



WATAUGA COUNTY

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Planning & Inspections

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Memorandum

Date: October 22, 2021
To: Board of Commissioners
From: Joe Furman, Director
RE: Ordinance amendments

The Watauga County Planning & Development Ordinance

http://www.wataugacounty.org/App_Pages/Dept/Planning/viewordinances.aspx?DbID=119
includes three (3) chapters of regulations that are either mandated by the state, or are local programs overseen by state agencies:

- Water Supply Watershed regulations – mandated by NC Statute and overseen by NC Division of Mineral, Energy, and Land Resources (DEMLR)
- Sedimentation and Erosion Control regulations – local program overseen by NC DEMLR
- Flood Damage Prevention regulations – local program overseen by NC Department of Public Safety (DPS) in partnership with Federal Emergency Management Agency (FEMA)

The NC agencies involved in oversight provide model ordinances to assist local governments to comply with relevant state and federal regulations. New model ordinances have been provided by those agencies for the three listed regulations within the past year. Accordingly, Watauga County must comply with the minimum requirements of the Sedimentation and Erosion Control and Flood Damage Prevention models, and must at least incorporate changes in NC Statutes included in the 2021 Water Supply Watershed model. The Planning & Inspections staff presented proposed amendments to Chapters 7, 8, 9, and 21 of the Planning & Development Ordinance to the Planning Board on September 20, 2021. The Planning Board discussed and voted to approve the amendments and to recommend that the Board of Commissioners schedule a public hearing to consider amending the Ordinance as proposed.

The Flood Damage Prevention model includes some optional provisions that are designed to provide a higher level of protection from flooding events or to reduce flood insurance rates for owners, or both. The Planning Board is recommending some, but not all of these options; they are highlighted in the attachment. As mentioned, the County is not required to fully comply with the Water Supply Watershed model ordinance, other than a few mandatory provisions, but the Planning Board is recommending some other components of the model they believe will be more user-friendly than the current regulations. Compliance with the Sedimentation and Erosion Control model ordinance is mandatory; the Planning Board is not proposing anything other than the changes incorporated therein. Amendments to Chapter 7, Definitions, are also proposed in order to comply with the model ordinances. The majority of the proposed amendments to the 4 chapters are mandatory. The needed and proposed amendments to all three of the regulations plus definitions are indicated with strike-throughs, red ink, and highlighting in the attachments.

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) Alteration of a watercourse - means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.
- (30) 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.
- (31) Antenna - Communications equipment that transmits, receives or transmits and receives electromagnetic radio signals used in the provision of all types of wireless communications services.
- (32) Appeal - means a request for a review of the Ordinance Administrator's interpretation of any provision of this ordinance.
- (33) Approving Authority – means the Division or other State or a local government agency that has been delegated erosion and

sedimentation plan review responsibilities in accordance with the provisions of the Act.

- (34) Area of Sign - Refer to measurement standards in [Chapter 16 Article II Section 1](#).
- (35) Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)".
- (36) Art - An aesthetic physical item or artistic creation.
- (37) 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.
- (38) 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.
- (39) Attraction or Reader Board - Any sign having changeable copy for the purpose of advertising events, sales, services or products provided on the site.
- (40) 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.
- (41) Awning Sign - Any permanent sign painted on or attached to or supported by an awning.
- (42) Awning - A shelter extending from the exterior wall of a building and composed of non-rigid materials except for the supporting framework.
- (43) Balance of Watershed (BW). The area adjoining and upstream of the critical area in a WS-II and WS-III water supply watershed. The "balance of watershed" is comprised of the entire land area contributing surface drainage to the stream, river, or reservoir where a water supply intake is located.
- (44) 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.
- (45) 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.

- (46) 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".
- (47) Base Flood - means the flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (48) 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.
- (49) Basement - means any area of the building having its floor subgrade (below ground level) on all sides.
- (50) Being Conducted - means a land-disturbing activity has been initiated and **not deemed complete by the Approving Authority**.
- (51) 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.
- (52) Bona Fide Farm Purposes - Agricultural activities as set forth in G.S. 160D-903.
- (53) 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.
- (54) Borrow - means fill material **that** is required for on-site construction **that** is obtained from other locations.
- (55) Buffer Zone - means the strip of land adjacent to a lake or natural watercourse.
- (56) 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.
- (57) 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.
- (58) 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.
 - (59) Building Lines - Lines tangent to the exterior surface of a building and parallel to front, side and rear property lines.
 - (60) 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.
 - (61) 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.
 - (62) Building, Principal - The primary building on a lot or a building that house a principal use.
 - (63) 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).
 - (64) Canopy - A freestanding permanent roof-like shelter not attached to or requiring support from an adjacent structure.
 - (65) 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.
 - (66) 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.
 - (67) 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.
 - (68) Certified Local Government (CLG) Program - Certified Local Government (CLG) Programs are 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.

- (69)** 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.
- (70)** Chemical – An element, chemical compound, a mixture of elements or compounds or both.
- (71)** Chemical Manufacturing – A facility involved in the production, synthesis, formation, processing, refining, manufacturing, and/or distribution of chemical products in bulk.
- (72)** Chemical Storage Facilities – A facility used for the storage of chemical compounds in bulk.
- (73)** 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.
- (74)** 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.
- (75)** 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.
- (76)** 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.

- (77) 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.
- (78) 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.
- (79) Commercial – Used for an occupation, employment, or enterprise that is carried on for profit by the owner, lessee, or licensee.
- (80) 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.
- (81) Commission - means the North Carolina Sedimentation Control Commission.
- (82) Common Plan of Development – site where multiple separate and distinct development activities may be taking place at different times or different schedules but governed by a single development plan regardless of ownership of parcels.
- (83) 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.
- (84) Composting Facility - A facility in which only stumps, limbs, leaves, grass and untreated wood collected from land clearing or landscaping operations is deposited.
- (85) 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.
- (86) Conditional Zoning – A legislative zoning map amendment with site-specific conditions incorporated into the zoning map amendment.
- (87) Construction Sign - A temporary sign identifying the persons, firms or business directly connected with a construction project.
- (88) 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.

