947(f), all of the provisions of Article 2, Section 8 are hereby made applicable to construction, alteration, moving, and demolition by the State of North Carolina, its political subdivisions, agencies, and instrumentalities, provided, however, they shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission or any successor agency assuming its responsibilities under N.C.G.S. 121-12(a) from any decision of a local preservation commission.

**Chapter 21 Watershed Protection (Winkler's Creek,  
Howards Creek, Norris Branch, Flat Top Branch, South Fork  
New River, and Pond Creek)**

**Article I Authority and General Regulations**

**Section 1. Authority and Enactment.**

The Legislature of the State of North Carolina has, in Chapter 160D, Zoning Authority; and in Chapter 143, Article 21, Watershed Protection Rules, 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 Watauga County Board of Commissioners enacts into law the following chapter as the Watershed Protection Zoning Regulations of Watauga County.

**Section 2. Jurisdiction.**

The provisions of this chapter shall apply within the area designated as a Public Water Supply Watershed by the N.C. Environmental Management Commission and shall be defined and established on the most recent officially adopted by the NC Environmental Commission version of the map entitled, "Watershed Protection Map of Watauga County North Carolina" ("the Watershed Map"), which is adopted simultaneously herewith. The Watershed Map and all explanatory matter contained thereon accompanies and is hereby made a part of this chapter.

**Section 3. 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 Watauga 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 provision of these regulations shall control.

- (C) Existing development, as defined in this ordinance, is not subject to the requirements of this ordinance. Expansions to structures classified as existing development must meet the requirements of this ordinance. However, the built-upon area of the existing development is not required to be included in the density calculations.
- (D) A pre-existing lot owned by an individual prior to the effective date of this ordinance, 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 ordinance.

#### **Section 4. Applicability to Agricultural Uses.**

This chapter shall not affect bona fide farms, as cited in Chapter 6 of this Title and N.C.G.S. 160D-903.

The following paragraph is provided for information only. Agricultural activities are regulated by the Watershed Protection Act (NCGS 143, Chapter 21) as follows:

"Agriculture is subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990. Agricultural activities conducted after January 1, 1993 shall maintain a minimum ten (10) 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."

### **Article II Subdivision Regulations**

#### **Section 1. General Provisions.**

- (A) No subdivision plat of land within the Public Water Supply Watershed shall be filed or recorded by the Register of Deeds until it has been approved in accordance with the provisions of this Article. Likewise, the Clerk of Superior Court shall not order or direct the recording of a plat if the recording of such plat would be in conflict with this Article.
- (B) All subdivisions of land within Watauga County are subject to the provisions of the Watauga County Subdivisions and Multi-Unit Structures regulation and shall be reviewed pursuant to that chapter. Subdivisions within Public Water Supply Watersheds shall comply with the provisions of both chapters except where the two (2) conflict. In that case, the more restrictive provisions shall apply.

- (C)** Compliance with this chapter shall be indicated on both copies of the plat by the following certificate and signed by the authorized representative:

Certificate of Approval for Recording

I certify that the plat shown here on complies with the Watershed Protection Regulations and is approved by the Watauga County Planning Board for recording in the Register of Deeds office.

\_\_\_\_\_                      \_\_\_\_\_  
 Date                                      Watauga County Authorized Representative

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

Or, for minor subdivisions as defined by the Watauga County Subdivisions and Multi-Unit Structures regulations, the following certificate shall be used:

Certificate of Approval for Recording

I certify that the plat shown here on complies with the Watershed Protection Regulations and is approved for recording in the Register of Deeds office.

\_\_\_\_\_                      \_\_\_\_\_  
 Date                                      Watauga County Authorized Representative

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.

\*NOTE: Those certificates may be combined with similar certificates required by the subdivision regulations.

- (D)** 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 to minimize their impact on water quality.
- (E)** All lots shall provide adequate building space in accordance with the development standards contained in Article III. Lots which are smaller than the minimum required for residential lots may be

- developed using built-upon area criteria in accordance with Article III or cluster development criteria in accordance with Section 3.
- (F) 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.
  - (G) 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 stormwater runoff away from surface waters and incorporates best management practices to minimize water quality impacts.
  - (H) Erosion and Sedimentation Control. The application shall, where required, be accompanied by a written statement that a sedimentation and erosion control plan will be submitted to and approved by Watauga County.

### **Article III Development Regulations**

#### **Section 1. Establishment of Watershed Areas.**

For purposes of this chapter, the following watershed areas are established:

- WS-II-CA (Critical Area)
- WS-II-BW (Balance of Watershed)
- WS-III-(Balance of Watershed)
- WS-IV-CA (Critical Area)
- WS-IV-PA (Protected Area)

#### **Section 2. Watershed Areas Described.**

- (A) WS-II Watershed Areas - Critical Area (WS-II-CA).  
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 two acres. All other residential and non-residential development shall be allowed at a maximum six percent (6%) built upon area. New residuals application sites and landfills are specifically prohibited.
  - (1) Allowed Uses:
    - (a) Agriculture. (See Article I Section 4)
    - (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II 6101-0209).
    - (c) Residential development, including both single family and all other residential.

- (d) Non-residential development, excluding: 1) landfills, and 2) sites for land application of residuals or petroleum contaminated soils.
- (2) Density and Built-upon Limits:
  - (a) Single Family Residential development shall not exceed one dwelling unit of single family detached residential development per two (2) acres (or 80,000 square foot lot excluding area within road right of way) on a project by project basis. No residential lot shall be less than two (2) acres (or 80,000 square feet excluding area within road right of way), except within an approved cluster development.
  - (b) All Other Residential and Non-Residential development shall not exceed six percent (6%) 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. Stormwater runoff from the development shall be transported by live vegetative ground cover to the maximum extent practicable.
- (B) 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 twelve percent built-upon area. Projects must minimize built-upon surface area, direct storm water away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed.
  - (1) Allowed Uses:
    - (a) Agriculture. (see Article I Section 4)
    - (b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).
    - (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 of single family detached residential development per one (1) acre (or 40,000 square foot lot excluding area within road right of way) on a project by project basis. No residential lot shall be less than one (1) acre (or 40,000 square feet excluding

area within road right of way), except within an approved cluster development.

**(b)** All Other Residential and Non-Residential - development shall not exceed twelve percent (12%) 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. Stormwater runoff from the development shall be transported by live vegetative ground cover to the maximum extent practicable.

**(c)** 10%-70% provisions - a maximum of 10% of the balance of the watershed outside the critical area may be developed with up to 70% built-upon surface area on a project-by-project basis. No site can exceed 70% built-upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area.

**(C)** WS-III Watershed Areas - Balance of Watershed (WS-III- BW).

In order to maintain a predominantly undeveloped land use intensity pattern, single family residential uses shall be allowed at a maximum of two dwelling units per acre. All other residential and non residential development shall be allowed a maximum of twenty-four percent (24%) built-upon area. Projects must minimize built-upon surface area, direct storm water away from surface waters and incorporate Best Management Practices to minimize water quality impacts. Non-discharging landfills and sludge application sites are allowed.

**(1)** Allowed Uses:

**(a)** Agriculture, (see Article I Section 4)

**(b)** Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II.6101-.0209).

**(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 on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.

**b)** All Other Residential and Non-Residential - development shall not exceed twenty-four percent (24%) 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. Stormwater runoff from the development shall be transported by live vegetative ground cover to the maximum extent practicable.

- c)** 10%-70% provisions--a maximum of 10% of the balance of the watershed outside the critical area may be developed with up to 70% built-upon surface area on a project-by-project basis. No site can exceed 70% built upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area.

**(D)** WS-IV Watershed Areas - Critical Area (WS-IV-CA).

In order to address a moderate to high land use intensity pattern, single family residential uses are allowed at a maximum of two (2) dwelling units per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. New residuals application sites and landfills are specifically prohibited.

**(1)** Allowed Uses:

- (a)** Agriculture (see Article I Section 4)
- (b)** Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 1I.0101-.0209).
- (c)** Residential.
- (d)** Non-residential development, excluding: 1) landfills and 2) sites for land application of residuals or petroleum contaminated soils.

**(2)** Density and Built-upon Limits:

- (a)** Single Family Residential - development shall not exceed two dwelling units per acre on a project by project basis. No residential lot shall be less than one-half (1/2) acre (or 20,000 square feet excluding roadway right-of-way), except within an approved cluster development.
- (b)** All Other Residential and Non-Residential - development shall not exceed twenty four percent (24%) built-upon area on a project by project basis. For the purpose of calculating the built-upon area, total project area shall include total acreage in the tract on which the project is to be developed.

**(E)** WS-IV Watershed Areas - Protected Area (WS-IV-PA).

In order to address a moderate to high land use intensity pattern, single family residential uses shall develop at a maximum of two (2) dwelling units of single family detached residential development or one duplex per acre. All other residential and non-residential development shall be allowed at a maximum of twenty-four percent (24%) built-upon area. A maximum of thirty-six percent (36%) built upon area is allowed for projects without a curb and gutter system. Stormwater runoff from the development shall be transported by live vegetative ground cover to the maximum extent practicable.

**(1)** Allowed Uses:

- (a)** Agriculture. (see Article I Section 4)
- (b)** Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC II, 6101-0209).
- (c)** Residential development.
- (d)** Non-residential development.

**(2)** Density and Built-upon Limits:

- (a)** Single Family Residential - development shall not exceed two (2) dwelling units per acre, as defined on a project by project basis. No residential lot shall be less than one-half (1/2) acre, except within an approved cluster development.
- (b)** All Other Residential and Non-Residential - development shall not exceed twenty-four percent (24%) built-upon area on a project by project basis. For projects without a curb and gutter system, development shall not exceed thirty-six percent (36%) built-upon area on a project-by-project basis. For the purpose of calculating built-upon area, total project area shall include acreage in the tract on which the project is to be developed.
- (c)** 10%-70% provisions - a maximum of 10% of the balance of the watershed outside the critical area may be developed with up to 70% built-upon surface area on a project-by-project basis. No site can exceed 70% built upon area. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70% built-upon surface area.

**(E)** In accordance with the provisions of N.C.G.S. 143-214.5, an applicant may average development density on up to two noncontiguous properties in order to achieve compliance with the watershed development standards set forth in this Section.

### **Section 3. Cluster Development.**

Clustering of development is allowed under the following conditions:

- (A) Minimum lot sizes are not applicable to single family cluster development projects; however, the total number of lots shall not exceed the number of lots allowed for single family detached developments in Section 2. Built-upon area or stormwater control requirements of 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, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (C) Areas of concentrated density development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainage ways.
- (D) If common open space is the method used to meet the standards of Section 2, the remainder of the tract not included in individual lots shall remain in a vegetated or natural state. The 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.
- (E) In reviewing and approving a development plan for a Planned Unit Development (PUD) or mixed use development, the County shall have the option of determining built-upon area for the entire development or for each type of land-use within the development.

### **Section 4. Buffer Areas Required.**

- (A) A minimum one hundred (100) foot vegetative buffer is required for all new development activities under the 10%-70% provision; otherwise a minimum thirty (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 or other structures such as flag poles, signs, and security lights which result in only minimal increases in

impervious surface, 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 Practices.

### **Section 5. Rules Governing the Interpretation of Watershed Area Boundaries.**

- (A) Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:
- (B) Where area boundaries are indicated as approximately following either street, alley, railroad or highway lines or centerlines thereof, such lines shall be construed to be said boundaries.
- (C) 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.
- (D) Where the watershed area boundaries lie at a scaled distance more than twenty-five (25) feet from any parallel lot line, the location of watershed area boundaries shall be determined by use of the scale appearing on the watershed map.
- (E) Where the watershed area boundaries lie at a scaled distance of twenty-five (25) feet or less from any parallel lot line, the location of watershed area boundaries shall be construed to be the lot line.
- (F) Where other uncertainty exists, the Watershed Administrator shall interpret the Watershed Map as to location of such boundaries. This decision may be appealed to the Board of Adjustment.

### **Section 6. 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 ordinance shall be included in the area required for another building.
- (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 Section 7.
- (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.

## **Section 7. Existing Development.**

Any existing development as defined in this Article may be continued and maintained subject to the provisions provided herein. Expansions to structures classified as existing development must meet the requirements of this chapter; however, the built-upon area of the existing development is not required to be included in the density calculations.

- (A) 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 Watauga County. A lot may be used for any of the uses allowed in the watershed area in which it is located, provided that where the lot area is below the minimum specified in this ordinance the Watershed Administrator is authorized to issue a watershed protection permit.
- (B) Occupied Lots. This category consists of lots, occupied for residential purposes at the time of the adoption of this ordinance. These lots may continue to be used.
- (C) Uses of Land. This category consists of uses existing at the time of adoption of this ordinance 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 shall be changed only to an allowed use.
  - (3) When such use ceases for a period of at least one year, it shall not be reestablished.
- (D) Reconstruction of Buildings or Built-upon Areas. Any 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, except that there are no restrictions in single family residential development, provided:
  - (1) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
  - (2) The total amount of space devoted to built-upon area may not be increased unless stormwater control that equals or exceeds the previous development is provided.

## **Section 8. 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 and supporting documentation deemed necessary by the Watershed Administrator.
  - (C) 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.
  - (D) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit (when no building permit is required) for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

### **Section 9. Building Permit Required.**

Except for a single family residence constructed on a lot deeded prior to the effective date of this ordinance, 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.

### **Section 10. Watershed Protection Occupancy Permit.**

- (A) The Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met prior to the occupancy or use of a building hereafter erected, altered or moved and/or prior to the change of use of any building or land.
- (B) A Watershed Protection Occupancy Permit, either for the whole or part of a building, shall be applied for coincident with the application for a Watershed Protection Permit and shall be issued or denied within ten (10) days after the erection or structural alterations of the building.
- (C) When only a change in use of land or existing building occurs, the Watershed Administrator shall issue a Watershed Protection Occupancy Permit certifying that all requirements of this chapter have been met coincident with the Watershed Protection Permit.
- (D) If the Watershed Protection Occupancy Permit is denied, the Watershed Administrator shall notify the applicant in writing stating the reasons for denial.
- (E) No building or structure which has been erected, moved, or structurally altered may be occupied until the Watershed Administrator has approved and issued a Watershed Protection Occupancy Permit.

