

WATAUGA COUNTY  
WATERSHED PROTECTION ZONING ORDINANCE  
(Winkler's Creek, Howards Creek, Norris Branch, Flat Top Branch, South Fork New River)

ARTICLE 100: AUTHORITY AND GENERAL REGULATIONS

Section 101. Authority and Enactment.

The Legislature of the State of North Carolina has, in Chapter 153A, Article 18, Part 3, 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 does hereby ordain and enact into law the following articles as the Watershed Protection Zoning Ordinance of Watauga County.

Section 102. Jurisdiction.

The provisions of this Ordinance shall apply within the area designated as a Public Water Supply Watershed (except Pond Creek watershed) by the N.C. Environmental Management Commission and shall be defined and established on 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 Ordinance. This Ordinance shall be permanently kept on file in the office of the Clerk to the Board of Commissioners.

Section 103. 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 Ordinance amend, modify, or restrict any provisions of the Code of Ordinances of Watauga County however, the adoption of this Ordinance shall and does amend any and all ordinances, resolutions, and regulations in effect in the county at the time of the adoption of this Ordinance that may be construed to impair or reduce the effectiveness of this Ordinance 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 104. Applicability to Agricultural Uses.

This ordinance shall not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market.

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.

Section 105. Criminal Penalties.

Any person violating any provisions of this Ordinance shall be guilty of a misdemeanor and, upon conviction, shall be punished in accordance with NCGS 14-4. The maximum fine for each offense shall not exceed \$500.00. Each day that the violation continues shall constitute a separate offense.

Section 106. Remedies.

(A) If any subdivision, development and/or land use is found to be in violation of this Ordinance, the county Governing Board may, in addition to all other remedies available either in law or in equity, institute a civil penalty in the amount of \$100.00, action or proceedings to restrain, correct, or abate the violation; to prevent occupancy of the building, structure, or land; or to prevent any illegal act, conduct, business, or use in or about the premises. In addition, the N.C. Environmental Management Commission may assess civil penalties in accordance with G.S. 143-215.6(a). Each day that the violation continues shall constitute a separate offense.

(B) If the Watershed Administrator finds that any of the provisions of this ordinance are being violated, 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. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal buildings or structures, or of additions, alterations or structural changes thereto; discontinuance of any illegal work being done; or shall take any action authorized by this ordinance to ensure compliance with or to prevent violation of its provisions. If a ruling of the Watershed Administrator is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

Section 107. Severability.

Should any section or provision of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, the declaration shall not affect the validity of this Ordinance as a whole or any part thereof that is not specifically declared to be invalid or unconstitutional.

Section 108. Adoption and Effective Date.

This Ordinance shall take effect and be in force on January 1, 1994. Adopted by the Watauga County Board of Commissioners December 6, 1993.

Amended:

June 18, 1996.

June 28, 2011.

March 30, 2013.

September 17, 2013

Article 200. Subdivision Regulations

Section 201. 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 Ordinance to Govern Subdivisions and Multi-Unit Structures and shall be reviewed pursuant to that ordinance. Subdivisions within Public Water Supply Watersheds shall comply with the provisions of both ordinances except where the two (2) conflict. In that case, the more restrictive provisions shall apply.

(C) Compliance with this ordinance shall be indicated on both copies of the plat by the following certificate and signed by the chairman or other authorized member of the Board:

Certificate of Approval for Recording

I certify that the plat shown here on complies with the Watershed Protection Ordinance and is approved by the Watauga County Planning Board for recording in the Register of Deeds office.

\_\_\_\_\_  
Date                      Chairman, Watauga County Planning Board

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 Ordinance to Govern Subdivisions and Multi-Unit Structures, the following certificate shall be used:

Certificate of Approval for Recording

I certify that the plat shown here on complies with the Watershed Protection Ordinance and is approved for recording in the Register of Deeds office.

\_\_\_\_\_  
Date                      Director, Watauga County Department of  
   Planning and Inspections

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 300. Lots which are smaller than the minimum required for residential lots may be developed using built-upon area criteria in accordance with Article 300 or cluster development criteria in accordance with Article 303.

(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 300: DEVELOPMENT REGULATIONS

### Section 301. Establishment of Watershed Areas.

The purpose of this Article is to list and describe the watershed areas herein adopted.