- (89) 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.
- (90) 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.
- (91) Department - when used alone means the North Carolina Department of Environmental Quality.
- (92) Determination - A written, final, and binding order, requirement, or determination regarding an administrative decision.
- (93) 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.
- (94) Development - Unless the context clearly indicated otherwise, the term means any ~~of the following~~ **man-made change to improved or unimproved real estate, including, but not limited to the following:**
- (a) The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any **building or** structure.
 - (b) The excavation, grading, filing, clearing, **paving, mining, dredging, drilling operation, storage of equipment or materials,** 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.

- (95) Development Activity - means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.
- (96) 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.
- (97) 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.
- (98) Digital Billboard - A highway sign utilizing electronic image displays that present multiple static advertisements on a rotating basis.
- (99) Digital Flood Insurance Rate Map (DFIRM) - means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.
- (100) 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.
- (101) 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.
- (102) Director - means the Director of the Division of Energy Mineral and Land Resources of the Department of Environment and Natural Resources.

- (103) Discharge Point or Point of Discharge - means that point where runoff leaves a tract of land where a land-disturbing activity has occurred or enters a lake or natural watercourse.
- (104) 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.
- (105) 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.
- (106) District - means the Watauga County Soil and Water Conservation District created pursuant to Chapter 139, North Carolina General Statutes.
- (107) Double Frontage Lot - A continuous (through) lot which borders two or more streets.
- (108) 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.
- (109) EASEMENT - A strip of land designated by the property owner for a specified purpose and use by the public, a corporation, or persons.
- (110) 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.
- (111) Electrical Transmission Tower - An electrical transmission structure used to support high voltage overhead power lines. The term shall not include any utility pole.
- (112) 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.

- (113) 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.
- (114) 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.
- (115) 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.
- (116) 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.
- (117) 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.
- (118) 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.
- (119) Equipment Compound - An area surrounding or near the base of a wireless support structure within which are located wireless facilities.
- (120) Erosion - means the wearing away of land surfaces by the action of wind, water, gravity, or any combination thereof.
- (121) 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.

- (122) 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.
- (123) 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.
- (124) 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.
- (125) 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).
- (126) 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.
- (127) 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.
- (128) 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.

- (129) 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.
- (130) 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.
- (131) 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.
- (132) Farmer's Market - A retail establishment primarily engaged in the sale of fresh fruits, vegetables and similar perishable goods.
- (133) 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.
- (134) Flood Boundary and Floodway Map (FBFM)" - means an official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).
- (135) Flood Hazard Boundary Map (FHBM)" - means an official map of a community, issued by the FEMA, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.
- (136) Flood Insurance - means the insurance coverage provided under the National Flood Insurance Program.
- (137) 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.
- (138) 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.

- (139) Flood Prone Area - see "Floodplain"
- (140) 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.
- (141) 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.
- (142) Floodplain - Any land area susceptible to be inundated by water from **any source**. ~~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.~~
- (143) Floodplain Administrator - is the individual appointed to administer and enforce the floodplain management regulations.
- (144) 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.
- (145) 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.
- (146) 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.
- (147) 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.
- (148) Flood-resistant material - **means any building product [material, component or system] capable of withstanding direct**

and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

- (149) 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.
- (150) Floodway encroachment analysis - means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and hydraulic models meeting the minimum requirements of the National Flood Insurance Program.
- (151) 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.
- (152) 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".
- (153) 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.

- (154) 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.
- (155) Gated Community - A development that is enclosed within a geographical area by restrictive gates.
- (156) 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.
- (157) 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.
- (158) Grade - The level of the site at the property line located at the closest distance to the sign.
- (159) Ground Cover - means any natural vegetative growth or other material which renders the soil surface stable against accelerated erosion.
- (160) 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.
- (161) 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.
- (162) 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).
- (163) 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.
- (164) Height of Sign - Refer to measurement standards in [Chapter 16 Article II Section 2](#).

- (165) 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](#).
- (166) 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.
- (167) High Quality Waters - means those classified as such in 15A NCAC 02B .0224, which is herein incorporated by reference including subsequent amendments and additions.
- (168) Highest Adjacent Grade (HAG) - means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.
- (169) 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.
- (170) 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.
- (171) Holiday Decorations - Signs or displays including lighting which are a nonpermanent installation celebrating national, state, and local holidays or holiday seasons.
- (172) 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.

- (173) 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.
- (174) 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.
- (175) Immediate Family - A person's parents, spouse, children, and siblings, including the parent's spouse. Includes step children and adopted children and their spouses.
- (176) Impervious Surface - Any material that substantially reduces or prevents the infiltration of stormwater into previously undeveloped land.
- (177) 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.
- (178) 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.
- (179) Ingress/Egress - The point where vehicles or pedestrians enter and exit a development.
- (180) 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.
- (181) 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.
- (182) 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.
- (183) 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.
- (184) 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.~~
- (185) Land-disturbing Activity - means any use of the land by any person in residential, industrial, educational, institutional, or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.
- (186) 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.
- (187) 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.
- (188) 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.
- (189) 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.
- (190) Legislative Hearing – A Hearing to solicit public comment on a proposed legislative decision.
- (191) 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.

(192) Letter of Map Change (LOMC) - means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

(a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

(b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

(c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

(d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

(193) 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.