## **Article IV Public Health Regulations**

### **Section 1. Public Health, in general.**

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.

### **Section 2. 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 Board of Commissioners. The Watershed Administrator may consult with any public agency or official and request recommendations.
- (C) Where the Board of Commissioners 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.

## **Article V Administration, Enforcement and Appeals**

### **Section 1. Watershed Administrator and Duties thereof.**

The 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 and Watershed Protection Occupancy 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 staff to the Board of Adjustment for cases involving this chapter.
- (C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Regulations and shall provide copies of all amendments upon adoption to the

Watershed Protection Section of the Division of Energy, Mineral and Land Resources.

- (D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this chapter, exercising in the fulfillment of his responsibility the full police power of the county. The Watershed Administrator, or his duly authorized representative, may enter any building, structure, or premises, as provided by law, to perform any duty imposed upon him/her by this chapter.
- (E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Regulations. This record shall be submitted to the Watershed Protection Section of the Division of Energy, Mineral and Land Resources. on or before the 1st of January every calendar year and shall provide a description of each project receiving a variance and the reasons for granting the variance.

## **Article VI Appearance Standards**

Multi-family and non-residential uses are subject to the standards described in this section. The standards do not apply to bona fide farming operations, which are exempt from this ordinance, or to temporary uses which are not required to be connected to a permanent wastewater disposal system. Compliance with the standards shall be determined through a site plan review by the Watershed Administrator. Standards are as follows.

### **Section 1. Buffer Areas.**

Buffer areas shall be established in order to create the impression of spatial separation between adjacent land uses. The purpose of this separation is to lessen possible adverse effects of land uses upon each other and to provide within development planted/green areas so as to maintain the rural character of the community. Buffer requirements are as follows:

- (A) Where a commercial or multi-family use is proposed adjacent to single family residential use, side and rear yard setback of 30 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper (trunk diameter 6 inches above grade) for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity. Where utility easements conflict with this height requirement, the requirement may be lessened at the discretion of the Watershed



- Administrator. In addition, plantings of low growing shrubs, and/or trees shall be placed at ten (10) foot intervals. Plantings within buffer zones shall be staggered unless topography is prohibitive. No planting shall be placed in the road right-of-way. Lists of recommended plantings are available from the Planning and Inspections Department.
- (B)** Where a commercial or multi-family use is proposed adjacent to a commercial or multi-family use side and rear yard setback of 15 feet shall be observed for buildings, parking, or storage. This area is to be used as a buffer and shall be landscaped as follows. Buffers shall consist of plantings of evergreen and/or deciduous trees spaced no more than thirty (30) feet apart. Such trees shall be at least six to seven (6-7) feet tall for evergreens and six to eight (6-8) feet tall with a one and one half (1-1/2) inch caliper for deciduous trees at time of planting and shall reach a height of no less than twenty (20) feet at maturity, except as described in subsection (A). In addition, permanent ground cover such as grasses shall be established.
  - (C)** Walls, fences, earthen berms, or other natural features may be used in combination with or in lieu of planted buffers if approved as part of a permit. Considerations include but are not limited to:
    - (1)** Any existing significant vegetation within the buffer(s) may be preserved and credited towards meeting the standard for the required buffer. Existing fences, berms, and/or walls within the buffer(s) may be used to fulfill the standards set forth for the buffer providing these elements are healthy and in a condition of good repair. Chain link fencing is not acceptable in meeting the performance criteria of this ordinance.
    - (2)** Installation of supplemental vegetation and/or site features may be required at the time of site plan review, if existing vegetation and/or site features within the buffer do not meet or exceed the requirements of this ordinance.
  - (D)** Open storage areas, exposed machinery and outdoor areas used for the storage and collection of rubbish must be visually screened from roads and surrounding land uses. Suitable types of screening include opaque wood fences and dense evergreen hedges of six (6) feet or more in height.
  - (E)** The recipient of a Watershed Occupancy Permit, or his successor, shall be responsible for maintaining all common areas, improvements, or facilities required by the ordinance or any permit issued in accordance with its provisions, except those areas, improvements, or facilities with respect to which an offer of dedication to the public has been accepted by the appropriate public authority. As illustrations, and without limiting the generality of the

foregoing, this means that private roads and parking areas, water and sewer lines, and recreational facilities must be properly maintained so that they can be used in the manner intended, and required vegetation and trees used for screening, landscaping, or shading must be replaced if they die or are destroyed.

## **Section 2. Location and Buffering of Parking.**

In order to preserve the rural environment, developers are encouraged to place parking and loading/unloading areas at the rear or side of buildings. ("Front" is defined as the face of the building which is parallel to a public road. By this definition, buildings on multiple public road frontage lots would have multiple "front yards"). In any event, parking areas which are exposed to a public road shall include a ten (10) foot buffer strip along the front. At a minimum, such strips shall be grassed and/or mulched and shall be planted with low growing trees or shrubs no more than twenty (20) feet apart.

## **Article VII Changes and Amendments to the Watershed Protection Regulations**

The Watauga County Board of Commissioners may, on its own motion or on petition, after public notice and hearing, amend, supplement, change or modify the watershed regulations and restrictions as described herein.

Under no circumstances shall the Board of Commissioners adopt such amendments, supplements or changes that would cause this ordinance to violate the watershed protection rules as adopted by the N.C. Environmental Management Commission. All amendments must be filed with the N.C. Division of Energy, Mineral, and Land Resources, N.C. Division of Environmental Health, and other State of NC agencies as required.

## **Article VIII Variances**

The Board of Adjustment 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 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.

If an applicant requests a major variance as defined in this Article, and if the Board of Adjustment 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.

The preliminary record shall be sent to the NC 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 (1) the property owner can secure no reasonable return from, nor make any practical use of the property unless the proposed variance is granted, and (2) 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. If the Commission approves the variance as proposed, the Board shall prepare a final decision granting the proposed variance. If the Commission approves the variance with conditions and stipulations, the Board shall prepare a final decision, including such conditions and stipulations, granting the proposed variance.
- (B) If the Commission concludes from the preliminary record that the variance qualifies as a major variance and that (1) the property owner can secure a reasonable return from or make a practical use of the property without the variance or (2) 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. The Board shall prepare a final decision denying the variance as proposed.

The Watershed Administrator shall notify in writing each local government having jurisdiction in the watershed. 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 Board of Adjustment. Such comments shall become a part of the record of proceedings of the Board.

## **CHAPTER 22 WIND ENERGY SYSTEMS**

### **Article I Authority and Purpose.**

Inasmuch as Watauga County has determined that single wind power turbines are exempt from the North Carolina Mountain Ridge Protection Act, and pursuant to the authority granted to counties by NC General Statute 153A-121 et seq. and other pertinent statutes and amendments thereto, it is the purpose of this ordinance to regulate the use of wind energy systems and to describe the conditions by which a permit for installing a system could be obtained.

### **Article II Findings.**

Wind power is a clean, inexhaustible, reliable, and economical source of energy that can help us reduce our dependence on fossil fuels, help to preserve and protect the environment, and help to create new jobs and sustainable forms of development. As a result of these benefits, wind power has become the fastest growing energy source in the world and is helping to satisfy the growing demand for electricity cleanly and affordably.

The State of North Carolina has enacted a number of laws and programs to encourage the use of small-scale renewable energy systems including a state tax credit, net metering law, property tax exemptions, and a state wide green power program.

### **Article III Small Wind Energy Systems.**

Small wind energy systems shall be a permitted use by right subject to the requirements set forth in this section:

#### **Section 1. Wind Turbine Height.**

Height shall be limited to 135 feet.

#### **Section 2. Setback.**

The base of the wind turbine shall not be closer to surrounding property lines than the height of the wind turbine unless a NC Registered Professional Engineer certifies the fall zone of the wind turbine and appurtenances will be within the setback area proposed. In addition, no wind turbine shall be located closer to an inhabited structure on adjacent property than 1.5 times

the height of the wind turbine. Relief from this section may be granted if the applicant can secure a permanent easement from the adjoining property owner(s) providing for a fall zone.

### **Section 3. Building Permit Requirements.**

A building permit shall be required and building permit applications for small wind energy systems shall be accompanied by standard drawings of the wind turbine structure, including the tower, base, and footings. An engineering analysis of the tower certified by a licensed professional engineer including standards for ice/wind loading shall also be submitted. This analysis may be supplied by the manufacturer. Wet stamps shall not be required.

### **Section 4. Compliance with FAA Regulations.**

Small wind energy systems must comply with applicable FAA regulations, including any necessary approvals for installations close to airports. Evidence of compliance or non-applicability shall be submitted with the application.

### **Section 5. Utility Notification.**

No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

### **Section 6. Appearance.**

Small wind energy towers shall maintain a galvanized finish or be painted to conform the tower color to the surrounding environment to reduce visual obtrusiveness. No wind tower should have any signage, or writing or pictures that may be construed as advertising placed on it at any time. In addition no flags, streamers or decorative items may be attached to the wind energy system tower or turbine.

### **Section 7. Removal of Defective or Abandoned Wind Energy Systems.**

Any wind energy system that is not functional shall be repaired by the owner or removed. In the event that the County becomes aware of any wind energy system that is not operated for a continuous period of 6 months, the County will notify the landowner by registered mail and provide 45 days for

a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for corrective action. If the County deems the timetable for corrective action as unreasonable, the County shall notify the landowner and such landowner shall remove the turbine with 120 days of receipt of said notice.

### **Article IV Large Wind Energy Systems**

Large wind energy systems shall be a use permitted by review subject to the requirements of this Article IV as well as Article III, except that the height limits in Article III Section 1 may be increased if approved as necessary by the Board of Adjustment.

#### **Section 1. Permit Application.**

- (A) A person seeking a site permit for a wind turbine over 20 KW shall file an application with the County for review. The application must provide the following background information regarding the applicant:
- (1) A letter of transmittal signed by an authorized representative or agent of the applicant.
  - (2) The complete name, address, telephone number, and e-mail address of the applicant and any authorized representative.
  - (3) The signature of the person who prepared the application, if prepared by an agent or consultant of the applicant.
  - (4) The role of the permit applicant in the construction and operation of the wind power project.
  - (5) The identity of any other wind power project located in the State in which the applicant, or a principal of the applicant, has an ownership or other financial interest; the operator of the wind power project if different from the applicant; and the name of the person or persons to be the permittee if a site permit is issued.
- (B) The applicant shall state in the application whether a certificate of public convenience and necessity for the system is required from the North Carolina Utilities Commission and, if so, the anticipated schedule for obtaining the certificate. The County may ask the Utilities Commission to determine whether a certificate of public convenience and necessity is required for a particular wind power project for which the County has received a site permit application. The County shall not approve a project requiring a certificate unless and until such certificate is issued by the Utilities Commission. If a certificate is not required from the Utilities Commission, the permit

- applicant shall include with the application a discussion of what the applicant intends to do with the power that is generated.
- (C)** The applicant shall describe in the application how the proposed wind power project furthers State policy to site such projects in an orderly manner compatible with environmental preservation, sustainable development, and the efficient use of resources.
  - (D)** The permit applicant shall include the following information about the site proposed for the wind power project and any associated facilities:
    - (1)** The surveyed boundaries of the site proposed for the wind power project.
    - (2)** The location of other wind turbines in the general area of the proposed wind power project.
    - (3)** The applicant's land rights within the boundaries of the proposed site.
  - (E)** The permit applicant shall provide the following information regarding the design of the proposed wind power project:
    - (1)** A project layout, prepared by a design professional, including a map showing the proposed location of the turbine(s).
    - (2)** A description of the turbine(s) and tower(s) and other equipment proposed to be used in the wind power project, including the name of the manufacturers of the equipment.
    - (3)** A description of the project electrical system, including transformers at both low voltage and medium voltage.
    - (4)** A description and location of associated facilities.
  - (F)** An applicant for a site permit shall include with the application an analysis of the potential impacts of the wind power project, proposed mitigative measures, and any adverse environmental effects that cannot be avoided, in the following areas:
    - (1)** Demographics, including people, homes, and businesses.
    - (2)** Noise.
    - (3)** Visual impacts.
    - (4)** Public services and infrastructure
    - (5)** Cultural and archaeological impacts.
    - (6)** Recreational resources.
    - (7)** Public health and safety, including air traffic, electromagnetic fields, and security and traffic.
    - (8)** Hazardous materials.
    - (9)** Land-based economics, including agriculture, forestry, and mining.
    - (10)** Tourism and community benefits.
    - (11)** Topography.
    - (12)** Soils.
    - (13)** Geologic and groundwater resources.

- (14)** Surface water and floodplain resources.
- (15)** Wetlands.
- (16)** Vegetation.
- (17)** Avian, impact assessment that includes an indication of the type and number of birds that are known or suspected to use a project site and the area surrounding that site.
- (18)** Wildlife.
- (19)** Rare and unique natural resources.
- (G)** The permit applicant shall describe all of the following:
  - (1)** The manner in which the wind power project, including associated facilities, will be constructed.
  - (2)** How the wind power project will be operated and maintained after construction, including a maintenance schedule.
  - (3)** The anticipated schedule for completion of the wind power project, and shall identify the expected date of commercial operation.
  - (4)** The energy expected to be generated by the wind power project.
- (H)** The permit applicant shall include the following information regarding decommissioning of the wind power project and restoring the site:
  - (1)** The anticipated life of the wind power project.
  - (2)** The estimated decommissioning costs in current dollars.
  - (3)** The method and schedule for updating the costs of decommissioning and restoration.
  - (4)** The method of ensuring that funds will be available for decommissioning and restoration.
  - (5)** The anticipated manner in which the wind power project will be decommissioned and the site restored.
- (I)** The permit applicant shall include in the application a list of all known federal, state, and local agencies or authorities, and titles of the permits they issue that are required for the proposed wind power project.
- (J)** Blue Ridge Parkway: If a proposed wind energy site is within the Blue Ridge Parkway viewshed the applicant shall inform the National Park Service of the proposed wind turbine siting. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the County. The Park Service shall be afforded 30 days to respond to the applicant's written intention to erect a wind turbine. No answer to the notification within the 30 days shall be considered as an affirmation of the site as proposed. Viewshed shall be determined by the County using maps and documents prepared for that purpose by the Design Research Laboratory at NC State University



and the Blue Ridge Parkway Division of Resource Planning and Professional Services.