For purposes of this ordinance, the following watershed areas are established:

- WS-II-CA (Critical Area)
- WS-II-BW (Balance of Watershed)
- WS-IV-CA (Critical Area)
- WS-IV-PA (Protected Area)

### Section 302. 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 Section 104)
- (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 Section 104)

(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-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 subject to the provisions of the Food Security Act of 1985 and the Food, Agriculture, Conservation and Trade Act of 1990 and the rules and regulations of the Soil and Water Conservation Commission.

(b) Silviculture, subject to the provisions of the Forest Practices Guidelines Related to Water Quality (15 NCAC 11.0101-.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.

(D) 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 Section 104)

(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 303. 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 302. 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 drainageways.

(D) If common open space is the method used to meet the standards of Section 302, 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 304. 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 305. Rules Governing the Interpretation of Watershed Area Boundaries.

Where uncertainty exists as to the boundaries of the watershed areas, as shown on the Watershed Map, the following rules shall apply:

(A) 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.

(B) Where area boundaries are indicated as approximately following lot lines, such lot lines shall be construed to be said boundaries. However, a surveyed plat prepared by a registered land surveyor may be submitted to the county as evidence that one or more properties along these boundaries do not lie within the watershed area.

(C) Where the watershed area boundaries lie at a scaled distance more than 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.

(D) 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.

(E) 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 306. 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 307.

(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 307. Existing Development.

Any existing development as defined in this ordinance, may be continued and maintained subject to the provisions provided herein. 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.

(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 ordinance 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 308. Watershed Protection Permit.

(A) Except where a single family residence is constructed on a lot deeded prior to the effective date of this ordinance, 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 ordinance.

(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 ordinance.

(D) A Watershed Protection Permit shall expire if a Building Permit or Watershed Occupancy Permit for such use is not obtained by the applicant within twelve (12) months from the date of issuance.

#### Section 309. 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 310. Watershed Protection Occupancy Permit.

(A) The Watershed Administrator shall issue a Watershed Protection 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 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 ordinance 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 400: PUBLIC HEALTH REGULATIONS

#### Section 401. 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 402. 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 500: ADMINISTRATION, ENFORCEMENT AND APPEALS

### Section 501. 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 ordinance 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 ordinance.

(C) The Watershed Administrator shall keep records of all amendments to the local Water Supply Watershed Protection Ordinance and shall provide copies of all amendments upon adoption to the Water Quality Section of the Division of Environmental Management.

(D) The Watershed Administrator is granted the authority to administer and enforce the provisions of this Ordinance, 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 by this Ordinance.

(E) The Watershed Administrator shall keep a record of variances to the local Water Supply Watershed Protection Ordinance. This record shall be submitted to the Water Quality Section of the Division of Environmental Management 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.

### Section 502. Appeal from the Watershed Administrator

Any order, requirement, decision or determination made by the Watershed Administrator may be appealed to and decided by the Board of Adjustment.

An appeal from a decision of the Watershed Administrator must be submitted to the Board of Adjustment by a petitioner with standing within thirty (30) days from receipt of actual or constructive notice of the order, interpretation, decision or determination made. All appeals must be made in writing stating the reasons for appeal. Following submission of an appeal, the Watershed Administrator shall transmit to the Board all papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed unless the officer from whom the appeal is taken certifies to the Board, after the notice of appeal has been filed with him, that by reason of facts stated in an affidavit, a stay would in his opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed except by a restraining order which may be granted by a court of record.

The Board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any party may appear in person, by agent or by attorney.

Section 503. Changes and Amendments to the Watershed Protection Ordinance.

(A) 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.

(B) No action shall be taken until the proposal has been submitted to the Planning Board for review and recommendations. If no recommendation has been received from the Planning Board within thirty (30) days after submission of the proposal to the Chairman of the Planning Board, the Board of Commissioners may proceed as though a favorable report had been received.

(C) 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 Environmental Management, N.C. Division of Environmental Health, and the N.C. Division of Community Assistance.

(D) Prior to adopting or rejecting any zoning amendment, the governing board shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and explaining why the board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.

The planning board shall advise and comment on whether the proposed amendment 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 county 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 governing board.

(E) A member of the Board of County Commissioners or the Planning Board shall not vote on any zoning map or text amendment, or recommendations regarding same, where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Section 504. Public Notice and Hearing Required.