(194) Light Duty Truck - means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular

curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
 - (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
 - (c) Available with special features enabling off-street or off-highway operation and use.
- (195) 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.
- (196) Logo, Logogram, or Logotype - An emblem, letter, character, pictograph, trademark, or symbol used to represent any firm, organization, entity, or product.
- (197) 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.
- (198) 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.
- (199) 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.
- (200) 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.
- (201) 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.

(202) 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.

(203) Manufactured Home or Mobile Home – ~~A structure as defined in NCGS 143-145(7)~~ ~~A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. "Manufactured home" includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of HUD and complies with the standards established under the Act. For manufactured homes built before June 15, 1976, "manufactured home" means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. "Manufactured home" also means a double-wide manufactured home, which is two or more portable manufactured housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. The term "manufactured home" does not include a "recreational vehicle".~~

(204) Manufactured Home Park or Subdivision – means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale (applicable to Chapter 9 only); for land outside of flood hazard areas (all other chapters) - 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."

- (205) Map Repository - means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products have the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.
- (206) 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.
- (207) 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.
- (208) Marquee Sign - A permanent sign painted on or attached to or supported by a marquee.
- (209) Massage - means the manipulation of body muscular tissue by rubbing, stroking, kneading, or tapping, by hand or mechanical device.
- (210) 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.
- (211) 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.
- (212) Minor Variance (re: watershed regulations) - A variance that does not qualify as a major variance.
- (213) 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.
- (214) 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.
- (215) 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.
- (216) 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.
- (217) Multi-Family Development - Three or more dwelling units intended for residential occupancy contained within one building or a Planned Unit Development.
- (218) 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.
- (219) 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.
- (220) Neon Sign - A sign with tubing that is internally illuminated by neon or other electrically charged gas.
- (221) 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.
- (222) 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.

- (223) 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.
- (224) 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.
- (225) 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).
- (226) 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.
- (227) Non-residential Development - All development other than residential development, agriculture and silviculture.
- (228) 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.

- (229)** 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.
- (230)** 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.
- (231)** Official Maps or Plans - Any maps or plans officially adopted by the County Commissioners as a guide to the development of the County.
- (232)** 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.
- (233)** On-Premises Sign - Any sign used for promoting a business, individual, product or service available on the premises where the sign is located.
- (234)** Ordinance Administrator – The Watauga County Department of Planning and Inspections.
- (235)** 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.
- (236)** Parent – means an affiliate that directly, or indirectly through one or more intermediaries, controls another person.
- (237)** Parking Space - A portion of the vehicle accommodation area set aside for the parking of one vehicle.
- (238)** 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.
- (239) 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.
- (240) Person who Violates or Violator - **Person Who Violates or Violator, as used in G.S. 113A-64, means: any landowner or other person who has financial or operational control over the land-disturbing activity; or who has directly or indirectly allowed the activity, and who has failed to comply with any provision of the Act, the rules of this Chapter or any order or local ordinance adopted pursuant to the Act as it imposes a duty upon that person.**
- (241) Phase of Grading - ~~means one of two types of grading: rough or fine.~~
- (242) 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.
- (243) Planning Board – Any board or commission established pursuant to NCGS 160D-301.
- (244) Plat - A map or plan of a parcel of land which is to be, or has been, subdivided.
- (245) 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.
- (246) 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.
- (247) 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.
- (248) Principally Above Ground - means that at least 51% of the actual cash value of the structure is above ground.
- (249) 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.
- (250) 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.
- (251) 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.
- (252) 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](#).
- (253) Propane – A heavy flammable gaseous alkane C₃H₈, found in crude petroleum and natural gas, also known as LP Gas.
- (254) 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.
- (255) 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.
- (256) 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.
- (257) 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.

(258) Qualified Individual. A person certified to perform stream determinations by completing and passing the Surface Water Identification Training and Certification (SWITC) course offered by the N.C. Div. of Water Resources at N.C. State University.

(259) 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.

(260) 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.

(261) 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.

(262) 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.
- (e)** Is fully licensed and ready for highway use.

For the purpose of this ordinance, "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

- (263)** 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.
- (264)** 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.
- (265)** 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 **two (2)** feet 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.
- (266)** 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.
- (267)** 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.
- (268)** 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.

- (269) 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.
- (270) 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.
- (271) 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).
- (272) Residence, Single-Family Detached - A residential use consisting of a single detached building containing one dwelling unit and located on a lot or tract.
- (273) 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.
- (274) 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.
- (275) Residential Subdivisions - A collection of land parcels designated and platted (mapped) exclusively for residential development.
- (276) Residuals. Any solid or semi-solid waste generated from a wastewater treatment plant, water treatment plant or air pollution control facility permitted under the authority of the Environmental Management Commission.
- (277) Revolving or Rotating Sign - An Animated Sign.
- (278) 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.
- (279) Riverine - means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
- (280) 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.

- (281) 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](#)).
- (282) 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.
- (283) 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.
- (284) 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.
- (285) 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.
- (286) 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.
- (287) 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.
- (288) 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.
- (289) 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.
- (290) 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.
- (291) 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.
- (292) 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.
- (293) 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.
- (294) Sign Face - An exterior display surface of a sign including nonstructural trim exclusive of the supporting structure.
- (295) Sign Permit - A permit issued by the land-use administrator that authorizes the recipient to erect, move, enlarge, or substantially alter a sign.

- (296)** 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.
- (297)** 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.
- (298)** 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.
- (299)** 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.
- (300)** Solid Waste Disposal Facility - means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).
- (301)** 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.
- (302)** 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.