**Section 2. Special Use Permit Required.**

Prior to granting or denying a permit for a large wind energy system, the Board of Adjustment shall conduct a hearing as set forth in Chapter 3.

## **CHAPTER 23 WIRELESS TELECOMMUNICATIONS**

### **Article I Purpose and Legislative Intent**

The purpose of this Wireless Telecommunications chapter is to provide for the public health, safety and welfare by ensuring that residents, businesses and public safety operations in Watauga County have reliable access to telecommunications networks and state of the art mobile broadband communications services while also minimizing adverse impacts created by wireless facilities and structures. To accomplish the above stated objectives and to ensure that the placement, construction or modification of wireless telecommunications facilities complies with all applicable federal and state laws, including without limitation Section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. 1455(a), and NCGS §160D, Article 9, Part 3, Watauga County enacts these single comprehensive wireless telecommunications regulations. This chapter is enacted pursuant to the general police powers granted by NCGS §153A-121. By enacting this chapter it is the County's intent to:

- (A) Minimize external impacts (i.e. visual impacts and generator noise) on surrounding areas;
- (B) Encourage cooperation among carriers and joint use of new and existing wireless structures in an effort to minimize the necessity for new structures;
- (C) Encourage use of existing buildings and suitable alternative structures for wireless facility use in an effort to minimize the number of new structures;
- (D) Encourage concealed wireless structures;
- (E) Encourage concealed antenna designs;
- (F) Encourage concealed cables and feed lines;
- (G) Minimize visual impacts on Major Mountain Ridges to the greatest extent possible.

### **Article II Approvals Required for Wireless Facilities and Wireless Support Structures**

#### **Section 1. Administrative Review and Approval.**

The following types of applications are subject to the review process as provided in Article III. No other type of site plan review is necessary:

- (A) New wireless support structures that are 60 feet or less in height.
- (B) New wireless support structures that are 100 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.

- (C) New wireless support structures that are 140 feet or less in height located within commercial or industrial areas and separated from residential dwellings by a distance of 300 feet or more.
- (D) Concealed wireless facilities that are 140 feet or less in height and separated from residential dwellings by a distance of 300 feet or more.
- (E) Monopoles or replacement poles located on public property or within utility easements or rights-of-way.
- (F) COWs, if the use of the COW is either not in response to a declaration of an emergency or disaster by the Governor, or will last in excess of one hundred-twenty (120) days.
- (G) Substantial modifications.
- (H) Collocations.

### **Section 2. Board Review and Approval.**

Any application for wireless facilities and/or wireless support structures not subject to administrative review and approval pursuant to this chapter shall be permitted upon the granting of a Special Use Permit by the Watauga County Board of Adjustment.

### **Section 3. Exempt from Review and Approval.**

The following are exempt from all County approval processes and requirements:

- (A) Removal or replacement of transmission equipment on an existing wireless tower or base station that does not result in a substantial modification as defined in this ordinance.
- (B) Ordinary maintenance of existing wireless facilities and wireless support structures, as defined in this Article.
- (C) Wireless facilities placed on utility poles.
- (D) COWs placed for a period of not more than one hundred twenty (120) days at any location within the County or after a declaration of an emergency or a disaster by the Governor.
- (E) Antennas or antenna support structures of amateur radio operators 90 feet or less in height.
- (F) New and existing wireless support structures and facilities owned by governmental agencies and designed for non-commercial emergency communications.

## **Article III Administrative Review and Approval Process**

### **Section 1. Content of Application Package for New Sites.**

All administrative review application packages must contain the following:

- (A) Administrative review application form signed by the owner, or the applicant in accordance with item (B) below;
- (B) Non-owner applicants must provide a copy of a lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms; and
- (C) Site plans detailing proposed improvements which comply with this ordinance. Drawings must depict improvements related to the applicable requirements including property boundaries, setbacks, topography, elevation sketch, and dimensions of improvements.
- (D) Documentation from a North Carolina licensed professional engineer including calculation of the fall zone and certification that the wireless support structure has sufficient structural integrity to accommodate the required number of additional users as provided in this ordinance. Design of the support structure shall be in accordance with the latest ANSI/EIA/TIA-222 standards. Tower foundation design shall be in accordance with Chapter 18 of the NC Building Code. Grounding and electrical service equipment shall be in accordance with the National Electric Code. Watauga County is located within a *Special Wind Region* that will impact structural design of wireless structures and foundations.

### **Section 2. Content of Application Package for Other Sites/Facilities.**

All administrative review application packages must contain the following:

- (A) Administrative review application form signed by the owner, or the applicant in accordance with item Section 1 (B) above;
- (B) For collocations and substantial modifications, written verification from a North Carolina licensed professional engineer certifying that the host support structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennas. Watauga County is located within a *Special Wind Region* that will impact structural design of wireless structures and foundations.
- (C) For substantial modifications, drawings depicting the improvements along with their dimensions.

### **Section 3. Fees.**

Permit fees are pursuant to the Planning & Inspections Fee Schedule. The fees for Collocation, Substantial Modifications, New Wireless Support Structures and Special Use permit applications include the Building Inspector's review and approval of structural and electrical systems that are subject to the North Carolina State Building Code and the National Electric Code respectively.

### **Section 4. Procedure and Timing.**

- (A)** Applications for Collocation, Monopole or Replacement Pole, Concealed Wireless Facility, Non-exempt COW or Substantial Modification. Within thirty (30) days of the receipt of an application for a collocation, a monopole or replacement pole, a concealed wireless facility, a non-exempt COW or a substantial modification, the Administrator will:
- (1)** Review the application for conformity with this chapter. An application under this Section D.1 is deemed to be complete unless the Administrator notifies the applicant in writing, within fourteen (14) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take fourteen (14) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within ten fourteen (14) calendar days, the application shall be reviewed and processed within thirty (30) calendar days from the initial date the application was received. If the applicant requires a period of time beyond fourteen (14) calendar days to cure the specific deficiencies, the thirty (30) calendar days deadline for review shall be extended by the same period of time;
  - (2)** Make a final decision to approve the collocation application or approve or disapprove other applications under Section 4 (A); and
  - (3)** Advise the applicant in writing of the final decision. If the Administrator denies an application, written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this chapter, must be provided.
  - (4)** Failure to issue a written decision within thirty (30) calendar days shall constitute an approval of the application.

- (B)** Applications for New Wireless Support Structures That Are Subject to Administrative Review and Approval. Within forty five (45) calendar days of the receipt of an application for a new wireless support structure that is subject to administrative review and approval under this chapter, the Administrator will:
- (1)** Review the application for conformity with this chapter. An application under Section 4 (B) is deemed to be complete unless the Administrator notifies the applicant in writing, within fifteen (15) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant may take fifteen (15) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within fifteen (15) calendar days, the application shall be reviewed and processed within forty five (45) calendar days from the initial date the application was received. If the applicant requires a period of time beyond fifteen (15) calendar days to cure the specific deficiencies, the forty five calendar days deadline for review shall be extended by the same period of time;
  - (2)** Make a final decision to approve or disapprove the application; and
  - (3)** Advise the applicant in writing of the final decision. If the Administrator denies an application, written justification of the denial, which must be based on substantial evidence of inconsistencies between the application and this chapter, must be provided.
  - (4)** Failure to issue a written decision within forty five (45) calendar days shall constitute an approval of the application.
- (C)** Building Permits associated with (A) and (B) above. A Building Inspector shall issue a building permit following approval of the application under administrative review in accordance with the process and standards of this chapter and the North Carolina State Building Code.

#### **Article IV Special Use Permit Process.**

##### **Section 1. Special Use Permit.**

Any wireless facility or wireless support structures not meeting the requirements of Article II Section 1 or 3 may be permitted upon the granting of a Special Use permit, subject to:

- (A)** The submission requirements of Section IV.B below; and

- (B) The applicable standards of Section V below; and
- (C) The requirements of the Special Use permit approval.

## **Section 2. Content of Special Use Permit Application Package.**

All Special Use permit application packages must contain the following:

- (A) Special Use Permit application form signed by the owner, or the applicant in accordance with (B) below;
- (B) Non-owner applicants must provide a copy of lease or letter of authorization from the property owner evidencing applicant's authority to pursue the application. Such submissions need not disclose financial lease terms;
- (C) Written description and scaled drawings of the proposed wireless support structure or wireless facility, including structure height, ground and structure design, and proposed materials;
- (D) Number of proposed antennas and their height above ground level, including the proposed placement of antennas on the wireless support structure;
- (E) Line-of-sight diagram or photo simulation, showing the proposed wireless support structure set against the skyline and viewed from at least four (4) directions within the surrounding areas;
- (F) A statement that the proposed wireless support structure will be made available for collocation to other service providers at commercially reasonable rates, provided space is available and consistent with Article V Section 1 (A) of this chapter.

## **Section 3. Fees.**

The total fees for reviewing a Special Use permit application with proposed wireless facilities shall be considered together as one application requiring only a single application fee.

## **Section 4. Procedure and Timing.**

Within one hundred fifty (150) calendar days of the receipt of an application under Article IV of this chapter, the Administrator and Board of Adjustment will:

- (A) Complete the process for reviewing the application for conformity with this chapter. An application under this Article IV. is deemed to be complete unless the Administrator notifies the applicant in writing, within thirty (30) calendar days of submission of the application of the specific deficiencies in the application which, if cured, would make the application complete. Upon receipt of a timely written notice that an application is deficient, an applicant

- may take thirty (30) calendar days from receiving such notice to cure the specific deficiencies. If the applicant cures the deficiencies within thirty (30) calendar days, the application shall be reviewed and processed within one hundred fifty (150) calendar days from the initial date the application was received. If the applicant requires a period of time beyond thirty (30) calendar days to cure the specific deficiencies, the one hundred fifty (150) calendar days deadline for review shall be extended by the same period of time;
- (B)** Conduct a quasi-judicial hearing pursuant to Chapter 3;
  - (C)** Make a final decision to approve or disapprove the application; and
  - (D)** Advise the applicant in writing of its final decision.
  - (E)** Failure to issue a written decision within one hundred fifty (150) calendar days shall constitute an approval of the application.

## **Article V General Standards and Design Requirements.**

### **Section 1. Design.**

- (A)** Wireless support structures:
  - (1)** Shall be engineered and constructed to accommodate a minimum number of collocations based upon their height as follows:
    - (a)** Support structures 60 to 100 feet in height shall support at least two (2) telecommunications providers;
    - (b)** Support structures greater than 100 feet shall support at least three (3) telecommunications providers;
  - (2)** The equipment compound area surrounding the wireless support structure must be of sufficient size to accommodate accessory equipment for the appropriate number of telecommunications providers in accordance with Article V Section 1(A)(1).
- (B)** Concealed wireless facilities are required on Major Mountain Ridges. Concealed wireless facilities shall be designed to accommodate the collocation of other antennas whenever economically and technically feasible. Antennas must be enclosed, camouflaged, screened, obscured or otherwise not readily apparent to a casual observer.
- (C)** Upon request of the applicant, the Board or Administrator may waive the requirement that new wireless support structures accommodate the collocation of other service providers if it finds that collocation at the site is not essential to the public interest, or that the construction of a shorter support structure with fewer antennas will promote community compatibility.



- (D) A monopole or replacement pole shall be permitted within utility easements or rights-of-way, in accordance with the following requirements:
- (1) The utility easement or right-of-way shall be a minimum of one hundred (100) feet in width.
  - (2) The easement or right-of-way shall contain overhead utility transmission and/or distribution structures that are eighty (80) feet or greater in height.
  - (3) The height of the monopole or replacement pole may not exceed by more than thirty (30) feet the height of existing utility support structures.
  - (4) Monopoles and the accessory equipment shall be set back a minimum of fifteen (15) feet from all boundaries of the easement or right-of-way.
  - (5) Single carrier monopoles may be used within utility easements and rights-of-way due to the height restriction imposed by Subsection (3) above.
  - (6) Poles that use the structure of a utility tower for support are permitted. Such poles may extend up to twenty (20) feet above the height of the utility tower.
- (E) Generators shall be located within equipment shelters or enclosed to limit noise levels.

### **Section 2. Setbacks.**

Unless otherwise stated herein, each wireless support structure shall be set back from all property lines a distance equal to its engineered fall zone.

### **Section 3. Height.**

Substantial Modifications and newly erected Wireless Support Structures shall not exceed the permitted height except by Special Use Permit granted by the Board of Adjustment.

### **Section 4. Aesthetics.**

- (A) Lighting and Marking. Wireless facilities or wireless support structures shall not be lighted or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA).
- (B) Signage. Signs located at the wireless facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited. Notwithstanding the foregoing, nothing in this chapter

shall prohibit signage that is approved for other uses on property on which wireless facilities are located (e.g., approved signage at locations on which concealed facilities are located).

### **Section 5. Accessory Equipment.**

Accessory equipment, including any buildings, cabinets or shelters, shall be used only to house equipment and other supplies in support of the operation of the wireless facility or wireless support structure. Any equipment not used in direct support of such operation shall not be stored on the site.

### **Section 6. Fencing.**

- (A) Ground mounted accessory equipment and wireless support structures shall be secured and enclosed with a fence not less than six (6) feet in height as deemed appropriate by the Board or Administrator.
- (B) The Board or Administrator may waive the requirement of Article V Section 6 (A) if it is deemed that a fence is not appropriate or needed at the proposed location.

### **Section 7. Landscaping.**

The equipment compound shall be screened with landscaping native to the area and suitable for planting in USDA Hardiness Zone 6a. All plants, including the root ball dimensions or container size to trunk caliper ratio, shall conform to ANSI Z60.1 "American Standard for Nursery Stock" latest edition. Quantity, ratio and minimum sizes of trees and shrubs shall be as follows:

- (A) Deciduous and/or Evergreen trees – twenty (20) feet maximum spacing. Trees shall have a minimum height of six (6) feet upon planting. Deciduous trees shall have a minimum two (2) inch caliper.
- (B) Shrubs – six (6) feet maximum spacing. Shrubs shall be a minimum height of eighteen (18) inches upon planting.