Before adopting or amending this ordinance, the Board of Commissioners shall hold a public hearing on the proposed adoption or changes. A notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published for the first time not less than then (10) nor more than twenty-five (25) days before the date fixed for the hearing.

Section 505. Board of Adjustment.

The Board of Adjustment 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.

Section 506. Powers and Duties of the Board of Adjustment.

(A) Administrative Review. The Board of Adjustment shall hear and decide appeals from any decision or determination made by the Watershed Administrator in the enforcement of this ordinance.

(B) Variances. The Board of Adjustment shall have the power to authorize, in specific cases, minor variances from the terms of this Ordinance as will not be contrary to the public interests where, owing to special conditions, a literal enforcement of this Ordinance will result in unnecessary hardship, so that the spirit of this Ordinance shall be observed, public safety and welfare secured, and substantial justice done. In addition, the county shall notify and allow a reasonable comment period for all other local governments having jurisdiction in the designated watershed where the variance is being considered.

(1) Applications for a variance shall be made on the proper form obtainable from the Watershed administrator and shall include the following information:

(a) A site plan, drawn to a scale of at least one (1) inch to forty (40) feet, indicating the property lines of the parcel upon which the use is proposed; any existing or proposed structures; parking areas and other built-upon areas; surface water drainage. The site plan shall be neatly drawn and indicate north point, name and address of person who prepared the plan, date of the original drawing, and an accurate record of any later revisions.

(b) A complete and detailed description of the proposed variance, together with any other pertinent information which the applicant feels would be helpful to the Board of Adjustment in considering the application.

(c) 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 Watershed Review Board.

(d) The Board of Adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the Board of Adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the Board of Adjustment willfully swears falsely, is guilty of a Class 1 misdemeanor.

(2) Before the Board may grant a variance, it shall make the following findings which shall be recorded in the permanent record of the case and shall include the factual reasons on which they are based:

(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.

(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.

(3) Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.

(4) If the application calls for the granting of a major variance, 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 Environmental Management Commission for its review.

#### Section 507. Appeals from the Board of Adjustment.

Appeals from the Board of Adjustment must be filed with the Superior Court within 30 days from the date of the decision. The decisions by the Superior Court will be in the manner of certiorari.

### ARTICLE 600: APPEARANCE STANDARDS

Multi-family and non-residential uses are subject to the standards described in this section. The standards do not apply to bonafide 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 601. 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 nine 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 section 602(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 property 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 602. 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 700: VESTED RIGHTS

Section 701. Purpose. The purpose of this article is to implement the provisions of N.C.G.S.153A-344.1 pursuant to which a statutory zoning vested right is established upon the approval of a site specific development plan.

Section 702. Definitions. As used in this article, the following terms shall have the meaning indicated:

Approval authority - The Board of Commissioners, Board of Adjustment or other board or official designated by ordinance for this article as being authorized to grant the specific zoning or land use permit or approval that constitutes a site specific development plan.

Site specific development plan - A plan of land development submitted to the county for purposes of obtaining a zoning vested right. At a minimum, such a 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. Applications for zoning permits or conditional use permits meet the requirements of this definition. Notwithstanding the foregoing, neither a variance, a sketch plan, nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

Zoning vested right - A right pursuant to G.S.153A-344.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

### Section 703. Establishment of a Zoning Vested Right

(A) A zoning vested right shall be deemed established upon the valid approval, or conditional approval, by the Board of Adjustment, of a site specific development plan, following notice and public hearing.

(B) The approving authority may approve a site specific development plan upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.

(C) Notwithstanding subsections (A) and (B), approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained.

(D) A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.

(E) The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development plan upon the expiration or termination of the vested right in accordance with this article.

(F) A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

### Section 704. Approval Procedures and Approval Authority.

(A) Except as otherwise provided in this section, an application for site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval authority for the specific type of zoning or land use permit or approval for which application in made.



(B) Notwithstanding the provisions of subsection (A), if the authority to issue a particular zoning or land use permit or approval has been delegated by ordinance to a board, committee or administrative official other than the Board of Commissioners, Board of Adjustment or other planning agency designated to perform any or all of the duties of a board of adjustment, in order to obtain a zoning vested right, the applicant must request in writing at the time of application that the application be considered and acted on by the board of adjustment, following notice and a public hearing as provided in G.S. 153A-323 and Chapter 160A, Article 19.