- (303)** 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.
- (304)** 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.
- (305)** 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.
- (306)** 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.
- (307)** 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.
- (308) 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.
- (309) Stable - A building in which horses or other livestock are kept for commercial use including boarding, hire, and sell.
- (310) 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.
- (311) Stormwater Control Measure (SCM). means a permanent structural device that is designed, constructed, and maintained to remove pollutants from stormwater runoff by promoting settling or filtration; or to mimic the natural hydrologic cycle by promoting infiltration, evapo-transpiration, post-filtration discharge, reuse of stormwater or a combination thereof.
- (312) Stormwater Runoff - means the ~~surface flow~~ runoff of water resulting from precipitation in any form and occurring immediately after rainfall or melting.
- (313) 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.

- (314)** 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).
- (315)** Structure - means a walled and roofed building, a manufactured home, or a gas, liquid or liquefied gas storage tank that is principally above ground.
- (316)** Subdivider - Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.
- (317)** 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.
- (318) Subsidiary – means an affiliate that is directly, or indirectly through one or more intermediaries, controlled by another person.
- (319) Substantial Damage - means damage of any origin sustained by a structure during any **five-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”.
- (320) 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.
- (321) Substantial Improvement - means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any **five-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.
- (322) 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.
- (323) Surface Waters - All waters of the State as defined in NCGS 143-212 except underground waters.
- (324) Technical Bulletin and Technical Fact Sheet - means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.
- (325) Temperature Controlled - means having the temperature regulated by a heating and/or cooling system, built-in or appliance.
- (326) 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.
- (327) 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.
- (328) Ten-Year Storm - means ~~the storm water runoff resulting from precipitation~~ a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority ~~expected~~ to be equaled or exceeded, on the average, once in ten years, and of a duration which that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (329) Tower - A lattice-type structure, guyed or freestanding, that supports one or more antennas.
- (330) Toxic Substance - Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.
- (331) Tract, erosion control regulations - means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership.
- (332) 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."
- (333) 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.

- (334) 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.
- (335) Twenty-five Year Storm - means ~~the storm water runoff resulting from precipitation~~ a rainfall of an intensity that, based on historical data, is predicted by a method acceptable to the Approving Authority ~~expected~~ to be equaled or exceeded, on the average, once in 25 years, and of a duration which that will produce the maximum peak rate of runoff for the watershed of interest under average antecedent wetness conditions.
- (336) Uncovered - means the removal of ground cover from, on, or above the soil surface.
- (337) 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.
- (338) Unit - A structure or portion of a structure which is a single, habitable dwelling or single place of business.
- (339) 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.
- (340) Use - The activity or function that actually takes place or is intended to take place on a lot.
- (341) 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.
- (342) 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.
- (343) Variance - is a grant of relief from the requirements of this ordinance.
- (344) Vehicle Sign - A sign permanently or temporarily attached to or placed on a vehicle or trailer.

- (345) 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.~~ means the speed of flow through the cross section perpendicular to the direction of the main channel at the peak flow of the storm of interest but not exceeding bank full flows.
- (346) 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.
- (347) Visible - Capable of being seen without visual aid by a person of normal acuity.
- (348) Violation - means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 3 and 4 is presumed to be in violation until such time as that documentation is provided.
- (349) 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.
- (350) Waste - means surplus materials resulting from on-site land-disturbing activities and being disposed of at other locations.
- (351) Water Dependent Structure - Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.
- (352) 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.

- (353) Water Surface Elevation (WSE) - means the height, in relation to ~~mean sea level~~ **NAVD 1988**, of floods of various magnitudes and frequencies in the floodplains of riverine areas.
- (354) 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.
- (355) 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.
- (356) Watershed - **The entire land area contributing surface drainage to a specific point (e.g. the water supply intake.) or alternatively, the geographic region within which water drains to a particular river, stream or body of water.**
- (357) Wholesale Sales - On-premises sales of goods primarily to customers engaged in the business of reselling the goods.
- (358) Wind Turbine Height - The height above grade to the tip of the turbine blade when it reaches its highest elevation.
- (359) 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.
- (360) 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.
- (361) 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.
- (362) Wireless Support Structure - A freestanding structure, such as a monopole or tower, designed to support wireless facilities. This definition does not include utility poles.
- (363) Wooded Area - An area if 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.
- (364) ~~Working Days - Days the Watauga County Administrative offices are open for business.~~

- (365)** 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.
- (366)** 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.
- (367)** 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.
- (368)** 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.~~

Materials being used as fill shall be consistent with those described in 15A NCAC 13B .0562 unless the site is permitted by the Department's Division of Waste Management to operate as a landfill. Not all materials described in Section .0562 may be suitable to meet geotechnical considerations of the fill activity and should be evaluated accordingly.

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 permanent 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 chapter **whereby no land-disturbing activity has been undertaken.**

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 Plans.

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 **and noted on the approved plan.**

Section 13. Display of Plan Approval.

A Plan approval issued under this article shall be prominently displayed until all construction is complete, **all temporary measures have been removed**, 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). **In addition, weekly and rain-event self-inspections are required by federal regulations, that are implemented through the NPDES Construction General Permit No. NCG010000.** 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~~ **or** 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.

(A) The inspection shall be performed during or after each of the following phases of the plan;

(1) initial installation of erosion and sediment control measures;

(2) clearing and grubbing of existing ground cover;

(3) completion of any grading that requires ground cover;

(4) completion of all land-disturbing activity, construction, or development, including permanent ground cover establishment and removal of all temporary measures; and

(5) transfer of ownership or control of the tract of land where the erosion and sedimentation control plan has been approved and work has begun. The new owner or person in control shall conduct and document inspections until the project is

permanently stabilized as set forth in Sub-Item (iii) of this Item.