## **Article VI Miscellaneous Provisions.**

### **Section 1. Abandonment and Removal.**

If a wireless support structure is abandoned, and it remains abandoned for a period in excess of twelve (12) consecutive months, the County may require that such wireless support structure be removed only after first providing written notice to the owner of the wireless support structure and giving the owner the opportunity to take such action(s) as may be necessary to reclaim

the wireless support structure within sixty (60) days of receipt of said written notice. In the event the owner of the wireless support structure fails to reclaim the wireless support structure within the sixty (60) day period, the owner of the wireless support structure shall be required to remove the same within six (6) months thereafter. The County shall ensure and enforce removal by means of its existing regulatory authority, with costs of removal charged to the owner.

## **Section 2. Multiple Uses on a Single Parcel or Lot.**

Wireless facilities and wireless support structures may be located on a parcel containing another principal use on the same site or may be the principal use itself.

## **Article VII Wireless Facilities and Wireless Support Structures in Existence on the Date of Adoption of this Ordinance.**

### **Section 1. Existing Wireless Facilities.**

Wireless facilities and wireless support structures that were legally permitted on or before the date this chapter was enacted shall be considered a permitted and lawful use as long as they remain compliant with the permit issued.

### **Section 2. Activities at Non-Conforming Wireless Support Structures.**

Notwithstanding any provision of this chapter:

- (A) Ordinary maintenance may be performed on a non-conforming wireless support structure or wireless facility.
- (B) Collocation of wireless facilities on an existing non-conforming wireless support structure shall not be construed as an expansion, enlargement or increase in intensity of a non-conforming structure and/or use and shall be permitted through the administrative approval process defined in Article II; provided that the collocation does not substantially modify the size of the equipment compound at that location or otherwise substantially modify the existing non-conformity.
- (C) Substantial modifications may be made to non-conforming wireless support structures utilizing the Special Use permit process defined in Article IV of this chapter.

### **Article VIII Jurisdiction**

The provisions of this chapter shall be applicable only to unincorporated areas of Watauga County which are not included in the extraterritorial jurisdiction of a municipality.

### **Article IX National Park Service Review**

When new wireless support structures or substantial modifications are proposed within one mile of the Blue Ridge Parkway centerline and within the Parkway viewshed, the applicant shall inform the National Park Service and seek recommendations. Park Service recommendations shall be given reasonable consideration and documentation of this consideration shall be provided to the Administrator. The Park Service shall be afforded thirty (30) days to respond to the applicant's initial request.

### **Article X Valle Crucis Historic District**

Wireless support structures shall be prohibited within the Valle Crucis Historic District.

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**AGENDA ITEM 10:****MISCELLANEOUS ADMINISTRATIVE MATTERS*****A. Proposed Architectural Services Contract with Clark Nexsen for Valle Crucis School Project*****MANAGER'S COMMENTS:**

The Board selected Clark Nexsen for architectural services for the new Valle Crucis Elementary School. Staff and the County Attorney have reviewed the contract for Board approval. The contract details services to be provided by Clark Nexsen. The total fee for architectural services and on-site utilities design and construction administration is \$2,664,000. Funds are budgeted in the future Valle Crucis School Capital Project Fund.

Board approval is required to accept the contract with Clark Nexsen in the amount of \$2,664,000 for architectural services and on-site utilities design and construction administration with funds to come from the future Valle Crucis School Capital Project Fund.

# AIA<sup>®</sup> Document B101<sup>™</sup> – 2017

## **Standard Form of Agreement Between Owner and Architect**

**AGREEMENT** made as of the Third day of February in the year Two Thousand Twenty One  
*(In words, indicate day, month and year.)*

**BETWEEN** the Architect’s client identified as the Owner:  
*(Name, legal status, address and other information)*

Watauga County  
814 West King Street  
Suite 205  
Boone, NC 28607

and the Architect:  
*(Name, legal status, address and other information)*

Clark Nexsen, Inc.  
301 College Street Suite 300  
Asheville, NC 28801

for the following Project:  
*(Name, location and detailed description)*

Valle Crucis Elementary School  
Broadstone Road  
Sugar Grove, NC

The Owner and Architect agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Init.

## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
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## EXHIBIT A INITIAL INFORMATION

*(Paragraphs deleted)*

## ARTICLE 1 INITIAL INFORMATION

*(Paragraph deleted)*

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information:

*(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's Construction Manager at Risk/General Contractor and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)*

Refer to Exhibit A – proposal letter dated January 28, 2021

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

Refer to Exhibit A for detailed schedule.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

## ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.



§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

\$1 million each occurrence, \$2 million aggregate

.2 Automobile Liability

\$1 million combined single limit each accident

.3 Workers' Compensation

Minimum of statutory limits based on location or \$1 million each incident

.4 Professional Liability

\$1 million per claim, \$2 million aggregate

### ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

*(Paragraphs deleted)*

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, electrical and civil engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

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§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

*(Paragraphs deleted)*

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

*(Paragraphs deleted)*

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents



including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

#### § 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

*(Paragraphs deleted)*

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager at Risk/General Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Construction Manager at Risk; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

#### § 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

##### § 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective Construction Manager at Risk. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

*(Paragraphs deleted)*

##### § 3.5.3 NEGOTIATED PROPOSALS

*(Paragraphs deleted)*

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 procuring the reproduction of Proposal Documents for distribution to prospective Construction Manager at Risk, and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective Construction Manager at Risk; and
- .3 participating in negotiations with prospective Construction Manager at Risk, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

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§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective Construction Manager at Risk.

## § 3.6 CONSTRUCTION PHASE SERVICES

### § 3.6.1 GENERAL

*(Paragraphs deleted)*

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk/General Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk/General Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk/General Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 Requests for Information or Clarification from the Construction Manager at Risk/General Contractor shall be received electronically through the Architect’s information management software or as otherwise specified in the Contract Documents. The Architect will respond to such requests that comply with the requirements of the Contract Documents within the time specified in the Contract Documents and forward responses to the Construction Manager at Risk/General Contractor through the Architect’s information management software. The Architect will also forward responses electronically to the Owner, if desired, through the Architect’s information management software. Receipt and forwarding of paper documents, or retrieving and forwarding electronic documents through either the Construction Manager at Risk’s or Owner’s information management software is available as an Additional Service in accordance with the provisions of Section 4.3.

### § 3.6.2 EVALUATIONS OF THE WORK

*(Paragraphs deleted)*

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager at Risk, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager at Risk, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.



§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager at Risk. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager at Risk, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager at Risk/General Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager at Risk/General Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONSTRUCTION MANAGER AT RISK/GENERAL CONTRACTOR

*(Paragraphs deleted)*

§ 3.6.3.1 The Architect shall review and certify the amounts due the Construction Manager at Risk/General Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Construction Manager at Risk/General Contractor and material suppliers and other data requested by the Owner to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk/General Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

*(Paragraphs deleted)*

§ 3.6.4.1 The Architect shall review the Construction Manager at Risk's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk/General Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk/General Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk/General Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.4.6 For paper submittals, the Architect shall retain one copy of each reviewed submittal as a record copy and forward one copy to the Owner, if required by the Contract Documents. All other copies of paper submittals shall be returned to a single address specified by the Construction Manager at Risk/General Contractor using the least cost delivery method available to the Architect. Distribution of the Construction Manager at Risk's copies of paper submittals to more than one location is available as an Additional Service in accordance with the provisions of Section 4.3.

§ 3.6.4.7 For electronic submittals, the Architect shall retain an electronic copy of each reviewed submittal and forward electronically to the Owner and the Construction Manager at Risk/General Contractor using the Architect's information management system, which may require the recipient to download the documents. Distribution of submittals by other methods such as emailing files as attachments and printing and shipping paper copies is available as an Additional Service in accordance with the provisions of Section 4.3.

§ 3.6.4.8 The Architect shall retain submittal documents for a period consistent with the Architect's document retention policy, but not less than one year after Substantial Completion.

### § 3.6.5 CHANGES IN THE WORK

*(Paragraphs deleted)*

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

*(Paragraphs deleted)*

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk/General Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.



§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk/General Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager at Risk, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager at Risk/General Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.2 Refer to **Exhibit A** for Additional Services or exclusions from the design services.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or Construction Manager at Risk;
- .5 Preparing digital data for transmission to the Owner's consultants and Construction Manager at Risk, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;

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- .2 Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction Manager at Risk/General Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk/General Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Construction Manager at Risk
- .2 twenty four ( 24 ) visits to the site by the Architect over the duration of the Project during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 one ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

*(Paragraphs deleted)*

*(Table deleted)*

## ARTICLE 5 OWNER'S RESPONSIBILITIES

*(Paragraphs deleted)*

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

*(Paragraph deleted)*

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

*(Paragraph deleted)*

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements

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and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

*(Paragraphs deleted)*

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

*(Paragraph deleted)*

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk/General Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk/General Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

*(Paragraphs deleted)*

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Construction Manager at Risk's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

## ARTICLE 7 COPYRIGHTS AND LICENSES

*(Paragraphs deleted)*

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager at Risk, Sub Contractors, Sub-subcontractor, and material or equipment suppliers, as well as the Owner's consultants and separate Contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

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§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 GENERAL

*(Paragraphs deleted)*

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 MEDIATION

*(Paragraphs deleted)*

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 8.3 of this Agreement

Other (Specify)

### § 8.3 ARBITRATION

*(Paragraphs deleted)*

#### § 8.3.1

Any controversy or claim arising out of or related to this Agreement involving an amount of less than \$5,000 must be heard in the Small Claims Division of the District Court in Watauga County, NC. Any controversy or claim arising out of or related to this Agreement which is over the dollar limit of the Small Claims Court must be submitted to mediation by a mediator acceptable to both parties. In the event the parties cannot agree upon a mediator the resident Senior Superior Court Judge for Watauga County shall be authorized to select a mediator. In the event that the dispute cannot be resolved by mediation, the controversy must be submitted to binding arbitration in accordance with the North Carolina Arbitration Act, by an arbitrator acceptable to both parties. In the event the parties cannot agree upon an arbitrator, the Resident Senior Superior Court Judge for Watauga County shall be authorized to select an arbitrator.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

#### § 8.3.4 CONSOLIDATION OR JOINDER

*(Paragraphs deleted)*

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

*(Paragraphs deleted)*



§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

*(Paragraphs deleted)*

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

Init.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect’s promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner’s promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and Construction Manager at Risk/General Contractor whose contracts include similar restrictions on the use of confidential information.

§ 10.9 Unless specified otherwise, the Architect shall provide documents, including submittals to the Owner and approval agencies, and bid or Contract Documents to the Construction Manager at Risk/General Contractor electronically in PDF format, with a single PDF file for each drawing. Provision of paper copies of documents, including labor and reproduction expenses is available as an Additional Service in accordance with the provisions of Section 4.3.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect’s Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Stipulated or lump sum for Basic Services in the amount of \$2,425,000 plus additional services for the On-site utilities design and construction administration for a total amount of \$2,664,000.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Negotiated lump sum or hourly as mutually agreed at the time the Architect is requested to perform the services. Compensation on an hourly basis shall be based on the Architect’s standard hourly rates at the time the Additional Services are performed.

§ 11.4 Compensation for Additional Services of the Architect’s consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

|                              |             |           |    |    |
|------------------------------|-------------|-----------|----|----|
| Schematic Design Phase       | twenty      | percent ( | 20 | %) |
| Design Development Phase     | twenty      | percent ( | 20 | %) |
| Construction Documents Phase | thirty      | percent ( | 30 | %) |
| Bidding or Negotiation Phase | five        | percent ( | 5  | %) |
| Construction Phase           | twenty five | percent ( | 25 | %) |



|                          |                       |     |    |
|--------------------------|-----------------------|-----|----|
| Total Basic Compensation | one hundred percent ( | 100 | %) |
|--------------------------|-----------------------|-----|----|

*(Paragraphs deleted)*

**§ 11.7** The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

See attached Exhibit B

*(Table deleted)*

*(Paragraphs deleted)*

*(Table deleted)*

### **§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

*(Paragraphs deleted)*

**§ 11.8.1** Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents;
- .
- .3 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .4 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .5 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .6 All taxes levied on professional services and on reimbursable expenses;
- .7 Site office expenses; and
- .8 Other similar Project-related expenditures.

**§ 11.8.2** For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred. No back up data or copies of bills will be provided for reimbursable expenses invoiced under this agreement. Should back-up data be requested, it will be provided for an administrative fee of \$100 per monthly invoice requiring verification.

### **§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE**

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Twenty five percent (25%) of the sum of the Architect's compensation for Basic Services and Additional Services, to be paid concurrently with the notice of termination to the Architect.

### **§ 11.10 PAYMENTS TO THE ARCHITECT**

*(Paragraphs deleted)*

**§ 11.10.2** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

*(Insert rate of monthly or annual interest agreed upon.)*

one % per month

Init.

§ 11.10.3 The Owner shall not withhold amounts from the Architect’s compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Construction Manager at Risk/General Contractor for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Agreement are as follows:

*(Paragraph deleted)*

In recognition of the relative Risk and benefits of the Project to both the Owner and the Architect, the Risk have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect’s officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys’ fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and Architect’s officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$1,000,000, or the Architect’s total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B101™–2007, Standard Form Agreement Between Owner and Architect
- .2 Other documents:  
*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Exhibit A- Proposal letter dated January 28, 2021  
Exhibit B- Standard Hourly rates for Clark Nexsen

This Agreement entered into as of the day and year first written above.


**OWNER**

**ARCHITECT**

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

  
\_\_\_\_\_  
Chadwick S Roberson, AIA Managing Principal  
*(Printed name and title)*

*(Table deleted)(Paragraphs deleted)*



# Additions and Deletions Report for AIA® Document B101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:20:34 ET on 02/08/2021.

**PAGE 1**

**AGREEMENT** made as of the Third day of February in the year Two Thousand Twenty One

...

Watauga County  
814 West King Street  
Suite 205  
Boone, NC 28607

...

Clark Nexsen, Inc.  
301 College Street Suite 300  
Asheville, NC 28801

...