(C) In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the county, that a zoning vested right is being sought.

(D) Each map, plat, site plan or other document evidencing a site specific development plan shall contain the following notation:

"Approval of this plan establishes a zoning vested right under G.S.153A-344.1. Unless terminated at an earlier date, the zoning vested right shall be valid until (date)."

(E) Following approval or conditional approval of a site specific development plan, nothing in this article shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.

(F) Nothing in this article shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

#### Section 705. Duration.

(A) A zoning right that has been vested as provided in this chapter shall remain vested for a period of two years unless specifically and unambiguously provided otherwise pursuant to subsection (B). This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.

(B) Notwithstanding the provisions of subsection (A), the approval authority may provide that rights shall 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 of the development, the level of investment, the need for or desirability of the development, economic cycles, and market conditions. These determinations shall be in the sound discretion of the approval authority at the time the site specific development plan is approved.

(C) Upon issuance of a building permit, the expiration provisions of G.S.153A-358 and the revocation provisions of G.S. 153A-362 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

#### Section 706. Termination

A zoning right that has been vested as provided in this article shall terminate:

(A) at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed; or

(B) with the written consent of the affected landowner; or

(C) upon findings by the Board of Commissioners, by ordinance after notice and a public hearing, the 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 development plan; or

(D) upon payment to the affected landowner of 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 consultant's fees incurred after approval by the county, together with interest hereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action; or

(E) upon findings by the Board of Commissioners, by ordinance after notice and a hearing, that the land owner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan; or

(F) upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority 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 a hearing.

#### Section 707. Limitations

Nothing in this article is intended or shall be deemed to create any vested right other than those established pursuant to G.S. 153A-344.1.1

#### Section 708. Repealer

In the event that G.S. 153A-344.1 is repealed, this article shall be deemed repealed and the provisions hereof no longer effective.

#### Section 709. Effective Date

This article shall be effective January 1, 1994 and shall only apply to site specific development plans approved on or after January 1, 1994.

### ARTICLE 800: DEFINITIONS

#### Section 801. General Definitions.

**Agricultural Use.** The use of waters for stock watering, irrigation, and other farm purposes.

**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.

**Buffer.** An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

**Building.** Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two buildings by means of an open porch, breezeway, passageway, carport or other structure, with or without a roof, shall not be deemed to make them one building.

**Built-upon area.** Built-upon areas shall include that portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious).

**Cluster Development.** The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes non-residential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.

**Composting Facility.** A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.

**Critical Area.** The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 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.

**Development.** Any land disturbing activity which adds to or changes the amount of impervious or partially impervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil.

**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.

**Dwelling Unit.** A building, or portion thereof, providing complete and permanent living facilities for one family.

**Existing Development.** Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one of the following criteria:

- (1) substantial expenditures of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or
- (2) having an outstanding valid building permit as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1), or
- (3) having an approved site specific or phased development plan as authorized by the General Statutes (G.S. 153A-344.1 and G.S. 160A-385.1).

Existing Lot (Lot of Record). A lot which is part of a subdivision, a plat of which has been recorded in the Office of the Register of Deeds prior to the 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.

Family. One or more persons occupying a single dwelling unit, provided that unless all members are related by blood or marriage or adoption, no such family shall contain over five persons, but further provided that domestic servants employed or living on the premises may be housed on the premises without being counted as a family or families.

Hazardous Material. Any substance listed as such in: SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

Industrial Development. Any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

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.

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.

Major Variance. A variance that results in any one or more of the following:

- (1) the complete waiver of a management requirement; or
- (2) the relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard.

Minor Variance. A variance that does not qualify as a major variance.

Nonconforming lot of record. A lot described by a plat or a deed that was recorded prior to the effective date of local watershed regulations (or their amendments) that does not meet the minimum lot-size or other development requirements of these rules.

Non-residential Development. All development other than residential development, agriculture and silviculture.

Plat. A map or plan of a parcel of land which is to be, or has been subdivided.

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.

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.

Single Family Residential. Any development where: 1) no building contains more than one dwelling unit, 2) every dwelling unit is on a separate lot, and 3) where no lot contains more than one dwelling unit.

Stormwater collection system. Any conduit, pipe, channel, curb or gutter for the primary purpose of transporting (not treating) runoff. A stormwater 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).

#### Section 802. 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.