(B) Documentation of self-inspections performed under Item (1) of this Rule shall include:

- (1)** Visual verification of ground stabilization and other erosion control measures and practices as called for in the approved plan;
- (2)** Verification by measurement of settling basins, temporary construction entrances, energy dissipators, and traps.
- (3)** The name, address, organization affiliation, telephone number, and signature of the person conducting the inspection and the date of the inspection shall be included, whether on a copy of the approved erosion and sedimentation control plan or an inspection report. A template for an example of an inspection and monitoring report is provided on the [DEMLR website](https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms) at: <https://deq.nc.gov/about/divisions/energy-mineral-land-resources/erosion-sediment-control/forms>. 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.
- (4)** A record of any significant deviation from any erosion or sedimentation control measure from that on the approved plan. For the purpose of this Rule, a "significant deviation" means an omission, alternation, or relocation of an erosion or sedimentation control measure that prevents it from performing as intended. The record shall include measures required to correct the significant deviation, along with documentation of when those measures were taken. Deviations from the approved plan may also be recommended to enhance the intended performance of the sedimentation and erosion control measures.

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 time **specified in G.S. 113A-57, the rules of this Chapter, or as directed by the Approving Authority.**

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 updrift 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.~~

Plans shall be designed so that any increase in velocity of stormwater runoff resulting from a land-disturbing activity will not result in accelerated erosion of the receiving stormwater conveyance or at the point of discharge. Plans shall include measures to prevent accelerated erosion within the project boundary and at the point of discharge.

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 **latest edition of the USDA, Soil Natural Resources**

Conservation Service's "National Engineering Field Manual for Conservation Practices Handbook", 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 **upon providing engineering justification with a construction sequence that considers phasing, limiting exposure, weekly submitted self-inspection reports, and a more conservative design than the Twenty-five Year Storm.**
- (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 **latest edition of the** United States Department of ~~Soil~~ **Natural Resources** Conservation Service's "National Engineering Field Manual for Conservation Practices Handbook" 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 Basin Design**. 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.~~ **according to the following criteria:**
 - (1) **use a surface withdrawal mechanism, except when the basin drainage area is less than 1.0 acre;**
 - (2) **have a minimum of 1800 cubic feet of storage area per acre of disturbed area;**
 - (3) **have a minimum surface area of 325 square feet per cfs of**

- the Twenty-five Year Storm (Q25) peak flow;
- (4) have a minimum dewatering time of 48 hours;
- (5) incorporate 3 baffles, unless the basin is less than 20 feet in length, in which case 2 baffles shall be sufficient.

Upon a written request of the applicant, the Director may allow alternative design and control measures in lieu of meeting the conditions required in Section 2(C)(1) through Section 2(C)(5) if the applicant demonstrates that meeting all of those conditions will result in design or operational hardships and that the alternative measures will provide an equal or more effective level of erosion and sediment control on the site. Alternative measures may include quicker application of ground cover, use of sediment flocculants, and use of enhanced ground cover practices.

- (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 forms of ditch liners proven as being effective in restraining accelerated erosion. 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.~~

If the same person conducts the land-disturbing activity and 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, G.S. 74, Article 7, 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 by the Approving Authority as separate land-disturbing activities.

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.~~ accelerated erosion and sedimentation continues despite the installation of protective practices, they shall direct the person conducting the land-disturbing activity to take additional protective action necessary to achieve compliance with the conditions specified in the Act or its rules.

~~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~~ **XIV** 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~~ XV 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~~ XVI 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. **If the person engaged in the land-disturbing activity has not received a previous notice of violation under this section, the county shall deliver the notice of violation in person and shall offer assistance in developing corrective measures. Assistance may be provided by referral to a technical assistance program on behalf of the Approving Authority, referral to a cooperative extension program, or by the provision of written materials such as Department guidance documents. If the county is unable to deliver the notice of violation in person within 15 days following discovery of the violation, the notice of violation may be served in the manner prescribed for service of process by G.S. 1A-1, Rule 4, and shall include information on how to obtain assistance in developing corrective measures**

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 **who presents appropriate credentials** 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 ~~XVII~~ XVII 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~~ XVIII 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~~ XIX 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~~ XX 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 ~~XXH~~ XXI 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 of assessment. 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 of 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) Remission of Civil Penalties. A request for remission of a civil penalty imposed under G.S. 113A-64 may be filed with the Board of Commissioners within 60 days of receipt of the notice of assessment. A remission request must be accompanied by a waiver of the right to a contested case hearing pursuant to Chapter 150B of the General Statutes and a stipulation of the facts on which the assessment was based. The following factors shall be considered in determining whether a civil penalty remission request will be approved:
- (1) Whether one or more of the civil penalty assessment factors in G.S.113A-64(a)(3) were wrongly applied to the detriment of the petitioner.
 - (2) Whether the petitioner promptly abated continuing environmental damage resulting from the violation.
 - (3) Whether the violation was inadvertent or a result of an

accident.

(4) Whether the petitioner had been assessed civil penalties for any previous violations.

(5) Whether payment of the civil penalty will prevent payment for necessary remedial actions or would otherwise create a significant financial hardship.

(6) The assessed property tax valuation of the petitioner's property upon which the violation occurred, excluding the value of any structures located on the property.

(G) 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 **and a remission that is not required** is due when the violator is served with a notice of assessment. An assessment that is contested **or a remission that is not requested** is due at the conclusion of the administrative and judicial review of the assessment.

(H) 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~~ **the** 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~~ **by the Commission or a local government**, 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~~ XXII 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~~ XXIII 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~~ XXIV 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, **Articles 1,7,9, and 11** 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;
- (I) Minimize damage to private and public property due to flooding;
- (J) Make flood insurance available to the community through the National Flood Insurance Program;
- (K) Maintain the natural and beneficial functions of floodplains.

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.~~

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 FIS dated December 3, 2009 for Watauga County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto.

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 2 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.

Section 8. Penalties for Violation.

See Chapter 5, Article IV and V.