Valle Crucis Elementary School  
Broadstone Road  
Sugar Grove, NC

**PAGE 2**

- 1 — ~~INITIAL-1~~ INITIAL INFORMATION
- 2 — ~~ARCHITECT'S-2~~ ARCHITECT'S RESPONSIBILITIES
- 3 — ~~SCOPE-3~~ SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 — ~~SUPPLEMENTAL AND ADDITIONAL-4~~ ADDITIONAL SERVICES
- 5 — ~~OWNER'S-5~~ OWNER'S RESPONSIBILITIES
- 6 — ~~COST-6~~ COST OF THE WORK
- 7 — ~~COPYRIGHTS-7~~ COPYRIGHTS AND LICENSES
- 8 — ~~CLAIMS-8~~ CLAIMS AND DISPUTES
- 9 — ~~TERMINATION-9~~ TERMINATION OR SUSPENSION
- 10 — ~~MISCELLANEOUS-10~~ MISCELLANEOUS PROVISIONS

~~11 — COMPENSATION~~ 11 COMPENSATION

~~12 — SPECIAL~~ 12 SPECIAL TERMS AND CONDITIONS

~~13 — SCOPE~~ 13 SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

~~§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.~~

~~(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")~~

~~§ 1.1.1 The Owner's program for the Project:~~

~~(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)~~

~~§ 1.1.2 The Project's physical characteristics:~~

~~(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)~~

~~§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:~~

~~(Provide total and, if known, a line item breakdown.)~~

~~§ 1.1.4 The Owner's anticipated design and construction milestone dates:~~

~~.1 — Design phase milestone dates, if any:~~

~~.2 — Construction commencement date:~~

~~.3 — Substantial Completion date or dates:~~

~~.4 — Other milestone dates:~~

~~§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:~~

~~(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast track design and construction, multiple bid packages, or phased construction.)~~

~~§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:~~

~~(Identify and describe the Owner's Sustainable Objective for the Project, if any.)~~

~~§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™ 2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner’s Sustainable Objective. If E204 2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204 2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.~~

~~§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:  
(List name, address, and other contact information.)~~

~~§ 1.1.8 The persons or entities, in addition to the Owner’s representative, who are required to review the Architect’s submittals to the Owner are as follows:  
(List name, address, and other contact information.)~~

~~§ 1.1.9 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)~~

~~.1 — Geotechnical Engineer:~~

~~.2 — Civil Engineer:~~

~~.3 — Other, if any:  
—— (List any other consultants and contractors retained by the Owner.)~~

~~§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:  
(List name, address, and other contact information.)~~

~~§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:  
(List name, legal status, address, and other contact information.)~~

~~§ 1.1.11.1 Consultants retained under Basic Services:~~

~~.1 — Structural Engineer:~~

~~.2 — Mechanical Engineer:~~

~~.3 — Electrical Engineer:~~

~~§ 1.1.11.2 Consultants retained under Supplemental Services:~~

~~§ 1.1.12 Other Initial Information on which the Agreement is based:~~

~~§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.~~

~~§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

## **ARTICLE 1 INITIAL INFORMATION**

~~§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

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User Notes:

(1196175975)



§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1 and in optional Exhibit A, Initial Information: (Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's Construction Manager at Risk/General Contractor and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

Refer to Exhibit A – proposal letter dated January 28, 2021

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

Refer to Exhibit A for detailed schedule.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

~~§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.~~

~~§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.~~

~~§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.~~

~~§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.~~

~~§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect as set forth in Section 11.9.~~

~~§ 2.5.1 Commercial General Liability with policy limits of not less than (\$ ) for each occurrence and (\$ ) in the aggregate for bodily injury and property damage.~~

~~§ 2.5.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Architect with policy limits of not less than (\$ ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.~~

~~§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

~~§ 2.5.4 Workers' Compensation at statutory limits.~~

~~§ 2.5.5 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~

~~§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.~~

~~§ 2.5.8 The Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5.~~

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost:

*(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)*

.1 General Liability

\$1 million each occurrence, \$2 million aggregate

.2 Automobile Liability

\$1 million combined single limit each accident

.3 Workers' Compensation

Minimum of statutory limits based on location or \$1 million each incident

.4 Professional Liability

\$1 million per claim, \$2 million aggregate

~~§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.~~

~~§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.~~



~~§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.~~

~~§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.~~

~~§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.~~

~~§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.~~

~~§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.~~

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, electrical and civil engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.



### ~~§ 3.2 Schematic Design Phase Services~~ **SCHEMATIC DESIGN PHASE SERVICES**

~~§ 3.2.1~~ The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

~~§ 3.2.2~~ The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

~~§ 3.2.3~~ The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

~~§ 3.2.4~~ Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

~~§ 3.2.5~~ Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

~~§ 3.2.5.1~~ The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

~~§ 3.2.5.2~~ The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

~~§ 3.2.6~~ The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

~~§ 3.2.7~~ The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may



include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

### § 3.3 Design Development Phase Services **DESIGN DEVELOPMENT PHASE SERVICES**

~~§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.~~

~~§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.~~

~~§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.~~

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

### § 3.4 Construction Documents Phase Services **CONSTRUCTION DOCUMENTS PHASE SERVICES**

~~§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.~~



~~§ 3.4.2~~ The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

~~§ 3.4.3~~ During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

~~§ 3.4.4~~ The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

~~§ 3.4.5~~ The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Construction Manager at Risk/General Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Construction Manager at Risk; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

## § 3.5 Procurement Phase Services **BIDDING OR NEGOTIATION PHASE SERVICES**

### § 3.5.1 General **GENERAL**

The Architect shall assist the Owner in establishing a list of prospective ~~contractors~~ Construction Manager at Risk. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

### § 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- ~~1~~ — facilitating the distribution of Bidding Documents to prospective bidders;
- ~~2~~ — organizing and conducting a pre-bid conference for prospective bidders;
- ~~3~~ — preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- ~~4~~ — organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.



~~§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.~~

~~§ 3.5.3 Negotiated Proposals~~**NEGOTIATED PROPOSALS**

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:~~

- ~~.1 — facilitating the distribution of Proposal Documents for distribution to prospective contractors and requesting their return upon completion of the negotiation process;~~
- ~~.2 — organizing and participating in selection interviews with prospective contractors;~~
- ~~.3 — preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,~~
- ~~.4 — participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.~~

~~§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.~~

~~§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by~~

- ~~.1 procuring the reproduction of Proposal Documents for distribution to prospective Construction Manager at Risk, and requesting their return upon completion of the negotiation process;~~
- ~~.2 organizing and participating in selection interviews with prospective Construction Manager at Risk; and~~
- ~~.3 participating in negotiations with prospective Construction Manager at Risk, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.~~

~~§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective Construction Manager at Risk.~~

~~§ 3.6 Construction Phase Services~~**CONSTRUCTION PHASE SERVICES**

~~§ 3.6.1 General~~**GENERAL**

~~§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™ 2017, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201 2017, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.~~

~~§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.~~

~~§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.~~

~~§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Construction Manager at Risk/General Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Construction Manager at Risk/General Contractor modify AIA Document~~



A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager at Risk’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager at Risk/General Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.1.4 Requests for Information or Clarification from the Construction Manager at Risk/General Contractor shall be received electronically through the Architect’s information management software or as otherwise specified in the Contract Documents. The Architect will respond to such requests that comply with the requirements of the Contract Documents within the time specified in the Contract Documents and forward responses to the Construction Manager at Risk/General Contractor through the Architect’s information management software. The Architect will also forward responses electronically to the Owner, if desired, through the Architect’s information management software. Receipt and forwarding of paper documents, or retrieving and forwarding electronic documents through either the Construction Manager at Risk’s or Owner’s information management software is available as an Additional Service in accordance with the provisions of Section 4.3.

### § 3.6.2 Evaluations of the WorkEVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect’s decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.



~~§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.~~

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Construction Manager at Risk, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager at Risk, Sub-contractor, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager at Risk. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Manager at Risk, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Construction Manager at Risk/General Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Construction Manager at Risk/General Contractor as provided in the Contract Documents.

**§ 3.6.3 Certificates for Payment to Contractor/CERTIFICATES FOR PAYMENT TO CONSTRUCTION MANAGER AT RISK/GENERAL CONTRACTOR**

~~§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.~~

~~§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~



**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.3.1** The Architect shall review and certify the amounts due the Construction Manager at Risk/General Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Construction Manager at Risk's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

**§ 3.6.3.2** The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Construction Manager at Risk/General Contractor and material suppliers and other data requested by the Owner to substantiate the Construction Manager at Risk's right to payment, or (4) ascertained how or for what purpose the Construction Manager at Risk/General Contractor has used money previously paid on account of the Contract Sum.

**§ 3.6.3.3** The Architect shall maintain a record of the Applications and Certificates for Payment.

**§ 3.6.4 Submittals**

**§ 3.6.4.1** The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

**§ 3.6.4.2** The Architect shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 3.6.4.3** If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

**§ 3.6.4.4** Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

**§ 3.6.4.5** The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.



§ 3.6.4.1 The Architect shall review the Construction Manager at Risk's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager at Risk's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager at Risk's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Construction Manager at Risk/General Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager at Risk/General Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager at Risk/General Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.4.6 For paper submittals, the Architect shall retain one copy of each reviewed submittal as a record copy and forward one copy to the Owner, if required by the Contract Documents. All other copies of paper submittals shall be returned to a single address specified by the Construction Manager at Risk/General Contractor using the least cost delivery method available to the Architect. Distribution of the Construction Manager at Risk's copies of paper submittals to more than one location is available as an Additional Service in accordance with the provisions of Section 4.3.

§ 3.6.4.7 For electronic submittals, the Architect shall retain an electronic copy of each reviewed submittal and forward electronically to the Owner and the Construction Manager at Risk/General Contractor using the Architect's information management system, which may require the recipient to download the documents. Distribution of submittals by other methods such as emailing files as attachments and printing and shipping paper copies is available as an Additional Service in accordance with the provisions of Section 4.3.

§ 3.6.4.8 The Architect shall retain submittal documents for a period consistent with the Architect's document retention policy, but not less than one year after Substantial Completion.

### **§ 3.6.5 Changes in the Work****CHANGES IN THE WORK**

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.



~~§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.~~

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

~~§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.~~

#### § 3.6.6 Project Completion **PROJECT COMPLETION**

~~§ 3.6.6.1 The Architect shall:~~

- ~~.1 — conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;~~
- ~~.2 — issue Certificates of Substantial Completion;~~
- ~~.3 — forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,~~
- ~~.4 — issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.~~

~~§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.~~

~~§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.~~

~~§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.~~

~~§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.~~

#### **ARTICLE 4 — SUPPLEMENTAL AND ADDITIONAL SERVICES**

##### **§ 4.1 Supplemental Services**

~~§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.~~

~~*(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)*~~

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Construction Manager at Risk/General Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Construction Manager at Risk; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.



§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager at Risk/General Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Construction Manager at Risk, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Construction Manager at Risk: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager at Risk/General Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

#### ARTICLE 4 ADDITIONAL SERVICES

§ 4.2 Refer to Exhibit A for Additional Services or exclusions from the design services.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:

- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or Construction Manager at Risk;
- .5 Preparing digital data for transmission to the Owner's consultants and Construction Manager at Risk, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Construction Manager at Risk's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Construction Manager at Risk's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Construction

- Manager at Risk/General Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Construction Manager at Risk-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders and Construction Change Directives that require evaluation of Construction Manager at Risk's proposals and supporting data, or the preparation or revision of Instruments of Service;
  - .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
  - .5 Evaluating substitutions proposed by the Owner or Construction Manager at Risk/General Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
  - .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Construction Manager at Risk
- .2 twenty four ( 24 ) visits to the site by the Architect over the duration of the Project during construction
- .3 One ( 1 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 one ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Eighteen ( 18 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

| <b>Supplemental Services</b>  | <b>Responsibility</b><br><i>(Architect, Owner, or not provided)</i> |
|---|---|
| <del>§ 4.1.1.1 Programming</del>  |   |
| <del>§ 4.1.1.2 Multiple preliminary designs</del>   |   |
| <del>§ 4.1.1.3 Measured drawings</del>  |   |
| <del>§ 4.1.1.4 Existing facilities surveys</del>  |   |
| <del>§ 4.1.1.5 Site evaluation and planning</del>   |   |
| <del>§ 4.1.1.6 Building Information Model management responsibilities</del>               |   |
| <del>§ 4.1.1.7 Development of Building Information Models for post construction use</del> |   |
| <del>§ 4.1.1.8 Civil engineering</del>  |   |
| <del>§ 4.1.1.9 Landscape design</del>   |   |
| <del>§ 4.1.1.10 Architectural interior design</del>                                       |   |
| <del>§ 4.1.1.11 Value analysis</del>  |   |
| <del>§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3</del>        |   |
| <del>§ 4.1.1.13 On site project representation</del>                                      |   |
| <del>§ 4.1.1.14 Conformed documents for construction</del>                                |   |
| <del>§ 4.1.1.15 As designed record drawings</del>   |   |
| <del>§ 4.1.1.16 As constructed record drawings</del>                                      |   |
| <del>§ 4.1.1.17 Post occupancy evaluation</del>   |   |
| <del>§ 4.1.1.18 Facility support services</del>   |   |
| <del>§ 4.1.1.19 Tenant related services</del>   |   |
| <del>§ 4.1.1.20 Architect's coordination of the Owner's consultants</del>                 |   |

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User Notes:

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| <b>Supplemental Services</b>   | <b>Responsibility</b><br><i>(Architect, Owner, or not provided)</i> |
|--|---|
| <del>§ 4.1.1.21 Telecommunications/data design</del>                         |   |
| <del>§ 4.1.1.22 Security evaluation and planning</del>                       |   |
| <del>§ 4.1.1.23 Commissioning</del>  |   |
| <del>§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3</del> |   |
| <del>§ 4.1.1.25 Fast track design services</del>                             |   |
| <del>§ 4.1.1.26 Multiple bid packages</del>                                  |   |
| <del>§ 4.1.1.27 Historic preservation</del>                                  |   |
| <del>§ 4.1.1.28 Furniture, furnishings, and equipment design</del>           |   |
| <del>§ 4.1.1.29 Other services provided by specialty Consultants</del>       |   |
| <del>§ 4.1.1.30 Other Supplemental Services</del>                            |   |

**§ 4.1.2 Description of Supplemental Services**

~~§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.~~

~~(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)~~

~~§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.~~

~~(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)~~

~~§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™ 2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.~~

**§ 4.2 Architect's Additional Services**

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

~~§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:~~

- ~~1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;~~
- ~~2. Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;~~
- ~~3. Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;~~

- ~~.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~
- ~~.5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- ~~.6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
- ~~.7 Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- ~~.8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- ~~.9 Evaluation of the qualifications of entities providing bids or proposals;~~
- ~~.10 Consultation concerning replacement of Work resulting from fire or other cause during construction;~~  
or,
- ~~.11 Assistance to the Initial Decision Maker, if other than the Architect.~~

~~§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If, upon receipt of the Architect's notice, the Owner determines that all or parts of the services are not required, the Owner shall give prompt written notice to the Architect of the Owner's determination. The Owner shall compensate the Architect for the services provided prior to the Architect's receipt of the Owner's notice.~~

- ~~.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;~~
- ~~.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,~~
- ~~.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.~~

~~§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:~~

- ~~.1 ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor~~
- ~~.2 ( ) visits to the site by the Architect during construction~~
- ~~.3 ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents~~
- ~~.4 ( ) inspections for any portion of the Work to determine final completion.~~

~~§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.~~

~~§ 4.2.5 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.~~

~~§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.~~

~~§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until~~



final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

~~§ 5.3~~ The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

~~§ 5.4~~ The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

~~§ 5.5~~ The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

~~§ 5.6~~ The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

~~§ 5.7~~ If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™-2017, Sustainable Projects Exhibit, attached to this Agreement.