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. **In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.**

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~~ **NAVD 1988** of the proposed reference level (including basement) of all structures;
 - (b) Elevation in relation to ~~mean-sea-level~~ **NAVD 1988** to which any non-residential structure in Zone AE or A will be floodproofed; and
 - (c) Elevation in relation to ~~mean-sea-level~~ **NAVD 1988** to which any proposed utility systems will be elevated or floodproofed.
- (3) If floodproofing, a Floodproofing Certificate (FEMA Form ~~81-65~~ **086-0-34**) 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.~~ **A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).**
 - (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).
 - (9) A statement, that all materials below BFE/RFPE must be flood resistant materials.
- (C) Certification Requirements.
- (1) Elevation Certificates
 - (a) An Elevation Certificate (FEMA Form ~~81-31~~ 086-0-33) 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~~ NAVD 1988, 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~~ 086-0-33) 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~~ 086-0-33) 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 ~~81-65-086-0-34~~), 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~~ NAVD 1988. 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.

A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. 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 NAVD 1988. Floodproofing certificate 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 Certificate of Occupancy. 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 deny 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 150 square feet or less and meeting requirements of [Article IV, Section 2\(H\)](#).

(D) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

Section 3. Duties and Responsibilities of the Floodplain Administrator.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

- (A) 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.
- (B) Review all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied **including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.**
- (C) 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).
- (D) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

- (E) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of [Article IV, Section 6](#) are met.
- (F) Obtain actual elevation (in relation to ~~mean sea level~~ NAVD 1988) 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\(C\)](#).
- (G) Obtain actual elevation (in relation to ~~mean sea level~~ NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (H) Obtain actual elevation (in relation to ~~mean sea level~~ NAVD 1988) of all public utilities in accordance with the provisions of [Article III, Section 2\(C\)](#).
- (I) 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\(B\)](#).
- (J) 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.
- (K) 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.
- (L) 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.
- (M) 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,
- (N) 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.
 - (O) 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.
 - (P) 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
 - (Q) 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.
 - (R) 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.
 - (S) Follow through with corrective procedures of [Article III, Section 4.](#)

- (T) Review, provide input, and make recommendations for variance requests.
- (U) 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.
- (V) 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 **Class 1** misdemeanor **pursuant to NCGS 143-215.58** 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\(1\)\(2\)](#), [\(3\)](#), 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.

(J) A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

(1) The use serves a critical need in the community.

(2) No feasible location exists for the use outside the Special Flood Hazard Area.

(3) The reference level of any structure is elevated or floodproofed to at least the Regulatory Flood Protection Elevation.

(4) The use complies with all other applicable federal, state and local laws.

(5) Watauga County has notified the Secretary of the North Carolina Department of Public Safety of its intention to

grant a variance at least thirty (30) calendar days prior to granting the variance.

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 in accordance with the FEMA Technical Bulletin 2, Flood Damage-Resistant Materials Requirements.
- (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.~~ All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. 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.
 - (1) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall also meet the above provisions.
 - (2) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

- (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.
 - (Q) Buildings and structures that are located in more than one flood hazard area shall comply with the provisions associated with the most restrictive flood hazard area.

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 not be temperature-controlled or conditioned; Watauga County has the right to inspect the enclosed area;
 - (3) shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and

- (4) 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 consistent with the code and requirements for the original structure.
 - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.
- (4) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a five (5) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the five (5) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:
- (a) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.
 - (b) Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (F) Recreational Vehicles. Recreational vehicles shall either:
- a. ~~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
b. meet all the requirements for new construction.~~

(1) Temporary Placement

- (a) Be on site for fewer than 180 consecutive days; or**
- (b) 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.)**

(2) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall 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 satisfies the criteria outlined above ~~does not require an elevation or floodproofing certificate~~ **is not required to meet the elevation or floodproofing certificate standards of Article IV Section 2 (b)**. Elevation or floodproofing certifications are required for all other accessory structures in accordance with [Article III, Section 2\(C\)](#).

- (I) **Tanks.** When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:
 - (1) **Underground tanks.** Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;
 - (2) **Above-ground tanks, elevated.** Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;
 - (3) **Above-ground tanks, not elevated.** Above-ground tanks that do not meet the elevation requirements of Section B (2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks.

Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during design flood conditions.

- (4) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:
 - (a) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
 - (b) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.
- (J) Other Development.
 - (1) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Article IV, Section 6 of this ordinance.
 - (2) Retaining walls, sidewalks and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Article IV, Section 6 of this ordinance.
 - (3) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Article IV, Section 6 of this ordinance.
 - (4) Commercial storage facilities are not considered "limited storage" as noted in this ordinance, and shall be protected to the Regulatory Flood Protection Elevation as required for commercial structures.

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.

Section 2. Effect Upon Outstanding Floodplain Development Permits.

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

Section 3. Severability

See Chapter 5, Article VII.

Section 4. Adoption Certification.

I hereby certify that this is a true and correct copy of the Flood Damage Prevention Ordinance as adopted by the governing body of Community Name, North Carolina, on the Day (number or text) day of Month, Year.

WITNESS my hand and the official seal of insert Name, Title, this the Day
(number or text) day of Month, Year.

(signature)

(Seal)

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.
- (E) If a Non-Conforming Lot of Record is not contiguous to any other lot owned by the same party, then that lot of record shall not be subject to the development restrictions of this ordinance if it is developed for single-family residential purposes. Local governments may require the combination of contiguous nonconforming lots of record owned by same party to establish a lot or lots that meet requirements in Article II of this ordinance.
- (F) Any lot or parcel created as part of a family subdivision after the effective date of these rules shall be exempt from these rules if it is developed for one single-family detached residence and if it is exempt from local subdivision regulation. If a local government does not enforce subdivision regulations, then that local government may or may not allow the exemption for family subdivisions.
- (G) Any lot or parcel created as part of any other type of subdivision that is exempt from a local subdivision ordinance shall be subject to the land use requirements (including impervious surface requirements) of these rules, except that such a lot or parcel must meet the minimum buffer requirements to the maximum extent practicable.

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.~~
- ~~e) 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 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.~~

~~(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 2. Watershed Areas – Allowed and Not Allowed Uses

Activity/Use	Water Supply Watershed Classification				
	WS-II CA	WS-II BW	WS-III BW	WS-IV CA	WS-IV PA
New landfills	No	Yes	Yes	No	Yes
New permitted residual land application	No	Yes	Yes	No	Yes
New permitted petroleum contaminated soils sites	No	Yes	Yes	No	Yes
NPDES General or Individual Stormwater discharges	Yes	Yes	Yes	Yes	Yes
NPDES General Permit Wastewater Discharges pursuant to 15A NCAC 02H .0127	Yes	Yes	Yes	Yes	Yes
NPDES Individual Permit trout farm discharges	Yes	Yes	Yes	Yes	Yes
New NPDES Individual Permit domestic treated wastewater discharge	No	No	Yes	Yes	Yes
New NPDES Individual Permit industrial treated wastewater discharge	No	No	No ^a	Yes	Yes
Non-process industrial waste	No	No	Yes	Yes	Yes
New industrial connections and expansions to existing municipal discharge with pretreatment program pursuant to 15A NCAC 02H .0904	No	No	No	Yes	Yes
Sewage	No ^b	No ^b	No ^b	No ^b	No ^b
Industrial Waste	No ^b	No ^b	No ^b	No ^b	No ^b
Other wastes	No ^b	No ^b	No ^b	No ^b	No ^b
Groundwater remediation project discharges ^c	Yes	Yes	Yes	Yes	Yes
Agriculture ^d	Yes	Yes	Yes	Yes	Yes
Silviculture ^e	Yes	Yes	Yes	Yes	Yes
Residential Development ^f	Yes	Yes	Yes	Yes	Yes
Non-residential Development ^g	Yes	Yes	Yes	Yes	Yes
Nonpoint Source Pollution ^h	Yes	Yes	Yes	Yes	Yes
Animal Operations ⁱ	Yes	Yes	Yes	Yes	Yes

Notes:

^a Except non-process industrial discharges are allowed

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

^c Where no other practical alternative exists

^d In WS-I watersheds and Critical Areas of WS-II, WS-III, and WS-IV watersheds, agricultural activities conducted after 1/1/1993 shall maintain a minimum 10 foot vegetated setback or equivalent control as determined by SWCC along all perennial waters indicated on most recent version of USGS 1:24000 scale (7.5 minute) topographic mpas or as determined by local government studies

^e Subject to Forest Practice Guidelines Related to Water Quality (02 NCAC 60C .0100 to .0209) Effective 4/1/2018

^f See density requirements in 15A NCAC 02B .0624

^g See different allowed and not allowed in this table

^h NPS pollution shall not have adverse impact, as defined in 15A NCAC 02H .1002, on use as water supply or any other designated use

ⁱ Deemed permitted, as defined in 15A NCAC 02T .0103 and permitted under 15A NCAC 2H .0217

NOTE: Source of table is Model Water Supply Watershed Protection Ordinance published by NCDEMLR, Stormwater program.

Section 3. Cluster Development

- (A) PROJECT DENSITY.** The following maximum allowable project densities and minimum lot sizes shall apply to a project according to the classification of the water supply watershed where it is

located, its relative location in the watershed, its project density, and the type of development:

Water Supply Classification	Location in the Watershed	Maximum Allowable Project Density or Minimum Lot Size		
		Low Density Development		High Density Development
		Single-family detached residential	Non-residential and all other residential	All types
WS-II	Critical Area	1 dwelling unit (du) per 2 acres or 1 du per 80,000 square foot lot excluding roadway right-of-way or 6% built-upon area	6% built-upon area	6 to 24% built-upon area
	Balance of Watershed	1 du per 1 acre or 1 du per 40,000 square foot lot excluding roadway right-of-way or 12% built-upon area	12% built-upon area	12 to 30% built-upon area
WS-III	Balance of Watershed	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
WS-IV	Critical Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon area	24% built-upon area	24 to 50% built-upon area
	Protected Area	1 du per one-half acre or 1 du per 20,000 square foot lot excluding roadway right-of-way or 24% built-upon; or 3 dus per acre or 36% built-upon area without curb and gutter street system	24% built-upon area; or 36% built-upon area without curb and gutter street system	24 to 70% built-upon area

NOTE: Source of table is Model Water Supply Watershed Protection Ordinance published by NCDEMLR, Stormwater program.

(B) CALCULATION OF PROJECT DENSITY. The following requirements shall apply to the calculation of project density:

(1) Project density shall be calculated as the total built-upon area divided by the total project area;

- (2) A project with "existing development," as that term is defined in Chapter 7, may use the calculation method in Sub-Item (1) of this Item or may calculate project density as the difference of total built-upon area minus existing built-upon area divided by the difference of total project area minus existing built-upon area.
 - (3) Expansions to existing development are excluded unless the expansion is part of a larger common plan of development that is subject to these regulations and shall be subject to 15A NCAC 02B .0624 except as excluded in Rule 15A NCAC 02B .0622 (1)(d).
 - (4) Where there is a net increase of built-upon area, only the area of net increase shall be subject to the regulations.
 - (5) Where existing development is being replaced with new built-upon area, and there is a net increase of built-upon area, only the area of net increase shall be subject to the regulations.
 - (6) Total project area shall exclude the areas below the Normal High Water Line (NHWL).
 - (7) Projects under a common plan of development shall be considered as a single project for purposes of density calculation except that on a case-by-case basis, local governments may allow projects to be considered to have both high and low density areas based on one or more of the following criteria:

 - (a) natural drainage area boundaries;
 - (b) variations in land use throughout the project; or
 - (c) construction phasing.
- (C) **LOW DENSITY PROJECTS.** In addition to complying with the project density requirements of Item (A) of this Rule, low density projects shall comply with the following:
- (1) **VEGETATED CONVEYANCES.** Stormwater runoff from the project shall be released to vegetated areas as dispersed flow or transported by vegetated conveyances to the maximum extent practicable. In determining whether this criteria has been met, the local government shall take into account site-specific factors such as topography and site layout as well as protection of water quality. Vegetated conveyances shall be maintained in perpetuity to ensure that they function as designed. Vegetated conveyances that meet the following criteria shall be deemed to satisfy the requirements of this Sub-Item:

 - (a) Side slopes shall be no steeper than 3:1 (horizontal to vertical) unless it is demonstrated

to the local government that the soils and vegetation will remain stable in perpetuity based on engineering calculations and on-site soil investigation; and

- (b) The conveyance shall be designed so that it does not erode during the peak flow from the 10-year storm event as demonstrated by engineering calculations.
- (2) CURB OUTLET SYSTEMS. In lieu of vegetated conveyances, low density projects shall have the option to use curb and gutter with outlets to convey stormwater to grassed swales or vegetated areas. Requirements for these curb outlet systems shall be as follows:

 - (a) The curb outlets shall be located such that the swale or vegetated area can carry the peak flow from the 10-year storm and at a non-erosive velocity;
 - (b) The longitudinal slope of the swale or vegetated area shall not exceed five percent except where not practical due to physical constraints. In these cases, devices to slow the rate of runoff and encourage infiltration to reduce pollutant delivery shall be provided;
 - (c) The swale's cross section shall be trapezoidal with a minimum bottom width of two feet;
 - (d) The side slopes of the swale or vegetated area shall be no steeper than 3:1 (horizontal to vertical);
 - (e) The minimum length of the swale or vegetated area shall be 100 feet; and
 - (f) Low density projects may use treatment swales designed in accordance with 15A NCAC 02H .1061 in lieu of the requirements specified in Sub-Items (a) through (e) of this Sub-Item.
- (3) 10/70 OPTION. Outside of the critical areas of WS-II and WS-IV watersheds, new development under the "10/70 option" is allowed in accordance with the following requirements:

 - (a) A maximum of 10 percent of the land area of a water supply watershed outside of the critical area and within Watauga County's planning jurisdiction may be developed with new development projects and expansions of existing development of up to 70 percent built-upon area.
 - (b) The beginning amount of acreage available under this option shall be based on the County's jurisdiction as delineated on the date the water supply watershed classification became effective. The acreage within the

critical area shall not be counted towards the allowable 10/70 option acreage;

- (c) Projects that are covered under the 10/70 option shall comply with the low density requirements set forth in Item (C) above.
- (d) The maximum built-upon area allowed on any given new development project shall be 70 percent;
- (e) When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision.

- (4) New development shall meet the development requirements on a project-by-project basis

Section 4. Density Averaging

An applicant may average development density on up to two noncontiguous properties for purposes of achieving compliance with the water supply watershed development standards if all of the following circumstances exist:

- (A) The properties are within the same water supply watershed. If one of the properties is located in the critical area of the watershed, the critical area property shall not be developed beyond the applicable density requirements for its classification.
- (B) Overall project density meets applicable density or stormwater control requirements under 15A NCAC 2B .0200.
- (C) Vegetated setbacks on both properties meet the minimum statewide water supply watershed protection requirements.
- (D) Built upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas.
- (E) Areas of concentrated density development are located in upland areas and, to the maximum extent practicable, away from surface waters and drainage ways.
- (F) The property or portions of the properties that are not being developed will remain in a vegetated or natural state and will be managed by a homeowners' association as common area, conveyed to a local government as a park or greenway, or placed under a permanent conservation or farmland preservation easement unless it can be demonstrated that the local government can ensure long-term compliance through deed restrictions and an electronic

- permitting mechanism. A metes and bounds description of the areas to remain vegetated and limits on use shall be recorded on the subdivision plat, in homeowners' covenants, and on individual deed and shall be irrevocable.
- (G) Development permitted under density averaging and meeting applicable low density requirements shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
 - (H) A special use permit or other such permit or certificate shall be obtained from the local Watershed Review Board or Board of Adjustment to ensure that both properties considered together meet the standards of the watershed ordinance and that potential owners have record of how the watershed regulations were applied to the properties.

Section 5. Cluster Development

Clustering of development is allowed in all Watershed Areas 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 6. Vegetated Setbacks 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) Where USGS topographic maps do not distinguish between perennial and intermittent streams, an on-site stream determination may be performed by an individual qualified to perform such stream determinations.
- (C) 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 7. 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 Article I, Section 3(c).
- (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 8. 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 9. 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.~~~~

Existing development as defined in Chapter 7 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. Please see Section 3 (B) Calculation of Project Density. This section deals with all existing development as defined in the EMC rules. All existing development, whether

or not it meets the statewide minimum standards, is exempt from the provisions of this ordinance.

- (A) 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:
 - (4) When such use of land has been changed to an allowed use, it shall not thereafter revert to any prohibited use.
 - (5) Such use of land shall be changed only to an allowed use.
 - (6) When such use ceases for a period of at least one year, it shall not be reestablished.
- (B) 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:
 - (3) Repair or reconstruction is initiated within twelve (12) months and completed within two (2) years of such damage.
 - (4) 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 10. 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 11. 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 12. 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.