~~§ 5.8~~ The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

~~§ 5.9~~ The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

~~§ 5.10~~ The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.



§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

~~§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.~~

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

~~§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.~~

~~§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.~~

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

~~§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.~~

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Construction Manager at Risk/General Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The



Owner shall provide the Architect a copy of the executed agreement between the Owner and Construction Manager at Risk, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Construction Manager at Risk/General Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

~~§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.~~

~~§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.~~

~~§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.~~

~~§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.~~

~~§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.~~

~~§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall~~

- ~~.1 give written approval of an increase in the budget for the Cost of the Work;~~
- ~~.2 authorize rebidding or renegotiating of the Project within a reasonable time;~~
- ~~.3 terminate in accordance with Section 9.5;~~
- ~~.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,~~
- ~~.5 implement any other mutually acceptable alternative.~~

~~§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.~~



§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include Construction Manager at Risk' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Construction Manager at Risk's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.



~~§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.~~

~~§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.~~

~~§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.~~

~~§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.~~

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Construction Manager at Risk, Sub Contractors, Sub-subcontractor, and material or equipment suppliers, as well as the Owner's consultants and separate Contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.



§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

### § 8.1 General**GENERAL**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2017, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes, or other matters in question, arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the Construction Manager at Risk, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the Construction Manager at Risk, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

### § 8.2 Mediation**MEDIATION**

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.



~~§ 8.2.3~~ The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 8.2.4~~ If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box.)

— Arbitration pursuant to Section 8.3 of this Agreement

— Litigation in a court of competent jurisdiction

— Other: (Specify)

If the Owner and Architect do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect’s services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.2.3 The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:  
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

— Arbitration pursuant to Section 8.3 of this Agreement

— Other (Specify)

**§ 8.3 Arbitration**

~~§ 8.3.1~~ If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the



date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement, shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

### § 8.3.1

Any controversy or claim arising out of or related to this Agreement involving an amount of less than \$5,000 must be heard in the Small Claims Division of the District Court in Watauga County, NC. Any controversy or claim arising out of or related to this Agreement which is over the dollar limit of the Small Claims Court must be submitted to mediation by a mediator acceptable to both parties. In the event the parties cannot agree upon a mediator the resident Senior Superior Court Judge for Watauga County shall be authorized to select a mediator. In the event that the dispute cannot be resolved by mediation, the controversy must be submitted to binding arbitration in accordance with the North Carolina Arbitration Act, by an arbitrator acceptable to both parties. In the event the parties cannot agree upon an arbitrator, the Resident Senior Superior Court Judge for Watauga County shall be authorized to select an arbitrator.

§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

### § 8.3.4 Consolidation or Joinder CONSOLIDATION OR JOINDER

§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

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§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.

~~§ 9.1~~ If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

~~§ 9.2~~ If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

~~§ 9.3~~ If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

~~§ 9.4~~ Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

~~§ 9.5~~ The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

~~§ 9.6~~ If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

~~§ 9.7~~ In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:

*(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)*

.1 — Termination Fee:

.2 — Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

~~§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.~~

~~§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.~~

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2017, General Conditions of the Contract for Construction.~~

~~§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.~~



~~§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.~~

~~§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.~~

~~§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.~~

~~§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.~~

~~§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.~~

~~§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.~~

~~§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.~~

~~§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.~~

~~§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.~~

~~§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.~~

~~§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect~~



for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and Construction Manager at Risk/General Contractor whose contracts include similar restrictions on the use of confidential information.

§ 10.9 Unless specified otherwise, the Architect shall provide documents, including submittals to the Owner and approval agencies, and bid or Contract Documents to the Construction Manager at Risk/General Contractor electronically in PDF format, with a single PDF file for each drawing. Provision of paper copies of documents, including labor and reproduction expenses is available as an Additional Service in accordance with the provisions of Section 4.3.

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Stipulated or lump sum for Basic Services in the amount of \$2,425,000 plus additional services for the On-site utilities design and construction administration for a total amount of \$2,664,000.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

*(Insert amount of, or basis for, compensation.)*

Negotiated lump sum or hourly as mutually agreed at the time the Architect is requested to perform the services. Compensation on an hourly basis shall be based on the Architect's standard hourly rates at the time the Additional Services are performed.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent ( 10 %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

|                                     |               |                  |           |           |
|-------------------------------------|---------------|------------------|-----------|-----------|
| <u>Schematic Design Phase</u>       | <u>twenty</u> | <u>percent (</u> | <u>20</u> | <u>%)</u> |
| <u>Design Development Phase</u>     | <u>twenty</u> | <u>percent (</u> | <u>20</u> | <u>%)</u> |
| <u>Construction Documents Phase</u> | <u>thirty</u> | <u>percent (</u> | <u>30</u> | <u>%)</u> |
| <u>Bidding or Negotiation Phase</u> | <u>five</u>   | <u>percent (</u> | <u>5</u>  | <u>%)</u> |

|                                 |                    |                  |            |           |
|---------------------------------|--------------------|------------------|------------|-----------|
| Construction Phase              | twenty five        | percent (        | 25         | %)        |
| <u>Total Basic Compensation</u> | <u>one hundred</u> | <u>percent (</u> | <u>100</u> | <u>%)</u> |

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~~§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:~~

~~.1 Stipulated Sum  
(Insert amount)~~

~~.2 Percentage Basis  
(Insert percentage value)~~

~~( )% of the Owner's budget for the Cost of the Work, as calculated in accordance with Section 11.6.~~

~~.3 Other  
(Describe the method of compensation)~~

~~§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)~~

~~§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:  
(Insert amount of, or basis for, compensation.)~~

~~§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as follows:  
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)~~

~~§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:~~

~~§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)~~

See attached Exhibit B

|                              |           |    |
|------------------------------|-----------|----|
| Schematic Design Phase       | percent ( | %) |
| Design Development Phase     | percent ( | %) |
| Construction Documents Phase | percent ( | %) |
| Procurement Phase            | percent ( | %) |
| Construction Phase           | percent ( | %) |



|                          |                       |     |    |
|--------------------------|-----------------------|-----|----|
| Total Basic Compensation | one hundred percent ( | 100 | %) |
|--------------------------|-----------------------|-----|----|

~~§ 11.6~~ When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

~~§ 11.6.1~~ When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

~~§ 11.7~~ The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. *(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

**Employee or Category**

**Rate (\$0.00)**

**§ 11.8 Compensation for Reimbursable Expenses COMPENSATION FOR REIMBURSABLE EXPENSES**

~~§ 11.8.1~~ Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- ~~.1~~ Transportation and authorized out of town travel and subsistence;
- ~~.2~~ Long distance services, dedicated data and communication services, teleconferences, Project web sites, and extranets;
- ~~.3~~ Permitting and other fees required by authorities having jurisdiction over the Project;
- ~~.4~~ Printing, reproductions, plots, and standard form documents;
- ~~.5~~ Postage, handling, and delivery;
- ~~.6~~ Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- ~~.7~~ Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner or required for the Project;
- ~~.8~~ If required by the Owner, and with the Owner's prior written approval, the Architect's consultants' expenses of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits in excess of that normally maintained by the Architect's consultants;
- ~~.9~~ All taxes levied on professional services and on reimbursable expenses;
- ~~.10~~ Site office expenses;
- ~~.11~~ Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- ~~.12~~ Other similar Project related expenditures.

~~§ 11.8.2~~ For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus percent (—%) of the expenses incurred.

~~§ 11.8.1~~ Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents;
- .3 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .4 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .5 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;

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- .6 All taxes levied on professional services and on reimbursable expenses;
- .7 Site office expenses; and
- .8 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus ten percent ( 10 %) of the expenses incurred. No back up data or copies of bills will be provided for reimbursable expenses invoiced under this agreement. Should back-up data be requested, it will be provided for an administrative fee of \$100 per monthly invoice requiring verification.

~~§ 11.9 Architect's Insurance. If the types and limits of coverage required in Section 2.5 are in addition to the types and limits the Architect normally maintains, the Owner shall pay the Architect for the additional costs incurred by the Architect for the additional coverages as set forth~~

below: COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows: (Insert the additional coverages the Architect is required to obtain in order to satisfy the requirements set forth in Section 2.5, and for which the Owner shall reimburse the Architect.)

Twenty five percent (25%) of the sum of the Architect's compensation for Basic Services and Additional Services, to be paid concurrently with the notice of termination to the Architect.

§ 11.10 Payments to the Architect PAYMENTS TO THE ARCHITECT

§ 11.10.1 Initial Payments

~~§ 11.10.1.1 An initial payment of ( \$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.~~

~~§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of ( \$ ) shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.~~

§ 11.10.2 Progress Payments

~~§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)~~

~~—%~~

~~§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.~~

~~§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.~~

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid sixty ( 60 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. (Insert rate of monthly or annual interest agreed upon.)

one % per month



§ 11.10.3 The Owner shall not withhold amounts from the Architect’s compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to Construction Manager at Risk/General Contractor for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

PAGE 18

*(Include other terms and conditions applicable to this Agreement.)*

In recognition of the relative Risk and benefits of the Project to both the Owner and the Architect, the Risk have been allocated such that the Owner agrees, to the fullest extent permitted by law, to limit the liability of the Architect and Architect’s officers, directors, partners, employees, shareholders, owners and subconsultants for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, including attorneys’ fees and costs and expert-witness fees and costs, so that the total aggregate liability of the Architect and Architect’s officers, directors, partners, employees, shareholders, owners and subconsultants shall not exceed \$1,000,000, or the Architect’s total fee for services rendered on this Project, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

...

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect

.2 Other documents:

*(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)*

Exhibit A- Proposal letter dated January 28, 2021

Exhibit B- Standard Hourly rates for Clark Nexsen

This Agreement entered into as of the day and year first written above.

OWNER

ARCHITECT

\_\_\_\_\_

\_\_\_\_\_ 

*(Signature)*

*(Signature)*

*(Printed name and title)*

Chadwick S Roberson, AIA Managing Principal

*(Printed name and title)*

...

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™ 2017, Standard Form Agreement Between Owner and Architect

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User Notes:

~~.2~~ AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
~~(Insert the date of the E203 2013 incorporated into this agreement.)~~

~~.3~~ Exhibits:  
~~(Check the appropriate box for any exhibits incorporated into this Agreement.)~~

~~[ ]~~ AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:  
~~(Insert the date of the E204 2017 incorporated into this agreement.)~~

~~[ ]~~ Other Exhibits incorporated into this Agreement:  
~~(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)~~

~~.4~~ Other documents:  
~~(List other documents, if any, forming part of the Agreement.)~~

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
ARCHITECT (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name, title, and license number, if required)

## **Certification of Document's Authenticity**

*AIA® Document D401™ – 2003*

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:20:34 ET on 02/08/2021 under Order No. 8471581786 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ – 2017, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

---

*(Signed)*

---

*(Title)*

---

*(Dated)*

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User Notes:

(1196175975)





January 28, 2021

Watauga County Manager  
814 West King Street  
Suite 205  
Boone, NC 28607

Attn: Mr. Deron Geouque  
County Manager

**RE: VALLE CRUCIS ELEMENTARY SCHOOL**

Dear Deron,

We are pleased to submit our proposal for the design associated with the Valle Crucis Elementary. This has been a long journey to get to this point. Looking forward the opportunities are exciting and will be a beautiful addition to Watauga County. The program will generally support a student population of approximately 450 students. The final square footage of the building will be determined during the programming phase. It is anticipated that the building will be approximately 70,000 square feet. The total project budget, including hard and soft costs, is \$35,000,000. Construction budget and contingency is \$30,600,000.

**SCOPE OF DESIGN AND PROJECT ADMINISTRATION SERVICES**

The scope of services defines the professional design services to be provided by Clark Nexsen related to architectural and engineering to meet the requirements of Watauga County for the project.

**PROGRAMMING**

The programming phase of the project will involve interviews with Watauga County Schools administration and staff. During this phase we will collect data, formulate a program document that will include types of space, square feet associated, fit and finish. This phase is as important to the project as the construction documents and will be used in all further decisions.

**SCHEMATIC DESIGN (SD)**

Clark Nexsen will provide consultation related to establishment of site characteristics that have ramifications on the project quality, schedule, or budget, such as building configuration and utility coordination issues. During this Schematic Design phase, Clark Nexsen will incorporate available information from the programming documentation and other required code resources to produce a schematic design; including preliminary site plans, floor plans, exterior building elevations, preliminary life-cycle cost analysis of proposed building systems, selections of major building systems and proposed building materials for this project.



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Asheville, NC 28801  
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Engineering services during the SD phase will include the conceptual building system selections and calculations reflecting the infrastructure needed to support the building program as defined in the Programming phase. The site engineering will include efforts on the overall site design, site layout, paving, limited on-site driveways, parking layout and circulation, storm drainage network, storm water management, preliminary grading, erosion control, and utilities. The schematic design will include narrative description for all major building systems for the purpose of soliciting review comments by the County. Clark Nexsen will also provide a statement of probable cost presented in CSI division format. Our proposal includes services to reconcile the statement of probable cost with the construction budget.

The Clark Nexsen team will organize, participate in and complete the following activities and deliverables during the SD phase to help facilitate and advance the overall design of the project:

- a. Prepare the design concepts in accordance with the current editions of the North Carolina Building Code. Preliminary Building Code information including but not limited to occupancy group, construction type, building height, number of stories, floor area, and sprinkler protection will be included as part of the analysis.
- b. Prepare a preliminary evaluation and provide data for sustainable design opportunities on the project:
  - i. The Clark Nexsen team will prepare a baseline energy simulation model to establish a base building that both meets the ASHRAE 90.1 2004 baseline building and is NC Code compliant. Base building characteristics that are to be used for an hourly energy performance simulation model will be based on specific building geometry.
  - ii. The team will investigate energy strategies for the building envelope, lighting and lighting controls, HVAC systems and controls and heating hot water systems.
- c. The team will prepare a scaled site plan showing the location and size of the project in relation to the existing campus context including, buildings, roads, walkways, parking and existing utility services. Importance shall be placed on early determination of the adequacy and availability of all existing utility services.
- d. Coordinate with the selected geotechnical engineer related to the building footprint, loads and anticipated geotechnical information needed. Preliminary information indicates that the building will require soil improvements similar to what we used on the Recreation Center.
- e. Provide preliminary list of permits and approvals required for site / civil improvements and site related construction activities, along with anticipated schedule for acquiring permits and approvals.
- f. Prepare (1) preliminary SD opinion of probable cost.
- g. Participate in and prepare presentation materials for one (1) Board of Commissioners meeting.
- h. Participate in and prepare presentation materials for one (1) School Board meeting or Community meeting.
- i. Provide a written response to any review comments prepared by the County
- j. Create two (2) renderings of the building. Views shall be selected by the Architect and Owner.
- k. Assist owner with acquisition of Certify of Appropriateness with the Historic District of Valle Crucis.

### **DESIGN DEVELOPMENT (DD)**

In parallel with the County review of the SD submittal, Clark Nexsen will proceed to the Design Development phase. The Design Development will refine the design and will include site plans, floor plans, exterior building elevations, schedules, building sections, wall sections, typical details, major engineering systems and building materials, outline specifications and other required documentation as further defined



below. During this phase, Clark Nexsen will further refine and develop engineering services to include the design development of building and utility systems, site layout, detailed grading, on-site erosion control, on-site utilities, on-site paving and on-site roadways / driveways. This design will be presented through drawings and outline specifications.

The Clark Nexsen team will organize, participate in and complete the following activities and deliverables during the DD phase to help facilitate and advance the overall design of the project:

- a. Attend monthly issue-oriented meetings with the Team to coordinate the design development documents. This will include meetings with the School administration.
- b. Clark Nexsen will prepare developed floor plans, life safety plans, fire resistant construction plans, scaled architectural site plans, proposed exterior building elevations, proposed building sections, proposed roof plans, proposed wall sections, proposed reflected ceiling plans, building sections, enlarged details, room finish schedule and door schedule as appropriate to reflect the overall DD effort for the project.
- c. The Civil drawings will include plans showing proposed grading, benchmarks, site drainage and sedimentation control; utility infrastructure, roads, parking, adjacent structures and site data as furnished on previous submittals. Septic design and on-site utilities will be determined during this phase.
- d. Structural drawings will be developed and will reflect the allowable soil bearing pressures and live loads used in the design. The team will provide a foundation plan showing the basic elements of the foundation. The team will provide floor and roof framing plans showing size, spacing and type of primary members, including locations of shear walls and/or bracing with such additional details and information to describe the method of lateral load resistance.
- e. The mechanical drawings will include the following: layout of mechanical rooms with equipment clearances, major HVAC equipment rooms and the basic layout of the heating, ventilating and air conditioning distribution system, a diagram of the temperature control systems; schematic diagram of air, hot water, chilled water and condenser water systems. Rated walls shall be shown on all plans.
- f. The plumbing drawings will include the general development of domestic and sanitary water systems. The drawings will show source of water supply and waste disposal termination; water distribution and waste collection plan diagrams, including fixtures.
- g. The electrical drawings will include the following: basic electrical service equipment and its location to include the electrical power distribution components, primary service switches, transformers, generators, main switchgear, motor control centers, and the locations of the electrical and telecommunication rooms. We will provide single line diagrams of the power distribution systems including primary, secondary and emergency power. We will provide similar diagrams for fire alarm, telecommunications, security and all other systems included in the electrical scope of work. The team will provide an estimated load summary in KVA rating, the connected load, the demand load and the DF are required with this submittal. The electrical floor plans shall show the basic layout of the lighting, emergency lighting, power receptacles, smoke and heat detectors, data/telecommunications outlets or other systems in the project.
- h. The fire protection drawings will reflect compliance with NFPA 13, 14, 20, and 24, the Fire Code, the Building Code, and applicable Guidelines. The drawings will indicate the location of all valves, mains, drains and FDC locations. The plans will clearly indicate that the fire protection scope of work begins 12" above the finish floor. Sprinkler Design Data Summary shall include the following: Project name and address, total building height in feet, type of system, hazard classification,



design data, design density, hose allowance, and water supply information. The documents will include fire protection equipment locations with schedule, and indicate electrical demands. The piping schematic will include all valves flow and tamper switch locations from point of municipal connection to further valve system. Remaining portions of the system shall be in the design/build format, as is typical for NC projects.

- i. Revise project design information for the sustainable design measures to meet established sustainable goals for the project.
  - i. The Clark Nexsen team will prepare the final baseline energy simulation model to establish a base building that both meets the ASHRAE 90.1 2004 baseline building and is NC Code compliant.
- j. The team will continue to investigate energy strategies for the building envelope, lighting and lighting controls, HVAC systems and controls and heating hot water systems. These will be evaluated in collaboration with the.
- k. Prepare an outline specification with brief descriptions of building systems and materials in CSI Master Format division and numbering.
- l. Provide a written response to the review comments prepared by the County.

#### **CONSTRUCTION DOCUMENTS (CD)**

Upon approval of the above submittal by the County, Clark Nexsen will prepare design drawings and MASTER SPEC formatted specifications, in accordance with the requirements set forth in the NC building codes, for use in construction of the project. This set of documents will also be used by the CM to obtain necessary approvals and permits from appropriate regulatory agencies having jurisdiction. Our proposal includes services to reconcile the statement of probable cost with the construction estimate. We will submit a complete Construction Documents package to the County and all local and state jurisdictions for their review and approval.

The Clark Nexsen team will organize, participate in and complete the following activities and deliverables during the CD phase to help facilitate and advance the overall design of the project:

- a. Participate in two (2) review meetings.
- b. The Construction Documents will set forth, in detail, the requirements for the Project, including drawings and specifications. Clark Nexsen will work with the County, user groups in generating the Construction Documents and the implementation of systems. The specifications will be developed in CSI format and will meet the specific documentation requirements for the project.
- c. Prepare the CD submittal in accordance with the current editions of the North Carolina Building Code.
- d. Provide a written response to the review comments prepared by the County
- e. Provide suggestions of value engineering alternatives required to meet the budget.

#### **BIDDING SUPPORT**

At this point, it is anticipated the project will be delivered by hard bidding to prequalified general contractors. We will assist the owner in soliciting and prequalifying NC licensed General Contractors in accordance with the general statutes set forth by the State. The team shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents for distribution to all prospective bidders in the form of addenda. The Architect shall organize and lead the pre-bid meeting. The Architect shall lead the opening of the bids and assist the County in the selection of any potential alternates that may be proposed for this project.



## CONSTRUCTION ADMINISTRATION

Clark Nexsen will monitor and review the quality and acceptability of construction in accordance with the requirements set forth in the contract documents. Our scope of services for this task includes:

- We will assist the contractor in arranging, attend, and participate in a pre-construction conference to include the contractor, subcontractors, the Owner, and consultants to review the requirements of the project and to coordinate activities for all construction. We will send copies of the minutes of this conference to all parties in attendance and to other interested parties.
- We will attend and participate in a regularly scheduled monthly Construction meeting, to be held at the job site and conducted by Clark Nexsen and the contractor to effect coordination, cooperation, and assistance in maintaining progress of the project on schedule, in order to complete the project within the contract time.
- We will attend and participate in a regularly scheduled bi-weekly progress meeting to be held at the job site and conducted by the Contractor.
- We will provide written copies of monthly construction progress reports to the County
- We will visit the site at intervals appropriate to the stage of the contractor's operations, or as otherwise agreed by the Owner and the Architect. In general, we have based our fee on field observation as needed by the requirements of the project, but no more than two visits per month by a representative from Clark Nexsen. Included as part of our basic services is the preparation of a written report documenting field observations, field issues and conditions, items needing correction, and other similar issues normally associated with construction observation.
- Upon notification from the contractor that the project is complete, we will make a preliminary final inspection of the project to verify substantial completion and prepare a list of discrepancies (punch list) for the contractor. Upon notification by the contractor that the discrepancies have been completed, we shall perform a formal final inspection.
- We will review and certify the amounts due the contractor and approve Certificates for Payment in such amounts.
- We will review and approve or take other appropriate action regarding the submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.
- We will respond to the contractor's requests within the following timeframes:
  - RFIs: Seven (7) calendar days.
  - Proposed Change Order Review: Fourteen (14) calendar days.
  - Product Submittals and Shop Drawings: Twenty-one (21) calendar days. For certain submittals, such as Building Automation Controls, Load Bearing Steel and Coordination Drawings, additional review time may be required; these time frames will be listed specifically in the specifications for bid.
  - Payment Applications: Five (5) calendar days.
- We will prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents.
- We will review properly prepared, timely requests by the Owner or contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time.
- We will conduct field visits to determine the date or dates of Project Acceptance. We will receive from the contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the contractor, and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.
- Based on the current project schedule, we will provide contract administrative services for a maximum of 18 months.



- Design and Contract Administration Services beyond the following limits shall be provided as additional services:
  - Up to two reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.
  - Up to two inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.
  - Up to two inspections for any portion of the Work to determine Substantial Completion.

#### CLOSE OUT SERVICES

- We will transmit one (1) set of approved shop drawings and a copy of official shop drawing log to the Project Manager when returning to the owner.

#### GENERAL PROJECT ADMINISTRATION SERVICES

In general, project administration services include consultation with the Owner, research of applicable design criteria, attendance at Project meetings, and communication with members of the Project team and issuing progress documentation. Also included is:

- Coordinating the services provided by Clark Nexsen and our consultants with those services provided by the Owner and the Owner's consultants.
- Preparing and periodically updating the design Project schedule that identifies milestone dates for decisions required of the County, design services furnished by Clark Nexsen, completion of documentation, and commencement of construction.
- Assisting the County in connection with their responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

#### SCHEDULE

Clark Nexsen agrees to provide the above listed services according to the mutually agreed upon project schedule. This schedule is dependent on the approval of each submission by the Client and that such approvals are made in a timely manner so as not to delay the agreed upon schedule. It is also dependent on prompt receipt of information and direction from County. Changes to such information and direction may cause delays in the completion of our services and require additional compensation. We agree to provide services in the most expeditious manner as is practical. The project services will begin upon receipt of written authorization from County to proceed.

| Task Name                                  | Duration        | Start              | Finish             |
|--|-----------------|--------------------|--------------------|
| Review of contract and approval            | 30 edays        | Mon 2/1/21         | Wed 3/3/21         |
| Kick Off Meeting                           | 1 day           | Wed 3/3/21         | Wed 3/3/21         |
| <b>Programming Phase</b>                   | <b>55 edays</b> | <b>Wed 3/3/21</b>  | <b>Tue 4/27/21</b> |
| <b>Schematic Design</b>                    | <b>69 days</b>  | <b>Tue 4/27/21</b> | <b>Mon 8/2/21</b>  |
| Schematic Design by CN                     | 90 edays        | Tue 4/27/21        | Mon 7/26/21        |
| Schematic Design -Owner review Comments    | 7 edays         | Mon 7/26/21        | Mon 8/2/21         |
| <b>Design Development</b>                  | <b>69 days</b>  | <b>Mon 8/2/21</b>  | <b>Fri 11/5/21</b> |
| Design Development                         | 88 edays        | Mon 8/2/21         | Fri 10/29/21       |
| Design Development - Owner review comments | 7 edays         | Fri 10/29/21       | Fri 11/5/21        |



|   |                 |                     |                     |
|---|-----------------|---------------------|---------------------|
| <b>Construction Documents</b>                         | <b>185 days</b> | <b>Fri 11/5/21</b>  | <b>Fri 7/22/22</b>  |
| Construction documentation 1                          | 60 edays        | Fri 11/5/21         | Tue 1/4/22          |
| Owner review meeting                                  | 1 day           | Wed 1/5/22          | Wed 1/5/22          |
| Construction Documentation 2                          | 61 edays        | Wed 1/5/22          | Mon 3/7/22          |
| Owner review meeting                                  | 1 eday          | Mon 3/7/22          | Tue 3/8/22          |
| Preparation of Bid Documents and specifications       | 76 edays        | Tue 3/8/22          | Mon 5/23/22         |
| Owner review comments                                 | 14 edays        | Mon 5/23/22         | Mon 6/6/22          |
| Submission to Department of Insurance for plan review | 60 edays        | Mon 5/23/22         | Fri 7/22/22         |
| <b>Bid Period</b>                                     | <b>57 days</b>  | <b>Fri 7/22/22</b>  | <b>Tue 10/11/22</b> |
| Pre bid meeting                                       | 5 edays         | Fri 7/22/22         | Wed 7/27/22         |
| Bid Period  | 46 edays        | Fri 7/22/22         | Tue 9/6/22          |
| Bid review and contract preparations                  | 14 edays        | Tue 9/6/22          | Tue 9/20/22         |
| Contract execution by the County                      | 21 edays        | Tue 9/20/22         | Tue 10/11/22        |
| <b>Construction</b>                                   | <b>426 days</b> | <b>Wed 10/12/22</b> | <b>Wed 5/29/24</b>  |
| Preconstruction kick off meeting                      | 1 day           | Wed 10/12/22        | Wed 10/12/22        |
| Notice to proceed                                     | 7 edays         | Wed 10/12/22        | Wed 10/19/22        |
| Site development and building construction            | 510 edays       | Wed 10/19/22        | Tue 3/12/24         |
| Weather   | 45 edays        | Tue 3/12/24         | Fri 4/26/24         |
| Building Punchlist                                    | 30 edays        | Fri 3/29/24         | Sun 4/28/24         |
| <b>Substantial Completion inspection -Occupancy</b>   | <b>1 day</b>    | <b>Mon 4/29/24</b>  | <b>Mon 4/29/24</b>  |
| <b>Final close out</b>                                | <b>30 edays</b> | <b>Mon 4/29/24</b>  | <b>Wed 5/29/24</b>  |

## COMPENSATION

Clark Nexsen agrees to provide professional services as outlined above in the Scope of Services and in conjunction with AIA document B101-2017. We believe the fee tabulated below is appropriate, given the schedule, the design and review process, coupled with the contract administration efforts. We propose a lump sum fee as follows:

### Basic Design Services

|  |           |                   |
|--|-----------|-------------------|
| <i>Building costs + Site Costs</i>   | \$        | 29,400,000        |
| <i>Contingency</i>   | \$        | 880,000           |
| <u><i>Total construction budget</i></u>  | <u>\$</u> | <u>30,280,000</u> |
| <i>Soft costs (permitting, geotech, special inspector, material testing, etc.)</i> | \$        | 956,000           |
| <i>Furniture, Fixtures and equipment budget</i>                                    | \$        | 1,100,000         |
|  | \$        |                   |
|  | \$        |                   |
| <b><i>Basic Services Architectural and Engineering services</i></b>                | <b>\$</b> | <b>2,425,000</b>  |
| <i>Programming</i>   | \$        | 90,000            |
| <i>Schematic Design Phase</i>  | \$        | 465,000           |





|  |    |            |
|--|----|------------|
| <i>Design Development Phase</i>  | \$ | 465,000    |
| <i>100% Construction Document Phase</i>  | \$ | 820,000    |
| <i>Bidding</i>   | \$ | 115,000    |
| <i>Construction Administration</i>   | \$ | 470,000    |
|  |    |            |
| <b><i>On site utilities design and construction administration</i></b>         |    |            |
| <i>Community water system design, fire suppression, storage, and treatment</i> | \$ | 101,000    |
| <i>On Site Sewer System Design</i>   |    | 128,000    |
| <i>Soil Scientist Coordination</i>   |    | 10,000     |
|  |    |            |
| <b><i>Total project cost</i></b>   | \$ | 35,000,000 |
|  |    |            |
|  |    |            |

Our invoicing will be in accordance with progress of the design documents based on percentage complete and shall be invoiced on a monthly basis. Should the project stop due to funding issues or changes in the market, we will invoice to the point we are in the design process.

Reimbursables included in the above noted fee include travel to and from the site, postage and handling of general mail and deliverables.

#### **ADDITIONAL SERVICES**

Clark Nexsen reserves the right to request Additional Services for those services and expenses not identified above and elsewhere in this proposal including services that extend beyond the period of time listed in the schedule. Additional services will not be performed until authorized by a contract amendment.

#### **ASSUMPTIONS**

Our fee proposal is based on the following assumptions:

- As noted above, the services needed to support the scope of work as defined and is reflective of our current understanding of the project. Should County elect to re-establish the program requirements for the project, Clark Nexsen may seek Additional Services and additional schedule time to re-investigate and re-establish the program.
- No liability is assumed for the work of consultants not under contract to Clark Nexsen or information provided by others used in the production of final documents or calculations.
- The geotechnical investigations for the project site will be performed by a consultant to the County.
- Should the project budget increase by more than 1.5% we shall be entitled to additional compensation.
- This proposal assumes that the construction duration on the project will last eighteen (18) months. Should the project require a longer duration to complete all construction activities, Clark Nexsen reserves the right to seek additional services.

#### **EXCLUSIONS**

The following items are excluded from the Scope of Services:



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Asheville, NC 28801  
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- Any design services for the County not related to the development of the project design as noted above.
- LEED certification, design around LEED certifications or any other sustainable guideline
- AV or IT design, we are placing back box, conduit, and raceway to IT closets.
- Security design, including but not limited to access control, CCTV, digital cameras, etc. We will place conduit and back box only.
- Design services related to any part of the Center not located within the limits of the immediate project site, including extension of site utilities beyond the boundary.
- Full-time, on-site project representation during construction phase activities.
- Representation for court appearances for litigation or preparation for the same unless Architect is a party to same and/or the litigation involves issues relating to the errors or omissions of the Architect and/or its consultants.
- Multiple bid packages.
- Phased turnover of the building
- Geotechnical Engineering services.
- Survey services.
- Environmental engineering
- Travel expenses associated with sit down review meetings with DOI.
- Transportation engineering services or parking studies related to areas beyond the immediate project site.
- Economic Feasibility Studies.
- Traffic Impact Analysis.
- Design of off-site roadway improvements
- Environmental reports or Phase 1 analysis.
- Set-up and maintenance of a project web site.
- The solicitation and retention of consultants and sub-consultants as requested by Owner, except as outlined herein.
- Commissioning services.
- Modifications to Clark Nexsen formatted documents such as drawing file name, specification format, etc.
- All environmental impact and mitigation fees.
- All permit or plan review fees
- Subsurface Utility Exploration.
- Solar Hot Water design, including panel sizing, optimization, placement, and verification of utilization.
- Photo-voltaic design.
- Provision of fire hydrant flow testing is excluded from this proposal and will be provided by the Owner.
- Development of project animations or videos.
- Design services needed to support a phased move-in.
- Design services for visual systems dashboards / electronic pedagogy feature walls in the building.
- Move management consulting services
- Rezoning or any special use permitting required by the County.



This project has been a long time coming and will greatly benefit your community. We appreciate the opportunity to collaborate with County and we look forward to a successful project. Please review this proposal and contact us if you have any questions. We welcome your recommendations and will be happy to discuss any items in more detail.

Sincerely,

**CLARK NEXSEN**



Chadwick S Roberson, AIA, LEED AP BD+C  
Principal



301 College Street, Suite 300  
Asheville, NC 28801  
clarknexsen.com



**CLARK NEXSEN**

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**AGENDA ITEM 10:**

**MISCELLANEOUS ADMINISTRATIVE MATTERS**

*B. Boards and Commissions*

**MANAGER'S COMMENTS:**

*Boone Rural Fire Protection Service District Board*

*Watauga County Planning Board*

Each Commissioner nominates a representative to the Boone Rural Fire Protection Service District Board and the Watauga County Planning Board whose terms run concurrent with the term of the appointing Commissioner. Planning Board members must live within the appointing Commissioner's District and action must be taken by the entire Board of Commissioners to make these appointments. Boone Rural Fire Service District Board members must own property and reside within the Fire Service District.

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**AGENDA ITEM 10:**

**MISCELLANEOUS ADMINISTRATIVE MATTERS**

*C. Announcements*

**MANAGER’S COMMENTS:**

The High Country Council of Governments invites you to their Virtual Legislative Day on March 22, 2021, from 10:00 A.M. until 12:00 P.M. More information will be available soon.

Parks and Recreation will host a Drive-Thru Bunny Trail Parade on Sunday, March 28, 2021, from 2:00 – 4:00 P.M. at the new Community Recreation Center.

High Country Senior Games 2021 will be ongoing from May to July in 2021. More information is available at Parks and Recreation.



**Anita.Fogle**

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Good Afternoon High Country Local Elected Officials,

We are excited to invite you to our second annual Legislative Day hosted by the High Country Council of Governments!

**Please save the date: Monday, March 22, 2021 from 10:00 AM – 12:00 PM.**

More information on registering for this virtual event coming soon.



YOU ARE INVITED TO PARTICIPATE IN THE



**HIGH COUNTRY**  
COUNCIL OF GOVERNMENTS

**VIRTUAL LEGISLATIVE DAY**

Kindly Save the Date:  
**March 22, 2021 | 10am-12pm**

Join us for the HCCOG's  
second annual legislative  
discussion.

More information coming soon.

Thanks!

**Victoria Potter**  
*Communications &  
Marketing Manager*  
468 New Market Blvd.  
Boone, NC 28607  
828-265-5434 x101  
[hccog.org](http://hccog.org)



**HIGH COUNTRY**  
COUNCIL OF GOVERNMENTS





# BUNNY TRAIL PARADE

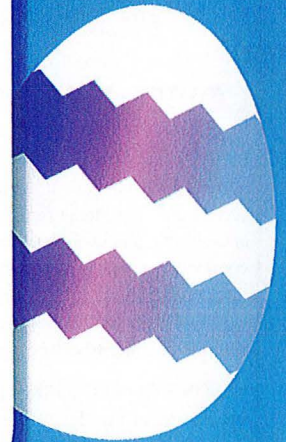
2-4 pm

Watauga Community  
Recreation Center

231 Complex Drive, Boone

Sunday  
March

28



828.264.9511 [keron.poteat@watgov.org](mailto:keron.poteat@watgov.org)

[HTTPS://REC.WATGOV.ORG](https://rec.watgov.org)





# VENDOR REGISTRATION FORM

**SIGN ME UP** to be in THE PARADE!

(Viewers do not need to sign up ahead of time)

**SUNDAY, MARCH 28TH 2-4 PM**

Arrive between 1-1:30 p.m. to set up

Individual/Group Name \_\_\_\_\_ Number in Party \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ Zip \_\_\_\_\_

Email Address \_\_\_\_\_

Home Phone # \_\_\_\_\_ Cell Phone # \_\_\_\_\_

Would you like to donate \$1 (or more) to the Watauga County Parks & Recreation Scholarship Fund? This fund helps others in our community by allowing the recreation department to offer a reduction in fees or scholarships for many of our programs. Yes \_\_\_\_\_ No \_\_\_\_\_ Amount \$ \_\_\_\_\_

## PARENTAL PERMISSION & RELEASE

I, \_\_\_\_\_, hereby give my consent for participation in the Watauga County Parks and Recreation Drive-Thru Bunny Trail Parade event. I assume all risks and hazards incidental to such participation, including transportation to and from the program, and do hereby waive, release, absolve, indemnify and agree to hold harmless Watauga County, its staff, its volunteers, and any sponsoring agency for any claim arising out of any loss or injury that the participant might sustain while engaged in this program. I understand that WCP&R does not provide insurance and is not responsible for the medical condition of the participant. I agree to the release of photographs of the participant for the promotion of WCP&R.

## COVID-19 WAIVER

STATE OF NORTH CAROLINA COUNTY OF WATAUGA WAIVER OF LIABILITY: CORONAVIRUS/COVID-19

WARNING: The novel coronavirus, COVID-19, has been declared a worldwide pandemic by the World Health Organization. COVID-19 is reported to be extremely contagious. The state of medical knowledge is evolving, but the virus is believed to spread from person-to-person contact and/or by contact with contaminated surfaces and objects, and even possibly in the air. People reportedly can be infected and show no symptoms and therefore spread the disease. The exact methods of spread and contraction are unknown, and there is no known treatment, cure, or vaccine for COVID-19. Evidence has shown that COVID-19 can cause serious and potentially life-threatening illness and even death. Watauga County cannot prevent you [or your child(ren)] from becoming exposed to, contracting, or spreading COVID-19 while participating in activities sponsored by Watauga County. It is not possible to prevent against the presence of the disease. Therefore, if you choose to engage in the activities identified below, you may be exposing yourself to and/or increasing your risk of contracting or spreading COVID-19.

ASSUMPTION OF RISK: I have read and understood the above warning concerning COVID-19. I hereby choose to accept the risk of contracting COVID-19 for myself and/or my children in order to participate in the following activities, to take place on Watauga County property:

These activities are of such value to me [and/or to my children,] that I accept the risk of being exposed to, contracting, and/or spreading COVID-19. in order to participate in person [if applicable: "rather than arranging for an alternative method of enjoying the same services virtually (e.g. videoconference)].

WAIVER OF LAWSUIT/LIABILITY: I hereby forever release and waive my right to bring suit against Watauga County and its officers, directors, managers, officials, trustees, agents, employees, or other representatives in connection with exposure, infection, and/or spread of COVID-19 related to my participation in the above identified activities. I understand that this waiver means I give up my right to bring any claims including for personal injuries, death, disease or property losses, or any other loss, including but not limited to claims of negligence and give up any claim I may have to seek damages, whether known or unknown, foreseen or unforeseen. I understand and agree that the law of the State of North Carolina will apply to this contract.

I HAVE CAREFULLY READ AND FULLY UNDERSTAND ALL PROVISIONS OF THIS RELEASE, AND FREELY AND KNOWINGLY ASSUME THE RISK AND WAIVE MY RIGHTS CONCERNING LIABILITY AS DESCRIBED ABOVE:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name \_\_\_\_\_

WATAUGA COUNTY PARKS & RECREATION 231 COMPLEX DRIVE BOONE NC 28607

828.264.9511 Keron.poteat@watgov.org





**May – July 2021**

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**Athletic  
Competitions  
including  
horseshoes,  
swimming, golf,  
pickleball & more!**

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**Art Competitions  
including quilting,  
painting,  
photography,  
performing arts &  
more!**

---

**Various venues  
throughout the High  
Country area!**

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# **SAVE THE DATE!**

# **HIGH COUNTRY SENIOR GAMES 2021**

**Are You 50 Years of Age or Better??**

Join us for arts, athletics, and social events through our High Country Senior Games season!

**WATAUGA COUNTY  
PARKS & RECREATION**

231 Complex Drive, Boone  
828.264.9511

[www.rec.watgov.org](http://www.rec.watgov.org)

Registration coming soon!

**AGENDA ITEM 11:**

**PUBLIC COMMENT**

**AGENDA ITEM 12:**

**BREAK**

**AGENDA ITEM 13:**

**CLOSED SESSION**

Attorney/Client Matters – G. S. 143-318.11(a)(3)  
Land Acquisition – G. S. 143-318.11(a)(5)(i)